



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – FIFTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, FEBRUARY 9, 2021

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker
4. **COMMUNICATION FROM THE CHAIR**

The Speaker conveyed the following Communication –

BUSINESS THAT LAPSED AT THE END OF THE FOURTH SESSION AND OMMITTAL OF DIFFERENT PROVISIONS OF THE BUSINESS LAWS (AMENDMENT)(NO.2) BILL, 2020 TO VARIOUS DEPARTMENTAL COMMITTEES

Honourable Members, I wish to welcome you back to the August House following the long recess and hope that you are sufficiently rested and rejuvenated in readiness for the commencement of the Fifth Session of the Twelfth Parliament, which will be a busy one.

Honourable Members, as we commence the Session, I wish to bring to the attention of the House that, going by our practices and the Standing Orders, certain business that was not concluded at the end of the last Session, such as Motions, as well as Questions and Statements which had not been responded to, has now lapsed. To this end, every Chairperson of a Committee or individual Member who wishes to re-introduce such business is advised do so by contacting the Table Office to revive the business. This, however, does not apply to Bills and Petitions, which were saved by way of a resolution of the House on December 3, 2020.

Honourable Members, I also wish to draw the attention of the House to the fact that the term of Sessional Committees has come to an end and therefore they will be reconstituted afresh, as per the usual practice. These include the Committee on Parliamentary Powers and Privileges and the Committee on Members' Services and Facilities.

Further, certain other Committees with set term limits also require to be reconstituted afresh, that is, the Committee on Appointments and the Budget and Appropriations Committee. As such, the Committee on Selection is required to expedite the process of nominating Members to serve in the said Committees.

Honourable Members, as you may also recall, the Business Laws (Amendment)(No.2) Bill (National Assembly Bill No. 50 of 2020) was published on 14th December, 2020 and read a First Time on Tuesday, 22nd December, 2020. The Bill, which is sponsored by the Leader of the Majority Party, seeks to make amendments to various statutes which do not warrant the publication of separate Bills to facilitate the ease of doing business in Kenya.

Honourable Members, the Bill proposes amendments to ten (10) statutes. In accordance with the provisions of Standing Order 127, the said omnibus Bill has been referred to the various relevant Departmental Committees for consideration and public participation. I wish to clarify that the Committees shall consider the Bill as follows –

- 1) The Departmental Committee on Justice and Legal Affairs will deal with the provisions of the Bill touching on the following:-
 - (a) The Law of Contract Act (Cap. 23);
 - (b) The Companies Act (No. 17 of 2015);
 - (c) The Insolvency Act (No. 18 of 2015); and
 - (d) The Small Claims Court Act (No. 2 of 2016).
- 2) The Departmental Committee on Labour and Social Welfare will deal with the provisions of the Bill touching on the following:
 - (a) The Industrial Training Act (Cap. 237); and
 - (b) The National Social Security Fund Act (No. 45 of 2013).
- 3) The Departmental Committee on Finance and National Planning will consider the provisions of the Bill proposing to amend the Stamp Duty Act (Cap. 480).
- 4) The Departmental Committee on Health will consider the provisions of the Bill proposing to amend the National Hospital Insurance Fund Act (No. 9 of 1998).
- 5) The Departmental Committee on Lands will consider the provisions of the Bill proposing to amend the Land Registration Act (No. 3 of 2012).
- 6) The Departmental Committee on Transport, Public Works and Housing will consider the provisions of the Bill proposing to amend the National Construction Authority Act (No. 41 of 2011).

Honourable Members, the cited Committees should facilitate public participation as they consider their relevant portions of the Bill, following which they should file their respective Reports with the Departmental Committee on Justice and Legal Affairs which will be the lead Committee on the Bill. The lead Committee is

thereafter expected to table the Consolidated Report in the House prior to commencement of the Second Reading on the Bill.

The House is accordingly guided.

5. **MESSAGES**

The Speaker conveyed the following Messages: -

(i) **REFERRAL BY H.E. THE PRESIDENT OF THE EMPLOYMENT (AMENDMENT) BILL, 2019**

Honourable Members, You may recall that on 17th September 2020, the National Assembly passed the **Employment (Amendment) Bill (National Assembly Bill No. 15 of 2019)**. The Bill was sponsored by the Member for Gilgil Constituency, the Hon. Martha Wangari, MP. Following its passage, I did present the Bill for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders. However, in exercise of the powers conferred under Article 115(1)(b) of the Constitution, H.E. the President, by way of a Memorandum dated 2nd November 2020, has since referred the Bill back to the National Assembly for reconsideration.

Honourable Members, in his Memorandum, H.E. the President has expressed reservations on sub-clauses (4), (5) and (6) of Clause 3 of the Bill which sought to insert a new Section 29A to provide for pre-adoptive leave and also leave for the parents of a child born as a result of a surrogate motherhood agreement. The proposed new section provides that an adoptive parent or the parent of a child born through surrogacy shall be entitled to parental leave with full pay, and thereafter sets out the procedure for applying for such leave.

Amongst the reasons for his reservations, H.E. the President notes that amending the law in the manner proposed in the Bill will lead to surrogacy agreements operating in a vacuum in terms of absence of a substantive legal and regulatory framework governing surrogacy in Kenya in view of the fact that surrogacy is a novel reproductive science that remains unregulated in the country. The President also objects to the proposal on grounds that the provisions relating to surrogate motherhood agreements are of a substantive nature hence necessitating the formulation of a comprehensive policy arrived at after broad public participation and stakeholder engagements that will inform legislative positions. Consequently, the President recommends deletion of sub-clauses (4), (5) and (6) of Clause 3 of the Bill.

Honourable Members, Standing Order 154(2) requires the House to consider the President's Reservations **within twenty one (21) days** upon receipt of the Memorandum. In this regard, the Reservations of the President, as contained in his Memorandum, now stand committed to the Departmental Committee on Labour and Social Welfare for consideration. The Committee should table its report soonest to allow the House to consider the President's Reservations within the said timelines.

Honourable Members, may I, at this point, remind the House of the *Speaker's Communication* of July 28, 2015 concerning the consideration of the President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance, that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of **fully accommodating** the President's reservations is **a simple majority** as contemplated under Article 122(1) of the Constitution as read together with Article 115(2)(a).

On the other hand, an amendment that **does not fully accommodate** the President's reservations, or indeed one that has the effect of a total override of the President's reservations, including negating his proposed text, would require a **two-thirds voting** threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution.

Honourable Members, I wish to further remind the House and the Committee that only sub-clauses (4), (5) and (6) of Clause 3 of the Bill will be considered. I therefore direct the Clerk to circulate the memorandum from H.E. the President to all Members so that they familiarize themselves with its contents.

(ii) **APPROVAL BY THE SENATE OF THE TEA BILL (SENATE BILL NO. 36 OF 2018) AND THE ANTI-DOPING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 51 OF 2020)**

Honourable Members, as you are aware, Standing Order 41(4) of the National Assembly Standing Orders requires the Speaker to report to the House any Message received from the Senate. In this regard, I wish to report that last month, I did receive two Messages from the Senate regarding its passage of the following two Bills, which had also been considered and passed by the National Assembly towards the end of last year-

- (a) The Tea Bill (Senate Bill No. 36 of 2018); and,
- (b) The Anti-Doping (Amendment) Bill (National Assembly Bill No. 51 of 2020).

Honourable Members, in summary, the Messages convey that the Senate, by resolutions made on 21st and 29th December, 2020 respectively, **passed** the two Bills in the form passed by the National Assembly. This action concluded the bicameral processing of the two Bills. Subsequently, following presentation for Assent in accordance with the requirements of Articles 110(5) and 112(2)(a) of the Constitution, H.E the President did give his Assent to both Bills on 31st December 2020. The two have since become part of the Laws of Kenya. The House is thus accordingly informed.

6. PAPERS LAID

The following Papers were laid on the Table by the Leader of the Majority Party: -

- a. The Supplementary Estimates I for the FY 2020/21 that includes: -
 - 1) FY 2020/21 Supplementary Estimates I (Programme Based Budget);
 - 2) FY 2020/21 Supplementary Estimates I (Recurrent Estimates Volumes I and II);
 - 3) FY 2020/21 Supplementary Estimates I (Development Estimates – Volumes I, II and III); and
 - 4) Memorandum on the Supplementary Estimates No.1 for the FY 2020/21.
- b. *Legal Notice No. 212 of 2020* relating to the Standards (Verification of Conformity to Standards and other applicable Regulations of Imports) (Amendment) Order, 2020 and the Explanatory Memorandum from the Ministry of Industrialization, Trade and Enterprise Development;
- c. *Legal Notice No. 224 of 2020* relating to the Public Health (COVID-19 Indoor Meetings) Rules, 2020 and the Explanatory Memorandum from the Ministry of Health;
- d. *Legal Notice No. 3 of 2021* relating to the Warehouse Receipt System Regulations, 2021 and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives;
- e. *Legal Notice No. 4 of 2021* relating to the Civil Aviation (Regulatory Fees and Charges for Unmanned Aircraft Systems) Regulations, 2020 and the Explanatory Memorandum from the Kenya Civil Aviation Authority;
Items (b) (c) (d) and (e) referred to the Committee on Delegated Legislation)
- f. National Government Budget Implementation Review Report for the First Quarter FY 2020/21 from the Office of the Controller of Budget;
- g. First Quarter County Governments Budget Implementation Review Report for the FY 2020/21 from the Office of the Controller of Budget;
- h. Report of the Auditor-General in respect of the State Department for Housing, Urban Development and Public Works for four (4) months ending 31st October, 2018 and the certificate therein;
- i. Report of the Auditor-General in respect of the Railway Development Levy Fund on Operations Account Financial Statements for the year ended 30th June, 2019 and the certificate therein; and
- j. Recommendation on the Basis for Equitable Sharing of Revenue between the National and County Governments for the Financial Year 2021/2022 from the Commission on Revenue Allocation.

7. **NOTICES OF MOTION**

The following notice of Motion was given:

ADOPTION OF THE REPORT OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES ON CONSIDERATION OF SESSIONAL PAPER NO. 1 OF 2020 ON THE KENYA WILDLIFE SERVICE POLICY)

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on its consideration of Sessional Paper No. 1 of 2020 on the Kenya Wildlife Service Policy, *laid on the Table of the House on Thursday, December 03, 2020*, and further approves Sessional Paper No. 01 of 2020.

(Chairperson, Departmental Committee on Environment and Natural Resource)

8. **STATEMENTS**

The following Statements were issued –

- (i) The Nominated Member (the Hon. Godfrey Osotsi) sought a Statement regarding crackdown on *boda boda* riders by Police Officers and National Transport and Safety. The Chairperson of the Departmental Committee on Administration and National Security undertook to respond to the statement within two weeks; and
- (ii) The Member for Nyaribari Chache (Hon. Richard Tongi) issued a Statement regarding demise of the former Member of Parliament for Nyaribari Chache Constituency and Cabinet Minister, Hon. Simeon Nyachae.

In honour of the departed former Member of Parliament, the Late Hon. Simeon Nyachae, MP, the Honourable Speaker led the House in observing a minute of silence.

9. **MOTION - APPOINTMENT OF MEMBERS TO THE HOUSE BUSINESS COMMITTEE**

Motion made and Question proposed:-

THAT, pursuant to the provisions of Standing Order 171(1), this House approves the appointment of the following Members to the House Business Committee in addition to those specified under paragraphs (a), (b), (c), (d) and (e)-

- (i) The Hon. Joyce Akai Emanikor, M.P.
- (ii) The Hon. Shadrack John Mose, M.P.
- (iii) The Hon. Kawira Mwangaza, M.P.
- (iv) The Hon. Mohamed Abdikhaim Osman, M.P.
- (v) The Hon. (Dr.) Makali Mulu, M.P.
- (vi) The Hon. Mishi Juma Khamisi Mboko, M.P.
- (vii) The Hon. Godfrey Osotsi, M.P.

(The Leader of the Majority Party)

Debate arising;

Question put and agreed to

And the time being Five Minutes to Four O'clock, the Speaker adjourned the House without Question put pursuant to the Standing Orders.

10. **HOUSE ROSE** - at five minutes to Four O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, February 10, 2021 at 9.30 a.m.

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