



**REPUBLIC OF KENYA**  
**THIRTEENTH PARLIAMENT - (THIRD SESSION)**  
**THE NATIONAL ASSEMBLY**  
**MESSAGES**

**MESSAGE FROM THE PRESIDENT**

\_\_\_\_ (No. 003 of 2024) \_\_\_\_

**ON**

**REFERRAL BY H.E. THE PRESIDENT OF THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 30 OF 2024) AND BRIDGING THE FISCAL DEFICIT IN THE FY 2024/25 BUDGET**

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**Honourable Members,**

1. I wish to take this opportunity to welcome you back to the House after the just concluded short recess. You will recall that the recess was preceded by illegal access and damage to the precincts of Parliament by unauthorized persons at the tail end of the consideration of the Finance Bill, 2024. We have ventilated on this and other pertinent matters during the Members' *Kamukunji* this morning, and I commend Members for the bipartisan discussions.
2. Having said that, I wish to report to the House that on 27<sup>th</sup> June 2024, I received a Memorandum from His Excellency the President referring the Finance Bill (National Assembly Bill No. 30 of 2024) back to the House for reconsideration in accordance with the provisions of Article 115 of the Constitution.
3. In the Memorandum, H.E. the President expressed reservations on the contents of the Bill in its entirety and recommended the **deletion of all clauses of the Bill**. In making the recommendations, the President noted the widespread expression of dissatisfaction by the public on the contents of the Bill. Therefore, the proposed deletion of all the provisions of the Bill will accord with its general rejection by the public.

4. **Honourable Members,** Standing Order 42(2) provides that *if a message is received from the President at a time when the House is not in session, the Speaker shall forthwith cause the message to be transmitted to every Member and report the message to the House on the day the House next sits.*
5. Consequently, in keeping with the provisions of Standing Order 42(2), on 27<sup>th</sup> June 2024, I notified all Members of the Message from the President and referred the Memorandum from the President to the Departmental Committee on Finance and National Planning for expeditious consideration.
6. **Honourable Members,** following submission of the Memorandum, my office received several inquiries from Members of Parliament and the general public regarding the fate of the Bill and the manner of bridging the fiscal deficit arising from its rejection. Various misleading opinions have also been advanced on the fate of the Bill following its referral back to the House. Given the gravity and import of the matter, I issued an **Explainer** with a view to creating clarity and understanding on both procedural and legal tenets relating to the referral.
7. **Honourable Members,** one of the primary concerns then was on whether the President can propose the deletion of all operative clauses in a Bill or indeed the entire Bill. From the onset, I wish to clarify that the President's Memorandum recommending rejection of the entire Bill, though significant, was neither exceptional in our legislative history nor new to this august House. Members may recall that on 2<sup>nd</sup> May 2024, I conveyed a Message from the President relating to the referral of the **Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022)** back to the House for reconsideration.
8. In the Memorandum, the President expressed reservations on Clause 2 of the Bill, which was the operative provision in the Bill, and further recommended its deletion. This essentially constituted a rejection of the whole Bill.



9. Similarly, in the 11<sup>th</sup> and 12<sup>th</sup> Parliaments, the then President referred the Central Bank (Amendment) Bill (National Assembly Bill No. 28 of 2014) and the Law of Contract (Amendment) Bill (National Assembly Bill No. 1 of 2019) back to the National Assembly for reconsideration. In both instances, the recommendation from the President was the deletion of the operative Clauses of the Bills, which in essence, constituted rejection of the said Bills.
10. **Honourable Members**, a strict reading of Article 115 of the Constitution shows that **no limitation** is imposed on the nature of reservations or indeed the recommendations that the President ought to make on a Bill. Indeed, this is also reflected in the practice in other comparative jurisdictions. For Instance, in the US Congress, the President, while referring a Bill back to the House, may either choose to provide general recommendations based on the reservations to the Bill, or propose the actual text to be added to or deleted from specified parts of the Bill.
11. **Honourable Members**, concerns were also raised on whether the Finance Bill, 2024, having been referred back to the National Assembly, would become law due to effluxion of time on the basis of the provisions of Article 115 of the Constitution. For clarity, Article 115(6) of the Constitution states, and I quote—
- "115. (6) If the President does not assent to a Bill or refer it back within the period prescribed in clause (1)...the Bill shall be taken to have been assented to on the expiry of that period."***
12. For context, Article 115(1) of the Constitution provides that—
- "115. (1) Within fourteen days after receipt of a Bill, the President shall—***
- (a) assent to the Bill; or***

***(b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill."***

- 13.** A clear reading of these provisions reveals that the fourteen-day period applies to the President's action regarding assent or refusal to assent to a Bill. As soon as any of the actions contemplated under Article 115(1) is undertaken by the President within the timelines prescribed, the application of Article 115(6) ceases to apply. In this regard, **I wish to reiterate that the Constitution ought not to be construed in a narrow or sophistic sense.**
- 14.** The Constitution should be interpreted broadly and liberally in accordance with the guiding principles provided under Article 259(1) of the Constitution. Bearing this in mind, it becomes evident that the fourteen-day period specified in Article 115 is a timeline for the President's action **and not a date when the Bill automatically becomes law.**
- 15.** Therefore, the concerns alluding to the possibility of the Finance Bill 2024 becoming law due to the effluxion of time were, and still are, unfounded and a miscomprehension of the provisions of the Constitution. **This also explains why the House was not recalled from recess for Special Sitzings.**
- 16. Honourable Members,** now that the regular sittings of the House have resumed, I wish to restate that Standing Order 154(2) requires the House to consider the President's reservations within twenty-one (21) days **when the House next meets. Under normal circumstances, the House would have had twenty-one days from today within which to consider and dispense with the Memorandum.**



17. **However**, noting that the Memorandum had already been referred to the Departmental Committee on Finance and National Planning for consideration on 27<sup>th</sup> June, 2024, I have been briefed that the Committee is yet to conclude its consideration and shall table a Report to the House **on or before Tuesday, 30<sup>th</sup> July, 2024**, that is next week.
18. **Honourable Members**, permit me at this point to remind the House of the *Speaker's* Communication of 28<sup>th</sup> July 2015 concerning the consideration of the President's reservations to a Bill and amendments thereto. As per the guidance, **any Member who wishes to move the House to reinstate any Clause of the Finance Bill, 2024 shall be required to marshal the support of at least 233 Members of the House**. This is in keeping with the provisions of Article 115(4) of the Constitution, which requires that such a proposal be supported by at least two-thirds of the Members of the National Assembly.
19. Conversely, **agreement with the President's reservations and the recommendation to delete all the Clauses of the Finance Bill shall only require the support of a simple majority of the Members present and voting**. This is in line with the provisions of Article 115 (2) (a) of the Constitution as read with Article 122(1) of the Constitution.
20. **Honourable Members**, when the Memorandum will be scheduled by the House Business Committee for the clause-by-clause consideration of the Bill, the House will convert itself into a Committee of the Whole House for that purpose. Any amendments to be proposed to the Bill will be proceeded with in the manner I have guided.
21. **Honourable Members**, Having conveyed the Message from the President, I now wish to address the various measures that need to be undertaken to bridge the fiscal deficit arising from the rejection of the Finance Bill, 2024.



## **Division of Revenue Act, 2024**

- 22.** Article 218 of the Constitution requires Parliament to introduce the Division of Revenue Bill and the County Allocation of Revenue Bill at least two months before the end of each financial year. The Division of Revenue Bill divides revenue raised by the national government among the national and county levels of government. On its part, the County Allocation of Revenue Bill divides the revenue allocated to the county level of government among the counties.
- 23.** As Members will recall, H. E. the President assented to the Division of Revenue Act, 2024 on 10<sup>th</sup> June, 2024. The Act provides for the division of revenue raised nationally between the national and county governments for Financial Year 2024/25. In particular, the Act provides that the total shareable revenue is **Kshs 2.9 trillion**, out of which **Kshs. 2.5 trillion** was allocated to the national government and **Kshs. 400 Billion** was allocated to county governments.
- 24.** The revenue apportioned by the Division of Revenue Act was based on projections of revenue intended to be raised by the national government in FY 2024/25. As such, the amounts in the Division of Revenue Act, 2024 may only be realized if the projected revenues are actually collected by the national government. **Any shortfall in the projected revenue collection has a significant bearing on the shares apportioned between the two levels of government.**
- 25. Honourable Members,** It is estimated that the rejection of the Finance Bill, 2024 will occasion a **financial gap of approximately Kshs. 346 Billion**. This gap shall **significantly impact the amounts apportioned by the Division of Revenue Act, 2024; the revenue due to counties under the County Allocation of Revenue Bill, 2024; and the monies appropriated to finance the Budget for FY 2024/25.**



## **County Allocation of Revenue Bill, 2024**

- 26.** I am aware that on 10<sup>th</sup> July 2024, H. E. the President did refer back the County Allocation of Revenue Bill, 2024 to the Senate for reconsideration in light of the anticipated fiscal deficit. Article 219 of the Constitution obligates the national government to transfer the equitable share apportioned to counties in the Division of Revenue Act **without reduction**.
- 27.** To ensure that the national government does not default on its obligations, **the Division of Revenue Act, 2024, ought to be amended to reflect the revenue that the national government is capable of transferring to the counties in view of the current reality**. Failure to amend the Division of Revenue Act, 2024 shall result in the national government owing a financial obligation which it cannot clearly meet. In addition to the proposed reconsideration of the County Allocation of Revenue Bill, 2024 by the Senate, it is expected that the Chairperson of the Budget and Appropriations Committee shall introduce a Bill to effect necessary amendments to the Division of Revenue Act, 2024.

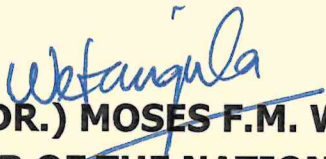
## **Supplementary Estimates I**

- 28. With regard to the monies already appropriated by the House to finance the Budget for FY 2024/25,** I wish to remind the House of the Notification I issued on 12<sup>th</sup> July 2024, informing you of the submission of the First Supplementary Estimates for the Financial Year 2024/25 which I referred the Budget and Appropriations Committee and the Departmental Committees for expedited consideration. The Supplementary Estimates seek to rationalize the FY 2024/25 Budget Estimates to align with the Revised Fiscal Framework and actualize expenditure cuts across the three arms of Government, Constitutional Commissions and Independent Offices.

**29.** As guided in my Notification of 12<sup>th</sup> July, 2024, the Budget and Appropriations Committee is expected to table its report on the Supplementary Estimates I on or before tomorrow, **Wednesday, 24<sup>th</sup> July, 2024**. The House shall thereafter consider the said Estimates and the resultant legislation to give effect to the Revised Fiscal Framework and the proposed expenditure reductions.

**The House is accordingly guided.**

**I thank you!**

  
**THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

Tuesday, 23<sup>rd</sup> July, 2024