



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – FIFTH SESSION**

**THE NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, OCTOBER 6, 2021**

1. The House assembled at thirty minutes past nine O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Deputy Speaker
4. **PETITIONS**

The Hon. Speaker conveyed the following petition to the House–

**CONVEYANCE OF A PUBLIC PETITION NO. 046 of 2021 ON REFUSAL BY THE  
MINISTRY OF HEALTH TO PAY 'EQUIP AGENCIES' LIMITED FOR SUPPLY OF ANTI-  
MALARIA EQUIPMENT AND DRUGS**

Honourable Members, Standing Order 225(2) (b) requires the Speaker to report to the House any petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, Honourable Members, I wish to report to the House that my office has received a petition, signed by Mr. Divyesh I. Patel of National Identification Number 8752685 on behalf of *Equip Agencies Ltd.*, C/o P.O. Box 18093-00200, Nairobi. The Petitioner is concerned that the Ministry of Health has violated the Company's rights by refusing to pay the Company for the supply of anti-malaria equipment and drugs made between 1995 and 1997. The Petitioner avers that, on 14<sup>th</sup> July 1995, *Equip Agencies Ltd.* entered into a lawful supply contract with the Ministry of Health, on behalf of the Government of Kenya, to supply anti-malarial drugs and equipment for a contract period tenable until June 1997. On the basis of the said contract, *Equip Agencies Ltd.* promptly delivered the goods as per the specifications set out in the supply contract and all deliveries were acknowledged by various officials from the Ministry of Health.

Honourable Members, the Petitioner avers that, during the contract period, the Company supplied anti-malarial equipment and drugs amounting to Kshs. 1,157,846,150 to various Government institutions in the country. According to the Petitioner, the Ministry of Health went ahead to renege on its contractual obligations and is yet to pay the Company a single dime for the supplies made since 1995 despite the numerous follow-ups over the past twenty years. This has adversely affected the Company's financial sustainability, given

that it had legitimate expectation to recover the money used to source for supplies upon being paid by the Government.

The Petitioner states that the Company sought redress in the High Court to compel the Government to pay the money and in December 2011, the High Court awarded the Company Kshs. 1,862,302,792.50, plus compound interest of 18% per annum. He affirms that even though the Government contested the award in the Court of Appeal, in December 2017, the Court of Appeal upheld the decision of the High Court and issued orders of *mandamus* compelling the Principal Secretary Ministry of Health to pay *Equip Agencies Ltd.* the sum of Kshs, 1,862,302,792.50 and the 18% interest accrued from March 1999.

Honourable Members, the Petitioner claims that the Ministry of Health defied the decrees of both the High Court and the Court of Appeal, and therefore, the decretal amount had risen to over Kshs. 80 billion as at February 2020. The Petitioner claims that in a bid to settle the matter amicably, the Company voluntarily negotiated with the Ministry of Health, the National Treasury and the Office of the Attorney-General and offered an irreducible sum of Kshs. 15.25 Billion plus costs, down from the decretal amount of Kshs. 80 billion due to the Decree Holder. To the Petitioner's astonishment, even after the Company sacrificing to waive Kshs. 65 Billion of the debt, the Government neither accepted the offer nor demonstrated commitment to conclude the negotiations, which threw the fate of the said payment in abeyance. The Petitioner asserts that the Government's refusal to pay the debt is a blatant affront to the Company's right and has continued to expose the proprietors to uncertainty and bankruptcy. He adds that the Company has since suffered irreparable financial harm and is incapable of bankrolling its operations and meeting its tax obligations, which is in arrears of over Kshs. 3.6 Billion, including penalties.

The Petitioner has clearly demonstrated that with the Company's assets currently listed for auction by financial lenders who are demanding repayment of loans and interests accrued on the loans that the Company borrowed to procure and deliver the goods to the Ministry of Health the threat of collapse is imminent. In addition, the Company is unable to pay its overseas suppliers credits totaling Kshs. 9 billion.

The Petitioner is therefore concerned that if the matter is not immediately resolved, *Equip Agencies Limited* risks being rendered insolvent, yet the Company supported the Government's initiative to make Kenya a malaria-free country by supplying anti-malarial equipment and drugs in good faith.

Honourable Members, the Petitioner is seeking the intervention of the National Assembly as the Company's last resort to –

- (1) inquire into the matters raised in the Petition with a view to establishing the circumstances under which the Ministry of Health has, for over twenty-five years, refused to pay *Equip Agencies Ltd.* for goods supplied as per the supply contract of 14<sup>th</sup> July 1995, in spite having acknowledged receipt of the goods that met the specifications of the contract;
- (2) intervene to cause the Ministry of Health and the National Treasury to pay *Equip Agencies Ltd.* the sum of Kshs. 80,522,464,880, being the principal debt owed since 1995 interest and costs thereof as decreed by the High Court in 2011 and upheld by the Court of Appeal in 2017;
- (3) recommend, if necessary, budgetary allocation to the Ministry of Health to settle the decretal amount owed to the Equip Agencies Limited as debt, costs and interest accrued thereof at the earliest opportunity; and
- (4) make any other recommendations deemed fit in securing the petitioners' property and economic rights.

Honourable Members, having determined that the matters raised by the Petitioner are well within the authority of this House, I order that, pursuant to the provisions of Standing Order 227(1), this petition be committed to the Departmental Committee on Health. The

Committee is required to consider the petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2). I thank you!

## **5. PAPERS LAID**

The following Papers were laid on the Table of the House by the Whip of the Majority Party-

- a) Annual Report and Financial Statements of the Power of Mercy Advisory Committee for the Financial year 2020/2021 from the Office of the Attorney-General & Department of Justice;
- b) The Annual Report for the Financial Year 2020/2021 from the Public Service Commission;
- c) Reports of the Auditor-General and Financial Statements in respect of the following Constituencies for the year ended 30<sup>th</sup> June, 2019 and the certificates therein: -
  - i) Msambweni;
  - ii) Kisauni;
  - iii) Mbeere North;
  - iv) Igembe Central;
  - v) Mwea;
  - vi) Isiolo South; and
  - vii) Likoni.

## **6. QUESTIONS**

The following Questions were asked –

- (i) Ordinary Question No.387/2021, by the Member for Tigania East (Hon. Josphat Kabeabea), regarding measures in place to ensure that residents living in arid and semi-arid areas of Tigania East Constituency, who are on the verge of starvation due to the ongoing drought, are urgently supplied with relief food and water.

*(To be replied to by the Cabinet Secretary for Devolution, before the Departmental Committee on Administration and National Security)*

- (ii) Ordinary Question No. 392/2021, by the Member for Westlands (Hon. Timothy Wanyonyi), regarding details of all agreements, contracts or memoranda entered into with book publishers for the distribution and supply of textbooks to secondary and primary schools as well as schedules of payments so far made to each publisher with respect to the financial year 2019/2020 and the current financial year.

*(To be replied to by the Cabinet Secretary for Education, before the Departmental Committee on Education and Research)*

- (iii) Ordinary Question No. 400/2021, by the Nominated Member (Hon. David Ole Sankok), regarding provision of specific details of the parcel of land located in Laikipia County which claimed to be owned by the Deputy President during his appearance before the Departmental Committee on Administration and National Security on 1<sup>st</sup> September 2021, including the Land Reference Number(s), size, date of acquisition and the previous ownership.

*(To be replied to by the Cabinet Secretary for Interior and Coordination of National Government, before the Departmental Committee on Administration and National Security)*

- (iv) Ordinary Question No. 401/2021, by the Member for Dagoretti South (Hon. John Kiarie), regarding confirmation of whether *M/s. WPP Scangroup Company PLC*, which is a full-service creative transformation company engaged in marketing, communication, brand stewardship, media investment management and consumer research complies with labour laws and regulations in its operations.

*(To be replied to by the Cabinet Secretary for Labour, before the Departmental Committee on Labour and Social Welfare)*

- (v) Ordinary Question No. 402/2021, by the Member for Kinango (Hon. Benjamin Tayari), regarding why defective transformers and damaged electricity poles in various areas of Kinango Constituency are yet to be replaced despite the numerous calls to have them replaced.

*(To be replied to by the Cabinet Secretary for Energy, before the Departmental Committee on Energy)*

**7. THE KENYA DEPOSIT INSURANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 43 OF 2020)**

Order for Second Reading read;

Motion made and Question proposed -

**THAT**, the Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No. 43 of 2020) be now read a Second Time.

*(Hon. Abdul Rahim Dawood - 18.08.2021)*

Debate having been concluded on Wednesday, September 22, 2021 (Morning Sitting);

Question put and agreed to.

Bill read a Second Time and committed to Committee of the Whole House tomorrow.

**8. THE KENYA FOOD AND DRUGS AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2019)**

Order for Second Reading read;

Motion made and Question proposed -

**THAT**, the Kenya Food and Drugs Authority Bill (National Assembly Bill No. 31 of 2019) be now read a Second Time.

*(Hon. (Dr) Robert Pukose- 22.09.2021)*

Debate having been concluded on Wednesday, September 22, 2021 (Morning Sitting);

Question put and agreed to.

Bill read a Second Time and committed to Committee of the Whole House tomorrow.

**9. COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE COMMITTEE**

The Third Chairperson of Committees in the Chair

**The Sugar Bill (National Assembly Bill No. 68 of 2019)**

Clause 3 - agreed to.

Clause 4 - amendment proposed –

**THAT**, Clause 4 of the Bill be amended in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (m)—

(ma) enforce and monitor compliance with standards along the sugar value chain;

(mb) facilitate value addition and product diversification in the sugar sub-sector;

(mc) formulate and implement a strategic plan for the sugar sub-sector at least once every five years;

(md) formulate guidelines on an efficient and economical transportation of sugar;

(me) conduct local and international sugar market intelligence and advise stakeholders accordingly;

(mf) establish linkages with various government agencies and research institutions to enhance quality assurance and research

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 4 - as amended agreed to

Clause 5 - amendment proposed –

**THAT**, clause 5 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting paragraph (b) and substituting therefor the following new paragraph—  
“(b) five representatives elected by growers from each sugar catchment area as per the First Schedule”

(ii) deleting paragraph (c) and substituting therefor the following new paragraph—

- “(c) one representative elected by sugar millers who is knowledgeable in sugar technology and value addition;”
- (iii) deleting paragraph (d) and substituting therefor the following new paragraph—  
“(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;”
- (iv) deleting paragraph (e) and substituting therefor the following new paragraph—  
“(e) one person nominated by the Council of County Governors who is knowledgeable in extension services and management of farmer institutions;”
- (v) deleting paragraph (f) and substituting therefor the following new paragraph—  
“(f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”
- (b) by deleting subclause (2);
- (c) by inserting the following new subclauses immediately after subclause (3)—  
“(4) The members under subsection (1) (b), (c) and (e) shall be appointed by the Cabinet by notice in the *Gazette*.

(5) A person shall not be appointed as a chairperson of the Board of Directors unless the person holds at least a degree or its equivalent in any discipline from an institution recognized in Kenya and has relevant experience in the sugar sector.”

- (d) by deleting subclause (3);  
Question of the amendment proposed;

Debate arising;

Question put and agreed to

- Clause 5 - as amended agreed to
- Clause 6 - agreed to
- Clause 7 - agreed to
- Clause 8 - agreed to
- Clause 10 - amendment proposed –

**THAT**, clause 10 be amended by deleting subclause (2) and substituting therefor the following new subclause—

- “(2) A person shall be qualified for appointment under this section if the person—
- (a) holds a relevant degree from a university recognized in Kenya;
- (b) has at least ten years knowledge and experience from a relevant field;
- (c) has at least five years’ experience in a position of senior management;
- and
- (d) meets the provision of chapter six of the Constitution.”

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 10 - as amended agreed to.

Clause 11 - agreed to

Clause 12 - agreed to

Clause 13 - agreed to

Clause 14 - amendment proposed –

**THAT**, clause 14 be amended by—

(a) in subclause (1) by inserting the words “upon recommendation by the relevant County Government” immediately after the word “Board”;

(b) by deleting subclause (2) and substituting therefor the following new subclause—  
“(2) A person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of a licence granted under this Act commits an offence and shall be liable on conviction, to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or to a fine not exceeding ten million shillings, whichever is the higher, or to imprisonment for a term not exceeding five years, or to both.”

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 14 - as amended agreed to.

Clause 15 - amendment proposed –

**THAT**, clause 15 of the Bill be amended—

(a) by renumbering the subclauses appearing after subclause (2) as (3), (4), (5), (6), and (7);

(b) by inserting a new subclause immediately after the renumbered subclause (7) as follows:

“(8) A person shall not import or export sugar without a valid licence issued by the Board.”

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 15 - as amended agreed to.

Clause 16 - amendment proposed –

**THAT**, Clause 16 of the Bill be amended by—

- (a) deleting sub clause (2);
- (b) inserting the following new sub clause immediately after sub clause (4) —  
 “(4B) In issuing certificates of registration under subsection(3), the Board shall satisfy itself that the premises upon which milling may be carried out meets the environmental standards set by the National Environmental Management Authority and the miller has been issued with a certificate of safety by the relevant county government.”
- (c) inserting the following new sub clause immediately after sub clause (6) —  
 “(7) A person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.”

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 16 - as amended agreed to.

Clause 17 - agreed to.

Clause 18 - amendment proposed –

**THAT**, Clause 18 of the Bill be amended by—

- (a) deleting sub clause (2);
- (b) inserting the following new sub clause immediately after sub clause (4) —  
 “(4B) In issuing certificates of registration under subsection(3), the Board shall satisfy itself that the premises upon which milling may be carried out meets the environmental standards set by the National Environmental Management Authority and the miller has been issued with a certificate of safety by the relevant county government.”
- (c) inserting the following new sub clause immediately after sub clause (6) —  
 “(7) A person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.”

Question of the amendment proposed;

Debate arising;

Question put and agreed to



Clause 18 - as amended agreed to.

Clause 19 - agreed to.

Clause 20 - agreed to.

Clause 21 - agreed to.

Clause 22 - amendment proposed –

**THAT,** the Bill be amended by deleting clause 22.

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 22 - as amended agreed to.

Clause 23 - agreed to.

Clause 24 - agreed to.

Clause 25 - agreed to.

Clause 26 - amendment proposed –

**THAT,** the Bill be amended by deleting clause 26 and substituting therefor the following new clause—

Quality, **26.** (1) All sugar millers and importers shall ensure that all safety and health control measures—  
sugar produced locally or imported into the country meets—  
health control measures.

- (a) safety and quality standards as set by the body for the time being responsible for setting standards;
- (b) safety and health standards for food handlers as set by the body for the time being responsible for public health; and
- (c) environmental issues as set by the body for the time being responsible for environment.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, upon conviction—

- (a) to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding seven years, or to both; and
- (b) the court may where a person is convicted for an offence

make a further order that the persons licence be withdrawn.

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 26 - as amended agreed to.

Clause 27 - amendment proposed –

**THAT**, the Bill be amended by deleting clause 27 and substituting therefor the following new clause—

Safeguard measures. **27.** (1) The Board shall ensure, subject to such regional and international trade agreements to which Kenya is a party, that all sugar imports into the country are subject to all the prevailing import duties, taxes and other tariffs.

(2) Despite subsection (1), the Board shall ensure that—

- (a) sugar shall be imported in the country only when there is sugar deficit on a quarterly basis and for a specific tonnage; and
- (b) importers report to the Board on their imports, sales and stock on daily basis.

(3) The Government shall introduce other safeguard measures as may be necessary to protect the industry from unfair trade practices.

(4) A person who contravenes the provision of this section commits an offence and shall be liable, on conviction, to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or two million shillings, whichever is the higher, or to imprisonment for a term not exceeding ten years, or to both

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 27 - as amended agreed to.

Clause 28 - agreed to.

Clause 29 - amendment proposed -

**THAT**, clause 29 of the Bill be amended in subclause (3)—

- (a) in paragraph (c) by inserting the words “, in consultation with stakeholders,” immediately after the words “agricultural produce”;
- (b) in paragraph (e) by deleting the word “impose” appearing after the words “to the Board to” and substituting therefor the word “enforce”; and
- (c) in paragraph (f) by deleting the word “imposition” appearing at the beginning of the paragraph and substituting therefor the word “enforcement”.

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 29 - as amended agreed to.

Clause 30 - amendment proposed -

**THAT**, clause 30 of the Bill be amended—

- (a) by deleting the marginal note and substituting therefore with the following—  
“Rights of growers in a privatized company”
- (b) in paragraph (b) by deleting the word “milling” appearing after the words “directors of” and substituting the words “privatized company”

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 30 - as amended agreed to.

Clause 31 - amendment proposed -

**THAT**, the Bill be amended by deleting Clause 31.

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 31 - as amended agreed to.

Clause 32 - as amended agreed to.

Clause 33 - amendment proposed -

**THAT**, Clause 33 of the Bill be amended—

- (a) in subclause (1) by inserting the words “shall in consultation with the Board” immediately after the word “Secretary”;
- (b) in subclause (2) by inserting the following new paragraphs immediately after paragraph (a) —
  - “(ca) the establishment of weigh bridges;
  - (cb) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;
  - (cc) production and import of sugar to ensure adequate sugar availability in the country;
  - (cd) guidelines on general industry agreements between growers and millers and between parties in the sugar industry;
  - (ce) minimum period within which farmers are to be paid for sugar crop delivered and penalties for delayed payments; and
  - (cf) cane harvesting and transportation;”

(c) by inserting the following new subsection immediately after subsection (3)-

“(4) Without prejudice to the generality of this section, the Cabinet Secretary shall make the regulations necessary to operationalize this Act within twelve months from the date of commencement of this Act.”

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 33 - as amended agreed to.

Clause 34 - agreed to.

Clause 35 - agreed to.

Clause 36 - amendment proposed –

**THAT**, the Bill be amended by deleting Clause 36 and substituting therefor the following new Clause—

Transfer of staff. “**36.** (1) Upon the commencement of this of this Act, a person who was a member of the staff of the former Kenya Sugar Board before the commencement of the Agriculture and Food Authority Act, and current staff of the Sugar Directorate not being under any

No. 13 of 2013 notice of dismissal or resignation shall upon commencement of this Act and subject to subsection (2) become a staff of the Board on their current improved terms and conditions of service.

(2) The pensions of staff under the provident fund of Agriculture and Food Authority- Sugar Directorate shall on the commencement of the Act vest in the Board.

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 36 - as amended agreed to.

Clause 37 - agreed to.

Clause 38 - agreed to.

**Progress Report**

Motion made and Question proposed –

**THAT**, the Committee do report its consideration of The Sugar Bill (National Assembly Bill No. 68 of 2019) and its approval thereof with amendments and seeks leave to sit again.

*(Hon. Wafula Wamunyinyi - Member for Kanduyi)*

Question put and agreed to-

And the time being One Minute to One O'clock, the Third Chairperson of Committees adjourned the House without Question put pursuant to the Standing Orders.

**10. HOUSE ROSE** - at One Minute to One O'clock.

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**MEMORANDUM**

The Speaker will take the Chair on  
Wednesday, October 6, 2021, 2021 at 2.30 p.m.

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