

12 AUG 2021
DIRECTOR LEGISLATIVE
SERVICES

SCHEDULE (S.3)

FORM OF PETITION

12 AUG 2021

*Ms Macharia
Pls deal. MA
DKPS 17/8
Please deal,
13/8/21*

THE CLERK OF SENATE
Parliament Buildings
P.O. Box 41842 – 00100
NAIROBI
10th August 2021

RE: PETITION TO THE SENATE TO AMEND THE CONSITITUTION AND RELEVANT LAWS ON THE ELECTION OF THE DEPUTY PRESIDENT AND DEPUTY GOVERNOR AFTER THOSE SEATS FALLS VACANT.

I, the undersigned,

Citizen of the Republic of Kenya, a resident of Embu County and a community leader in different spheres of life;

DRAW the attention of the Parliament to the following:

That, I am a law abiding citizen and I am a protector of human rights and a protector of our Constitution.

THAT, Article 136 (1) states that “The President shall be elected by registered voters in a national election conducted in accordance with this Constitution and any Act of Parliament regulating presidential elections”.

THAT, Article 137 (1) states that “A person qualifies for nomination as a presidential candidate if the person, is a citizen by birth, is qualified to stand for election as a member of Parliament, is nominated by a political party, or is an independent candidate, and is nominated by not fewer than two thousand voters from each of a majority of the counties.

THAT, Article 148(1) states that “Each candidate in a presidential election shall nominate a person who is qualified for nomination for election as President, as a candidate for Deputy President”

THAT, Article 149. (1) of our constitution states that “Within fourteen days after a vacancy in the office of Deputy President arises, the President shall nominate a person to fill the vacancy, and the National Assembly shall vote on the nomination within sixty days after receiving it”.

THAT, Article 182 (2) of our 2010 constitution states that " If a vacancy occurs in the office of county governor, the deputy county governor shall assume office as county governor for the remainder of the term of the county governor".

THAT,after the deputy Governor assumption of the office as the Governor,he appoints his dupty(non-elected) who could consequently a become a Governor late if the office of the Governor fall vacant after which he would also appoint his deputy.

THAT, Article 182(4) of our 2010 constitution staes that " If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor".

THAT, Article 182 (5) of our 2010 constitution staes that "If a vacancy occurs in the circumstances contemplated by clause (4), an election to the office of county governor shall be held within sixty days after the speaker assumes the office of county governor".

THAT, Section 180(1) of part 2 of our Constitution (Election of county governor and deputy county governor) states that "The county governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year".

THAT,as a remedy for a leadership vacuum which might be created in the office of a Governor after it has fallen vacant, and his deputy has been removed are not able to undertake his mandate due to any reason as specified in the Constitution,the constitution states that the speaker of the concened County Assembly may act as a Governor for a period of six months before an election to replace such a Govern is held.

THAT,on an extreme circumstance,a county may be led by none-elected leaders after the dissolution of such a County Government by the President.

THAT,there is a dangerous precendence which has been set on County in Kenya in which both the County Governor and her deputy will be appointed but not eleted leaders thus exposing some of Kenyan population to be led by unpopular and unelected leaders.

THAT,there is a dangerous precendence which has been set in this Country where a number of Counties are being led by unpopular and unelected deputy Governors who could incidentaly accend to the positions of the Governors and then appoint their deputies who could also be unpopular with the electrorate.

THAT,there is an urgent need for a constitutional amendment to protect Kenyans from being led by un-popular and un-elected leaders on elective positions.

THAT,as a democratic Country we should always follow a democratic process through which we elect our leaders of all the calibres in our society ,hence the need to have a clause guiding on the election of the deputy President and Duputy Governor's potition after falling vacant.

THAT, there is no article in our constitution which states that a person shall be sworn in as a substantive president on being appointed or who has previously been appointed as a Deputy President.

THAT, in case seat of the deputy President falling vacant, the most senior Cabinet Secretary under the National Government, shall act as the Deputy President for a six months period within which a Substantive Deputy President shall have been elected.

THAT, in case the seat of the deputy Governor falling vacant, the County Secretary in the County Government setup can act as a Deputy Governor for a term of six months within which a substantive Deputy Governor shall have been elected.

THAT, the proposed amendment in this petition does not and is not violation of Article 255 of our constitution.

THAT, this petition does not interfere with national values and principles of governance referred to in Article 10 (2) (a) to (d), or the term of office of the President or the objects, principles and structure of devolved government.

THAT, this petition squarely falls under the Senate which by law is mandated to review and enact legislation as proposed in this petition.

THAT, I confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.

HEREFORE your humble petitioners Pray that the Senate—

1. Amend the constitution by introducing the sections of law which will provide for a by-election of the Deputy President and Deputy Governor after the assumption to the presidency by the elected Deputy President and after the ascendancy of the elected Deputy Governor to the office of the Governor respectively.
2. Amend the The Elections Act, 2011, the Independent Electoral and Boundaries Commission Act, the County Government Act 2012 and any other Law touching on the electoral process in Kenya to be in line with the amended Constitution.
3. Amend the relevant law to give the president power to appoint a Cabinet Secretary in an acting capacity as a deputy President for a period of six months within which an election for a substantive Deputy President shall have been done
4. Amend the relevant law to give the County Government power and authority to appoint a County Secretary in an acting capacity as a deputy Governor for a period of six months within which an election for a substantive Deputy Governor shall have been done.
5. Amend any other relevant law which will fill in the gap related to the electoral leadership in Kenya.

And your PETITIONERS will ever pray.

That his petition heard and considered with a view of having it dealt with in accordance with the law and disposed off appropriately and expeditiously.

Dated this..10th.....day of..AUGUST.....2021.

| | Name of petitioner | Full Address | National ID | Signature |
|----|----------------------|---------------------------|-------------|---|
| 1. | TARATISIO IREMI KAWA | BOX 139-60103 RUYENUES | 8600483 |  |