



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

(No. 054 of 2024)

ON THE NOMINATION OF PROF. KITHURE KINDIKI, EGH TO FILL THE VACANCY IN THE OFFICE OF THE DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA

Honourable Members,

1. You will recall that earlier, at the commencement of this sitting, I notified the House of the receipt of a Message from H.E The President nominating Prof. Kithure Kindiki, EGH to fill the vacancy in the Office of the Deputy President pursuant to Article 149 of the Constitution. You may further recall, upon notification of the House, several Members rose in their places and raised a number of issues for my guidance. The Members who spoke included Hon. Robert Pukose, MP; Hon. Omboka Milemba, MP; Hon. Emmanuel Wangwe, MP; Hon. Samuel Chepkonga, MP; and Hon. Jane Kagiri, MP.
2. In this regard, I convened a meeting of the House Business Committee for the purposes of deliberating on the next steps to be taken by the House on this matter and guiding the House on the issues raised by the Members.
3. **Honourable Members,** I have distilled the issues raised by the Members as follows—

- (1) Whether Article 149(1) of the Constitution envisages an approval process in the manner contemplated by the Public Appointments (Parliamentary Approval) Act, Cap. 7F;**
- (2) Whether the House shall conduct public participation in voting on the nomination under Article 149(1) of the Constitution;**
- (3) Whether the Members shall be required to debate on the nomination under Article 149(1) of the Constitution;**
- (4) The timelines envisaged under Article 149(1) of the Constitution; and**
- (5) The threshold for voting on the nomination under Article 149(1) of the Constitution.**

4. Honourable Members, now permit me to examine each of the issues. With regard to the **First Issue**, on whether Article 149(1) of the Constitution envisages an approval process in the manner contemplated by the Public Appointments (Parliamentary Approval) Act, it is noteworthy that Article 149(1) of the Constitution provides as follows—

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

5. From a reading of Article 149(1) of the Constitution, it is expressly provided that the National Assembly shall **“vote on the nomination within sixty days after receiving it”**. The drafters of the Constitution distinguished the language used in Article 149(1) of the Constitution by expressly providing that the House is required to vote and not approve the nomination.

6. Indeed, this is to be distinguished from the provisions of Article 132(4) of the Constitution which provides that the President shall nominate and, with the **approval of the National Assembly**, appoint, and may dismiss the Cabinet Secretaries, in accordance with Article 152; the Attorney-General, in accordance with Article 156; the Secretary to the Cabinet in accordance with Article 154; Principal Secretaries in accordance with Article 155; and high commissioners, ambassadors and diplomatic and consular representatives.
7. **Honourable Members**, in this regard, for all the State Officers that I have just highlighted, the House is required to approve their nomination by the President. However, in respect to the Deputy President, Article 149(1) of the Constitution expressly provides that the House is **required to vote on the nomination**. It is noteworthy that the Public Appointments (Parliamentary Approval) Act applies where an appointment under the Constitution or any other law requires an approval by the House. Consequently, noting Article 149(1) of the Constitution requires the House to take a vote on the nomination, the approval process envisaged under the Public Appointments (Parliamentary Approval) Act does not apply. The House will therefore adopt the precedent it has set on this matter. **This settles the First Issue.**
8. **Honourable Members, the Second Issue** was whether the House shall conduct public participation in voting on the nomination under Article 149(1) of the Constitution. As stated earlier, Article 149(1) of the Constitution requires the House to take a vote on the nomination of Prof. Kithure Kindiki,EGH to fill the vacancy in the Office of the Deputy President which is essentially an election.

9. Honourable Members, you will recall the practice of the House whenever it is confronted with an obligation to vote on a matter as relates to an election. The instances include, election of the Speaker and Deputy Speaker under Article 106 of the Constitution; the Members of the East Africa Legislative Assembly and the Pan-African Parliament, for which the House is required to vote on nominations of Members to hold such positions. The practice of the House in these instances is that the House has always proceeded directly to vote without public participation. To this end, to the extent that Article 149(1) of the Constitution contemplates the House to vote, upon receiving the nomination, the requirement for public participation is not applicable in this case. This settles the Second Issue.

10. Honourable Members, on the **Third Issue,** relating to whether Members shall be allowed to debate on the nomination, it is noteworthy that having determined the vote contemplated under Article 149(1) of the Constitution is an election, no debate arises on a matter of election. Indeed, you will recall that in the case of the election of a Speaker of this House and the Members of the East Africa Legislative Assembly, no debate arises. This settles the Third Issue.

11. Honourable Members, moving on to the **Fourth Issue,** on the timelines envisaged under Article 149(1) of the Constitution, you will observe that Article 149(1) of the Constitution defines the period within which the President is required to nominate a person to fill the vacancy in the Office of the President, which is **within fourteen days** after a vacancy in the office of Deputy President arises. The National Assembly is then required to vote on the nomination **within sixty days** after receiving it.

12. Honourable Members, from the foregoing, Article 149(1) of the Constitution defines the maximum period within which the President and the National Assembly are required to act. To this end, the President can nominate a person to fill the vacancy from the first day the vacancy arises up to the fourteenth day. On its part, the National Assembly is required to vote on any day from the first day it receives a nomination up-to the sixtieth day after receipt of the nomination. Consequently, the nomination of Prof. Kithure Kindiki, EGH and the vote the House is required to take today on the nomination, is within the constitutional timeline provided for in Article 149(1) of the Constitution. This settles the Fourth Issue.

13. Honourable Members, the Fifth and Final Issue, that was raised for guidance was on the threshold for voting under Article 149(1) of the Constitution. It is noteworthy that Article 149(1) of the Constitution has not defined or provided for the threshold for voting for the nomination of a person to fill the vacancy in the Office of the Deputy President. Article 122(1) of the Constitution provides that **“except as otherwise provided in the Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the members in that House, present and voting”**. Consequently, the threshold for voting on the nomination of Prof. Kithure Kindiki, EGH is a majority of the Members in this House, present and voting as provided for in Article 122(1) of the Constitution. This settles the Final Issue.

14. Honourable Members, in summary therefore, I wish to guide the House as follows—

(1) THAT Article 149(1) of the Constitution requires the House to take a vote on the nomination of Prof. Kithure Kindiki, EGH to fill the vacancy in the Office of the Deputy President.

- (2) In this regard, the House will be guided by its previous precedent whenever it is called upon to take a vote on a matter as relates to the election of the Speaker, Deputy Speaker and Members of the East Africa Legislative Assembly and the Pan-African Parliament.**
- (3) THAT no debate arises on a matter that the House is required to take a vote.**
- (4) THAT the nomination of Prof. Kithure Kindiki, EGH and the vote the House is required to take on the nomination, is within the constitutional timeline provided for in Article 149(1) of the Constitution.**
- (5) THAT the House Business Committee has resolved that the vote contemplated under Article 149(1) of the Constitution be taken today, during this sitting of the House.**
- (6) THAT the threshold for voting on the nomination Of Prof. Kithure Kindiki, EGH is a majority of the Members in the House, present and voting as provided for in Article 122(1) of the Constitution.**

The House is thus accordingly guided and may now proceed to take the vote.

I thank you!


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

Friday, 18th October, 2024