



REPUBLIC OF KENYA

TWELFTH PARLIAMENT– (FIFTH SESSION)
THE NATIONAL ASSEMBLY
GUIDANCE FROM THE CHAIR

(No. 49 of 2021)

ON THE
CONSIDERATION IN COMMITTEE OF THE WHOLE HOUSE OF CERTAIN PROPOSED
AMENDMENTS TO THE KENYA ROADS (AMENDMENT) BILL (NATIONAL ASSEMBLY
BILL NO. 13 OF 2021)

1. **Honourable Members**, before we proceed to Order No. 11, being consideration of various Bills in Committee of the whole House, I wish to guide the House as follows with regard to certain proposed amendments to the Kenya Roads (Amendment) Bill, 2021. I have received amendments proposed by Nominated Member the Hon. Godfrey Osotsi, MP seeking to amend clauses 2 and 3 of the Bill and to insert a new clause 5. The proposed amendments to clauses 2 and 3 seek to vary the term of office, and the qualifications, of the Director-General, respectively.
2. My perusal of the amendments is that the first two amendments are a direct negative of the contents of the Bill as published. This is in contravention of Standing Order 56(2) which prohibits consideration of proposed amendments whose effect is a direct negative of the principal motion. **It is for this reason that I declined to approve the proposed amendments by the Hon. Member on Clauses 2 and 3.**
3. With respect to the proposed new clause 5, it is observed that the effect of the amendment is to declare the offices of Directors-General in the road sector **vacant** upon coming into force of the proposed law. However, taking into account the provisions of Article 47 of the Constitution providing for fair administrative action, the House must refrain from legislating in the manner proposed by the Hon. Member.

4. The declaration of vacancies is a definite removal from office of the current office holders and amounts to administrative action prompted by the House by way of legislation. The constitutional provision as read together with The Fair Administrative Action Act, 2015, the requirements for public participation, set a high threshold for administrative action. In this regard, the proposed amendment is contrary to **Articles 47 and 118 of the Constitution**, and The Fair Administrative Action Act, 2015 to the extent that it does not provide for notification to the office holders, nor transitional arrangements for the offices and public participation has not been undertaken on this drastic proposal having not been part of the Bill as published.
5. Further, Standing Order 133(5) prohibits amendments to Bills that unreasonably or unduly expand the scope of the Bill as published taking into account the need for public participation as contemplated under Article 118 of the Constitution.
6. For these reasons, I have **disallowed** the proposed amendments by the Hon. Godfrey Osotsi and ordered their exclusion from the Order Paper. The House is accordingly guided.

I thank you.



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, December 02, 2021