



REPUBLIC OF KENYA

**THIRTEENTH PARLIAMENT– (THIRD SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATION FROM THE CHAIR**

_____ (No. 061 of 2024) _____

ON

**PROPOSED AMENDMENTS TO THE ETHICS AND ANTI-CORRUPTION
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2024)**

Honourable Members,

- 1.** Before we proceed to the next Order, being the Committee of the whole House to consider the Ethics and Anti-Corruption (Amendment) Bill (National Assembly Bill No. 11 of 2024), I wish to make the following guidance relating to consideration of the proposed amendments to the said Bill.
- 2. Honourable Members,** As you may have observed, the Notices annexed to the Supplementary Order Paper for this afternoon's sitting contains several amendments that have been proposed to the **Ethics and Anti-Corruption (Amendment) Bill (National Assembly Bill No. 11 of 2024)**. The amendments have been proposed by the Leader of the Majority Party; the Chairperson of the Justice and Legal Affairs Committee; the Hon. Caroli Omondi, MP; and the Hon. Shakeel Shabbir, MP.
- 3. Honourable Members,** Standing Order 47(3) obligates the Speaker to exclude a Motion from being debated or direct the amendment of a Motion in an appropriate format where the Motion either offends the Constitution, an Act of Parliament or the Standing Orders. The Standing Order provides, and I quote—

(3) If the Speaker is of the opinion that any proposed Motion—

(a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders;

(b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;

.....

the Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve or that the motion be referred to the relevant committee of the Assembly, pursuant to Article 114(2) of the Constitution.

4. **Honourable Members**, With respect to amendments proposed to a Bill under consideration by the House, the Speaker is obligated to ensure that the Bill under consideration by the House is insulated from any amendment or revision that may place it at odds with either a constitutional or statutory provision or violate the procedural prescriptions of the Standing Orders.
5. Both I and my predecessors have ruled on the solemn duty outlined in Standing Order 47(3). On several occasions, we have reiterated that **a Speaker cannot fold his or her arms and preside over deliberations that may lead to an unconstitutional or absurd result**. Additionally, we have also consistently ruled that the question of the constitutionality of a matter under consideration by the House **should NOT be put to a vote**.

6. **Honourable Members**, the Ethics and Anti-Corruption (Amendment) Bill (National Assembly Bill No. 11 of 2024) is one of the Bills that were co-sponsored by the Leader of the Majority Party and the Leader of the Minority Party to actualize the recommendations of the **National Dialogue Committee (NADCO)**.
7. The Bill seeks to amend the Ethics and Anti-Corruption Act, Cap. 7H to review the qualifications for appointment of the Chairperson of the Ethics and Anti-Corruption Commission. Clause 2 of the Bill outlines the proposed new qualifications. Additionally, **Hon. Members**, Clause 3 of the Bill saves the person currently serving as the EACC Chairperson from the effect of the reviewed qualifications if the same are passed by the House. This is in keeping with the practice of this House when reviewing the provisions relating to the qualifications or terms of persons appointed to public office.
8. **Honourable Members**, In the Notice in the Order Paper for this sitting, the Chairperson of the Departmental Committee on Justice and Legal Affairs, the Hon. Caroli Omondi, MP and the Hon. Shakeel Shabbir, MP **all propose amendments to delete Clause 3** of the Ethics and Anti-Corruption (Amendment) Bill, 2024 (National Assembly Bill No. 11 of 2024). The implication of their proposed amendments is that, **if the House were to pass the new qualifications contained in the Bill, the qualifications would immediately apply to the current holder of the office.**
9. **Honourable Members**, The proposed deletion of Clause 3 by the Chairperson of the Departmental Committee on Justice and Legal Affairs, the Hon. Caroli Omondi, MP and the Hon. Shakeel Shabbir, MP flies directly in the face of the provisions of Article 250 of the Constitution on the composition, appointment and terms of office of members of a Commission or holders of independent Offices.

- 10.** In particular, Article 250(3) of the Constitution provides that for a person to be appointed as a member of a Commission or the holder of an Independent Office, such person *must have the specific qualifications required by this Constitution or national legislation.*
- 11. Honourable Members,** This House approved the appointment of the EACC Chairperson based on the specific qualification required by the Constitution and the Ethics and Anti-Corruption Commission Act, Cap. 7H. It would, therefore, patently offend the Constitution for the House to contemplate amending the qualifications midstream and to subject a current office-holder to new qualifications without providing an appropriate saving or transitional provision.
- 12.** In this regard, **Hon. Members,** I have declined to approve the amendments proposed by the Chairperson of the Departmental Committee on Justice and Legal Affairs, the Hon. Caroli Omondi, MP, and the Hon. Shakeel Shabbir, MP, for the deletion of Clause 3 of the Bill.
- 13.** I have approved the amendment proposed by the Leader of the Majority Party to Clause 3 of the Bill for consideration by the Committee of the Whole House. The proposed amendment is in keeping with the requirements of the Constitution and the established practice of the House cited in this Communication.

The House is accordingly guided.


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

Wednesday, 27th November, 2024