



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (SECOND SESSION)

THE SENATE

VOTES AND PROCEEDINGS

THURSDAY, MARCH 16, 2023 AT 2.30 P.M.

1. The Senate assembled at thirty Minutes past Two O'clock.
2. The proceedings were opened with Prayer said by the Speaker.
3. **QUORUM IN THE HOUSE**

The Speaker, having counted the Honourable Senators present at the commencement of the Sitting and confirming that there was no Quorum, caused the Bell to be rung pursuant to Standing Order 40;

And there being a Quorum after the expiry of seven minutes;

The Speaker invited the Clerk to call the Orders of the day.

4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair: -

a) Visiting Delegation of University Student Leaders from Kisii County

“Honourable Senators,

I would like to acknowledge the presence, in the Speaker’s Gallery this afternoon, a visiting delegation of Student Leaders from various Universities in Kisii County. The delegation is in the Senate for a one-day academic exposition.

Honourable Senators,

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

b) Preface to Communication on Changes in The Leadership of the Senate Minority Coalition

“Honourable Senators,

Yesterday afternoon, the Senate Minority Leader rose on a Point of Order seeking that the Speaker makes a Communication on changes in the leadership of the minority side on the grounds that the Political Parties Tribunal had made a ruling yesterday, 14th March, 2023 striking out the complaint that had been lodged with it by the Senate Minority Whip on the grounds that it had no jurisdiction in the matter. The Minority Leader did not provide any evidence of such order having been made but instead alleged that the matter was in the public domain.

To this Point of Order, I ruled that in the same manner that I had previously withheld my Communication in response to the correspondence that the Senate Minority Leader had furnished me with after receipt of an order of the Tribunal served on my office, I could similarly only pronounce myself on the matter after receiving an order to the contrary effect. I further ruled, which is trite law, and which is in keeping with the precedents of this House, that the Chair is not to rely on rumour, hearsay or newspaper or other media accounts.

Subsequently, Senator Okongó Mogeni, SC tabled a document asserting that it was a ruling of the Tribunal in the matter. After a series of other interventions and points of order canvassed by Senators from both sides, Senator Mwinyihaji Faki, also tabled a document which he purported to be the order of the Tribunal in the matter. Honourable Senators will appreciate that the Chair may not always be able to verify or authenticate documents laid on the Table instantly and there will be many occasions when it will be necessary that documents of significance be scrutinized and a determination be made thereafter. I, therefore, informed the House that I was retreating to my Chambers to scrutinize the documents laid on the Table and to consider the interventions canvassed.

Honourable Senators,

Upon arriving at my Chambers, I received from the Legal Office of the Senate a certified copy of the Ruling and the Orders of the Tribunal in PPDT Complaint No. E003 of 2023: Fatuma Dullo and Jubilee Party, as First and Second Complainants versus Azimio La Umoja One Kenya Coalition Party, as the respondent and Stewart Madzayo, Ledama Olekina and the Speaker of the Senate of the Republic of Kenya as the First, Second and Third Interested Parties, respectively. It is noteworthy that the Ruling and the Order were received by the Senate Legal team on behalf of the Speaker as the Third Interested Party.

Honourable Senators,

I have perused the document tabled by Senator Okongó Mogeni purporting to be the ruling of the Tribunal and the document laid on the Table by Senator Mwinyihaji Faki purporting to be the ruling of the Tribunal against the documents of the like designation obtained by our Legal Office and I am satisfied as to their authenticity.

The ruling of the Tribunal at paragraph 15 reads as follows-

Having found that the Tribunal lacks jurisdiction, it follows that delving into the question of the second complaints representation will be an exercise in futility. That leaves us with no option but to down our tools.

In the disposition at paragraph 52, the Ruling is to the following effect-

In light of the fore-going, we order as follows-

That the complaint and the application herein be and is hereby struck out;

Each party to bear its own costs.

The Ruling is dated and delivered at Nairobi on 14th March, 2023.

The Order, on the other hand, which is in the same terms as the Ruling, is issued, dated and signed at Nairobi on 15th March, 2023 and is under the hand and seal of the Tribunal.

Honourable Senators,

You will recall that on 21st February, 2021, it was indicated from this Chair that while we were ready to deliver the ruling on the correspondence from the Senate Minority Leader on the changes made in the minority leadership, the ruling could not be delivered and had to be stayed because of the injunctive orders of the Tribunal and that the ruling from this Chair would issue as soon as the matter at the Tribunal was concluded or the orders vacated.

Honourable Senators,

The matter now having been determined in the manner that I have recited above, I will proceed to deliver my Ruling-

c) Changes in the Leadership of the Senate Minority Coalition

“Honourable Senators,

As you may recall, at the sitting of the Senate held on Wednesday, 15th February, 2023, the Senate Minority Leader rose on a point of order seeking the directions of the Chair regarding a proposed change in the

leadership of the Minority Party. The Senate Minority Leader asserted that he had communicated changes in the leadership of the Minority side the previous day and was concerned that the changes had not been effected and communicated to the Senate. The Senate Minority Leader, more or less, demanded that the changes be communicated at that sitting alleging that failure to do so portrayed badly on the part of the Speakership.

Arguments in similar vein were advanced by Senators Ledama Olekina and Godfrey Osotsi, who also sought the immediate communication by the Speaker on the matter.

On the other hand, the Senate Majority Leader and the Deputy Speaker, speaking to the point of order raised by the Senate Minority Leader, urged caution, asserting that while it was the prerogative of the Senate Minority Leader to communicate changes in the leadership of the Minority side, pursuant to standing order 23 of the Senate Standing Orders, it was necessary that the Speaker be accorded time and opportunity to consider the contents of the communication received and to make a reasoned determination on the matter.

Senator Abdul Haji, who also spoke on the matter, drew the attention of the Senate to the fact that the Jubilee Party, which is a member of the Azimio One Kenya Coalition, had written a letter to the Speaker regarding the matter of the proposed changes to the leadership of the Minority side and sought a ruling by the Speaker on the matter, having also considered the correspondence from the Jubilee Party.

Honourable Senators,

By way of background, by a letter, reference SEN/SML/1/2023, dated 14th February, 2023, and received in my office on the same day, the Senate Minority Leader communicated to the Office of the Speaker the decision of a meeting of the Azimio La Umoja One Kenya Coalition Parliamentary Group meeting to make certain changes in the leadership of the Minority side.

The letter, states as follows, and I quote-

“RE: DISCHARGE OF A SENATOR FROM LEADERSHIP OFFICE

Pursuant to Standing Order 23(6), I hereby convey the decision of the minority party to discharge Sen. Fatuma Dullo, CBS, MP, from the position of the Senate Minority Whip.

The decision was arrived at a meeting of the Minority Party held pursuant to Standing Order 23(4). In the place of the Senator, Sen. Ledama Olekina, MP, was elected as the new Senate Minority Whip. Further, Sen. Edwin Sifuna, MP was elected to the position of Deputy Senate Minority Whip.

Attached herewith please find the Minutes of the meeting at which the decision was made.”

Honourable Senators,

Attached to the letter were Minutes of a meeting of the Azimio La Umoja One Kenya Coalition Parliamentary Group, indicating that the meeting was held on Tuesday, 14th February, 2023 in the Office of the Senate Minority Leader at Parliament Buildings, Nairobi, at 12.00 noon. The Minutes contain the resolution of the meeting making changes in office of the Senate Minority Whip as follows-

That, Sen. Fatuma Dullo, MP be removed from the position of Senate Minority Whip;

That, Sen. Ledama Olekina, MP be elected to the position of Senate Minority Whip; and

That, Sen. Edwin Watenya Sifuna, MP, be elected to the position of Deputy Senate Minority Whip.

Further, attached to the Minutes is a list and signatures of sixteen (16) Senators who were present and in support of the resolution.

Honourable Senators,

Subsequent to my receipt of the letter by the Minority Leader as aforesaid, I received two other letters dated 14th February, 2023 and 15th February, 2023, respectively, from Sen. Abdul Haji and Sen. Fatuma Dullo.

The letter, by Sen. Haji, Reference No. MW/ADM/2023 (23), dated 14th February, 2023 and received in my office on 15th February, 2023, is titled ‘Attempts to Challenge Jubilee Membership in Azimio.’ In the letter, Sen. Haji sought to challenge the proposed changes in the leadership of the Minority side on the grounds that-

The Jubilee Party has not formally exercised its right to exit the Azimio Coalition in accordance with Article 22 of the Azimio Coalition Agreement; The Jubilee Party has utmost confidence in the leadership of Sen. Fatuma Dullo, CBS, MP as the Senate Minority Whip;

The Jubilee Party objected against the draconian, unprocedural and unfair attempt to remove the Jubilee member from the Whip position by only two constituent parties of Azimio Coalition;

The Jubilee Party was unaware of the alleged Azimio PG to remove Sen. Fatuma Dullo, MP as the Senate Minority Whip and consequently as Jubilee never participated in the process and that the same was therefore not duly constituted and is null and void;

The position of the Senate Minority Whip is a Jubilee Party position as per the Azimio Coalition Agreement and that any removal ought to be from the Jubilee Party in form of a letter and not from anywhere else; and

The positions currently held by Jubilee Party in the Senate were agreed upon by the Azimio Coalition and that any attempts to remove any member from any position is a violation of the Coalition arrangement.

Sen. Abdul Haji signs the letter as the National Organizing Secretary of Jubilee Party. Attached to the letter are the Minutes of a meeting of Jubilee Senators stated to have been held on 14th February, 2023 at the Serena Hotel with four Senators from the Jubilee Party listed to be present and one absent with apology.

Honourable Senators,

The letter, by the Senate Minority Whip, Reference No. MW/ADM/2023 (24), dated 15th February, 2023 and received in my office on the same day, is titled 'Violation of Human Rights and Unprocedural Removal of Jubilee Members from Positions'.

In the letter, the Senate Minority Whip, Sen. Fatuma Dullo, MP alleges, among other things that due process was not followed in her purported removal from the Office of the Minority Whip and that her human rights as provided for under Article 47 of the Constitution have been violated. She further alleges that -

Her proposed removal from the Office of the Minority Whip went against fair administrative action and was a violation of the rules of natural justice. She claims that she was never-

Given any notice whatsoever of the Azimio PG meeting in order to prepare;

Informed of the reasons for which a charge has been brought;

Given an opportunity to hear the charge and defend against any charge that may be leveled against her;

Allowed to have legal representation present; and

Given a written decision of the meeting.

She was elected as a leader to represent the Jubilee Party from the Azimio La Umoja PG meeting encompassing all the constituent partners in the coalition and that it would be fair and procedural for any attempt to remove her to follow the same process.

The Jubilee Party and herself were not aware of the alleged Azimio PG meeting as due process was not followed in the convening of the said meeting.

The Jubilee Party is still in the Azimio Coalition Party and that it has not exited the Coalition.

There has been unprocedural removal of Jubilee members from Committees of the Senate, the most recent case being the removal of Sen. (Prof.) Margaret Kamar, MP from the Senate Business Committee.

The Jubilee Party should be recognized as the third largest party with rights similar to those enjoyed by other parties and further that the existing coalition agreement must be taken into account before any removal from office.

Honourable Senators,

I am clear in my mind that at the time the Senate Minority Leader rose on a point of order to demand an immediate Communication from the Speaker on what he claimed to be a simple and straight forward matter, he was not aware of the foregoing correspondence which the Office of the Speaker was seized of. It cannot be gainsaid that the Office of the Speaker must accord due respect to all Senators and must, at the very least, give due consideration to any matter brought to the attention of the Speaker by any Senator. The outcome of such due consideration is of course a separate matter altogether.

Honourable Senators,

Having considered the letter of the Senate Minority Leader, the annexures thereto and the letters by Sen. Abdul Haji and Sen. Fatuma Dullo the following questions commend themselves for my determination-

What is the procedure, including the timelines, required of the Speaker when he receives a communication on changes in the political leadership in the Senate as contemplated in standing orders 22 and 23 of the Senate Standing Orders?

What options are available to the Speaker where proposed changes in the political leadership in the Senate are contested by an aggrieved political party, senator or senators?

Honourable Senators,

On the first question, as you are aware, Part VI of the Senate Standing Orders provides for the Senate political leadership offices. In respect of the Minority Party, standing order 23(1) provides for election of Senators by the Minority Party to the offices of the Senate Minority Leader, the

Deputy Senate Minority Leader, the Senate Minority Whip and the Deputy Senate Minority Whip.

Standing order 23 provides for the removal from office of a Senator elected to a leadership position. At paragraphs (4), (5) and (6), the standing order provides that -

(4) A Senator elected under paragraph (1) may be removed by a majority of the votes of all Senators belonging to the Minority Party;

(5) The removal of a Senator from office under paragraph (3) shall not take effect until a Senator is elected in the manner provided for under paragraph (1); and

(6) Upon a decision being made by the Minority Party under this Standing Order, the decision of the Party shall be communicated to the Speaker in writing, together with the minutes of the meeting at which the decision was made-

(a) in the case of the removal of the Senate Minority Leader or the Deputy Senate Minority Leader, by the Senate Minority Whip; and

(b) in the case of the removal of the Senate Minority Whip or the Deputy Senate Minority Whip, by the Senate Minority Leader.

This is as far as the Standing Orders go. They neither provide for what the Speaker should do nor give an indication of any timelines within which the Speaker should act. This omission may be a matter that the Senate may consider for reform in future amendments to the Standing Orders. Nevertheless, I am convinced that this omission is not fatal and that it is open to me to draw inspiration from Article 259 (8) of the Constitution which provides (in relation to construing the Constitution) that if a particular time is not prescribed for performing a required act, the act shall be done without unreasonable delay and as often as the occasion arises. Indeed, Honourable Senators will recall that when the Senate Minority Leader raised this matter in the Senate on 15th February, 2023, I indicated that the communication will be processed in the usual manner and that a communication would be given in terms of the Standing Orders without inordinate delay.

Honourable Senators,

These are no idle pronouncements. What constitutes a reasonable time must depend on the totality of the circumstances. For example, the communication on proposed changes could be received on a Friday afternoon or during a long recess as at the end of a Session. Clearly, the Standing Orders do not contemplate that the Speaker would communicate the said changes to the plenary on a weekend or that the Senate would be called for a special sitting for the purpose only of the Speaker

communicating the changes to the plenary. This must mean that the gaps occasioned by the Standing Orders not providing the manner, medium or timing of communication of the changes must be filled in the manner most consistent with a purposive interpretation of the Standing Orders, and that seeks to give effect to the letter and spirit of the Standing Orders rather than to defeat them.

Similarly, there can be no doubt that in giving due consideration to the communication received, the Speaker, cannot be oblivious of any correspondence pertinent to the matter that is brought to his attention. The upshot of this is that a claim that the Speaker must forthwith upon receipt of a letter from the Senate Minority Leader, rush to the Chamber and read it to the assembled Senate is without merit and I reject it. It cannot be! The Speaker must, in each case, properly address himself to the correspondence and any accompanying annexures to satisfy himself as to compliance with standing order 23. If there is any other correspondence on the matter, he must also consider it, the only caveat being that all this must be done within a reasonable time. The importance of bona fide Senate leadership of both sides being in place at all times cannot be gainsaid.

Honourable Senators,

The lacuna in respect of the process and the timelines, notwithstanding, we find backing in Standing Order No. 1 which among other things provides that in all cases where matters are not expressly provided for by the Standing Orders, any procedural question shall be decided by the Speaker whose decisions shall be based inter alia on the Constitution of Kenya, statute law and the usages, forms and precedents of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.

Precedent has been set on this matter where changes in the Senate political leadership were effected during the term of the 12th Parliament. The first time that this matter was addressed by the Speaker was on 15th and 20th March, 2018 respectively during the consideration of the proposed removal of the then Senate Minority Leader, Hon. Moses Wetang'ula.

On that occasion, the Speaker found that the provisions of the Standing Orders had been met in respect of the removal of Sen. Wetang'ula as the Senate Minority Leader but that the provisions of the Standing Orders on the election of a new Senate Minority Leader to replace him had not been met. The Speaker therefore suspended the removal until and unless another Senator was elected in compliance with the Standing Orders and communication to that effect with the minutes evidencing the election was made to his office.

Honourable Senators,

The prerequisites for a lawful removal of a leader as set out in the ruling of the Speaker on that occasion are that-

The removal is undertaken by a majority of the members of the parliamentary party as known and recognized in the Senate in accordance with the Standing Orders;

The minutes evidencing the removal are attached and the Senators who have signed up as supporting such removal are indicated in the said minutes;

The removal is communicated to the Speaker by the designated office holder as provided for in the Standing Orders;

The Speaker peruses and satisfies himself as to the validity and correctness of the documentation received;

A new Senator replacing the removed office holder is validly elected by the recognized political party;

Applying these principles, it is clear that the recognized parliamentary political parties in the Senate at this time are the Kenya Kwanza Coalition as the Majority Party and the Azimio La Umoja - One Kenya Coalition as the Minority Party. In terms of Standing Order 23 (6), the letter by the Senate Minority Leader communicated the decision by sixteen (16) Senators being a majority of the members of the Minority Party to remove the Senate Minority Whip. The Minutes evidencing such removal were attached and it fell to me to ascertain whether these were in compliance with the Standing Orders.

Honourable Senators,

I now turn to the second question which is the question of the options available to the Speaker where the proposed changes in the political leadership in the Senate are contested by an aggrieved political party, senator or senators.

As stated by Speaker Lusaka in the Sen. Wetang'ula case "...it cannot be gainsaid that political parties are recognized under Article 91 of the Constitution and are subject to the requirements thereunder. Political Parties are also subject to legislation made, pursuant to Article 90(2) of the Constitution. In the context of the Senate, political parties have the opportunity to present themselves for recognition in the Senate either as single political parties or as an alliance or coalition of parties operating under a coalition agreement deposited with the Registrar of Political Parties. It is their prerogative; it is their choice, but when they make their choice, they must abide by the consequences of that choice. Coalitions enjoy the benefit of being a coalition, such as enhanced numbers resulting

therefrom, but must similarly, put up with the language that comes with the coalition status such as the decision making required under Standing Order No. [23]”.

The meaning of this is that political parties cannot be wild creatures, roaming in the national landscape without deference to the Constitution. But similarly, it is not open to their constituent entities to approbate and reprobate in presenting themselves to the Senate. The Senate recognizes single parties presenting themselves for recognition as parliamentary parties or a number of parties presenting themselves to the Senate as a coalition enjoying parliamentary party status.

The answer to the second question therefore is that it is not open to the Speaker to entertain and find valid the correspondence of a coalition on the status of its leadership and at the same time accept a contrary position on the same matter from constituent entities or individuals of the same coalition.

Honourable Senators,

It is therefore my finding and I so rule, that the letter sent to me by the Senate Minority Leader met the requirements of the Standing Orders as stipulated in Standing Order No. 23 and accordingly-

1. Sen. Fatuma Adan Dullo, CBS, MP has been validly removed as the Senate Minority Whip;
2. Sen. Ledama Olekina, MP has been validly elected as the Senate Minority Whip and is now the Senate Minority Whip; and
3. Sen. Edwin Watanya Sifuna, MP, has been validly elected as the Deputy Senate Minority Whip and is now the Deputy Senate Minority Whip.

I thank you.”

d) Visiting Teachers and Students from Rukanga Secondary School in Kirinyaga County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, a visiting delegation from Rukanga Secondary School in Kirinyaga County. The delegation comprises three (3) teachers and forty-four (44) students who are in the Senate for a one- day study visit.

Honourable Senators,

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

e) Visiting Teachers and Students from Kaai Girls Secondary School in Kitui County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, a visiting delegation from Kaai Girls Secondary School in Mwingi West, Kitui County. The delegation comprises four (4) teachers and forty-seven (47) students who are in the Senate for a one- day study visit.

Honourable Senators,

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

f) Visiting Teachers from Stone Town Academy in Lamu County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, a visiting delegation of thirty-eight (38) teachers from Stone Town Academy in Lamu County. The delegation is in the Senate for a one-day study visit.

Honourable Senators,

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

5. PAPERS

The following Papers were laid on the Table of the Senate: -

- i.) Report of the Auditor General on the Mathira Water and Sanitation Company Ltd for the year ended 30th June, 2022.

- ii.) Report of the Auditor General on the Kirinyaga County Alcoholic Drinks and Substance Abuse Control Fund for the year ended 30th June, 2022.
- iii.) Report of the Auditor General on the Receiver of Revenue – County Government of Kirinyaga for the year ended 30th June, 2022.
- iv.) Report of the Auditor General on the County Revenue Fund – County Government of Kirinyaga for the year ended 30th June, 2022.
- v.) Report of the Auditor General on the Gatanga Community Water Scheme for the year ended 30th June, 2022.
- vi.) Report of the Auditor General on the Murang’a County Education Scholarship Fund for the year ended 30th June, 2022.
- vii.) Report of the Auditor General on the Nyeri County Elimu Fund for the year ended 30th June, 2022.
- viii.) Report of the Auditor General on the Nyandarua County Bursary Fund for the year ended 30th June, 2022.
- ix.) Report of the Auditor General on the Kakamega County Microfinance Corporation for the year ended 30th June, 2022.
- x.) Report of the Auditor General on the Kakamega County Maternal Child Health and Family Planning Fund for the year ended 30th June, 2022.
- xi.) Report of the Auditor General on the County Executive of Busia for the Year ended 30th June, 2022.
- xii.) Report of the Auditor General on the County Assembly of Busia for the year ended 30th June, 2022.
- xiii.) Statement of the Business of the Senate for the week commencing Tuesday, 21st March, 2023.

(The Senate Majority Whip)

6. **STATEMENTS**

a) Pursuant to Standing Order 53(1)

- i) The Senator for Embu County (Sen. Alexander Mundigi, MP) sought a statement from the Standing Committee on National Security, Defence and Foreign Relations concerning the delay in posting an assistant county commissioner to Kiambere Division.

b) Pursuant to Standing Order 56(1)(a)

The Chairperson, Standing Committee on Roads, Transportation and Housing issued a Statement relating to a matter for which the Committee is responsible.

c) Pursuant to Standing Order 57(1)

The Senate Majority Whip issued a statement on the business of the Senate for the week commencing Tuesday, 21st March, 2023.

7. THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 6 OF 2022)

(Sen. Danson Mungatana, MP)

(Second Reading)

***(Resumption of debate interrupted on Thursday, 9th March, 2023)
(Division)***

Order for Second Reading read;

Order deferred.

8. THE COUNTY VOCATIONAL EDUCATION AND TRAINING BILL (SENATE BILLS NO. 3 OF 2022)

(Sen. Moses Kajwang', MP)

(Second Reading)

Order for Second Reading read;

Order deferred.

9. THE AGRICULTURAL AND LIVESTOCK EXTENSION SERVICES BILL (SENATE BILLS NO. 12 OF 2022)

(Sen. Maureen Tabitha Mutinda, MP)

(Second Reading)

Order for Second Reading read;

Order deferred.

10. THE MUNG BEANS BILL (SENATE BILLS NO. 13 OF 2022)

(Sen. Enoch Wambua, MP)

(Second Reading)

Order for Second Reading read;

Order deferred.

11. **THE START-UP BILL (SENATE BILLS NO. 14 OF 2022)**
(Sen. Crystal Asige, MP)

(Second Reading)

Order for Second Reading read;

Order deferred.

12. **MOTION – ADOPTION OF THE REPORT OF THE JOINT COMMITTEE OF THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING AND THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES ON THE APPROVAL HEARING FOR THE NOMINEES FOR APPOINTMENT AS MEMBERS OF THE NATIONAL CLIMATE CHANGE COUNCIL**

THAT the Senate adopts the Report of the Joint Committee of the National Assembly Departmental Committee on Environment, Forestry and Mining and the Senate Standing Committee on Land, Environment and Natural Resources on the Approval Hearing for the Nominees for Appointment as Members of the National Climate Change Council laid on the Table of the Senate on Tuesday, 14th March, 2023; and pursuant to Section 7 (4) of the Climate Change Act and Section 8 of the Public

Appointments (Parliamentary Approval) Act, approves the nomination of Ms. Emily Mwendu Waita; Mr. John Kioli; and Prof. George Odera Outa for appointment as Members of the National Climate Change Council, and rejects the nomination of Ms. Umra Omar.

(The Vice-Chairperson, Standing Committee on Land, Environment and Natural Resources- 15.03.2023)

Debate interrupted on Wednesday, 15th March, 2023 resumed;

And there being no other Senators wishing to contribute;

Mover replied;

Before the Question was put, and pursuant to Standing Order 84(1) the Temporary Speaker (Sen. Hillary Sigei Wakili, MP) ruled that the Motion does not affect counties.

Question put and agreed to.

RESOLVED ACCORDINGLY;

THAT, the Senate adopts the Report of the Joint Committee of the National Assembly Departmental Committee on Environment, Forestry and Mining and

the Senate Standing Committee on Land, Environment and Natural Resources on the Approval Hearing for the Nominees for Appointment as Members of the National Climate Change Council laid on the Table of the Senate on Tuesday, 14th March, 2023; and pursuant to Section 7 (4) of the Climate Change Act and Section 8 of the Public Appointments (Parliamentary Approval) Act, approves the nomination of Ms. Emily Mwende Waita; Mr. John Kioli; and Prof. George Odera Outa for appointment as Members of the National Climate Change Council, and rejects the nomination of Ms. Umra Omar.

13. **MOTION – THE DOPING MENACE THREATENING KENYA’S IMPECCABLE GLOBAL REPUTATION IN ATHLETICS**

(Sen. Samson Cherarkey, MP)

Order read;

THAT, AWARE THAT in 2018 Kenya was placed under Category A by the world Anti-Doping Agency and since then forty Kenyan athletes have been banned by either the Athletics Integrity Unit (AIU) or the Anti – Doping Agency of Kenya (ADAK) and has led to a situation whereby the Kenyan athletes have to undergo intense testing before participating in major events and has immensely affected the reputation of the Kenyan athletes and the standing of Kenya in the international Sports arena where it currently ranks at number five;

CONCERNED THAT, despite the high number of alleged doping cases Kenya has only one World Anti- Doping Agency (WADA) approved blood testing laboratory forcing it to send urine tests to Qatar and South Africa for analysis and that the Anti- Doping Agency of Kenya (ADAK) is taking too long to address the doping menace which is likely to affect the state of preparedness for the athletes in the upcoming 2024 Olympic games in Paris;

NOW THEREFORE the Senate resolves that the Ministry of Youth, Sports and Arts: -

- a. Come up with modalities that can help achieve increased testing, intelligence gathering on athletes and doping awareness programmes;
- b. In collaboration with Athletics Kenya (AK) and National Olympic Committee of Kenya (NOCK) to vet all training camps, coaches, trainers and other athlete handlers;
- c. Initiate investigations at the Anti – Doping Agency Kenya (ADAK) to identify and sanction all responsible officers liable for the menace of doping;
- d. In collaboration with the Directorate of Criminal Investigations and the Ethics and Anti – Corruption Commission finalize pending investigations and recommend prosecution of individuals involved in giving this banned substance to athletes; and

- e. In collaboration with the Ministry of Health to identify and revoke licenses for medics, pharmacies and hospitals responsible for the prescription of the commonly abused drugs by the athletes.

(Resumption of debate interrupted on Tuesday 14th March, 2023 – Balance of time – 2hrs 42mins)

Order deferred.

14. **MOTION – PROVISION OF FREE SANITARY TOWELS TO END PERIOD POVERTY**

(Sen. Gloria Orwoba, MP)

Order read;

THAT, AWARE THAT period poverty refers to the common challenge plaguing women globally wherein they are unable to attend schools or work as a cause of a lack of funds for sanitary products that is both a health risk and a signal of gender inequity;

FURTHER AWARE THAT in rural Kenya, 2 out of 3 pad users receive pads from sexual partners and 65 percent of women and girls can't afford sanitary pads, forcing them to use alternative materials like grass, cotton wool and cloth which lack adequate absorbent qualities resulting in frequent leakage and hygiene issues;

CONCERNED THAT period poverty also referred to as the “shadow pandemic” contributes to global and regional gender inequity, as women are forced to solicit help from men in order to satisfy a basic health need with 10% of 15-year-old girls having sex to pay for sanitary products;

FURTHER CONCERNED THAT, data from the Ministry of Education indicates that a girl that is absent from school for four days a month loses 13 learning days, equivalent to two weeks of learning in every school term, translating to 39 learning days or six weeks of learning time in a term and up to 18 of 108 weeks in primary and 24 weeks of 144 weeks of learning in secondary school;

NOTING THAT, while the Government, through the State Department for Gender Affairs was charged with the responsibility of procuring and distributing sanitary towels for 3.7 million girls in public primary schools, special primary and secondary schools in the country at a cost of Kshs. 470 million during the 2017/2018 Financial year, which amount needs to be increased in order to fully address and mitigate the problem;

NOW THEREFORE, the Senate resolves that the Ministry of Public Service, Gender and Affirmative Action in partnership with the Ministry of Education and the Council of Governors to:-

1. facilitate provision of feminine hygiene products in all public schools;

2. ensure that all schools that don't have bathrooms that facilitate privacy, cleanliness or proper disposal of hygiene products are properly equipped;
3. create awareness and take advocacy measures on reproductive health issues related to period poverty;
4. include in the curriculum a dedicated lesson per week to teach girls on menstrual hygiene; and
5. ensure that sanitary products will be obtainable timely, consistently, and in a way that respects the dignity of concerned persons.

(Resumption of debate interrupted on Tuesday 28th February, 2023 – Balance of time – 2hrs 41mins)

Order deferred.

15. **MOTION – INSTITUTION OF MEASURES TO CURB INCESSANT HIGH ELECTRICITY COSTS IN KENYA**

(Sen. Mohamed Chute, MP)

Order read;

THAT, AWARE THAT energy is an essential factor of production and its total consumption is a major determinant of performance of the economy with its cost and reliability spurring or stifling economic growth;

FURTHER AWARE THAT there has been a significant growth in the demand for electricity in Kenya driven by economic growth and increased efforts towards rural electrification while the supply has been constrained due to, among other factors, the overreliance on hydro-electric power generating plants that have been negatively impacted by perennial drought experienced in the country;

NOTING THAT the imbalance in the demand and supply of power coupled with payments by the Kenya Power and Lighting Company (KPLC) for produced power not consumed and fluctuation in the foreign exchange rates contribute to the high cost of electricity;

APPRECIATING THAT Kenya has made strides in diversifying its power sources with geothermal plants, offering tremendous potential for zero-carbon source of power, already producing nearly one (1) Gigawatt (GW) of power;

CONCERNED THAT private power generating companies popularly referred to as Independent Power Producers (IPPs) only supply 28% of power to KPLC but account for 47% of power purchase costs calling for the need to enhance energy management in Kenya;

NOW THEREFORE the Senate resolves that the:

- a) Standing Committee on Energy to undertake an inquiry into: -
 - i. Contracts signed by IPPs, detailing the cost, capacity and duration of the contractual agreements and their implications on affordability of electricity in the country;
 - ii. Discrepancy in the cost of electricity sold to Kenya Power by KenGen, imports from Ethiopia and IPPs; and
 - iii. The diversion of the electricity generated by Lake Turkana Wind Power to the national grid, bypassing the inadequately supplied northern frontier counties of Marsabit and Samburu.

- b) Ministry of Energy to come up with a policy framework aimed at: -
 - i. Lowering the cost of electricity as a way of addressing the high cost of living; and
 - ii. Enhancing clean energy by switching to renewable sources of energy such as geothermal power, wind energy, among others as a way of reducing the carbon footprint.

Order deferred.

16. **MOTION - ENHANCING HIGHWAY SAFETY AND CONVENIENCE**
(Sen. Wahome Wamatinga, MP and Sen. Mohamed Faki, MP)

Order read;

THAT, AWARE THAT 67% of road crash fatalities and injuries in the country comprise of the economically productive age groups of 15 - 64 years, and that the importance of good post-crash care reduces deaths and disability and the suffering for road crash survivors creates the urgent need for effective emergency medical care system elements and processes on our highways;

FURTHER AWARE THAT lives and properties are lost or irreparably damaged daily on major highways in the country due to accidents and explosion of fuel tankers, and the lack of accessible roadside amenities such as medical clinics, rescue centers, fire engines and ambulances hamper efforts to mitigate the carnage caused by the accidents, rescue lives and put out fires;

COGNIZANT THAT setting up safe stopping points for road users at regular intervals with the necessary road-side amenities such as fuel stations, parking spaces, restaurants, telephone booths, minor repair shops, medical facilities, and toilets enhances total travel experience and the lack of these points make

it impractical for drivers to stop as often as they would wish to resulting into driving-related fatigue, a significant contributor to accidents on the highways;

FURTHER COGNIZANT THAT provision of amenities such as ambulances, firetrucks and satellite medical clinics to provide emergency services to road accident victims would save lives lost daily on major roads;

ACKNOWLEDGING THAT governments across the world have taken on the task of setting up such amenities through incorporation of the basic provisions in their road transport infrastructure through different models of Public Private Partnership (PPP), lease, or ownership;

NOW THEREFORE the Senate resolves that: -

- i) The Kenya National Highway Authority, in collaboration with the Council of Governors to come up with a policy framework on the incorporation of road reserves for road-side amenities in all highway designs;
- ii) The Ministries of Health, Roads, Transport and Public Works in conjunction with the Council of Governors to undertake a survey to ascertain the specific amenities required but not available on the existing highways such as satellite medical clinics, firetrucks and ambulances, and identify the most convenient locations to develop them; and
- iii) The Ministry of Roads and Transport in conjunction with the Council of Governors to develop Public Private Partnership guideline on leasing of the road reserves to developers, financing the construction of the amenities, and the packaging of incentives to attract investors.

Order deferred.

17. **MOTION - COMPENSATION TO THE KENYAN VICTIMS OF THE 1998 BOMBING OF THE UNITED STATES EMBASSY IN NAIROBI**

Order read;

Motion made in amended form -

THAT, AWARE THAT, disaster is defined as an overwhelming event and circumstance that tests the adaptation of responses of a community or individuals beyond their capability and leads momentarily to massive disruption of function for a community or individual that often exceeds their capacity to cope using existing resources;

FURTHER AWARE THAT, such was the case with the 1998 US Embassy Bomb disaster in Nairobi in which many of the Kenyan casualties resulted from the

collapse of adjacent buildings located within a two to three block radius, and with reverberations being felt in most parts of Nairobi that resulted in 223 Kenyans and 44 American Embassy employees killed and over 5,000 citizens of both countries being seriously injured;

NOTING THAT, US Allies, including Kenya, have endured the great burden of death, and long-term and in many instances permanent, physical and psychological injury;

FURTHER NOTING THAT, the United States Government has since compensated some of the victims and families of US citizens, leaving the families of Kenyan citizens and certain other victims uncompensated;

NOW, THEREFORE, the Senate resolves that the Ministry of Foreign Affairs:

- (i) Advances friendship and co-operation between the United States and Kenya by supporting the eligibility of Kenyan and American victims and their personal representatives, surviving spouses and next of kin in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act; and
- (ii) Partners with the Ministry of Health to explore subsidized medical treatment for the surviving victims of the bomb blast.

(Sen. Agnes Kavindu Muthama, MP)

And the time being thirty Minutes past Six O'clock, the Temporary Speaker (Sen. Hillary Sigei Wakili, MP) interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

18. **SENATE ROSE** – at thirty minutes past six O'clock.

MEMORANDUM

*The Speaker will take the Chair on
Tuesday, 21st March, 2023 at 2:30 p.m.*