



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, JULY 23, 2024, AT 2.30 P.M

1. The House assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.
3. **Presiding** – the Rt. Honourable Speaker.
4. **COMMUNICATION FROM THE CHAIR**

The Rt. Honourable Speaker issued the following Communication to the Chair—

Allegations of bribery of Members of Parliament in the discharge of Parliamentary duties

“I wish to inform the House that my office is in receipt of correspondences dated 24th and 25th June 2024, from various Members of Parliament regarding allegations of bribery of Members of Parliament during the voting on the Finance Bill (National Assembly Bill No. 30 of 2024). The Honourable Members include the Hon. Joseph Munyoro, MP, the Hon. Josses Kosgey Lelmengit, MP, the Hon. Jane Kagiri, MP, the Hon. Kanyuithia Mutunga, PhD, MP, and the Hon. Didmus Wekesa Barasa, MP. The Hon. Didmus Barasa, MP also raised the matter on the floor of the House on Wednesday, 25th June, 2024.

In their complaint, the Members allege that on Sunday, 23rd June, 2024, the Member for Juja Constituency, the Hon. George Koimburi, MP, was quoted across various Media outlets claiming that Members of this Honourable House who voted in support of the Second Reading of the Finance Bill (National Assembly Bill No. 30 of 2024) were bribed with Kshs. 2 million each to do so.

The affected Hon. Members sought my guidance on how to address this matter. In their estimation, the assertions attributed to the Hon. Koimburi, if left unsubstantiated, continue to bring shame and odium to Members of Parliament and paint the entire House in a bad light.

Honourable Members, you will recall when the matter was raised on the floor of the House, I did undertake to give a considered ruling at the next sitting of the House, which is today.

In a related development, I wish to inform the House that I have also received a letter dated 22nd July, 2024 from the Hon. Koimburi titled “*APOLOGY LETTER*”. The letter indicates as follows, and I quote—

I George Koimburi Ndung'u of ID No: elected Member of Parliament for Juja constituency would like to tender my apology to the house leadership and my colleague members of parliament. I understand we are living on a very dynamic and sensitive times and my utterances in the past may have caused some problems in the country. I am remorseful and humbly seeking for forgiveness. As an ambassador of peace I pray that peace do prevail in our country. God bless Kenya.

Today, at the rise of the House Business Committee at around 1.45 pm, I did call the Hon. Koimburi to ascertain his authorship of the letter. The Hon. Koimburi did confirm authorship of the letter and further denied any claims that he has dissociated himself from its contents. The Hon. Member further indicated that he is currently away in Mombasa and unavailable to attend the sittings of the House until Tuesday, 30th July, 2024.

Hon. Members, any allegation of corrupt practice, bribery or attempted bribery is a stain on the privilege of the institution of Parliament and deserves expeditious investigation and resolution. The practice and precedents of the House require that any issue touching on the privilege of the House should be dispensed with as a matter of priority.

I fully appreciate the pain and discomfort that the pendency of Hon. Koimburi's allegations continues to cause the affected Members. However, I have reluctantly allowed the Hon. Koimburi to avail himself to the House by 2.45 pm on Tuesday, 30th July 2024, to explain his actions with regard to the complaint raised by the affected Members and the context of his "Apology" letter in the manner contemplated by the Parliamentary Powers and Privileges Act, Cap. 6 and the Standing Orders. Thereafter, I shall guide the House on any subsequent actions to be taken in the matter. The House is accordingly guided. I thank you!"

5. MESSAGES

The Rt. Honourable Speaker conveyed the following Papers Messages from the President to the House –

(a) Referral by H.E. the President of the Finance Bill (National Assembly Bill No. 30 of 2023) and bridging the fiscal deficit in the FY 2024/25 Budget

"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.

Having said that, I wish to report to the House that on 27th 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.

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.

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.*

Consequently, in keeping with the provisions of Standing Order 42(2), on 27th 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.

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.

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 2nd 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.

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.

Similarly, in the 11th and 12th 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.

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.

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.”

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.”

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.**

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.**

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 Sittings.**

Honourable Members, now that the regular sittings of the House have resumed, I wish to state 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.**

However, noting that the Memorandum had already been referred to the Departmental Committee on Finance and National Planning for consideration on 27th 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, 30th July, 2024,** that is next week.

Honourable Members, permit me at this point to remind the House of the *Speaker’s* Communication of 28th 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 this 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.

Conversely, **agreement with the President's reservations and the recommendation to delete all the Clauses of the 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.

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.

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.

On the Division of Revenue Act, 2024, 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.

As Members will recall, H. E. the President assented to the Division of Revenue Act, 2024 on 10th 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.

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.**

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.**

On the County Allocation of Revenue Bill, 2024, I am aware that on 10th 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.**

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.

On the Supplementary Estimates I, 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 12th 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.

As guided in my Notification of 12th July, 2024, the Budget and Appropriations Committee is expected to table its report on the Supplementary Estimates I on or before tomorrow, **Wednesday, 24th 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!”

(b) Nomination of persons for appointment to the offices of Cabinet Secretaries

“Honourable Members, Standing Order 42(1) relating to ‘Messages from the President’ provides that-

“The Speaker shall read to the House any message from the President delivered to the Speaker for communication to the House”.

In this regard, I wish to convey to the House that I have received a Message from His Excellency the President, notifying the nomination of various persons for appointment to the Offices of Cabinet Secretaries.

In the Message, **Honourable Members**, His Excellency the President conveys that, in exercise of powers conferred on him by Articles 152(2) of the Constitution, as read together with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, he nominates various persons for appointment to the aforementioned offices.

For clarity, Article 152(2) of the Constitution states and I quote -

“152 (2) The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.”

The names of persons submitted to this House for approval for appointment as Cabinet Secretaries are as follows—

	NOMINEE	MINISTRY/OFFICE
(1)	Hon. (Prof.) Kithure Kindiki, EGH	Cabinet Secretary, Ministry of Interior & National Administration
(2)	Dr. Debra Mlongo Barasa	Cabinet Secretary, Ministry of Health
(3)	Hon. Alice Wahome, EGH	Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development
(4)	Dr. Julius Migos Ogamba	Cabinet Secretary, Ministry of Education
(5)	Hon. Roselinda Soipan Tuya, EGH	Cabinet Secretary, Ministry of Defence
(6)	Dr. Andrew Mwihia Karanja	Cabinet Secretary, Ministry of Agriculture and Livestock Development
(7)	Hon. Aden Barre Duale, EGH	Cabinet Secretary, Ministry of Environment, Climate Change and Forestry
(8)	Mr. Eric Muriithi Muuga	Cabinet Secretary, Ministry of Water, Sanitation and Irrigation
(9)	Mr. Davis Chirchir, EGH	Cabinet Secretary, Ministry of Roads and Transport
(10)	Dr. Margaret Nyambura Ndung'u	Cabinet Secretary, Ministry of Information, Communication and the Digital Economy

In view of the foregoing and pursuant to the provisions of section 8 of the Public Appointments (Parliamentary Approval) Act, of 2011 as read together with Standing Order 42(3), I hereby refer the Message from the President, together with the curriculum vitae of the nominees to the Committee on Appointments.

Honourable Members, section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that, unless otherwise provided in law, the Committee to which such nomination is referred shall consider the matter and table a report in the House **within twenty-eight (28) days.** It is therefore imperative that the Committee on Appointments immediately commences the process of consideration of the nominees.

The Committee on Appointments is expected to immediately notify the nominees and the general public, commence the necessary approval hearings and table its report in the House soonest, to enable the House consider the nominees within the stipulated timelines. I thank you!"

6. PAPERS

The following Papers were laid on the Table of the House –

- (a) Supplementary Estimates I for the FY 2024/25 from the National Treasury and Economic Planning and the following accompanying documents: -
 - (i) Programme Based Budget;
 - (ii) Recurrent Estimates;
 - (iii) Development Estimates (Vol I & II); and
 - (iv) Statement on FY 2024/25 Supplementary Estimates No.1.
- (b) Legal Notice No. 105 of 2024 relating to the Income Tax (Charitable Organisations and Donations Exemption) Rules, 2024 including Explanatory Memorandum and the evidence of public participation from the National Treasury;
- (c) Legal Notice No. 109 of 2024 relating to the Road Maintenance Levy Fund (Imposition of Levy) Order, 2024 including Explanatory Memorandum and reports of public participation from the Ministry of Roads and Transport;
- (d) Report of the NG-CDF Board on project proposals approval, disbursement status and restrictions imposed on constituency account for the Third Quarter of 2023/24 Financial Year;
- (e) Price stability target and the Economic Policy of the Government for the Financial Year 2024/25 Budget from the National Treasury;
- (f) The June 2024 Special Audit Report of the Auditor General on debt servicing of external loans in Kenya;
- (g) The June 2024 Special Audit Report of the Auditor General on the implementation of the Global Fund Program in Kenya;
(Hon. Naomi Waqo, MP - Deputy Majority Party Whip)
- (h) Report of the Departmental Committee on Trade, Industry and Cooperatives on its inspection visit to The New Kenya Planters Cooperatives Union warehouses in Nairobi, Sagana and Meru.
(The Vice Chairperson, the Departmental Committee on Trade, Industry and Cooperatives)
- (i) Report of the Departmental Committee on Finance & National Planning on its consideration of the President's Memorandum on the Finance Bill (National Assembly Bill No. 30 of 2024).

(Hon. (CPA) Julius Rutto, MP – Member, Departmental Committee on Finance & National Planning)

- (j) Report of the Budget and Appropriations Committee on its consideration of the Supplementary Estimates for the Financial Year 2024/2025.

(Hon. Francis Masara, MP – Member, Budget and Appropriations Committee)

7. **NOTICES OF MOTION**

The following Notice of Motion was given—

(a) Report on inspection visit to The New Kenya Planters Cooperatives Union warehouses in Nairobi, Sagana and Meru

THAT, this House **adopts** the Report of the Departmental Committee on Trade, Industry and Cooperatives on its inspection visit to The New Kenya Planters Cooperatives Union warehouses in Nairobi, Sagana and Meru, *laid on the Table of the House on Tuesday, 23rd July 2024.*

(The Vice Chairperson, the Departmental Committee on Trade, Industry and Cooperatives)

(b) Consideration of the First Supplementary Estimates for FY 2024/2025.

THAT, this House **adopts** the Report of the Budget and Appropriations Committee on its consideration of the Supplementary Estimates for the Financial Year 2024/2025, *laid on the Table of the House on Tuesday, 23rd July 2024*, and pursuant to the provisions of Article 221 of the Constitution, section 39 of the Public Finance Management Act, 2012 and Standing Order 239-

- (i) approves a **reduction** of the **current expenditure** for FY 2024/2025 by **Ksh. 38,896,358,312** in respect of the Votes contained in the First Schedule of the Report;
- (ii) approves a **reduction** of the total **capital expenditure** for FY 2024/2025 by **Ksh. 107,445,697,478** in respect of the Votes contained in the First Schedule of the Report;
- (iii) approves an **overall reduction** in the total budget for FY 2024/2025 by **Kshs. 146,342,055,790** in respect of the Votes contained in the First Schedule of the Report, subject to paragraph (vi) (*Committee of Supply*);
- (iv) makes the policy and financial resolutions as contained in the Second Schedule to the Report;
- (v) orders that **“The Speaker do now leave the Chair”** to facilitate the consideration of the said Budget Estimates with respect to each Vote and Programme in the *Committee of Supply* as contemplated under Standing Order 240 (*Consideration of Supplementary Estimates in the Committee of Supply*).

(The Hon. Francis Masara, MP – Member, Budget and Appropriations Committee)

8. **MOTION – PUBLIC PETITION ON FUNDS SPENT CONTRARY TO THE PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION**

Motion having been made and Question proposed –

THAT, this House **adopts** the Report of the Public Petitions Committee on its consideration of Public Petition No. 4 of 2022 regarding Funds Spent by the National Government Contrary to the Provisions of Article 223 of the Constitution, *laid on the Table of the House on Tuesday, 12th March 2024.*

(The Chairperson, Public Petitions Committee – 20.06.2024)

Debate interrupted on Thursday, 20th June, 2024 resumed;

Rising in his place on a Point of Order pursuant to Standing Order 96, the Member for Kitui Rural (Hon. (Dr.) Makali Mulu, MP claimed to move “THAT the debate be now adjourned”.

Thereupon, Question put and agreed to;

Debated adjourned.

9. MOTION – REPORTS OF THE AUDITOR-GENERAL ON THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND FOR NINE CONSTITUENCIES IN BUNGOMA COUNTY

Motion made and Question proposed –

THAT, this House **adopts** the Report of the Decentralized Funds Accounts Committee on its consideration of the Reports of the Auditor-General on the Financial Statements for the National Government Constituencies Development Fund for nine Constituencies in Bungoma County for Financial Years 2013/2014, 2014/2015 and 2015/2016, *laid on the Table of the House on Thursday, 7th March 2024.*

(Hon. Innocent Obiri, MP – Member, Decentralized Funds Accounts Committee)

Debate arising;

(Change of Chair from the Speaker to the Fifth Chairperson of Committees)

(Change of Chair from the Fifth Chairperson of Committees to the Second Chairperson of Committees)

(Change of Chair from the Second Chairperson of Committees to the Fifth Chairperson of Committees)

And the time being Seven O'clock, the Fifth Chairperson of Committees interrupted proceedings and adjourned the House without Question put pursuant to the Standing Orders.

10. HOUSE ROSE - at Seven O'clock.

MEMORANDUM

The Speaker will take the Chair on
Wednesday, July 24, 2024 at 9.30 am

---x---