



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – FIRST SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, NOVEMBER 29, 2022

1. The House assembled at thirty minutes past two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Hon. Speaker
4. Communications from the Chair-

The Hon. Speaker conveyed the following communications from the Chair-

**a) NOMINATIONS OF PERSONS FOR APPOINTMENT AS MEMBERS OF
COMMISSION ON REVENUE ALLOCATION**

1. I have a Communication and an acknowledgement. First, the Communication is on the nomination of persons for appointment as members of the Commission on Revenue Allocation.
2. Hon. Members, as you are aware, the term of office of the current members of the Commission on Revenue Allocation (CRA) is set to end on 31st December 2022 in accordance with the provisions of Article 250(6)(a) of the Constitution. In this regard, the appointment process ought to be concluded before the said date.
3. Article 215(2)(b) and (c) of the Constitution, as read together with Article 215(3), require political parties represented in the National Assembly and the Senate to nominate two and five persons respectively for appointment as members of the CRA from among persons who are not Members of Parliament.
4. Pursuant to the said provisions and having been notified of the impending vacancies, the Clerks of the Houses of Parliament, by advertisements published in the dailies on 15th November 2022, invited applicants from interested persons seeking to be nominated as members of the Commission and set out the qualifications for appointment in accordance with Article 215(4) of the Constitution and Section 6 of the Commission on Revenue Allocation Act, 2011.
5. A total of 176 applications were received being 37 and 139 applications received by the National Assembly and the Senate, respectively. At the closure of the submission period, the Clerks of the Houses of Parliament forwarded the particulars of qualified applicants to the leaders of the Majority and Minority parties in both Houses to facilitate the nomination of qualified persons for appointment.
6. On Friday, 25th November 2022 and Saturday, 26th November 2022, I received communication from the leadership of the Majority and Minority parties conveying the

- nomination of seven persons for appointment to the membership of the CRA in accordance with Article 215(2)(b) and (c) of the Constitution.
7. With regard to the nominees from the political parties in the National Assembly under Article 215(2)(b) of the Constitution, I have received the names of Benedict Muasya Mutiso and Wilfred Koitamet Olekina Nchoshi, having been nominated by the Majority Party and the Minority Party, respectively.
 8. With regard to nominees under Article 215(2)(c) of the Constitution, the leadership of political parties represented in the Senate nominated Jonas Misto Vincent Kuko, Dr. Isabel Nyambura Waiyaki and Hadija Nganyi Juma. The three were nominated by the Majority Party. Also, Dr. George Jalang'o Midiwo and Hon. Fatuma Gedi Ali, CBS were nominated by the Minority Party.
 9. Noting the close timelines and given the fact that the House is scheduled to commence the long recess on Thursday, 1st December 2022 in accordance with its Calendar, I forthwith refer the names of the seven persons so nominated to the Departmental Committee on Finance and National Planning. The Committee is expected to undertake the necessary approval hearing as contemplated under the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 45 (Committal of Public Appointments to Committees). I am aware that the Committee has already called for the submission of memoranda from the public as part of the approval process. Additionally, by way of a notification, I directed the Clerk of the National Assembly to transmit the said notification to all Members, which he did.
 10. I now direct the Committee to expeditiously undertake the approval hearings and report back to the House. In any case, the Committee should conclude the approval hearings by 6th December 2022 and table its report before the expiry of the constitutional deadline.
 11. The House is accordingly guided. I thank you.

b) VISITING DELEGATION FROM THE NATIONAL ASSEMBLY OF ZAMBIA

I wish to introduce to you a delegation of Members of staff from the Parliamentary Reforms Programme Department in the National Assembly of Zambia who are seated in the Speaker's Gallery. When I call your name, stand for acknowledgment by the House. The delegation comprises:

1. Mr. Chalema Chabala - Programme Officer;
2. Mr. Peter Oswald Tembo - Constituency Office Coordinator;
3. Ms. Christine Zimba - Constituency Office Coordinator;
4. Mr. Labson Nyendwa - Constituency Office Coordinator;
5. Ms. Daisy Siame - Constituency Office Coordinator; and
6. Mr. Pride Mundeia - Constituency Office Coordinator.

The officers are in the country on a benchmarking visit aimed at, amongst other things, sharing knowledge and experiences with their counterparts on best practices and procedures in the management and coordination of constituencies' offices.

On my own behalf, and that of the National Assembly, I welcome the delegation to Parliament and wish them fruitful engagements during the course of their stay in the country.

Thank you.

c) RESUMPTION OF VETTING OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

Hon. Members, you will recall that on 15th November 2022, the Employment and Labour Relations Court in Constitution Petition No.E186 of 2022, Dr. Magare Gikenyi versus the

President of the Republic of Kenya and 55 Others; and in Constitution Petition No.E192 of 2022, Law Society of Kenya versus the National Assembly and four others, granted Ex-Parte-Conservatory Orders temporarily staying the vetting process in respect of nominees for appointment to the position of Principal Secretaries pending hearing and determination of the petitioners' application for conservatory orders.

Consequently, on 16th November 2022, *vide* Notification No.02 of 2022, I directed that the vetting process be suspended pending the outcome of the judicial process. This was informed by the appreciation of the provisions of Article 3(1) of the Constitution which places an obligation on myself and, indeed, the House, to respect and uphold the Constitution, and in particular by abiding and upholding the rule of law.

Further, I directed our Litigation Counsel to move the concerned courts to set aside the *ex-parte* orders based on various legal grounds, and more particularly on lack of jurisdiction on the part of courts to interfere with active parliamentary processes. Accordingly, the National Assembly challenged the court's power to hear and determine the case on the ground that the Petitions were in contravention of the constitutional principle of separation of powers as they were inviting the court to determine a matter under the exclusive jurisdiction of the National Assembly under Article 155(3)(b) of the Constitution and the Public Appointments (Parliamentary Approval) Act, 2011.

Hon. Members, in its ruling delivered today, Tuesday, 29th November 2022, the court agreed with the National Assembly's submission that the doctrine of separation of powers as provided for in the Constitution ought to be respected and upheld at all times. Further, the court observed that the National Assembly has exclusive original jurisdiction to, first, carry out the approval process before court can intervene. The court, therefore, paved the way for the resumption of the vetting process noting that the Petitions were baseless, frivolous, vexatious and premature. The court also noted that the Legislature must be allowed to carry out its constitutional mandate without undue interference by any person or other arm of Government.

At the outset, I wish to note the very progressive view taken by the court in this matter. Whereas it is the constitutional right of every person to approach the courts of law, State organs must be allowed sufficient leeway to carry out their mandate without undue interference by any person. Indeed, to a keen observer, the petitioners were moved more by a lack of proper information and legal guidance, and a push to stall a process for reasons other than national interest.

Hon. Members, as observed by the court, comity among the organs of the State dictates that one organ shall not interfere in a matter under the active consideration of another organ. Indeed, our own Standing Order 89 on matters *sub-judice*, prohibits referral or consideration of any matter before a court of law. In the same vein, the courts are expected to exercise restraint and refrain from interfering with matters that are active before Parliament, a constitutional concept that the court has today, once again, upheld in its ruling. As the National Assembly, we will endeavour to protect and uphold these constitutional principles in furtherance of the mandate bestowed on us.

Hon. Members, following this ruling by the court, I wish to guide the House, the concerned committees and the general public as follows:

- (i) That, the suspension of the vetting of persons nominated to serve as principal secretaries is hereby lifted. The committees are, therefore, expected to resume the vetting process immediately.
- (ii) That, all departmental committees are to conclude the vetting proceedings and approval hearings as soon as possible to allow for the conclusion of the process. In any case, noting that the House will be commencing the long recess on 2nd December 2022 in accordance with its Calendar, it is expected that the committees will hasten the process and report to the House by the end of the morning Sitting of Thursday, 1st December 2022 to pave way for consideration of the various approval Motions by the House.

I thank you.

5. **PAPERS:**

(1) The following papers were laid on the Table of the House-

- (i) Legal Special Audit Report of the Auditor-General on the Contracting Process for Transportation of Cargo via Standard Gauge Railway by Kenya Railways Corporation.
- (ii) Statement on the Financial Year 2022/2023 Additional Expenditures granted under Article 223 of the Constitution from the National Treasury and Planning.
- (iii) The Kigali Amendments to the Montreal Protocol on substances that deplete the Ozone layer and Explanatory Memorandum for the Ministry of Foreign Affairs.
- (iv) The Accession of the Bamako Convention on the Import into Africa and the control of the trans-boundary movement and management of the hazardous waste within Africa and the Explanatory Memorandum for the Ministry of Foreign Affairs.
- (v) The Progress Report on Submission of Nominees to the National Government Constituencies Development Fund (NG-CDF) for the National Assembly's approval.
- (vi) The Tenth, Eleventh and Twelfth Batches of Nominees to 31 National Government Constituencies Development Fund Committees from the National Government Constituencies Development Fund Board for the following constituencies:
 - 1) Balambala Constituency;
 - 2) Banissa Constituency;
 - 3) Butere Constituency;
 - 4) Emuhaya Constituency;
 - 5) Funyula Constituency;
 - 6) Gatundu North Constituency;
 - 7) Kabete Constituency;
 - 8) Kiambaa Constituency;
 - 9) Kibwezi East Constituency;
 - 10) Kilifi North Constituency;
 - 11) Keiyo South Constituency;
 - 12) Kesess Constituency;
 - 13) Kuresoi South Constituency;
 - 14) Mandera West Constituency;
 - 15) Masinga Constituency;
 - 16) Matayos Constituency;
 - 17) Mogotio Constituency;
 - 18) Mt. Elgon Constituency;
 - 19) Mwala Constituency;
 - 20) Navakholo Constituency;
 - 21) Nyando Constituency;
 - 22) Sabatia Constituency;
 - 23) Tindiret Constituency;
 - 24) Turkana Central Constituency;
 - 25) Hamisi Constituency;

Ikolomani Constituency

(No.30)

TUESDAY, NOVEMBER 29, 2022

(321)

- 27) Laisamis Constituency;
 - 28) Mandera North Constituency;
 - 29) Teso North Constituency;

 - 30) Vihiga Constituency; and
 - 31) Wajir North Constituency.
- (vii) Re-submissions of list of nominees for 13 constituencies from the National Government Constituencies Development Fund Board:
- 1) Eldas Constituency;
 - 2) Gilgil Constituency;
 - 3) Githunguri Constituency;
 - 4) Kajiado West Constituency;
 - 5) Kapenguria Constituency;
 - 6) Kieni Constituency;
 - 7) Kitui South Constituency;
 - 8) Mara Constituency;
 - 9) Marakwet Constituency;
 - 10) Ol Joro Orok Constituency;
 - 11) Othaya Constituency;
 - 12) Rongai Constituency; and
 - 13) Ndhiwa Constituency.
- (viii) Report of the Auditor-General and Financial Statements for Bandari Maritime Academy for 14 months' period ended 30th June 2020 and the certificates therein.
- (ix) Reports of the Auditor-General and Financial Statements of the following constituencies for the Financial Year ended 30th June 2020 and the certificates therein:
- 1) Mavoko Constituency;
 - 2) Kitui Rural Constituency;
 - 3) Kitui East Constituency;
 - 4) Kitui South Constituency; and
 - 5) Matungulu Constituency.
- (x) Reports of the Auditor-General and Financial Statements of the following institutions for the year ended 30th June 2021 and the certificates therein;
- 1) The National Irrigation Authority;
 - 2) Emsos Technical and Vocational College;
 - 3) Mitungulu Technical Training College;
 - 4) Tetu Technical and Vocational College;
 - 5) Tourism Finance Corporation;
 - 6) Tseikuru Technical Training Institute;
 - 7) Wote Technical Training Institute;
 - 8) Masinga Technical and Vocational College;
 - 9) Mungatsi Technical and Vocational College; and
 - 10) Golf Hotel Limited

(The Leader of the Majority Party)

- (xi) Report of the Select Committee on Delegated Legislation on its consideration of the Public Finance Management (Financial Inclusion Fund) famously known

(No.30)

TUESDAY, NOVEMBER 29, 2022

(322)

- (xii) as the 'Hustler Fund' Regulation 2022, Legal Notice No.213 of 2022.

(The Hon. Samuel Chepkonga, Chairperson, Select Committee on Delegated Legislation)

- (xiii) Report of the Budget and Appropriations Committee on its consideration of the County Governments Additional Allocations (No.2) Senate Bill No.4 of 2022

(The Hon. Ndindi Nyoro, Chairperson, Budget and Appropriations Committee)

6. **NOTICES OF MOTION:**

The following Notices of Motion were given-

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Financial Inclusion) Fund famously referred to as 'Hustler Fund' Regulation 2022, laid on the Table of the House on Tuesday, 29th November 2022, and pursuant to the provisions of sections 24(4) of the Public Finance Management Act, 2012, approves the Public Finance Management (Financial Inclusion) Fund Regulations, 2022 published as Legal Notice No.213 of 23rd November 2022.

*(The Hon. Samuel Chepkonga, Chairperson, Select Committee on Delegated Legislation
29.11.2022)*

THAT, this House adopts the Report of the Select Committee on the National Government Constituencies Development Fund, laid on the Table of the House and pursuant to the provisions of Section 43(4) of the NG-CDF Act, 2015 and paragraphs 5(2) and (10) of the NG-CDF Regulations, 2016 approves the list of nominees for appointment to the following 103 Constituency Committees of the National Government Constituencies Development Fund:

1. Alego Usonga Constituency;
2. Balambala Constituency;
3. Banissa Constituency;
4. Buuri Constituency;
5. Butere Constituency;
6. Bomachoge Borabu Constituency;
7. Bomet East Constituency;
8. Borabu Constituency;
9. Embakasi East Constituency;
10. Emgwen Constituency;
11. Emurua Dikirr Constituency;
12. Emuhaya Constituency;
13. Fafi Constituency;
14. Funyula Constituency;
15. Gatundu North Constituency;
16. Gem Constituency;
17. Hamisi Constituency;
18. Ijara Constituency;
19. Ikolomani Constituency;

20. Juja Constituency;
21. Kabete Constituency;
22. Karachuonyo Constituency;
23. Kabondo Kasipul Constituency;
24. Kanduyi Constituency;

25. Kiambu Town Constituency;
26. Kibwezi West Constituency;
27. Kilifi South Constituency;
28. Kiminini Constituency;
29. Kinango Constituency;
30. Kiambaa Constituency;
31. Kibwezi East Constituency;
32. Kilifi North Constituency;
33. Keiyo South Constituency;
34. Kesses Constituency;
35. Kuresoi South Constituency;
36. Kimilili Constituency;
37. Kisumu East Constituency;
38. Kitui West Constituency;
39. Kitutu Chache North Constituency;
40. Kitutu Chache South Constituency;
41. Kitutu Masaba Constituency;
42. Laisamis Constituency;
43. Lari Constituency;
44. Luanda Constituency;
45. Lugari Constituency;
46. Lurambi Constituency;
47. Lungalunga Constituency;
48. Machakos Town Constituency;
49. Matuga Constituency;
50. Malindi Constituency;
51. Mathare Constituency;
52. Mathira Constituency;
53. Mandera North Constituency;
54. Mandera West Constituency;
55. Masinga Constituency;
56. Matayos Constituency;
57. Mbooni Constituency;
58. Mukurweini Constituency;
59. Mogotio Constituency;
60. Mt. Elgon Constituency;
61. Mwala Constituency;
62. Mwingi Central Constituency;
63. Mwingi North Constituency;
64. Nambale Constituency;
65. Navakholo Constituency;
66. Ndia Constituency;
67. Nyando Constituency;

North Mugirango Constituency;

(No.30)

TUESDAY, NOVEMBER 29, 2022

(324)

68.

69. Ol Kalou Constituency;
70. Runyenjes Constituency;
71. Sabatia Constituency;
72. Saku Constituency;
73. Samburu East Constituency;
74. Seme Constituency;
75. Sirisia Constituency;
76. Suba North Constituency;
77. Taveta Constituency;
78. Teso North Constituency;
79. Tetu Constituency;
80. Thika Town Constituency;
81. Tigania East Constituency;
82. Tigania West Constituency;
83. Tinderet Constituency;
84. Turkana Central Constituency;
85. Turkana North Constituency;
86. Turkana West Constituency;
87. Ugenya Constituency;
88. Vihiga Constituency;
89. Wajir North Constituency;
90. Wajir West Constituency; and
91. Westlands Constituency

Re-submitted nominees:

92. Eldas Constituency;
93. Gilgil Constituency;
94. Githunguri Constituency;
95. Kajiado West Constituency;
96. Kapenguria Constituency;
97. Kieni Constituency;
98. Kitui South Constituency;
99. Maara Constituency;
100. Marakwet West Constituency;
101. Ol Joro Orok Constituency;
102. Othaya Constituency; and,
103. Rongai Constituency.

*(The Hon. Musa Sirma, Chairperson, Select Committee on NG-CDF
29.11.2022)*

7. **QUESTIONS**

a) The following question was asked –

- (i) Ordinary Question No. 076/2022 by Nominated Member (Hon. Umulkher Harun, MP) to the Cabinet Secretary for Education regarding measures put in place by the Government to ensure equal and timely distribution of sanitary pads to all school girls in the rural areas and plans instituted by the Ministry to ensure efficient and sustainable ways of addressing menstrual poverty.

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

(No.30)

TUESDAY, NOVEMBER 29, 2022

(325)

- b) The following questions were deferred –
- (ii) Ordinary Question No. 041/2022 by the Member for Garissa County (Hon. Amina Udgoon, MP) regarding effects of SIM Card deregistration in ASAL Areas,
 - (iii) Ordinary Question No. 049/2022 by the Member for Saboti (Hon. Caleb Amisi, MP) regarding status of land ownership by Kwale International Sugar Company,
 - (iv) Ordinary Question No. 052/2022 by the Member for Buuri (Hon. Rindikiri Murithania, MP) regarding criteria for categorization of ASAL Areas
 - (v) Ordinary Question No. 055/2022 by the Member for Fafi (Hon. Farah Yakub, MP) regarding drought mitigation measures in ASAL Areas

8. **STATEMENTS:**

Pursuant to Standing Order 44(2)(b),

- a) The Leader of the Majority Party (the Hon. Kimani Ichung'wah, MP), made a statement regarding the progress regarding the submission of nominees to the NG-CDF Committees from the NG-CDF Board for the National Assembly approval; that, on 15th September 2022, the NG- CDF Board issued a circular regarding the appointment of members of the NG-CDF Committees, the deadline given by the Board for submission of the proposed nominees from the respective constituencies was 30th October 2022 and as at 28th November 2022, the Board had received names of proposed members of N-GCDF committees from 283 constituencies.
- b) The Chairperson of the Select Committee on NG-CDF (the Hon. Musa Sirma, MP), made a statement regarding proposed budget ceilings for constituencies for the 2022/2023 Financial Year.

9. **RESPONSE TO A STATEMENT:**

Pursuant to Standing Order 44(2)(c), the Leader of the Majority Party (the Hon. Kimani Ichung'wah, MP), responded to a statement regarding a ministerial response on planned importation of maize from Hon. Franklin Mithika Linturi, the Cabinet Secretary for Agriculture and Livestock Development regarding the planned importation of 900,000 metric tonnes; as addressed to the Chair of the Departmental Committee on Agriculture and Livestock The Statement was sought by the Member for Pokot South, Hon. David Pkosing.

10. **PROCEDURAL MOTION - EXTENSION OF TIME FOR CONSIDERATION OF CERTAIN PETITIONS**

(Chairperson, Departmental Committee on Justice and legal Affairs)

Motion made and Question proposed –

THAT, pursuant to the provisions of Standing Order 256A(1) (Extension of period prescribed), this House resolves to extend the period for consideration of the Public Petitions reported on 15th November 2022, from the persons specified hereunder seeking the removal of commissioners of the Independent Electoral and Boundaries Commission (IEBC) pursuant to the provisions of Article 251 of the Constitution and Standing Order 230 by the Departmental Committee on Justice and Legal Affairs by a further period of three days with effect from 29th November 2022:

- (i) Petition by the Republican Party,
- (ii) Petition by Rev. Dennis Ndwiga Nthumbi,

Petition by Mr. Geoffrey Langat, and

(iii) Petition by Mr. Owuor Steve Gerry.

(The Hon. Kimani Ichung'wah, M.P.)

Debate arising;

Question put and agreed to.

11. **MOTION – SESSIONAL PAPER NO. 1 OF 2022 ON THE NATIONAL AUTOMOTIVE POLICY**

(The Leader of the Majority Party)

Motion made and Question proposed –

THAT, this House adopts Sessional Paper No. 1 of 2022 on the National Automotive Policy, laid on the Table of the House on Wednesday, 25th May 2022.

(The Hon. Kimani Ichung'wah, M.P. on 23.11.2022 - Morning Sitting)

Debate on the Motion having been concluded on 24.11. 2022

Question put and agreed to

12. **MOTION – RESOLUTION TO HOLD A THURSDAY MORNING SITTING**

(The Leader of the Majority Party)

Motion made and Question proposed –

THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold a morning sitting on Thursday, 1st December 2022 commencing at 9.30 a.m. for purposes of considering priority business ahead of the December recess..

(The Hon. Kimani Ichung'wah, M.P.)

Debate arising;

Question put and agreed to.

13. **THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS (NO. 2) BILL 2022 (SENATE BILL NO. 4 OF 2022)**

(The Chairperson, Budget and Appropriations Committee)

Order for First Reading read;

Bill read a First time and referred to the relevant Departmental Committee pursuant to Standing Order 127(2).

14. **MOTION – CONSIDERATION OF THE PUBLIC FNANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS, 2022**

The Chairperson, Committee on Delegated Legislation)

Motion made and Question proposed –

(No.30)

TUESDAY, NOVEMBER 29, 2022

(327)

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Financial Inclusion Fund)

Regulations, 2022, laid on the Table of the House on Tuesday, 29th November 2022, and pursuant to the provisions of Section 24 (4) of the Public Finance Management Act, 2012 approves the Public Finance Management (Financial Inclusion Fund) Regulations, 2022, published as Legal Notice No.213 of 23rd November 2022.

(The Hon. Samwel Chepkonga, M.P.)

Debate arising;

Change of Chair from the Hon. Speaker to Sixth Chairperson (Hon. (Dr.) Rachael Nyamai, MP)

Rising on a Point of Order under Standing Order 95, the Member for Tinderet (Hon. Julius Melly) claimed to move that the Mover be called upon to reply;

The Honourable Speaker acceded to the request;

Question that the Mover be called upon to reply put and agreed to;

Mover replied;

Putting of the Question deferred.

15. **THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS (NO. 2) BILL 2022 (SENATE BILL NO. 4 OF 2022)**

Motion made and Question proposed –

THAT, the County Governments Additional Allocations (NO. 2) Bill 2022 (Senate Bill No. 4 of 2022) be now read a Second time

(The Chairperson, Budget and Appropriations Committee)

Debate arising;

Rising on a Point of Order under Standing Order 95, the Member for Ainabkoi (Hon. Samwel Chepkonga) claimed to move that the Mover be called upon to reply;

The Honourable Speaker acceded to the request;

Question that the Mover be called upon to reply put and agreed to;

Mover replied;

Putting of the Question deferred.

And the time being seven o'clock, the Sixth Chairperson *(Hon. (Dr.) Rachael Nyamai, MP)* interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

(No.30)

TUESDAY, NOVEMBER 29, 2022

(328)

16. **HOUSE ROSE** -

at seven o'clock

MEMORANDUM

The Speaker will take the Chair Tomorrow,
Wednesday, November 30, 2022 at 9.30 a.m.

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