



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – FIFTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, FEBRUARY 11, 2021 (EVENING SITTING)

1. The House assembled at Seven O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Hon. Speaker
4. **COMMUNICATION FROM THE CHAIR**

The Speaker issued the following Communication: -

Regarding prioritization of the Referendum (No.2) Bill (National Assembly Bill No. 14 of 2020)

Honourable Members, before we proceed to Order No. 8 on the Order Paper of today's Evening Sitting which is the Second Reading of the Referendum (No. 2) Bill (National Assembly Bill No. 14 of 2020), I wish to give the following guidance. As you are aware, Honourable Members there are currently two Bills before the House proposing to legislate on the processes and management of referenda in the country. These are –

- (i) The Referendum Bill (National Assembly Bill No. 11 of 2020) sponsored by the Constitutional Implementation Oversight Committee; and
- (ii) The Referendum (No.2) Bill (National Assembly Bill No. 14 of 2020) sponsored by the Departmental Committee on Justice & Legal Affairs.

Honourable Members, in the exercise of its mandate as provided for under Standing Order 171, the House Business Committee has since prioritised The Referendum (No.2) Bill (National Assembly Bill No. 14 of 2020) sponsored by the Departmental Committee on Justice & Legal Affairs. I have received representations in my Chambers seeking asking why the House Business Committee arrived at that decision. I have decided to make the facts of the matter known to the House at this earliest opportunity. In this regard, I wish to inform the House that, on two occasions towards the end of last Session, the House Business Committee did ask the two Committees to retreat, consult and agree on which of the two Bills ought to be accorded priority. However, despite lengthy engagements on the matter, the information availed to the Committee indicated that no agreement was reached. This therefore prompted the House Business Committee, as the Committee charged with prioritising business in the House, to offer leadership for purposes of

facilitating uninterrupted flow of business of the House with respect to enabling the House to legislate on the process and management of referendum.

Honourable Members, in making the determination to give priority to the Bill by the Departmental Committee on Justice & Legal Affairs, the House Business Committee was informed by the following –

1. During the First Leadership Retreat of the 12th Parliament that took place in August 2018 in Mombasa, it was agreed that draft Bills and Legislative proposals emanating from Independent Offices and Constitutional Commissions ought to be channelled through the relevant Departmental Committees of the House and accorded priority. This decision was further affirmed during the Third Leadership Retreat that took place in August last year. It was therefore imperative that the House Business Committee respects and upholds the previous resolutions of the House Leadership, which were arrived with participation of the Chairpersons and Vice-Chairpersons of the two Committees. This criteria favoured the version of the Bill sponsored by the Departmental Committee on Justice & Legal Affairs; and,
2. We asked ourselves the following Question: Of the two Bills, we Which one originated from, or has the highest input of the Independent Electoral & Boundaries Commission, in line with the said resolution of the House Leadership, and which one started its legislative journey first. Information availed to the House Business Committee and indeed a close reading of the Reports of the two Committees revealed that the Bill sponsored by the Departmental Committee on Justice & Legal Affairs was initially a product of a lengthy and consultative process which started in the last Parliament seeking to reform and consolidate electoral-related laws in the country. Indeed, an analysis of the two referendum Bills confirms that the Bill by the Departmental Committee on Justice & Legal Affairs emanated from prolonged engagements between the Committee and IEBC from as far back as 2015. From the Report of the Committee, it is evident that part of the amendments that had been proposed in the draft Bill in the last Parliament were incorporated in the Election Laws (Amendment) Act, 2017, which was a product of the Joint Committee of both Houses chaired by the then Senator for Meru, The Hon. Kiraitu Murungi, EGH.

Honourable Members, records indicate that owing to the weighty nature of the pending work at the time, it was agreed that the balance of the amendments at the end of the 11th Parliament, which were substantial in number, be carried forward by the Departmental Committee on Justice & Legal Affairs and considered by the next Parliament, which is this one. Further, information provided by the Committee also reveals that upon commencement of the current Parliament in 2017, the Committee continued to engage with IEBC on the Referendum Bill and there is evidence of these engagements taking place as late as March, 2019.

Honourable Members, having considered these issues, it was the determination of the House Business Committee not to allow the two Bills, dealing with similar subject matter, to proceed concurrently.

Honourable Members, a second question may then arise is “what is to happen to the Bill sponsored by the Constitutional Implementation Oversight Committee?” I would like, at this juncture, to assure Members that nothing has been lost. I say this because, procedurally, the Committee and indeed any other Member of the House is at liberty to identify and isolate whatever provisions they may deem crucial from the CIOC Bill, and

move them as amendments to the Bill by the Departmental Committee on Justice & Legal Affairs during the Committee of the Whole House stage.

Beyond that, Honourable Members, the Bill by the Constitutional Implementation Oversight Committee remains valid as the fate of the Bill by the Departmental Committee on Justice & Legal Affairs is still unknown until it is exhaustively considered and passed by the House. This therefore means that should the Bill sponsored by the Departmental Committee on Justice & Legal Affairs be withdrawn by the Mover or get lost at any stage, the House will result to considering the Bill sponsored by the Constitutional Implementation Oversight Committee in the published form. This would be a last resort.

However, Honourable Members having weighed the alternatives available, my guidance is that the reasonable option would be to have the relevant provisions of the Bill by the Constitutional Implementation Oversight Committee included in the Bill by the Departmental Committee on Justice & Legal Affairs. The so 'consolidated' Bill, incorporating all areas of concern, would then be considered for decision by the House. This will not only hasten the process, but also ensure unity of purpose in legislation.

In conclusion, Honourable Members, may I state that this guidance has been made to allow continuity of the business of the House, with respect to legislating on the subject of consolidation of the referendum law. The Constitutional Implementation Oversight Committee should therefore not get discouraged by this decision. Indeed, the House acknowledges and truly appreciates the fact that the Committee has equally done a remarkable job in putting together their Bill which was actually published first. The House, and the indeed the concerned Committees, are guided accordingly. I thank you.

5. PAPERS LAID

The following Papers were laid on the Table –

- (i) 2021 Budget Policy Statement from the National Treasury.
- (ii) 2021 Medium-Term Debt Management Strategy from the National Treasury.
(Submitted pursuant to the section 25(7) of the Public Finance Management Act, 2012)
- (iii) Legal Notice No. 202 of 2020 relating to the Architects and Quality Surveyors (Continuing Professional Development) By-Laws, 2020 and the Explanatory Memorandum from the Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works.
- (iv) Performance Audit Report on Installation and Maintenance of Road Furniture by the Kenya National Highways Authority, the Kenya Urban Roads Authority and the Kenya Rural Roads Authority from the Office of the Auditor-General.
- (v) Annual Report for the 2018/2019 financial year from the National Gender and Equality Commission.
- (vi) Annual Statutory Report for the 2019/2020 financial year from the Council of Governors.

- (vii) Annual Report and Financial Statements for the 2017/2018 financial year for the Kenya Tourism Board from the Ministry of Tourism and Wildlife.
- (viii) Financial Statements for the year ended 30 June, 2019 from the Public Service Commission.
- (ix) The Report of the Auditor-General and Financial Statements in respect of the Competition Authority of Kenya for the year ended 30th June, 2020 and the certificate therein.
- (x) The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June, 2019 and the certificates therein: -
 - a) Petroleum Development Levy Fund Holding Account;
 - b) Uwezo Fund;
 - c) Youth Enterprise Development Fund;
 - d) National Government Affirmative Action Fund;
 - e) State Department for Information Communication Technology;
 - f) The National Treasury – Revenue Statements (Recurrent);
 - g) The National Treasury – Development Revenue Statements; and
 - h) Kenya Revenue Authority – Revenue Accountability Statements.

(The Leader of the Majority Party)

6. QUESTIONS

The following Questions were asked: -

- (i) **Question No. 013/2021** by the Member for Funyula (Hon. (Dr.) Ojiambo Oundo, MP) regarding completion of the Matayos – Ganjala – Nakhasiko – Nangina (C830) road; and

(To be replied to by the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works before the Departmental Committee on Transport, Public Works and Housing)

- (ii) **Question No. 016/2021** by the Member for Alego Usonga (Hon. Samuel Atandi, MP) to ask the Teachers Service Commission regarding dismissal from service of Mr. Jared Otieno Ogola of TSC No. 390385 as former principal of Kowet Mixed Secondary School was dismissed contrary to section 41(2) of the Employment Act

(For Written Reply by the Teachers Service Commission)

The following Questions were deferred: -

- (i) **Question No. 012/2021** by the Member for Kitutu Masaba (Hon. Shadrack Mose, MP) regarding inordinate delays in registering Primary and Secondary schools across the country occasioned by strenuous, complicated and bureaucratic processes and requirements; and

- (ii) **Question No. 015/2021** by the Member for Kikuyu (Hon. Kimani Ichung'wah, MP) on importation of raw hides and skins that are available locally.

7. **THE REFERENDUM (No.2) BILL (NATIONAL ASSEMBLY BILL NO.14 OF 2020)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Referendum (No.2) Bill (National Assembly Bill No.14 of 2020) be now read a Second Time

(Vice-Chairperson, Departmental Committee on Justice & Legal Affairs)

Debate arising;

And the time being one minute past Nine O'clock, the Speaker interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

8. **HOUSE ROSE** - at one minute past Nine O'clock

M E M O R A N D U M

The Speaker will take the Chair on Tuesday,
Tuesday, February 16, 2021 at 02.30 p.m.

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