



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

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THE HANSARD

Tuesday, 11th February 2025

The House met at 2.30 p.m.

[The Speaker (Hon. Moses Wetang'ula) in the Chair]

PRAYERS

Hon. Speaker: Hon. Members, congratulations. We have quorum to transact business. For the first time, we are not ringing the Quorum Bell.

(Laughter)

Clerk-at-the-Table, proceed.

*(Hon. Kiborek Reuben, Hon. Dorice Donya,
Hon. Kassait Kamket, Hon. Robert Mbui, and
several other Members stood up in their places)*

Hon. Members on their feet, take your seats. Hon. Kiborek, take the nearest seat. Hon. Donya, Hon. Kamket, and Hon. Mbui take your seats. Either take your seats or freeze.

(Loud consultations)

(Hon. Julius Mawathe consulted with the Deputy Speaker)

(Hon. Julius Mawathe spoke off the record)

Order, Hon. Mawathe. Members in the Walkway, please take the nearest seats. Hon. Mawathe, you know very well that no seat is reserved for you in this House. You are not in leadership. Please take any seat so that we can proceed.

*(Hon. Mark Mwenje, Hon. Eric Wamumbi
and Hon. Robert Mbui stood in the aisle)*

Order, Hon. Mwenje. If you are in leadership, show an example. Take your seats. Order Hon. Mwenje and Hon. Mbui. Either freeze where you are or take your seats. Members on their feet, please, take your seats. I have two communications to make. Hon. Wamumbi, look for a seat and sit.

(Hon. Raphael Wanjala spoke off the record)

Order Hon. Wanjala, the House is not in business yet. Hon. Robert Mbui freeze where you are. Hon. Members, I have two communications to make.

COMMUNICATIONS FROM THE CHAIR

RESUMPTION OF SITTINGS FOR THE FOURTH SESSION

Hon. Speaker: Hon. Members, I wish to welcome you back to the house for the Fourth Session of the 13th Parliament. I trust that you had a restful and joyous Christmas and New Year break and that you also took the opportunity to engage with constituents on key development matters. I am confident that you are well rejuvenated and ready to embark on the business that is ahead of us this session, which marks the midterm of the 13th Parliament.

At the outset, I wish to thank you all for availing yourselves of the Special Sitting held on Thursday, 16th January 2025, during which the House transacted priority business. I also wish to thank Members for their participation in the just-concluded Members' Midterm Retreat which took place from January 27th to 31st 2025 as scheduled and witnessed the highest-ever turnout of Members. On behalf of the leadership of the House, I extend our gratitude to all of you for your participation. This made the retreat a great success and positioned the House for smooth take-off in the Fourth Session.

Several resolutions were adopted at the retreat and are currently being implemented progressively by the Office of the Clerk. Among the key outcomes of the retreat was the identification of possible areas that require the National Assembly's legislative intervention.

Indeed, some of those resolutions may be contained in unpublished legislative proposals by Members, totalling 283 which are undergoing processing. Members who sponsored those proposals are requested to indicate if they still wish to proceed with them or withdraw any that may have since been overtaken by events. Additionally, the retreat underscored the need to maintain the momentum demonstrated during our deliberations, particularly in expediting priority business in the Fourth Session, and strengthening the oversight functions of the House through its committees. I advised Members who have Bills to get in touch with various committees in my management meeting today. We noticed that there are certain proposals to amend certain Acts that come from 10 different Members on the same issue. So, if Members can get in touch with the Office of the Clerk, we can collapse some of those proposals so that this huge number that does not reflect reality gives way to the actual number of pending Bills.

On matters of Social Health (SHA), you will recall that there were concerns by Members about its implementation and also feedback being received from the people regarding the management of the transition process. In this regard, I instructed the Departmental Committee on Health to meet the Ministry of Health and Social Health Authority officials to enquire into the matter and appraise the House by way of a Statement. I will, therefore, accord the Chairperson of the Departmental Committee on Health, at some point this afternoon, an opportunity to appraise the House on the outcome of the meeting.

As we commence the Fourth Session, I wish to bring to the attention of the House the term of the following 18 committees lapsed today, 11th February 2025, being the first Sitting of the Fourth Session. The first category, which lapses every session, is the Housekeeping Committees. These are:

1. House Business Committee (pursuant to Standing Order 171);
2. The Committee on Member Services and Facilities (pursuant to Standing Order 212B);
3. The Committee of Powers and Privileges (section 15 of the Parliamentary Powers and Privileges Act; and
4. The Procedure and House Rules Committee (pursuant to Standing Order 208).

The second category, largely comprising Audit, Appropriation and other General Purposes Committees, has lapsed pursuant to the respective Standing Orders which prescribe their lifetime. These are:

1. The Public Accounts Committee (pursuant to Standing Order 205);
2. The Special Funds Accounts Committee (pursuant to Standing Order 205A);
3. The Decentralised Funds Committee (pursuant to Standing Order 205B);
4. The Public Investments Committee on Governance and Education (pursuant to Standing Order 206);
5. The Public Investments Committee on Commercial Affairs and Energy (pursuant to Standing Order 206A)
6. The Public Investments Committee on Social Services, Administration and Agriculture (pursuant to Standing Order 206B);
7. The Budget and Appropriations Committee (pursuant to Standing Order 207);
8. The Public Debt and Privatisation Committee (pursuant to Standing Order 207A);
9. The Public Petitions Committee (pursuant to Standing Order 208A);
10. The Diaspora Affairs and Migrant Workers Committee (pursuant to Standing Order 208B);
11. The Committee on Implementation (pursuant to Standing Order 209);
12. The Committee on Delegated Legislation (pursuant to Standing Order 210);
13. The Committee on Regional Integration (pursuant to Standing Order 212); and,
14. The Committee on National Cohesion and Equal Opportunity (pursuant to Standing Order 212C).

In line with the Standing Orders, the House Business Committee should be listed for reconstitution as the only business in today's Order Paper, as it owes its exclusive role in setting up the business of the House. Thereafter, the House Business Committee ought to receive and consider recommendations from the Committee on Selection on reconstitution of the remaining 17 Committees, including any consequential changes to other Committees. I am aware that, at the beginning of last week, the Clerk wrote to the leadership of the Majority and the Minority parties to expedite the process of reconstituting the affected committees, indeed, as instructed during our retreat in Naivasha.

Having said that, Hon. Members, I wish to remind the House that in accordance with the provisions of Standing Orders, any business that was not concluded at the end of the Third Session has lapsed. This includes any pending Motions, Statements, Questions and certain Bills. Any committee or individual member wishing to reintroduce any lapsed business is advised to do so in accordance with the procedures laid down in the Standing Orders and our parliamentary practice. Members who may not be clear on the procedure are advised to visit the Table Office for guidance.

With regard to the lapsing of the Bills, Standing Order 141(2) (b) provides as follows, and I quote—

“A Bill that has been published, read a First Time, or in respect of which the Second Reading has not been concluded—

(b) at the end of two consecutive Sessions of the same Parliament shall lapse at the end of the second Session and may be re-published in the same or different form in accordance with the Standing Orders 114 (Introduction of Bills).”

However, as Members will recall, on Wednesday, 4th December 2024, the House approved a Procedural Motion exempting 19 Bills from lapsing during the period of the Third and Fourth Sessions. These are:

1. The Political Parties (Amendment) Bill, 2022;

2. The Fisheries Management and Development Bill, 2023;
3. The Metrology Bill, 2023;
4. The Universities (Amendment) Bill, 2023;
5. The Preservation of Public Security (Amendment) Bill, 2023;
6. The Appellate Jurisdiction (Amendment) Bill, 2023;
7. The Penal Code (Amendment) Bill, 2023;
8. The Legal Aid (Amendment) Bill, 2023;
9. The Prisons (Amendment) Bill, 2023;
10. The Mining (Amendment) Bill, 2023;
11. The Cancer Prevention and Control (Amendment), Bill 2023;
12. The Kenya Roads (Amendment) Bill, 2023;
13. The National Transport and Safe Authority (Amendment) Bill, 2023;
14. The Earned Corruption and Economic Crimes (Amendment) (No. 2) Bill, 2023;
15. The Gold Processing Bill 2023;
16. The Basic Education (Amendment) Bill, 2023;
17. The Employment (Amendment) Bill, 2023;
18. The Universities (Amendment) (No. 3) Bill, 2023; and,
19. The Institute of Social Work Professionals Bill, 2023.

Bills that were not covered under this exemption have since lapsed. However, sponsors of the affected Bills who may be desirous of proceeding with them may, in accordance with the Standing Orders, seek guidance from the Clerk. I will repeat, we have up to 10 Bills seeking to amend the same Acts of Parliament and some the same Sections of the same Acts. Therefore, I encourage sponsors of those Bills to find a way of harmonising them so that we have a composite Bill that can be brought afresh.

Hon. Members, with regard to Questions, those that had been transmitted to the respective Ministries by the end of the Third Session but had not yet received a response, have also lapsed. However, if any Member still wishes to obtain a response, the Member is required to visit the Table Office to formally indicate so. This must be done by close of business on Thursday, 20th February 2025, to enable the Leader of the Majority Party to prioritise such questions when scheduling the appearance of Cabinet Secretaries before the House.

For avoidance of doubt, any Questions that had not been transmitted to the Ministries, Constitutional Commissions and Independent Offices have also lapsed. Members are, however, still at liberty to file such questions afresh, if they wish to do so.

As we settle to this new Session, to ensure effective communication and facilitation of Members, Members are also requested to update their bio-data with the Office of the Clerk in order for it to be accurately captured in the records and on the website of Parliament. I, therefore, urge all Members to visit the Office of the Clerk at the earliest convenience in order to fast-track this process.

Additionally, Hon. Members, the following 10 Bills which the House passed before proceeding to the just-concluded recess were assented to and are now part of our Laws of Kenya. They are:

1. The National Rating Bill (National Assembly Bill No. 55 of 2022);
2. The Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023);
3. The Water Amendment Bill (National Assembly Bill No. 33 of 2023);
4. The Ethics and Corruption (Amendment) Bill (National Assembly Bill No. 11 of 2024);
5. The Kenya Roads (Amendment) Bill (National Assembly Bill No.18 of 2024);
6. The Kenya Revenue Authority (Amendment) (No. 2) Bill (National Assembly Bill No. 35 of 2024);

7. The Division of Revenue (Amendment) Bill (National Assembly Bill No. 38 of 2024);
8. The Tax Procedures (Amendment) Bill (National Assembly Bill No. 46 of 2024);
9. The Tax Laws (Amendment) Bill (National Assembly Bill No. 47 of 2024); and,
10. The Business Laws (Amendment) Bill (National Assembly Bill No. 49 of 2024).

I applaud the House for the dedication demonstrated in the passage of the said laws and urge that, as we commence the Fourth Session, we undertake our legislative duty with greater enthusiasm in order to achieve more.

Finally, Hon. Members, as we embark on the Fourth Session, I am confident that the House will continue to build on its commendable performance in the consideration of key legislative business and other crucial committee business.

Let us remain committed to serving the people of Kenya with diligence, integrity and efficiency. With that, Hon. Members, I once again welcome you back and look forward to a productive fourth session. I thank you.

(Several Members walked into the Chamber)

Members, at the door, take the nearest seats. I have another communication to make.

Hon. Millie Odhiambo-Mabona (Suba South, ODM): On a point of order.

Hon. Speaker: No.

(Several Members stood along the walkway)

Members in the walkway, take the nearest seats.

(Hon. Paul Nabuin walked into the Chamber)

Hon. Nabuin, take the nearest seat.

(Loud consultations)

Order! Hon. Members! Take the nearest seats. Order!

RECOGNITION OF MEMBERS OF THE NATIONAL ASSEMBLY
CONFERRED STATE HONOURS AND RETIREMENT OF A
LONG-SERVING OFFICER OF THE HOUSE

The next Communication is on the recognition of Members of the National Assembly who were conferred with State honours and retirement of a long-serving officer of the House.

(Loud consultations)

Order, Members!

Hon. Members, as you are all aware, the offices that we hold as leaders in this Republic, including the office of Members of Parliament, are held in trust on behalf of the people of Kenya. Indeed, part of the recital in our own prayer states that we elected leaders in this House always commit: *To treat and consider all matters that shall come under our deliberation in so just and faithful a manner as to promote the honour and the glory of God and to advance the*

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peace, prosperity and welfare of our country and those whose interests have been committed to our charge.

In recognition of Members' commitment to live up to the philosophy of our prayer when serving the nation, the Parliamentary Honours Advisory Committee has been regularly making recommendations to the President regarding Members of this House who ought to be conferred honours in accordance with Article 13 (4) (c) of the Constitution.

The Parliamentary Honours Advisory Committee, which I co-chair with the Speaker of the Senate, is a statutory body. It is composed of Members drawn from both Houses of Parliament and the Parliamentary Service Commission. The Committee is responsible for identifying and recommending nominees from Parliament as one of the arms of the national Government to be awarded national honours. The Committee is also responsible for some statutory bodies, including the Office of the Auditor-General and the Office of the Controller of Budget.

To this end, the Committee, in 2024 recommended some Members of Parliament and staff for the award of national honours. This was done through a rigorous consideration, including seeking the views or objections of the public on the proposed nominees and taking them into consideration while determining the final list of nominees.

In this regard, I wish to inform the House that several Members of this House were conferred State honours by His Excellency the President during the 61st Jamhuri Day celebrations held on 12th December 2024, in recognition of their distinguished service to the nation in various capacities.

Top on the list of honours is, Hon. Junet Sheikh Nuh Mohammed, CBS, MP, Leader of the Majority Party, who was conferred the Elder of the Golden Heart (EGH). Alongside him are the following Members who were awarded the Chief of the Order of the Burning Spear (CBS):

1. Hon. Faith Gitau, CBS, MP;
2. Hon. Patrick Makau, CBS, MP;
3. Hon. Mohammed Ali, HSC, CBS, MP;
4. Hon. Raphael Wanjala, CBS, MP;
5. Hon. Kangogo Bowen, CBS, MP;
6. Hon. (Eng.) Vincent Musyoka, CBS, MP;
7. Hon. Kimani Kuria, CBS, MP;
8. Hon. Haika Mizighi, CBS, MP;
9. Hon. Abdi Shurie, CBS, MP;
10. Hon. Yussuf Haji, CBS, MP;
11. Hon. Gabriel Tongoyo, CBS, MP;
12. Hon. George Kariuki, CBS MP;
13. Hon. (Dr) John Mutunga Kanyuithia, CBS, MP;
14. Hon. John Kiarie, CBS, MP;
15. Hon. Nelson Koech, CBS, MP;
16. Hon. Peter Lochakapong, CBS, MP;
17. Hon. Stephen Karani, CBS, MP;
18. Hon. Eric Muchangi, CBS, MP;
19. Hon. Nelson Wamboka, CBS, MP;
20. Hon. Fatuma Zainab, CBS, MP;
21. Hon. Rose Museo, CBS, MP;
22. Hon. (Dr) Makali Mulu, CBS, MP;
23. Hon. Janet Sitienei, CBS, MP;
24. Hon. Tom Joseph Kajwang', CBS, MP; and,
25. Hon. Johnson Naicca, CBS, MP.

Hon. Members, you will note that the Members conferred State commendations are Members of the Parliamentary Service Commission (PSC), Chairpersons of Committees, and other ranking Members who have served for more than three terms. In making recommendations, the Committee considered other factors, including longevity of service in Parliament and performance during the just concluded 14th EAC Inter-Parliamentary Games, whose agenda is regional integration. I do note that many Members would desire to be part of this list, but slots are ordinarily very limited.

I urge the House to take a moment to congratulate them for earning this well-deserved recognition. Congratulations to all those Members.

(Applause)

Hon. Members, among those who were also conferred State Honours were nine members of staff. Please allow me, on your behalf, to recognise one of them, Ms Anne Wambui Njoroge, the immediate former Director of Hansard and Audio Service, who is seated in the Hansard Box. You may stand up, Anne. She is just below the Speaker's Gallery.

I have singled out Ms Njoroge because she retired from the Parliamentary Service Commission effective last week, Friday, 7th February 2025. That is after 33 years of distinguished service to Parliament.

(Applause)

Hon. Members, Ms Njoroge joined Parliament at the level of a Hansard Reporter in the National Assembly in 1991. That was during the 6th Parliament, after a one-year stint as a teacher at Kwale High School, having graduated from Kenyatta University. Therefore, she has served eight Parliaments; that is, the 6th, 7th, 8th, 9th, 10th, 11th, 12th and the current 13th Parliament.

As a career Hansard Reporter, she committed her life to the production of precise records of plenary proceedings and Committee sessions in the form of Hansard Reports. She steadily rose through the ranks of a Hansard Reporter I, Assistant Hansard Editor, Senior Assistant Hansard Editor, Deputy Hansard Editor and, ultimately, ascending to the apex position of the Director, Hansard and Audio Services. Anne, you may take your seat.

Her notable milestones include restructuring the Hansard and Audio Services for better service delivery, formulating policies that have improved the production processes of Hansard Reports, and the ongoing project of digitising the production of *The Hansard*.

Indeed, in recognition of the stellar services rendered to Parliament and the nation by Ms Anne Njoroge, the Parliamentary Honours Advisory Committee recommended her to His Excellency the President, who awarded her the Order of the Grand Warrior (OGW) in December 2023.

Hon. Members, her presence in the Hansard Box today is of great importance. We thank her for the 33 years of service and diligence in overseeing the production of Hansard Reports of our proceedings as the Director of Hansard and Audio Services.

On behalf of the National Assembly, the Parliamentary Service Commission and, indeed, on my behalf, I thank Ms Anne Njoroge, OGW for the more than three decades of her dedication to the service of the Parliament of Kenya and, indeed, the Republic of Kenya. We congratulate you. We wish you well in your next phase of life in retirement.

Hon. Members, before you go to what looks like some arguments you are going to have this afternoon, allow Anne to have a dignified send-off. That is by allowing me to invite one of your colleagues who worked with Anne in the Hansard section before he branched off to

become the Speaker of Baringo County Assembly and later came back as the Member of Parliament for Baringo North. Is it Tiaty Constituency now? Give Hon. Kamket a microphone.

(Loud consultations)

Order, Hon. Members. This is a great day for Ms Anne Njoroge. Give her the silence to be honoured by one of your colleagues, who was her colleague.

Hon. Kassait Kamket (Tiaty, KANU): Thank you very much, Hon. Speaker and Members. Indeed, it is a great honour to have an opportunity to pay tribute to my former boss, Ms Anne Njoroge.

I joined Parliament as a Hansard Reporter in February 1997. Immediately, I was thrown into the deep end of Hansard reporting. However, I was lucky to have a very dedicated, humble and determined public officer who trained me. She is Ms Anne Njoroge.

(Hon. Robert Mbui consulted loudly)

Hon. Speaker: Order, Hon. Robert Mbui. You would love to give Ms Anne Njoroge this day if she were your sister, mother, cousin or wife.

Go on, Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Speaker.

Ms Anne Njoroge is a very dedicated officer. Therefore, that Box called the Hansard Box is very familiar to me. I served in that Box for a very long time under the guidance of that very humble and hardworking public servant. I am very proud to be a product of her guidance. That Hansard Box has produced not only me but, also, the Member for Matungu, Hon. Peter Oscar Nabulindo. He was equally a Hansard Reporter with me, under the guidance and leadership of Ms Anne Njoroge.

There was no Parliamentary Service Commission in this House when I joined Parliament in 1997. I remember we used to line up before the accountant, Mr Kiliku, for our salaries. At the time, not even Members of Parliament had bank accounts. We used to line up at the Finance Office to receive our salaries. We did not like Members of Parliament that much at that time. We would line up for salaries for more than two hours and then, about 10 or 15 Members of Parliament would come and overtake us as we all lined up.

But because we are talking about Ms Wambui today, what is most interesting about the Hansard is that it is supposed to be an accurate report of the spoken word without interfering with the facts and the line of thought of Hon. Members. It is specialised reporting. I worked in the Department of Hansard and led by Ms. Wambui and other officers, we did that. I believe they do so even now.

We were able to capture the lines of thoughts of Hon. Members and organise their thoughts without losing the facts and realities of what they wanted to present. Whenever a Member wanted to read or go through what they contributed in the House, the next day, they would be mesmerised by how well they spoke and how well thought-out their ideas were. It was only because Hansard officers put in many hours of work to make everything right.

Hon. Speaker: Thank you. Wind up.

Hon. Kassait Kamket (Tiaty, KANU): I wish my colleague and former boss, Ms Njoroge, the very best in her life as she retires.

The Box there, the Hansard Box, is a great Box. To all the officers of Parliament who have worked in other departments and those who have made it to be Members of Parliament, everybody has a chance in life to be a leader in this country.

Ms Anne Wambui Njoroge is a great person. She is a great woman. I will forever be grateful to her as the person she mentored into the great Member of Parliament I believe I am today.

Hon. Speaker: Thank you. The second and last tribute to Ms Njoroge is from Hon. Owen Baya, who will represent the constituency from which she came from, before she joined the Parliamentary Service.

Hon. Owen Baya (Kilifi North, UDA): Today, I rise to salute a distinguished public officer, Ms Anne Wambui Njoroge, who has recently retired from her position as the Director of Hansard and Audio Services in the National Assembly.

Ms Njoroge's journey in the Public Service began on 7th October 1991, when she was first appointed as a Hansard Reporter II in the Hansard Department. Her dedication and commitment saw her rise through the ranks until she was promoted to the position of Director of Hansard and Audio Services in the National Assembly. She recently retired from the position.

Ms Njoroge has been an integral part of the Hansard Department of the National Assembly, contributing to the accurate and comprehensive recording of parliamentary proceedings. Her meticulous attention to detail and commitment to excellence have ensured that *Hansard* reports remain reliable and valuable resources for Members of Parliament, researchers and the public.

Before joining Public Service, Ms Njoroge taught at Kwale Boys High School. She taught many students, including Hon. Mike Sonko, the former Member of Parliament for Makadara Constituency, first Senator and second Governor of the Nairobi City County in Form II in 1990.

Ms Njoroge's tenure has seen her work alongside many prominent figures in Kenyan politics, including the late President Mwai Kibaki, the late Hon. Michael Kijana Wamalwa, the late Hon. Jaramogi Oginga Odinga, the late Hon. George Anyona, the late Hon. Martin Shikuku, the late Hon. George Nthenge, the late Hon. Kenneth Matiba, the late Hon. Jeremiah Nyagah and his sons; Hon. Norman Nyagah and the late Joe Nyagah; the late Hon. David Mwenje, the late Hon. William Ole Ntimama and the late Hon. Bonaya Godana, to mention but a few. I am also told that she taught Hon. Mwashetani, the former Member of Parliament for Lunga.

There are several memorable events by Ms Njoroge, such as the Members' induction in 2013, where she presented on *Parliamentary Privileges*. She gave the example of Hon. George Nyanja, former Member of Parliament for Limuru Constituency, who jumped over the fence along Uhuru Highway in the 1990s to avoid arrest. She recalls the firm chairmanship of the late Hon. Anyona as the Chairman of the Public Accounts Committee together with the late Hon. Jaramogi, and the late Hon. Kijana Wamalwa as the Chairmen of the Public Accounts Committee. The late Hon. Anyona was also a firm Temporary Deputy Speaker.

Ms Anne Wambui Njoroge's contribution to the Hansard Department at the National Assembly has left a lasting legacy. Her unwavering dedication and professionalism have set a high standard for all who will follow in her footsteps. As we recognise her invaluable service, let us extend our heartfelt gratitude and best wishes for her future endeavours.

Hon. Speaker, please join me in recognising and celebrating the remarkable career of Ms Anne Wambui Njoroge. We salute you. I bring you greetings from the Leader of the Majority Party, Hon. Kimani Ichung'wah.

Hon. Speaker: Hon. Members, can we have a foot thumping for Ms Njoroge?

(Prolonged applause)

Hon. Speaker: Thank you. Ms Anne, we wish you well in your remaining productive years in public life. May God give you guidance and protection.

Next Order.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Yes.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker, for giving me this opportunity. I would like to wish all the Members a happy new year.

I congratulate all the Members who were awarded and Ms Anne for her amazing work for Parliament. My concern as a woman leader is that when we have a woman rising to that level, there would be another woman who will either go that high or to a level almost as high. Women are usually not represented at that high level. Having said that and acknowledging the Members, I know your awards committee forgot me, but you will correct that.

(An Hon. Member spoke off the record)

Yes, I have a CBS, but I also want to rise, as I am still doing good work. If I do not praise myself, who will?

I wish to stand under Standing Orders 19 and 20 of the National Assembly. I wish to indicate further to the High Court decision...

Hon. Speaker: Order, Hon. Millie, take your seat. I know you saw me in my Chamber and indicated that you would raise a matter, which you are trying to. I will give you an opportunity, but let us finish with some preliminaries first. Clerks-at-the-Table.

(Hon. Raphael Wanjala consulted loudly)

Order, Hon. Wanjala.

PAPERS

Hon. Speaker: The Deputy Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

1. The Auditor General's Report...

(Loud consultations)

(Several Members stood up in their places)

Hon. Speaker: Order! Order! Take your seats. Order. I order that matter to be stayed.

(Laying of Papers deferred)

Let me hear Hon. Millie Odhiambo's point of order. Order. I will hear your point of order.

(Applause)

Hon. Members, take your seats. Hon. Millie Odhiambo, take the Floor.

POINT OF ORDER**HIGH COURT RULING ON THE NATIONAL ASSEMBLY
MAJORITY AND MINORITY MEMBERSHIP**

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker.

(Loud consultations)

Hon. Speaker: Order. Hon. Millie Odhiambo, take the Floor.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I rise under Standing Orders 19 and 20.

Hon. Speaker: Hold on, Hon. Millie. Hon. Members, can we hear Hon. Millie Odhiambo?

*(Hon. Raphael Wanjala, Hon. Gertrude Mwanyanje,
and Hon. Julius Mawathe consulted loudly)*

Order, Hon. Wanjala, Hon. Gertrude Mbeyu and those conducting themselves like you, including Hon. Mawathe. The excitement does not preclude the application of Standing Orders. If I see you getting rowdy again, I will request you to leave the Chamber. Hon. Millie Odhiambo, proceed.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I stand under Standing Orders 19 and 20, and in furtherance of the recent decision by the High Court HCC/E202/2023, Kenneth Njagi Njiru and 11 Others versus the National Assembly of Kenya and Others. I will not go to the merits and demerits of that matter. I will focus on what the court concluded:

That the Azimio la Umoja side is the majority. Based on that, because I have said I am not going to the merits and demerits of the decision, I want to indicate that I have today, as the Whip of the Majority Party of Azimio, handed over to your office a copy of that decision of the High Court with a letter, according to the Standing Orders, that we are giving you Hon. Junet Mohamed as our Leader of the Majority Party and Hon. Robert Mbui as our Deputy Leader of the Majority Party. Following the Standing Orders, Hon. Junet Mohamed will thereafter communicate to me officially as the Whip of the Majority Party, going by what the Standing Orders provide.

Hon. Speaker, I also stand under Standing Order 90. I actually consulted you about this. If you look at that judgment, the court actually infers that, because of the positions you hold as Speaker and party leader of your party, it is not possible for you to be fair. You are going to be conflicted when presiding over matters of this House. I, therefore, humbly request you to step down and mandate Hon. Gladys Boss to take over discharging the functions of the Speaker because of your conflict of interest.

In conclusion, because I said I will not go into the merits and demerits of the matter, I urge that, as Parliament, we obey court rulings and decisions even when we disagree with them. You can see my two colleagues are standing next to me. My advice to them in future is to follow a philosophy from my community, which says, *telo ikawo telo ok mi ng'ato*. Next time, they should do what Hon. Ruku did. Jump if you have to, but take your position as Hon. Millie has.

Hon. Speaker: Is that part of your point of order?

Hon. Millie Odhiambo-Mabona (Suba North, ODM): No, Hon. Speaker, I said that as an arbiter.

Finally, as an arbiter, people also talk about the broad-based government. Again, I am very careful. I am saying this as an arbiter; it is not my substantive argument. People speak of the broad-based government. When you look at the court's arguments, they keep referencing *de jure* and *de facto*. Many things may have changed over time. If you look at this side of the House today, we are seeing broad. If you want to see good faith, we want to see if it is also 'based'. It is broad. However, whether it is 'based' will depend on the decision going forward. Otherwise, we will be told by the court that it is hot air, wild goose chase, and all those other things.

Thank you, Hon. Speaker.

(Loud consultations)

Hon. Speaker: Order, Members. Maintain your silence. Hon. Millie Odhiambo has raised two points. I will dispose of one very quickly but for the other, I will allow the House some latitude. As to whether the Speaker, yours truly, should preside over these proceedings, I will dispose of it as follows.

One, there is no Motion before the House about the Speaker. I am a senior lawyer in this country. And I am your senior, Hon. Millie Odhiambo. I have read that judgment with a toothcomb. There is nowhere it requires the Speaker to do what you are saying, particularly the final findings of that judgment, which, as a distinguished learned friend, we had an opportunity to read together today. That judgment does not cast aspersions on the Speaker presiding on such matters. In a similar situation in the 11th Parliament, a Motion was brought to this House by the then Member for Kibwezi West, Hon. Patrick Musimba, to discuss the conduct and the possible vacation of office by Speaker Muturi, as he then was.

Speaker Muturi presided over the debate, and the vote was taken. The Motion went the way it did. In the 7th Parliament, when I was a fresher in this House, Hon. James Orendo, or one of the then Ford Kenya Members, brought a Motion to discuss the conduct and character of the then Speaker, Francis Xavier Kausai ole Kaparo. Kausai ole Kaparo presided over the proceedings. The Motion was debated and put to a vote, and it went the way it did. I am sure you know that neither Muturi nor ole Kaparo left office based on any Motion. Yours truly, as your Speaker, does not debate or vote. I hold a position of honour to preside over your proceedings. If anybody wants to say anything about this judgment, I will give you an opportunity. And it is going to be 'yours truly' to give you a ruling on the matter.

It must also be made very clear as we listen to each other. Senior lawyers like Otiende Amollo should know that neither the court nor any authority outside this Chamber can make declarations that affect the conduct of business in this House, except yourselves by voting and by the Speaker giving you rulings. We sit here as a quasi-judicial body. As a quasi-judicial body, I will listen to you and assure you I will make a fair finding. It is like going to court and telling a judge that he will not be fair because the lawyer appearing before him was his classmate. That has no foundation in law or fact. So, I will open the Floor and hear those who want to have similar points of order as Hon. Millie Odhiambo on the judgment.

I caution you that the Standing Orders do not allow you to discuss the person or character of any judge, unless you have brought a special Motion to discuss that judge. You can analyse the judgment. You can agree or disagree with it. You can qualify it. You can do whatever you want. But do not disparage or discuss the character of any judge without a special Motion, as is provided for in our Standing Orders.

Hon. Millie Odhiambo, that is my direction. Thank you.

Hon. Raphael Wanjala, what is your point of order?

Hon. Raphael Wanjala (Budalangi, ODM): Thank you, Hon. Speaker. Thank you for the first clarification, which we humbly understood and agreed with. But you have left out the second issue about the Leader of the Majority Party in the House.

Hon. Speaker: Order, Hon. Raphael Wanjala. That is exactly the issue Hon. Millie Odhiambo raised. She wrote to the Speaker and yes, I received the letter. I will analyse it. I have given you an opportunity to speak to her point of order or any other point of order.

Yes, Hon. Junet Mohammed.

Hon. Junet Mohamed (Suna East, ODM): Hon. Speaker, first, today, I am privileged to speak from the seat of the Leader of the Majority Party.

(Applause)

Hon. Speaker, the seat is very warm, unlike mine, which is very cold.

(Laughter)

I did not know the seats of Parliament have different warmth.

(Laughter)

I do not foresee myself leaving this seat any time soon.

Hon. Speaker, as you are aware, and as it has been alluded to, there is a court ruling on this matter. It is a ruling of a three-judge bench. A court ruling has only two decisions and there is no third way about it. One is to obey it and secondly, if there is an avenue of appeal, it is exercised. There is no third way about it.

Hon. Speaker, what took us, the Azimio la Umoja-One Kenya Coalition, to court after the elections and after your decision here was for the court to interpret for us the constitutionality of your decision on who is the Leader of the Majority Party and the Leader of Minority Party in this House. The issue of an arbiter came up, but what took us to court was that we wanted to know the majority coalition. After the elections, we arrived here knowing very well that we were the Majority Party because we had the numbers. But midway, we ended up losing numbers through your Ruling. That is what took us to court to ascertain whether we are the Majority or the Minority.

Luckily, the court made its ruling *albeit* late. We expected this ruling much earlier, but it is better late than never. The decision says that the Azimio la Umoja-One Kenya Coalition is the Majority Party in Parliament. I happen to be the Leader of the Minority Party. So, today afternoon, I just switched seats and I took over that role of the Leader of the Majority Party.

(Applause)

I am capable of doing that work. I have the capacity; I have the qualifications; I have the capabilities and I have the numbers in the House to lead. I have all that it takes to be the Leader of the Majority Party in this House. That is the issue that we need to exercise and analyse.

Court rulings are very important. Let us remember we disputed the result of the elections. We ended up filing a case in the Supreme Court. The court pronounced itself that we did not win the elections and that the other party won. We abided by the judgement and we respected the court ruling. This court ruling also must be respected because it is not like any other. It is a ruling of the High Court of the Republic of Kenya. This ruling cannot be taken jokingly.

Last evening, when I went through it, I noted that the judges raised very serious fundamental issues. They raised issues relating to violation of the Constitution. Let us remember we impeached someone here because he violated the Constitution. If this matter is not addressed, we are going to have a constitutional crisis in this country.

We borrowed this presidential system from jurisdictions and democracies all over the world. In the United States of America, there are times when the Executive is from the Republican Party, but the House is ruled by the Democratic Party and life goes on. It does not mean that we are going to oppose everything that the Government wants to do. If the Government brings to this House Bills and policies that are of benefit to the country, we will support them. As we know now, many things are water under the bridge. There is this animal called the broad-based Government. We want to broaden, deepen and tighten this relationship, Hon. Speaker.

(Laughter)

If I may borrow your words, we want to broaden it, deepen it and tighten it, so that we can have a country that is cohesive. There is no way we are going to have this ‘animal’ in place, but when we want to become the Majority, people look at us with suspicious eyes. How can it be, Hon. Speaker? Members of Parliament are Members of Parliament. They work under Article 95 of the Constitution which has given them the roles of oversight, legislation and representation. We are not going to do our business outside Article 95 of the Constitution. So, I want to allay fears here that the Majority Party in the House must be the ruling party. This ruling is for posterity.

In the next elections or the elections in 2032, a Government might come in place where the person who garners the majority votes and is elected as the President, will not have numbers in Parliament. His numbers in Parliament might be less and he becomes a minority. This is the trend we are now setting. Parliament, the Judiciary and the Executive are independent. We have no problem with the Executive doing their work. We know the President of the Republic of Kenya as of today is His Excellency William Samoei Ruto. There is no doubt about that. So, there should be no ambiguity and doubt that the Leader of the Majority Party in the National Assembly is Hon. Junet Mohamed, the Member for Suna East Constituency.

(Applause)

I am going to serve the country diligently without any fear or favour. I am a seasoned politician and serving my third term in Parliament. I know how Parliament operates and how it does its work. I also understand how Bills are done in this Parliament. I have gained enough experience.

Hon. Speaker: Wind up, kindly.

Hon. Junet Mohamed (Suna East, ODM): So, the mindset that the ruling party must have the majority Members in Parliament for them to do the Executive work of the country must be gotten rid of. We must emulate democracies that have matured over 200 years. In the last administration of President Joe Biden in America...

Hon. Speaker: Wind up.

Hon. Junet Mohamed (Suna East, ODM): The Republican Party was controlling the House of Representatives and the Democratic Party was controlling the Senate and life went on as usual. So, my advice to this House and to Parliament in general is that the only solution to this problem is to appeal. Unless the appeal overturns this matter, I shall be recognised as the Leader of the Majority Party of the Republic of Kenya.

Thank you very much. With those remarks, I conclude.

(Applause)

Hon. Speaker: In all civilised Parliaments, when you appreciate a point, you thumb your foot. You do not stand up and throw your hands in the air. Hon. Adan Keynan, before you take the Floor, let us have some ground rules. I will give everyone an opportunity to speak. Can we do three minutes? Is that good enough? Then I will give everyone three minutes.

Hon. Members: Three minutes!

Hon. Speaker: Three minutes. Let us also observe decorum.

(Several Members shouted: "five minutes")

Hon. Robert Mbui and Hon. Mark Mwenje, if it is making a point, you have made it. It is beneath your dignity to continue standing there while other matters are going on.

(Loud consultations)

Hon. Speaker: Hon. Adan Keynan.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Speaker. Luckily...

(Loud consultations)

Hon. Speaker: Order. Let us hear one another in silence. If you really want to get a reasoned ruling from the Speaker, let us hear one another.

Hon. Adan Keynan (Eldas, JP): Hon. Speaker, this is a House of rules and traditions. This is a House that enjoys being a quasi-judicial institution. On the face of it, I take this opportunity to welcome my colleagues to this very important Session. Kenyans out there are really looking upon us to deliberate in a civilised manner and guide this nation.

There comes a time when some issues must be deliberated and agreed upon. I agree with my brother, Hon. Junet, that he is qualified to even be the President of the Republic of Kenya, not just the Leader of the Majority Party. Having said that, there are certain things that we must be clear on and follow the procedures. It is only the procedures that will guide us. Order No.8 in today's Order Paper is supposed to provide for the appointment of Members of the House Business Committee, which is the anchor Committee for the business of the House. However, we cannot reach there until certain issues are sorted out.

Now that we cannot discuss Order No.8, I want to seek your guidance on the following. The High Court last week quashed the ruling contained in the Speaker's Communication dated 6th October 2022 on the Majority and the Minority parties. That is a fact which cannot be denied. I had a chance to go through that great ruling and internalise it. I have seen the letter, its interpretation, and what the Speaker and the House are generally expected to do.

On the face of it, the Petitioner sought that a declaration be issued that Azimio la Umoja One-Kenya Coalition is the Majority Party in the National Assembly, based on the outcome of the election of the Members of the National Assembly held on 9th August 2022. The second prayer was that a declaration be issued to declare that the Kenya Kwanza Alliance is the Minority Party in the National Assembly. If you look at the orders given, Order No.4 is a bit confusing. It is not explicit. The court declined or quashed the Speaker's ruling, but did not give proper guidance on what constitutes the Majority and the Minority parties.

Hon. Speaker: Give him one more minute.

Hon. Adan Keynan (Eldas, JP): Hon. Speaker, it is clear that the court quashed the ruling on the Majority and the Minority parties, but never answered the question of how that will be arrived at in the House. That means that we are back to square one, which is where we

were when the term of this Parliament started. Unless that question is determined, we are staring at a crisis. I say this because Standing Order 171...

(Loud consultations)

I am on a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Wanjala. What is your point of order? Give him the microphone.

Hon. Raphael Wanjala (Budalangi, ODM): Hon. Speaker, courts are arbiters. When they give orders or declarations, it is up to the institution to implement them. They are not debated. You have seen the ruling of the court.

Hon. Speaker: Order, Hon. Wanjala! Have you even read that judgement?

(Laughter)

Hon. Keynan, wind up.

Hon. Adan Keynan (Eldas, JP): Hon. Speaker, unless this question is determined, pursuant to Standard Order 171, we are looking at a crisis, which can only be sorted out with the proper guidance from the Speaker. This state of affairs portends a crisis for the House. We want your guidance, pursuant to Standing Order 171, on who are the majority and minority parties. Once that is determined, all other things will flow.

Hon. Speaker: Hon. Osoro.

(Hon. Robert Mbui spoke off record)

Order, Hon. Robert Mbui!

(Loud consultations)

I want you to listen to this carefully. Hon. Robert Mbui, you are engaging in misconduct. You are too senior to be told to leave the Chamber.

Hon. Millie, who raised the point of order, has read the judgment clearly. The judgement quashed the direction of the Speaker on the majority and minority parties. The judgement never declared which is the majority party. It is not up to the court to declare which is the majority party. It is the Speaker of this House who does that. You better know that. It is the Speaker of the House who declares the majority party.

Hon. Osoro, go on.

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you very much, Hon. Speaker. I want to pick up from what you have said. Even upon reading the judgement of the court, the Standing Orders of this House gives you power to declare which parties are the majority and minority. We appreciate the judgement of the court as it is. We are ventilating about the judgement and we respect the courts. Again, it is the very laws that govern us that give you that power, Hon. Speaker, to declare the majority and minority parties. As Hon. Junet and Hon. Millie Odhiambo live in rented spaces, they should know that the final declaration of the majority and minority parties comes from you.

Perhaps, we should ponder and ask ourselves very pertinent questions. In the past two years we have served in this House in different capacities as the majority and the minority parties, several decisions have been made. Committees that are chaired and led by the majority and minority parties have been formed. Does it mean that every decision or report that has been

passed by the committees as they were previously constituted are rendered moot? Should we define the judgement as it is on paper?

The second question that we should ask ourselves is about the Selection Panel of the Independent Electoral and Boundaries Commission (IEBC) that was nominated by the Parliamentary Service Commission (PSC). The minority and majority parties proposed their respective membership. The IEBC Selection Panel has already started working to select the next commissioners. What happens to that Selection Panel? They were appointed based on the majority and the minority parties when the Parliamentary Service Commission submitted the names. Those are the questions we need to ask ourselves.

The Commission on Revenue Allocation (CRA) is also a preserve of both the minority and the majority parties. What happens to the decisions that have been made in the last two years? What happens to the allowances that have been paid? Those are the questions that we need to ask ourselves because we are at the midterm of this Parliament. As you retire to make your ruling, it is important to ask those very pertinent questions. We should not just be talking about...

Hon. Speaker: Thank you, Hon. Osoro. Give him a minute.

Hon. Silvanus Osoro (South Mugirango, UDA): Hon. Speaker, we should not just be talking about positions on who the Leader of the Majority Party or the Leader of the Minority Party is. As Hon. Junet has well put, we are all Members of Parliament and we can serve in whatever capacity. Let us look at the implications of this decision. What happens to what we have passed in the last two years? What happens to the decisions we have made in the past two years? What happens to the IEBC Selection Panel? My colleague, Hon. Millie Odhiambo, is saying that she has added the position of the Chief Whip of the Majority to her Curriculum Vitae. She will only do that in her dreams. It will not work.

Hon. Speaker: Hon. David Ochieng’.

Hon. David Ochieng’ (Ugenya, MDG): Thank you so much, Hon. Speaker. I would like to thank the three judges...

(Loud consultations)

Hon. Speaker: Order, Hon. Members. Let us listen to each other. Save Hon. David Ochieng’s time.

(Several Members stood along the gangways)

Order, Hon. Members. Those of you on your feet, take your seats.

Hon. Members, I have given you guidance which I would like to repeat. The upshot of the judgment of the court is that we go back to the status quo ante, as is referred to in law. This means that the House has to make a decision and a finding on who the majority is. The court has not declared any party as a majority party in this House. Read the judgment carefully. Do not speak from what you are hearing in the air.

(Hon. Raphael Wanjala spoke off record)

Order, Hon. Wanjala. I am giving you guidance so that you do not speak irrelevantly. We have gone back to the status quo ante. Convince the House as to who is the majority and I will make a finding based on facts.

Hon. David Ochieng’.

Hon. David Ochieng’ (Ugenya, MDG): Thank you so much, Hon. Speaker. I thank the three judges for last week’s judgment. We have a new Constitution that we keep testing. It also

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guides us on how we run our affairs as a country. Under the laws on coalition making that we passed in this House, it is presumed that there will be coalitions where some people will leave while others will join. Therefore, it is presupposed that in any term of Parliament, one side will be the minority today while tomorrow, it will be the majority. This is because it is a moving target. As to who the majority and minority are, it is not cast in stone. Therefore, the finding by the court that the decision on who the majority and minority in the National Assembly as was decided on 8th August 2022 is wrong. I disagree with it because if, today, Ford Kenya and the Amani National Congress (ANC), that was, left Kenya Kwanza and joined Azimio la Umoja-One Kenya Coalition Party, the latter will have more Members than the remaining United Democratic Alliance (UDA). In that regard, Azimio la Umoja-One Kenya Coalition Party will be the Majority Party. You will be called upon, as the Speaker, to make that decision and you will decide as such. So, I disagree with the judges' findings that the decision on which is the majority and minority party was made once. It can never be made once. It depends on the facts of the day in this House. For example, if tomorrow...

(Loud consultations)

Hon. Speaker, I must be heard.

Today, if the Wiper Democratic Movement-Kenya (WDM-K), the Jubilee Party and the United Democratic Movement (UDM) left Azimio la Umoja-One Kenya Coalition Party, it will only be left with ODM, which has 85 Members. That means that it will be the Minority Party. So, the decision on who the Minority and Majority is moves like a pendulum, depending on who has left which coalition. Therefore, that decision cannot be made once after the elections. That is why the judges are wrong on this matter.

Number two, it is very important to note that the day you made the decision on this matter, you had facts before you. You had evidence before you indicating that the UDM, Movement for Democracy and Growth (MDG), the Maendeleo Chap Chap (MCCP) and the Pamoja African Alliance (PAA) had left the Azimio la Umoja-One Kenya Coalition Party. You cannot ignore those facts. You have also made a finding that the courts have not ruled that Azimio la Umoja-One Kenya Coalition Party is the majority. The courts ruled that we should go back and decide on that matter. Therefore, Azimio la Umoja-One Kenya Coalition Party must convince you today that they are the majority.

Hon. Speaker: Hon. Murugara.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Speaker. What you need to decide on is the wording of Article 108 of the Constitution of Kenya, 2010 and Standing Order 19. Of importance is the use of the verb 'to be' in that particular Article and Standing Order. The majority or minority party is one that is adequately constituted at that particular moment. It is not cast in stone as the court tried to tell Kenyans that the majority and minority parties were determined on the election date. The tense used is present, 'is', which means it can change from time to time, as the issue comes into question. Therefore, the court was wrong. I respect the decision of the court. However, on appeal, we will argue that the three judges were wrong because they did not take into consideration the use of the verb 'to be' in the present tense which means from time to time. For example, before the ruling, the majority party was the Kenya Kwanza Coalition. If parties like UDA left Kenya Kwanza Coalition, does it continue to be the majority party? It loses the status because that is determined by how many Members are in the party or a coalition from time to time. The court overreached when they interpreted it this way. So, we shall appeal on this matter. But because the course of action of 6th October 2022 is spent, we request you, Hon. Speaker, to give us another ruling using the present tense of the verb 'to be', that is, 'is', as to who the majority and minority is as we speak in this House today.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Makilap.

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Speaker.

(Some Members consulted loudly along the gangway)

Hon. Speaker, protect me from these Members.

The decision of the court is belated because it is based on a ‘freezing point’ which was on 9th August 2022, after the pre-election coalition agreements. After the 9th August 2022, and our subsequent swearing in, there was, again, post-election agreements. This means that the composition of the National Assembly, in terms of parties and coalitions, is a moving target that will be determined by the interests of Members of Parliament and the parties that form a particular coalition. You are aware that during your determination, at that time, some Members from some parties, for example, the Jubilee Party, moved to Kenya Kwanza Coalition. Likewise, UDM had already changed position. Even if ‘Wamunyoro’ have changed their position now, there must be a post-election agreement to that effect. This determination is a fundamental one as it will guide Parliament for many years to come. We must determine how many post-election coalition agreements shall continue to exist so as to guide the majority and minority in the National Assembly. That way, we shall have a House that is made up of sober people who know where they are and where they sit.

In a parliamentary system, it does not matter where you sit in the chamber; it is only a tradition. The determination of the majority or minority party rests with you, Hon. Speaker, guided by the existing post-election coalition agreements. So, it is over to you now to make a decision, based on these facts. This is a continuous moving target that will continue to change.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Donya.

Hon. Dorice Donya (Kisii County, WDM): Thank you, Hon. Speaker. Hon. Speaker, you have told us to debate and you will rule on this matter. If Azimio la Umoja-One Kenya Coalition Party did not win the election of the Speaker, which is the Majority Party? As we debate this matter, this is our question. I am a member of Azimio la Umoja-One Kenya Coalition Party. We did not win the position of the Speaker. Who are the majority then? This is the question, you should answer. Who won the election? Put the Question, Hon. Speaker. Who won the position of the Speaker? Who were the majority then?

We should debate other things. We should help our people. We have no water and electricity in Kisii County. We are discussing things that have been shot straight. Who was the Speaker then, when we came to Parliament for the first time on 29th September 2022? Who was elected as the Speaker?

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Wamboka.

Hon. Wanami Wamboka (Bumula, DAP-K): Thank you, Hon. Speaker. Firstly, I will speak as an elder from Luhya Community.

(Loud consultations)

Hon. Speaker: Order.

Hon. Wanami Wamboka (Bumula, DAP-K): Let us keep the Speaker out of this issue. If we speak about the position of the Speaker, we will start taking sides; which will not be good.

Secondly, parties went for elections. The law required that you choose which coalition you wanted to belong to. At that point, it was to determine which side you belong to. There

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was Azimio la Umoja-One Kenya Coalition Party and Kenya Kwanza. Some people decided to sign an agreement with Kenya Kwanza and others with Azimio la Umoja-One Kenya Coalition Party. Then, elections were held and results came out. Please, let us respect this position.

I know some Members of Parliament were in our Party. When we had the first meeting of Azimio la Umoja-One Kenya Coalition Party at the Kenyatta International Convention Centre (KICC), Hon. Mutuse and other Members were with us. After realising that the presidency was going *senemnege*, they shifted to the other side. The fact that their numbers belonged to Azimio la Umoja-One Kenya Coalition Party has not changed. Basic people here are arguing that this can be changed another time. At the time of the election, Azimio la Umoja-One Kenya Coalition Party was the majority. Give us that position.

Hon. Junet Mohamed is the Leader of the Majority Party. Hon. Millie Odhiambo is our Whip of the Majority Party. If you feel numbers have changed, bring that here on the Table, and we shall discuss it. That is a different thing. As at election, Azimio la Umoja-One Kenya Coalition Party was the Majority Party of this House. Let the Speaker rule. If you feel you have numbers, bring it on, and we will deal with you. Hon. Osoro should be very ashamed. I thought he is a lawyer. His arguments are below, as a basic nursery school class. He cannot tell us that. We are the majority.

Lastly, what I have said about the Speaker stands. Keep him out of these matters. *Kama Waluhya, hicho ndicho kiti tuko nacho peke yake. Msitufanyie mchezo.*

(Laughter)

Hon. Speaker: Hon. Sabina Chege.

Hon. Sabina Chege (Nominated, JP): Thank you, Hon. Speaker, for giving me this opportunity to contribute.

Hon. Junet Mohamed (Suna East, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Sabina, hold on. Hon. Junet, what is your point of order?

Hon. Junet Mohamed (Suna East, ODM): Thank you, Hon. Speaker. Hon. Wamboka who has just finished his contribution has said that the only seat Luhyas have in this Parliament is yours. Do we assume that?

Hon. Speaker: Order, Hon. Junet. He also said we should keep the Speaker out of this matter. So, keep me out of it.

(Laughter)

Hon. Sabina Chege.

Hon. Sabina Chege (Nominated, JP): Thank you, Hon. Speaker, for giving me the opportunity to contribute. At the outset, this judgement is meant to bring paralysis in this House. You need to make a decision on this matter. Having listened to my colleagues on this judgement which I have also gone through, there is a lot of consideration on the status quo as of 6th October 2022. Many things have changed.

After your ruling, we formed committees in this House. There was also the appointment of Commissioners of Parliamentary Service Commission that were done based on the Minority Party and Majority Party. We have the Independent Electoral and Boundaries Commission (IEBC) Selection Panel. As a House, we appointed the leadership.

Early this month, we also received communication on reconstitution of the committees. We will appoint Members of the House Business Committee this afternoon. Who will be the Chairpersons and members of the committees based on the Majority Party and Minority Party? You will give a ruling on this matter. You need to clear the air on it. Many things have changed

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after two years. There are post-election and pre-election coalition agreements. Let us take the case of Maendeleo Chap Chap Party. They left the coalition they had signed with before the election. As we make the decision, are they part of the Azimio la Umoja-One Kenya Coalition Party? Does Azimio la Umoja-One Kenya Coalition Party still exist?

As Members of Jubilee Party, we wrote a letter in June 2023 and requested to be an independent political party. As we make this decision, will we be counted in Azimio la Umoja-One Kenya Coalition Party or as an independent political party? We hold these positions and we need clear guidance on this issue so that, as the Whips sit down to reallocate the positions, we know where we belong. It is simple mathematics. If people are doubting, we can conduct *mlolongo* system. We can do the calculation on who is in Kenya Kwanza Coalition and Azimio la Umoja-One Kenya Coalition Party. This will enable us to make a decision instead of wasting precious time when we are supposed to be passing important Bills in this Republic.

Finally, there is a Broad-Based Government. Where do we stand?

Hon. Speaker: Thank you. Hon. Otiende Amollo.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. For starters and because not all Members have read the judgement, allow me to read three paragraphs so that people are in tandem.

Paragraph 504 says: “We, thus, hold and find that the simultaneous holding of the position of Speaker with that of the leader of the political party and the leadership positions in the ruling political coalition, as in the case with the current National Assembly and the concluding parties, this dual role is therefore unlawful and unconstitutional.”

They continue in paragraph 505 as follows: “We hold that the Speaker was elected in accordance with Article 106 of the Constitution and the Standing Orders. The fact that he was a party leader at the time of his election could not invalidate his election. However, for the reasons we have given, his position as the leader of FORD-Kenya or any other political office for that matter became untenable and inconsequential, the moment he assumed the office of the Speaker of the National Assembly. He could not and he has no capacity to perform any other functions as a leader of a political party or political organ as long as he is the Speaker of the National Assembly.”

I have referred to two paragraphs: 504 and 505. This is on whether the court expressly found the two offices untenable. I will make a concession separately.

I will now go to paragraph 508 which is important because we are debating in ignorance. It says:

1. “It is hereby declared that the question as to which party or coalition of parties is the majority in the National Assembly, in the 13th Parliament, was determined by the sovereign will of the Kenyan voters during the 9th August 2022 General Election. It continues in (ii).
2. “It is hereby declared that Hon. Speaker's ruling on determination, contained in his Communication of 6th October, is null and void.”
3. “It is hereby declared that Hon. Speaker's ruling on determination of the Minority is again null and void.”

Finally, an order of *certiorari* is hereby issued, quashing the Speaker's ruling.

Here is my submission, Hon. Speaker. First, this matter did not go to court in vain. The contestation was your considered ruling of 6th October. Once that ruling is quashed, you cannot then, with due respect, come and say that no decision has been made. The consequences are two. One, the Leader of Minority Party becomes the Leader of Majority Party by operation of law, even if you do nothing else. However, in this case, we have gone further, under Standing Order 19A (3), it states...

Hon. Speaker: I will add you one minute.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Standing Order 19A (3) states very clear:

“(3) The Majority Party Whip shall communicate the name of the Member elected under paragraph (1) to the Speaker in writing on behalf of the Majority Party”.

That was already done by Hon. Millie Mabona. That settles that case.

The only way we can start debating whether this decision quashes and changes the position of Majority Party and Minority Party, is if we want to practise impunity. I agree with your observations that it is not in this forum, to question the reasoning in the judgement; that must be questioned elsewhere. The only issue is: Was it the finding of the Court? It was. If we are to be a country that practises the rule of law, let it be appealed. But until then, let it be implemented. Let Hon. Junet Mohamed be the Leader of the Majority Party.

It does not matter whether you are in Government or not. This is because we are not debating who is in the Government and who is not. The reasoning or even your election because we all participated... Some of us who are not in the other parties still voted for you.

Hon. Speaker: Hon. Milemba.

(Hon. Raphael Wanjala consulted loudly)

Hon. Speaker: Order, Hon. Wanjala. It suffices to mention that the Senior Counsel has also read the judgement very selectively.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. This judgement is good. I want to ask Members to exercise restraint, the way we are doing as we deal with it. This is because it will grow our own Standing Orders and decisions that have been taken by this Parliament before. Just like when we had the stalemate on who should lead the House Business Committee and Hon. Marende made the ruling that is always talked about.

In the 508-paragraph judgement which I have also read, let me spot out the one which the Senior Counsel spoke on. It says that: “The question as to which Party or Coalition Party is a Majority Party was determined by the sovereign will of the people on 9th August 2022”. This statement and paragraph presume that Parliament will stay static and there will be no changes as at the time when the election was done. However, the truth is that if we were to follow this, it would mean that the Majority Party would remain as the Majority Party for five years as determined at the time of the general election. That is not correct.

Majority Party and Minority Party are a fluid situation that keeps on changing depending on many happenings within Parliament. We know of the by-elections that are forthcoming in some of the constituencies. We have four constituencies namely; Banissa, Ugunja and others which lost or do not have Members of Parliament. What kind of results will come out of this situation? Will it not numerically affect the Majority and Minority leadership in the House? Hon. Speaker, those are issues that I want you to determine.

It also assumes that there are no post-election agreements which can be done. The Third Schedule of the Political Parties Act, 2011, talks about how coalitions can be entered. You can also get out of coalitions and it determines how this can be done in law. If all those changes have happened, then we cannot say that it is static for five years.

Hon. Speaker, one other reason why the court did not go to the extent of determining, is because there are three Arms of Government: The Legislature, Parliament and Judiciary. Hon. Members, Parliament is independent and we should not allow to be told what to do. This must be done by the rules and order of Parliament, which has its own Standing Orders.

Hon. Speaker, you have to make a ruling on which political party, as of now, is the majority in the House. This is not a static but fluid position that keeps on changing. Please add me more time.

I want to refer to governments like Germany, Israel and Canada, which are very good examples. Currently, the Prime Minister of Canada is going to resign. Why? Because he has

lost some of the coalition parties that were around him. Once he loses them, he is no longer the leader. Therefore, we have to rearrange Parliament.

Thank you, I submit.

Hon. Speaker: Hon. Caroli Omondi.

Hon. Caroli Omondi (Suba South, ODM): Thank you very much, Rt. Hon. Speaker. I raised this matter on 6th October, as my first statement in this House. The question was, which of the coalitions was the Majority Party in this House? The courts have made that decision somewhat, by not declaring, but giving the indication as to how the process should be done.

We should frame our issues in terms of five questions. On the question is of which is the Majority Party? It is not for the court, Hon. Speaker, or even this House to debate and decide. Our Standing Orders clearly provide the mechanism of determining the Majority Party in this House. The Clerk writes to the Registrar of Political Parties, who then gives us a return based on the Independent Electoral and Boundaries Commission (IEBC) election results. On the basis of that letter, this House gets to know the Majority Party. That is the position in law and this is what I raised on 6th October 2022. This is the path we must go back to. It is not for the courts, Hon. Speaker, or this House to debate or decide the Majority Party.

Second question is, who is the Leader of the Majority Party or Minority Party? By dint of this decision, as we speak today in this House, there is neither a Leader of the Majority Party or Minority Party. Our Standing Orders and the Constitution provide a pathway. As coalitions, we must hold elections and bring minutes tabled in this House to determine who the Leader of the Majority Party or Minority Party is. That has not been done. Therefore, there is no Leader of the Majority Party or Minority Party as at today. My friends, Hon. Kimani Ichung'wah and Hon. Junet Mohamed are both out of work.

The third question is on the import of this judgement on the position of the Speaker. The position in law is that the Speaker was elected by a majority of Members of this House and this decision does not affect his position. The fourth question is on the constitution of the Committees of this House. We cannot even proceed to constitute the House Business Committee today because we neither have a Leader of the Majority Party or Minority Party. We have to determine those questions first before we go forth and constitute committees of the House.

Finally, is on the impact of this decision on the previous decisions of this House. Whatever was done then in good faith, holds. We must now proceed and write to the Registrar to tell us who the Majority Party is. That is the position in law.

Thank you, Hon. Speaker.

Hon. Speaker: Leader of the Majority Party.

Hon. Members: No!

(Loud consultations)

Hon. Kimani Ichung'wah.

(Loud consultations)

Hon. Kimani Ichung'wah will speak.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Speaker. I welcome Members back to the House after the long recess and join you in thanking them for showing up during the Special Sitting last month.

I also take cognisance of the issues before you and the House. Let me start on a light note. My brother, Hon. Junet has said that this seat seems to be warm. This is a seat like any other in this House. In a presidential system, any Member can sit anywhere and if Hon. Junet

feels that this seat is warmer than his, we must make sure that we warm his seat so that he feels the warmth of the House.

The matter before us is straightforward. I agree with many of the things that have been said, including what Hon. Caroli Omondi has just said. That, the import of this court ruling has nothing to do with the past decisions of this House over the last two years. This is because decisions of the House, like legislation or the approvals we make, are not made by a party. Nor does the Leader of the Majority Party own business.

(Hon. Atieno Bensuda crossed the Floor)

Hon. Speaker: Order, Hon. Bensuda. You cannot just dash across the Floor like that.

(Laughter)

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Speaker. Hon. Bensuda is not used to sitting on this side of the House. We may forgive her.

Decisions of the House are decisions of Parliament. That is why a Government Bill moved by the Leader of the Majority Party and enacted as law becomes an Act of Parliament, not an Act of the Leader of the Majority Party or an Act of the Government of Kenya. It becomes an Act of Parliament. Therefore, all previous decisions made by this House have been decisions of the House. The House subsists as it were on 9th August 2022 and as it is today, with the unfortunate loss of one or two of our Members. We lost a Member through a by-election and another by passing on.

We also have a very good Constitution. As much as I respect the decision of the court, I completely disagree with the court in many aspects. Some aspects have been touched. I do not want to dwell on them. However, the question that we need to ask you as the Speaker and ourselves is on the 34 prayers sought.

(Loud consultations)

Hon. Speaker, there is much loud consultation behind me.

Hon. Speaker: Order, Members.

Hon. Kimani Ichung'wah (Kikuyu, UDA): The gentlemen who went to court went there with a total of 34 prayers. Amongst those prayers was a declaration by the court that the Azimio Coalition be declared the majority party and the leader of the Azimio Coalition in Parliament be declared the Leader of the Majority Party in the House. The court declined to give that ruling. Out of the 34 prayers, the only ruling given by the court was to annul your ruling of October 2022. When they said that they found it to be unconstitutional, null and void, the import of that is that we go back to the status quo as at 9th August 2022.

Hon. Speaker: It is called status quo ante.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Status quo ante, Hon. Speaker. You know I am only an accountant. I am not a lawyer. At least, I know the doctrine of *ultra vires* because I studied commercial law in accounting studies.

(Hon. Kimani Ichung'wah spoke off record)

Hon. Speaker: Give him a minute.

Hon. Kimani Ichung'wah (Kikuyu, UDA): The doctrine says that any statute or Act of Parliament that is inconsistent with the Constitution is null and void to the extent of the inconsistency.

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We have a beautiful Constitution because it gives powers to enjoy rights, including the right of association that is the most important thing in our Constitution. Chapter Four of our Constitution on the Bill of Rights is what has built our Constitution to be amongst the progressive Constitutions in the world. Therefore, the 14 Members in question—from United Democratic Movement (UDM), Pamoja African Alliance (PAA), Movement for Democracy and Growth (MDG), and Maendeleo Chap Chap Party (MCCP) - enjoy certain rights that not an Act of Parliament can take away from them. Including the right to associate. No court or law can tell the Member of Ugenya from MDG party that he must remain in the Azimio Coalition. There is no court or Act of Parliament, including the Political Parties Act that was acrimoniously passed in this House at the tail-end of the last Parliament, can force the eight Members of UDM to associate with the Azimio Coalition. That cannot happen.

That is why I disagree with the court to a large extent. The 14 Members enjoy certain inalienable rights to enjoy their right of association and associate with the political coalitions they desire. They told us that letters were tabled here, including letters from the Registrar of Political Parties that I have seen. The letters ascertain that MDG, UDM, PAA, and Maendeleo Chap Chap have left Azimio. The leader of the Jubilee Party in this House, Hon. Sabina Chege, today enjoys the position as a Whip of an independent parliamentary political party called the Jubilee Party. On that basis, Jubilee Party cannot shall not and shall never be counted as part of the Azimio Coalition.

(Loud consultations)

Hon. Speaker, we, therefore, invite you to make a decision on the status quo ante. It is up to you as the Speaker to now make a fresh ruling.

Hon. Junet Mohamed (Suna East, UDA): On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Junet.

Hon. Junet Mohamed (Suna East, UDA): Hon. Speaker, it is not my intention to interrupt.

Hon. Speaker: You have already done so.

Hon. Junet Mohamed (Suna East, UDA): It is not my intention to interrupt my colleague, the Leader of the Minority Party.

(Laughter)

Is it correct for the Leader of the Minority Party to mislead the House that those parties who were members of the Azimio Coalition cannot be forced to stay in the Azimio Coalition? To that extent, there is a procedure of getting out of the Azimio Coalition. They have not followed the procedure. I can tell you this because I am the Secretary-General of the Azimio Coalition. They only wrote letters to me. They never followed the procedure.

I can see Hon. David Ochieng' wants to respond to me. We cannot discuss that one-man one-member party in this House.

(Laughter)

Hon. Speaker: Order, Hon. Junet. Do not disparage your colleagues. You are better than that. Hon. Kimani Ichung'wah, you have one minute.

Hon. Kimani Ichung'wah (Kikuyu, UDA): So that I do not waste much time, you are being called upon to determine something from the status quo ante. The court has annulled your ruling of October. Respect to that court ruling is paramount. You must respect it. In respect of that court ruling, I have appeared here today and decided to sit with my brother Hon. Junet

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wherever I can sit. Your ruling being annulled now calls on you to look at the facts and numbers as they are today.

Last week Hon. Junet Mohamed and I got letters from the Clerk's office to submit names for the House Business Committee. It is important to note that both of us have since submitted names to the House Business Committee. The names that appear on the Order Paper today are from both the Minority and Majority. We did that cognisant of the court ruling. We did some letters as late as yesterday.

Therefore, as you make your decision on this matter, I ask that you look at all the facts as they are. Even the 14 contentious slots in the Azimio Coalition. I agree with Hon. Junet that there was a process of getting out of the Azimio Coalition. Has the process been followed? Are there letters? This is because I have seen letters that confirm that United Democratic Movement (UDM), Maendeleo Chap Chap Party (MCCP), Pamoja African Alliance (PAA) and Movement for Democracy and Growth (MDG) left the Azimio Coalition.

(Loud consultations)

I am speaking about the letters I had, from the Registrar of Political Parties. I will table them before the House because I have copies in the office.

Hon. Speaker, I beg you to look at those facts as you make that decision. Hon. Osoro submitted a letter to you on my nomination and election as Leader of the Majority Party in September of 2022, signed and assented to by over 171 Members of this House. Late last year, after Hon. Opiyo left, Hon. Junet Mohammed submitted...

Hon. Speaker: Wind up.

Hon. Kimani Ichung'wah (Kikuyu, UDA): In his nomination as Leader of the Minority Party, Hon. Junet Mohammed submitted a letter nominating him, upon election by the Azimio Coalition, as Leader of the Minority Party, signed by a paltry 80 members of the Azimio Coalition. This is actually less than what is provided for in our own Standing Orders, which have a certain threshold for who and how many members should have elected you as the Leader of the Minority Party. Therefore, it is my humble submission that you have facts on your table to make a ruling when the time comes.

Hon. Speaker: Thank you. Hon. Mwengi Mutuse. Pardon?

Hon. Mwengi Mutuse (Kibwezi West, MCCP): Thank you, Hon. Speaker, for giving me the opportunity.

Hon. David Ochieng' (Ugenya, MDG): On a point of order.

Hon. Speaker: Hon. David Ochieng', what is the point of order?

Hon. David Ochieng' (Ugenya, MDG): I was mentioned by Hon. Junet.

Hon. Speaker: I told him he was out of order and so, you are now protected.

Hon. David Ochieng' (Ugenya, MDG): Hon. Speaker, I just need to mention something. Hon. Junet claims to be the Secretary-General of the Azimio Coalition. Could he tell this House today where the Azimio Coalition's office is in this country?

(Loud consultations)

Hon. Speaker: Hon. Mwengi Mutuse.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): Thank you, Hon. Speaker. I kindly request that you protect me so that I may be heard in silence.

Hon. Speaker: Order, Hon. Members.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): Hon. Speaker, we are debating a very important matter, and you are sitting on a very delicate issue. When you retire to make a ruling, you will be making a ruling for the country. I am one of the lawyers who participated in the

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litigation that led to this decision and, therefore, I am aware of the facts, the law, and the arguments that went into court for this determination to be made.

Importantly, as you retreat, I am elected under the Maendeleo Chap Chap Party, which is one of the parties whose membership is under dispute. I will be tabling before this House a letter dated 30th January 2024, by the Registrar of Political Parties, confirming that Maendeleo Chap Chap Party is no longer a member of the Azimio Coalition. I will be asking you, when you retreat, to give effect to that exit in line with the ruling that you made on the 6th of August 2023, as well as the judgment of the court. As you retreat, I also invite you to look at an important doctrine that has been developed by the Supreme Court in the United States that has been applied locally. This is the political question doctrine, or the doctrine of justiciability.

This doctrine was developed so that the separation of powers can be given effect - so that matters that are for the Legislature are left to the Legislature, matters that are for the Judiciary are left to the Judiciary, and matters that are for the Executive are left to the Executive. It is my submission that the matter of determining the Majority and Minority Leaderships is a matter for Parliament and not one for the courts of law.

Finally, it is important to look at the gazette notice that declared the members who won positions. In the gazette notice released by the Independent Electoral and Boundaries Commission, there was no mention of coalitions. There was no mention of the Azimio or Kenya Kwanza Coalitions. In my constituency, they declared Mwengi Mutuse the winner under Maendeleo Chap Chap. If you look at that gazette notice, there was no mention of coalitions. Therefore, you cannot assign membership based on the election. You assign membership based on the realities of the day. This is to say that the issue of minority and majority is a moving target and can change at any time. Therefore, as I table this letter, I urge you to recognise that since Maendeleo Chap Chap exited the Azimio Coalition, we should be counted on the Kenya Kwanza side.

Thank you.

Hon. Speaker: Thank you. Let us have Hon. Mathenge, the Member for Nyeri Town.

Hon. Duncan Mathenge (Nyeri Town, UDA): Thank you, Hon. Speaker. Allow me to start by acknowledging that in our country, the formation of coalitions occur pre-and-post-election. Therefore, the determination of this case would only have benefited the Azimio Coalition if the courts had made their determination urgently, as the case was taken to court under a certificate of urgency. This judgment, coming two years late, is unimplementable because the reality is that there have been movements in and out of the Azimio Coalition. It is important that this House also addresses the Judiciary as it is no longer tenable for them to certify a matter as urgent, but make a determination two years later. So, where is the urgency? We must be practical in handling the issues of Kenyans when they go before the Judiciary.

As at this point in time, the only way out of this quagmire is for you and Parliament to communicate afresh to the Registrar of Political Parties to provide us with the facts as they stand today, and based on the response from the Registrar, make a determination as to which party has the majority members. Therefore, let us move forward with the business of the House. I urge you to stand and make a ruling on this issue.

Hon. Speaker: Thank you. Hon. Didmus Barasa.

Hon. Didmus Barasa (Kimilili, UDA): Thank you, Hon. Speaker, for giving me this opportunity. I have read the court ruling, which touches on a number of issues that require constitutional direction, so that nobody else can misuse such matters to put this House into limbo. I have singled out from what the court said that because you belong to a political coalition, you are not impartial in the manner that the Speaker of this House is required to be. As you retreat to make a ruling on this matter, I want you to reflect on what the framers of our Constitution and our Standing Orders mitigated when they said that the Speaker of this House

does not have a vote and does not influence, in any manner, how the Members of this House will make a decision.

Kenya, as a country... This House takes a lot from what happens in other countries of comparable jurisdictions. An example is the United States of America, where their system is purely presidential. Our system is also presidential. If you look at how Nancy Pelosi presided over the affairs of the United States Congress and yet she belonged to the Democratic Party, and what is happening now regarding the current Speaker, who belongs to the Republicans, that does not stop them from being impartial in their conduct of the affairs of the House.

Hon. Speaker, as you make a ruling on this, you must be guided by Article 122 of our Constitution, which makes it very clear that the Speaker of the House does not participate in the affairs of the House.

Last but not least, the role of the courts is not to make any law, but to interpret the law. When we elected you as Speaker of this House, we were guided by the Standing Orders. There is no qualification as to whether the Speaker should not be a member of any political party. And above all, the Speaker is a Member of Parliament. As you retreat to make the determination, you must bring to the attention of the country that the Speaker is, indeed, a Member of Parliament, and not a civil servant. I beg to differ with the ruling of the court.

Hon. Speaker: Hon. Major Bashir

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Thank you, Hon. Speaker. I would like to give my input on this matter. You ruled on this matter on 6th October 2022, and it has now been almost two years. It seems like we are being taken back to something that you had made a ruling on. Up to now, this House has done exemplary well in executing its duties and mandate. Now we have been taken back. I think the ruling itself is not in good faith. I looked at the ruling and one thing that I picked is the issue that the electorates determined who the Leader of the Majority Party is.

Hon. Peter Orero (Kibra, ODM): Hon. Speaker, on a point of order.

Hon. Speaker: Member for Kibra, what is your point of order? Clerks-at-the-Table, hold Hon. Bashir's time. Hon. Orero.

Hon. Peter Orero (Kibra, ODM): Hon. Speaker, so far, only 20 Members have spoken. I suggest we reduce the time from five minutes to two minutes.

Hon. Speaker: Hon. Orero, we are doing three minutes. It is not too bad.

Hon. Major (Rtd.) Abdullahi Sheikh Bashir (Mandera North, UDM): Hon. Speaker, as I was saying, the ruling stated that voters determined the Majority and Minority Leaders at the ballot. If you look at the specimen of the ballot paper, there was nowhere written Kenya Kwanza Coalition or Azimio la Umoja—One Kenya Coalition Party. It was just individual Members and their parties. On that aspect, the court might have gone too low. There is no way voting would have determined who is a member of a coalition and who is not.

There is what we call pre-election pact and post-election pact. For UDM, of which I am a member, we had a pre-election pact with Azimio la Umoja—One Kenya Coalition Party. After the elections, we had a post-election pact with the Kenya Kwanza Coalition. It is allowed. It is provided for in the statutes. If as UDM we decided that we have a relationship and are working with the Kenya Kwanza Coalition, no one can stop our interaction. There is freedom of association and freedom of speech.

As you make your determination, the only person you need to rely on is the Registrar of Political Parties to inform you of the status of the 14 Members and their party. With that information, you will determine if they belong to Kenya Kwanza Coalition or Azimio la Umoja—One Kenya Coalition Party. We will go back to the status quo *ante* until you make the determination.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Jane Kagiri.

Hon. Jane Kagiri (Laikipia County, UDA): Thank you, Hon. Speaker. I attempted to understand the ruling. I realised it was 71 pages, with 508 paragraphs. I also read that there were 34 prayers, but the judges only honoured three.

In the first prayer, the judges said that the Majority and Minority parties were already determined at the ballot on 9th August 2022. As a layman, I want to translate this to mean that the determination that was made at the ballot is based on the Members of Parliament seated in this House. I believe it is in your power to determine who the Majority and the Minority are even by a simple head-count. Our Constitution provides for freedom of association, and any Member can choose to be in whatever coalition they want. It will be your responsibility to make a determination of the Minority and Majority parties based on that. For parties that already left their coalitions, there is a right to be in new associations that they deem comfortable and necessary for them.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Jane. Let us hear the Deputy Speaker.

(A member spoke off the record)

You said you wanted gender equality. Let me give the chance to women. Hon. Deputy Speaker, proceed.

Hon. Gladys Boss (Uasin Gishu County, UDA): Thank you, Hon. Speaker. When this judgement came out, I remember reading it with a lot of disbelief as a lawyer. First of all, I can correct Hon. Junet. The court did not say that the Azimio la Umoja–One Kenya Coalition Party is the Majority Party. You cannot be sitting on that seat. That is going to be determined by the Speaker. As we speak, that is not the case.

(Applause)

I just want to point out a few things. I can say the judgment is conflated, convoluted and confusing. It even reveals that there were no laws that were looked at. For example, the argument that the Speaker cannot be a member of a political party, or be a political party leader, is flawed. Section 12 of the Political Parties Act prohibits every public officer from getting into a party or in politicking, but sub-clause 2 provides an exemption to the President, the Deputy President, Members of Parliament, members of county assemblies, governors and deputy governors. And the Speaker is a Member of the National Assembly.

(Applause)

Article 97 of the Constitution outlines the membership of Parliament, which includes the substantive Speaker as an *ex-officio* member. Just looking at that, I would like my colleagues who are praising the judgment to know that it has a very glaring and complete disregard for the law. You do not need to be a magician to know that. Just read Article 97 of the Constitution and section 12(2) of the Political Parties Act.

Secondly, the way the court has interpreted the law that determination of the Majority Party and Minority Party is decided by the people at the ballot is inaccurate. Kenya is a first-past-the-post (FPTP), which means individuals who are voted can enter into a coalition and join parties. I think they are confusing it with the South African method. South Africa has a mixed-member proportional representation (MMPR) system, where people are voted in by parties, not as individuals. Parliament should ask itself how come we have a Judiciary that does not follow the same laws they are supposed to apply and interpret.

Thirdly, the judges say that they decided to look at other evidence and that they did not have any evidence of who had left the coalition. In the same judgement, they contradict themselves and point out that the Registrar of Political Parties provided evidence. This judgement came when we were away. Immediately, I instructed the Clerk of the National Assembly to write to the Registrar of Political Parties to give us a true position of how membership is organised. I request the Clerk to give me that letter so that I can table it and let it become part of these proceedings and, then, as the Speaker, it will be at your discretion to make a ruling as to who the Majority and Minority parties are. The courts do not have any power to do that. That is why even though they nullified your ruling, they did not make any declaration. They know that is the mandate of the Speaker.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Emmanuel Wangwe.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Speaker. I seek that you clarify two issues. First is the prayer presented by the petitioner to declare your seat vacant. You tried to explain this in the beginning, but my take is different. We all know that Article 106(2) of the Constitution provides how you can vacate your office. In this case, the court appears to be following the petitioner, who is “chasing the wild goose”, to understand how you can be relieved of your position because of your party affiliation. In your ruling, I ask you to clarify how the court has come up with this decision and whether this is in order,

On the second prayer, which is about Article 103 of the Constitution, as read together with section 14 of the Political Parties Act, the petitioner wanted to understand whether, by virtue of association, a Member can exit a political party or coalition. The Ruling does not appear to me to be satisfactorily responded to. Therefore, I seek that you clarify whether it is true that there is another way other than writing to the Registrar of Political Parties to confirm that a Member belongs to a particular coalition or party.

Hon. Speaker, those are my two issues that I wish you to clarify as you make your Ruling.

Hon. Speaker: Thank you. Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker.

The High Court of Kenya made this decision pursuant to Article 165 of the Constitution that gives it power of original jurisdiction over matters concerning questions of the interpretation of the Constitution. We must be alive to the fact that the High Court of Kenya only exercises original jurisdiction. This matter, most likely, will go to the Court of Appeal under Article 164 of the Constitution and ultimately to the Supreme Court of Kenya under Article 163 of the Constitution because it concerns constitutional interpretation.

Hon. Speaker, you may be in your right place to decide on this matter but I request you have regard to the provisions of Article 10(2) of the Constitution as you communicate your position to guide us in terms of how to proceed.

Having said so, as you make your decision, I request that you help us understand and resolve the following matters:

1. Members are asking for determination of which party is the majority or minority in Parliament a *de jure* or *de-facto*. Is it based on law or it sits on existing facts? May your Communication, Hon. Speaker, clarify that.
2. I am asking you this together with the Members, whether it is a decision to be made at once at elections and then it remains static, or it is capable of change due to the possibility of post-election coalitions? We have seen this in Israel and Germany. What happens if it is static and at once if parties like United Democratic Movement (UDM), Movement for Democracy and Growth (MDG) and others that were to move from Azimio effectively, successfully and lawfully joined Kenya Kwanza. How would that position sit with the judgement?

3. Hon. Speaker, I seek you to clarify that if the determination is static, how does the judgement sit with the provisions of Article 36 of the Constitution. As you make your determination...

Hon. Speaker: Give him one minute.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, when you decide, look at the provisions of Standing Order 178(2) as read with Standing Order 174(2A). To what extent does this decision affect the leadership of oversight committees like Public Accounts Committee (PAC) and Public Investments Committee (PIC)? Can the Members of the parties which the judgement has said did not move from Azimio One-Kenya Alliance seek to chair those oversight committees; and what of Members who are independent? To what extent, would it affect our side?

Lastly, on the matter concerning the sitting of the Speaker, I request that you look at the provisions of Article 106(2) of the Constitution.

As a supporter of broad-based government, allow me to say this.

(Laughter)

It is very painful when supporters of the broad-based government are travelling to Mombasa on economy class and then find Hon. Gakuya and Hon. Wamuchomba sitting on business class because they are chairpersons of committees. We want reorganisation that ensures equity in the broad-based system.

(Applause)

That is why I would agree that whatever decision you make, we must ensure we be equally integrated as a broad-based government in a presidential system.

Thank you, Hon. Speaker.

(Applause)

Hon. Speaker: Hon. (Dr) Lilian Gogo.

Hon. (Dr) Lilian Gogo (Rangwe, ODM): Thank you very much, Hon. Speaker, for giving me this chance. I must say that in the spirit of separation of powers, whatever we decide on the plenary is unanimously decided by the Speaker of the National Assembly. In the recent past, the Judiciary has had its own share of problems and it could now be diverting focus and attention to Parliament. Why was this particular judgement made two and a half years after elections? What is their intention?

(Applause)

We have issues of governance that we want to solve for our people. The people of Rangwe have no roads. I am not interested in who the Leader of Majority Party or Leader of the Minority Party is, though I want Hon. Junet Mohamed to be the Leader of Majority Party. But what I care for now is service delivery to the people of Kenya.

Concerning this matter, this is what I want to say. We have 345 Members or thereabout in the National Assembly. They come here known with their names. Let this matter be determined next Tuesday and let everybody be present. Let each Member tell us whether they want to be in the Majority or Minority parties so that we dispense off with this matter and we go to serious national issues that will help the Executive deliver its mandate. As Members of the National Assembly, we have a mandate to deliver to the people of the Republic of Kenya.

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When it comes to voting for the Speaker of the National Assembly, I will personally vote for one Hon. Moses Masika Wetang'ula so that we stop wasting a lot of time.

The world is moving forward. What are we doing as Kenyans? If we are talking of majority and minority, how could the Majority impeach its own Deputy President? This is something that happened last year. So, goal posts have shifted as it were. *Wakisema ni Mhe. Junet, niko na yeye*. What we want is service delivery to Kenyans in the best way possible.

Hon. Speaker: Thank you. Member for Keiyo South.

(Loud consultations)

I will give more Members a chance thereafter. Do not worry. Everybody will speak. There is plenty of time. I am in no hurry. I will listen to all of you. You are making my mind richer.

Hon. Gideon Kimaiyo (Keiyo South, UDA): Thank you, Hon. Speaker.

Like my colleagues, I have also read the judgement from the High Court. The only thing they said you did wrong was that you did not submit, in your affidavit, the evidence that the three parties

(Hon. Raphael Wanjala consulted loudly)

Hon. Speaker you need to protect me.

Hon. Speaker: You are protected. Hon. Wanjala, you are making the Member on the Floor feel intimidated.

Hon. Gideon Kimaiyo (Keiyo South, UDA): Hon. Speaker, I have read the judgement as my colleagues have. You have always been impartial in this House. There is no question about that. The three-judge bench said that your only problem is that you did not submit the evidence in your affidavit. So, what you need to do is to write to the Registrar of Political Parties, get evidence that the three parties – United Democratic Movement (UDM), Pamoja African Alliance (PAA) and the rest – and their 14 members belong to the Kenya Kwanza Coalition.

Hon. Speaker, I also want to agree with my colleagues that coalitions keep changing. We may have a coalition with two or three parties today, but then tomorrow, one part moves from one coalition to another one. So, the position of Majority and Minority parties is dependent on which party has moved to which coalition.

Hon. Speaker, in your ruling, just write to the Registrar of Political Parties to know the number of parties in each coalition so that the matter is put to rest. Otherwise, like my colleague has said, that matter should rest here. It is not the work of the courts to decide the number of members in a coalition of parties or a party. It is the work of the Speaker to decide how many parties are in a coalition. As my colleagues have said, the court did not say that the Azimio Coalition is the Majority Party. That is the work of the Speaker. We will abide by your ruling.

Hon. Speaker: Member for Nyaribari Chache.

Hon. Zaheer Jhanda (Nyaribari Chache, UDA): Thank you, Hon. Speaker. I read the ruling which I see as a strange judgement purely driven by mischief. Why do I say so? The judgment stated that the Speaker is a stranger to this House and not a Member of this House. Is it not shocking that the very persons who are supposed to interpret and apply the Constitution disregarded the plain provisions of Article 97 of the Constitution, which clearly states that you are a Member of this House? In any case, it is plain truth that the Speaker of any Parliament is actually the first Member of that Parliament. For the court to misread the Constitution to create the public perception that you, the Speaker of the National Assembly, is not a Member of Parliament, is tantamount to amending the Constitution within the walls of the courtroom, contrary to the Constitution itself.

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The same judgement went to great lengths to explain how the Speaker cannot hold a political office. Where is it written in the Constitution that the Speaker, who is elected by Members of this House, cannot hold a political office? Please, note that the same court never gave final orders that the Speaker of the National Assembly cannot hold a political office. How did the issue of which are the Majority and Minority parties end up determining whether the Speaker can hold a political office? We will not sit here and watch unknown forces try to play dirty within the House and the sanctity of the Speakership. On behalf of our Speaker, we say no to such games. On behalf of our great *mulembe* son, we say no to such antics. As I wind up, on behalf of our great national leader, we say a loud no to such games. You should stay put. I rest my case.

Hon. Speaker: Thank you, Member for Nyaribari Chache. Hon. Nabii Nabwera. Can I reduce the speaking time to two minutes?

Hon. Members: Yes!

Hon. Speaker: Two minutes. Hon. Nabii, compose your argument in two minutes.

Hon. Nabii Nabwera (Lugari, ODM): Thank you, Hon. Speaker. I want to associate myself with the comments made by Hon. Caroli Omondi. This ruling is inviting you to make a finding based on our Constitution, the Political Parties Act and the Standing Orders. Can you be invited to make a finding based on the following: One, the letter from the Registrar of Political Parties, as the situation is. Two, the spirit of the Broad-Based Government. In fact, if I was Hon. Kimani Ichung’wah, in the spirit of the Broad-Based Government, having served as the Leader of the Majority Party for two-and-half years, I would have told Hon. Junet that since we are the drivers of the Broad-Based Government, he can now take over and captain this ship to the next level. That is what we want in terms of the Broad-Based Government – to unite the country.

Finally, Hon. Speaker, I have realised in the recent past that, just like what happened in 2013/2014, a group of people, namely, the national media and the courts, have been targeting Parliament. I want to call upon my colleagues in this House to realise that this judgement is not about the Speaker. It is about Parliament. If we do not stand up against the Judiciary, we will be headed in the wrong direction.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Betty Maina.

Hon. Betty Maina (Murang’a County, UDA): Thank you, Hon. Speaker. Mine is to seek for...

Hon. Speaker: You have two minutes.

Hon. Betty Maina (Murang’a County, UDA): Thank you, Hon. Speaker. Mine is to seek clarification. Who will guide the House when there is a stalemate? Secondly, the court found that the decision you made in this House was null and void. In an incident like today’s where there is a lacuna, who should make decisions in this House? Finally, is it within your powers as the Speaker, to make the decisions of this House under Standing Order 1, or is it the role of our courts? I ask those questions humbly.

Thank you.

Hon. Speaker: Hon. Marianne Kitany

Hon. Marianne Kitany (Aldai, UDA): Thank you, Hon. Speaker. I stand to make reference to a letter that is doing rounds on social media. It has been written to you requesting for your resignation following the judgment or the ruling on this case. Nowhere does the ruling state that the Speaker shall resign. Secondly, the Member of Parliament who has written this letter is the Member for Starehe, who is also the Member who hosts Parliament. This House is hosted in Starehe Constituency. The Member rarely speaks in this Parliament. He is rarely in this Parliament and the only time he comes close to the precincts of Parliament is when he is at the bar.

(Hon. Mark Mwenje consulted loudly)

He is a Member of Parliament and he should be seated here...

Hon. Speaker: Order, Hon. Mwenje! This is not a market place, for heaven's sake. As a young lawyer and a young Member of Parliament, I have been mentoring you and telling you how to conduct yourself in many ways. However agitated you are, just maintain your cool like the old good doctor next to you. Even if you have a point of order, you do not have to stand up and shout at your colleague. That is gross disorderly conduct. Carry on, Hon. Marianne.

Hon. Marianne Kitany (Aldai, UDA): Thank you Hon. Speaker.

Hon. Speaker: You have less than a minute to go.

Hon. Marianne Kitany (Aldai, UDA): Thank you. The ruling states that under the Political Parties Act, you cannot be a member of a political party because you are not a Member of Parliament and yet, the Constitution of Kenya, which is more supreme, states that the Speaker is an *ex-officio* Member of Parliament. Therefore, the rights that a Member of Parliament enjoys are the same rights the Speaker enjoys. The Speaker can belong to a party.

Hon. Speaker: Thank you. Member for Kajiado South.

Hon. Parashina Sakimba (Kajiado South, ODM): Thank you, Hon. Speaker. I stand to support the ruling by the High Court. We are supposed to abide by it. It is also good to confess today that I voted for you. If the election was repeated today, I would still vote for you.

Hon. Speaker: Thank you for that confidence.

Hon. Parashina Sakimba (Kajiado South, ODM): You had a lot of friends at that time and you have more now. If all of us look at other agreements that have come in, the party that I serve— Orange Democratic Movement (ODM)— is also in the Broad-Based Government now.

(An Hon. Member spoke off the record)

(Loud consultations)

Let me just finish.

Hon. Speaker: Do not address Members across the Floor. Address the Chair.

Hon. Parashina Sakimba (Kajiado South, ODM): Thank you, Hon. Speaker. If we go back to 2022 when Kenyans voted, they voted on the manifesto and certain beliefs. When Azimio la Umoja-One Kenya Coalition Party went to court, they sought justice at that time. Even if justice took two years to be served, it does not mean we should not adhere to the judgement that has been made.

For example, if someone takes your property and then he gives you half of it, when the judgement is made that it is yours, you will go back and take it. I respect and love Hon. Kimani Ichung'wah so much. However, Hon. Junet Mohamed is qualified to be Leader of the Majority Party. Kenyans are waiting for that decision to be made today. As we go ahead, what are the fruits of this Broad-Based Government? We need them today to see if they can give us a small cut of the meat.

Thank you.

Hon. Speaker: Hon. Chikati. Give him the microphone. You have two minutes.

Hon. John Chikati (Tongaren, FORD-K): Thank you, Hon. Speaker. Article 106 of the Constitution does not disqualify a political leader from holding Speaker's office at all. I will give some examples. The Deputy Speaker of this House, Hon. Gladys Boss, is an elected Member of the National Assembly from Uasin Gishu County. The party leader of the Movement for Democracy and Growth (MDG), Hon. Ochieng', is a member of the

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Chairperson's Panel. The Senate Speaker, Hon. Amason Kingi, is a party leader of the Pamoja African Alliance (PAA).

Nationally, all the county assemblies are led by elected Speakers. Regionally, the Speaker of Uganda, Madam Anita Among, is also an elected Member of Parliament for Bukedea District Women Constituency. The Speaker of the National Assembly of Tanzania, Hon. Tulia Ackson, is an elected Member of the National Assembly from Mbeya. This decision to disqualify a Speaker from holding a political office is unconstitutional and an attempt to change Article 106 of the Constitution, which is totally unacceptable.

I submit.

Hon. Speaker: Thank you. Hon. Bensuda.

Hon. Atieno Bensuda (Homa Bay County, ODM): Thank you, Hon. Speaker, for giving me this opportunity to contribute. I would like to seek clarification and give my view on this issue.

One, we need the 13th Parliament to stop giving the public mixed reactions and signals on issues. Therefore, court rulings must be respected. Hon. Speaker, you know very well when there was the ruling on the wild goose chase, hot air and the rest, and it was respected. We are in this House as legislators or lawmakers. I support colleagues who have requested you to guide and give us direction, so that it is not for only Members at this particular moment. When we undergo such kind of eventualities in future, things will be straight and the pace will be set.

I appreciate the six facts which you gave on the ruling that the Speaker has conflict of interest. They convinced me. When we come to the issue of Majority Party, as I stand, you can see that I am and we are broadly competent and we are the majority. Even from the physical outlook, I belong to the Majority Party.

(Laughter)

This matter should be put...

Hon. Speaker: Order, Hon. Bensuda. The Majority Party is not judged by body morphology.

Hon. Atieno Bensuda (Homa Bay County, ODM): Thank you, Hon. Speaker. I was intentional, but even the brain is the majority. Even the level that we have reached as a country, Hon. Junet Mohamed has navigated the River Nile and made sure that we are fully represented and there is peace. This issue of mixed signals should not be there. There is nothing wrong with us occupying the space.

Hon. Speaker: Hon. KJ.

Hon. John Kiarie (Dagoretti South, UDA): Hon. Speaker, I thank you for letting me catch your eye. You are hereby called upon to make a decision, which is expected to be very Solomonic. As you make it, you have to appreciate that the problem that we face today is not legal, but political and numerical - political numbers. As you retreat to your chamber to make a ruling on this matter, all you need to understand is that there are pre-election and post-election coalitions. Kenyans decided on this when they granted themselves the Constitution. Parties can come together before or after an election.

In the interest of time, so that this House can apply itself on the issues that Kenyans are keen to hear us debating, and which are matters that concern their welfare, I call upon this House to agree that if you were to take a headcount today, you will find that Kenya Kwanza is the Majority Party. Hon. Kimani Ichung'wah is the substantive Leader of the Majority Party. As the numbers stand today, you were right in your place to make a decision that Kenya Kwanza is the Majority Party and the status quo remains. This is not legal, but arithmetic and political. Just like Bunge cannot interpret the law, the courts cannot make political decisions for this country.

I ask us to protect the sanctity of this House so that we can go into the business that Kenyans elected us to do. They did not elect us to argue on who is the Leader of the Majority Party and Leader of the Minority Party. Hon. Speaker, make your ruling that Kenya Kwanza is the Majority Party.

Hon. Speaker: Hon. Ruweida Obo.

Hon. Ruweida Mohamed (Lamu East, JP): Ahsante Mhe. Spika. Tunaheshimu uamuzi wa korti lakini hatukubaliani nao. Mwanzo, sisi kama Jubilee Party, tulikuwa tushaenda. Hatuko kwa Azimio la Umoja-One Kenya Coalition Party. Ukiangalia Mawaziri wale tuko nao saa hii, ambao walipeleka haya mambo kortini, Mhe. Wandayi na Mhe. Mbadi, saa hii wako kwenye hii Serikali. Kwani hao mahakimu hawaoni mambo yamepita na yameendelea? Kwani wanaishi Kenya gani? Sasa huku ni kuleta taharuki. Sisi hatuna haja nayo. Serikali hii imepitia changamoto kubwa na nyingi. Kwa hivyo, tafadhali, tunaomba watupatie nafasi tuendeleo.

Kuna jambo kuhusu ofisi ya Mhe. Spika. Katiba haijasema Jambo kulihusu na imenyamaza. Hii yamaanisha inaruhusiwa. Haina haja kuwalenga Maspika wawili hawa. Katiba iko na ifuatwe. Haikukataza. Inamaanisha ni sawa uwe hapo kama Spika.

Mhe. Spika, naona mlengwa ni wewe na labda utuambie ukweli. Hatujui umefanya nini huko. Ulikanyaga waya au kuna stori gani huko? Naona kama wewe ni mlengwa na sisi twaona haya mambo ni kama kumwambia bibi na bwana waliooana kwamba hawaruhusiwi kisheria kuonana ilhali wamependana na washazaa. Tumeshikana katika *broad-based government*. Sasa, shida zote hizi ni za nini?

Hon. Speaker: Next is the Member for Khwisero, Hon. Aseka. Give him the microphone. He is at the end there.

Hon. Christopher Wangaya (Khwisero, ODM): Thank you, Hon. Speaker. I have read the 71-page and 508-paragraph judgement. I request that as you retire to make your ruling, consider its repercussions on the composition of the Independent Electoral and Boundaries Commission (IEBC) selection panel and the repercussions on the Commission on Revenue Allocation (CRA), which was approved by this House as well as the repercussions of the committee reports of this House.

Hon. Speaker, also consider and advise this House on the court's decision that a party leader is not supposed to preside over this House. Does it mean that even the President of the Republic of Kenya, who is a party leader in this country, was supposed to resign when he took over the Executive?

Thank you, Hon. Speaker.

Hon. Speaker: Member for Kitui Central, Hon Makali Mulu.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Speaker. This is my input on this issue. Everybody who sits in this House swore to defend and protect the Constitution. As it is, the courts have given a ruling and I have not seen anybody in this House table a stay order to say that things should be as they should be. Unless that has happened, the House has no choice but to respect the ruling of the courts. At the time we joined this House, there were pre-election coalition agreements which had been signed. On the basis of those pre-election coalition agreements, Azimio was declared the Majority Party. The way forward is if there are post-election coalition agreements which have been signed or formalised, they just need to be tabled and it will make it easy for you to make a ruling. But even as you make a ruling, the composition of committees and slots to the IEBC were determined on the basis of Majority and Minority parties. Therefore, it will have implications.

Hon. Speaker, the sooner you do this, the better for the House. This will enable us know how we will reorganise the committees because, in a situation where Kenya Kwanza was the Majority and now are the Minority, it means that we have to restructure the committees by reducing the numbers. This is not a simple matter as we are treating it. We need to take this seriously and the starting point is to know whether we have post-election coalition agreements

which have been formalised. We are aware that some parties have crossed sides. Some of us in Wiper Democratic Movement are still very...

Hon. Speaker: Yes. Is the Member sitting behind Hon. Rahim Hon. Chiforomodo Mangale?

Hon. Chiforomodo Mangale (Lunga, Lunga, UDM): Thank you, Hon. Speaker. Apart from the quagmire which has been caused by the courts, it is a wakeup call for them to ensure that matters which are presented before them are concluded on time so that it does not cause all this confusion. This is because a lot has happened after the case was taken to court. I have gone through parts of the ruling and I have seen that they have said that the decision of the Majority Party in Parliament was done by the electorate. I want to differ because what was the reason for us to vote for the Leader of the Majority Party, the Speaker and all the other leaders? I believe that those people have purposefully confused this Parliament and we need to put our feet down. The public needs to hear us debating serious issues which actually affect them. This is the time to expedite this matter and your guidance is paramount for us to move forward. Otherwise, I see this issue as a time-wasting strategy for this Parliament.

Thank you, Hon. Speaker.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Speaker. I would like to approach this matter from two fronts. First, the position of the Speaker has already been outlined under Articles 97 and 106 of the Constitution of Kenya. Therefore, there is no one who can challenge the position of the Speaker, who is elected and qualified to be a Member of Parliament.

Secondly, on the issue of leadership, Standing Order 19, which is a replica of Article 108, clearly states that the Majority Party shall produce the Leader of the Majority Party. The only question we need to determine when making a decision on this matter is who the Majority Party or the coalition parties are. This can only be achieved when you invite the Registrar of Political Parties to give you those facts and the matter will end here. It is a weighty matter but simple to determine. This will enable us determine who the Leader of the Majority Party is and any coalition or parties must also be brought to Parliament under Standing Order 19. Whatever Hon. Millie Odhiambo purported to bring here was premature. This is because she did not present an agreement of political parties together with the list she presented before this House.

Thank you, Hon. Speaker.

Hon. Speaker: Next is your immediate neighbour, Member for Kabuchai.

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Thank you, Hon. Speaker. The courts are intending to throw this House under the bus, and we must be very careful. In the 48 Laws of Power, if you want to disperse the flock, you strike the shepherd. You are the shepherd of this House. Striking you would disperse the flock of this House. As you retire to make your judgement, I want to bring to your notice that once, this House was led by senior people. I remember well in 1993-1994, FORD Kenya was the Majority Party under the Leader of the Opposition, Hon. Jaramogi Oginga Odinga. But the moment FORD Kenya split into two, that is FORD Kenya and Liberal Democratic Party (LDP), seats fell from 44 to 22, and Hon. Mwai Kibaki and the Deputy President took over this House as the leaders of the Opposition. That tells you that House leadership is dynamic. You can never step in a river twice. If you do that, you are a different man in different waters. Make a decision according to the dynamics of this House. Having heard what Hon. Murugara has said here, make the decision as is today. Give your evidence and declare Hon. Ichung'wah as the Leader of the Majority Party, as is the case today.

Thank you, Hon. Speaker.

Hon. Speaker: Next is the Member for Matuga. Yes, give the microphone to Hon. Tandaza. There is time. You will all speak. Do not worry. Tandaza, you have two minutes. *Nyorosha maneno yako.*

Hon. Kassim Tandaza (Matuga, ANC): *Which one?*

Asante sana Mhe. Spika. Kwa sababu mimi ni mhandisi, sikumbuki ni mwandishi yupi aliyesema haina haja uendeleo kubembeleza farasi wako unayempenda na anayekimbia mbio kushinda wengine na kuleta zawadi zote. Kwa bahati mbaya, umri wake hufika akafariki. Haina haja uendeleo kubembeleza na kumletea chakula kwa sababu ulimpenda sana ukidhani ataamka kukushindia mbio ulizotaka. Cha kufanya ni kutafuta farasi mwingine, umlishe, umfanyishe mazoezi, na aendeleo kushinda.

Sasa, kwa kifupi, uamuzi huu umepitwa na wakati. Najua wanahistoria ni wengi hapa. Ndio maana tunazungumza kwa kirefu. Sidhani kama kuna mtu aliye na tashwishi na ukweli ulivyo kwamba Azimio ilifariki. Kama hawataki kuizika, ni sawa. Lakini tunajua ilifariki. Uamuzi unazungumzia Azimio ambayo haipo. Sasa tutafufua vipi farasi ambaye amefariki hata kama tulikuwa tunampenda? Ndugu zangu, tukubaliane tulichagua Spika sawasawa. Kiongozi wa Walio Wengi ni Kimani Ichung'wah ambaye yuko hapa. Tukubaliane kuwa bado sisi ndio wengi. Sioni haja kudhani tutafufua farasi.

Ahsante sana, Mhe. Spika.

Hon. Julius Mawathe (Embakasi South, WDM): Thank you, Hon. Speaker.

This is a House of rules. Kenya is a country of laws. The ruling we will be given about this matter will determine whether the House obeys court orders or it is a House that disobeys court orders. There is the Judiciary for a reason. There is the Legislature for a reason. There is the Executive for a reason. The court has issued a ruling. There is no way a court issues a ruling that is taken to a police station and police officers disobey it.

Hon. Speaker, there is no way a court issues a ruling that will be taken to a police station and police officers told to have a discussion about the court ruling to decide between left or right. There is a court ruling. This country should obey court orders. We should obey this court order. This Parliament should obey the court order.

Hon. Speaker: Give it to Pukose.

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Speaker. On the position of Speaker, I was your agent during the time. I can confirm there was no requirement for you to resign as the Party Leader of FORD Kenya. That passed.

Hon. Speaker, as you retreat to rule about the Majority and the Minority, I want our Constitution to guide you. Article 108 says that the Leader of the Majority Party shall be the person who is the leader in the National Assembly of the largest party or coalition of parties. As it stands, Kimani Ichung'wah is the leader of the largest coalition in the National Assembly. Junet Mohammed is the leader of the second-largest coalition in the National Assembly.

The court gave you a chance to rule as it is now. That is why it talks of *ex-parte* and *ante*. I think you will rule on a new beginning and it stands from there moving forward. It is not a question of going back after the elections, pre-election agreements, or anything of that nature. I rest my case, Hon. Speaker.

Hon. Speaker: Member for Garissa *Mjini*.

Hon. Dekow Mohamed (Garissa Township, UDA): Yes, it is *Mjini*.

Thank you very much, Hon. Speaker. We have been raising our hands here for quite a long time.

Hon. Speaker: Do not complain. I have given you an opportunity. Make your point.

(Laughter)

Hon. Dekow Mohamed (Garissa Township, UDA): Now, there is some confusion here in that some people are misinterpreting the court ruling on the Majority and the Minority coalitions in this House. The court ruling was that your decision on 6th October 2022 was null

and void. However, who is to make this decision again? It is not the courts. It is the Speaker of the National Assembly.

We have sat here the whole afternoon yet no other business of this House can take place because a decision has to be made. Can you make that decision, Hon. Speaker? It is upon you. It is with you. The issue is about numbers. We know the numbers. You know the numbers. Make the decision based on the numbers you have. This is a political issue. It has nothing legal.

Hon. Speaker: Hon. Alice Ng'ang'a, Thika Town.

Hon. Alice Ng'ang'a (Thika Town, UDA): Thank you, Hon. Speaker.

A ruling was made in this House in 2022 and Kimani Ichung'wah was declared the Leader of the Majority Party. To me, the ruling still stands. The National Assembly is an independent arm of Government. Whatever business we do here stands. Courts cannot make laws. We do it here. You should clarify to us when they go out there and purport to change a 2022 ruling making the country come to a standstill. Are all the businesses we have concluded in this House null and void? Does it mean everything we have done in this House does not count?

The courts should stop interfering with the running of this House. People who do not wish this nation well is what I have seen in this ruling. Because of the broad-based government, they are outside here to scatter everything and the achievements we have had this far. The only big thing I can tell them is *washindwe tena sana*.

Hon. Speaker: Thank you. Hon. Kajwang', you are senior.

Hon. TJ Kajwang' (Ruaraka, ODM): Hon. Speaker, you are up to the task. You are a veteran Speaker. You are a veteran lawyer. You are a veteran politician and my senior.

The fact of the matter is that there is a high court decision. The question would be what you will do with it. I want to bring something to your attention. I am sure your staff will bring it to you. It is the ruling you made on 8th June about political parties. You are the only Speaker who respects the rule of law. The very first speech you gave when you came here was heart-warming. That, you came here to protect the Constitution. That, above all, you came here to demonstrate the rule of law.

Please give me a little time. I think we are at the end.

You said that you would obey a court order, although you differ with it or you have a respectful otherwise view. Let me get what you said on that day.

"In reference to the directions of the court with respect to the appellate administration process, I did notify the House that despite the discomfort this decision caused on the business of the House, I instructed the liaison delegation to challenge the Speaker immediately thereafter. As your Speaker, I remain cognisant of the obligation imposed on Article 3 of the Constitution with respect to defending the Constitution and the proceedings of the House. Despite the sympathies I hold for the predicament of the Minority Party, my hands are tied with regard to the court order." That is the only question.

All these debates in the afternoon are neither here nor there. The fact is that there is now an order. We await your decision, cognisant of the rule of law under Article 10, which is very conspicuous. We know that you will do it.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. (Dr) Nyikal. Sorry *Daktari*. With your age, we have kept you for so long.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Speaker. The matter before the court was whether the decision declaring one of the two coalition parties as the majority was valid. The court decided that it was not correct. Therefore, it stands to reason that the other coalition must be recognised as the majority party.

The Members have engaged in lengthy debate asking you to make a ruling, but what remains is for you to implement the court's decision. If you take the position that the status quo

ante is what prevails, then why did you subject the House to this lengthy discussion? It would have been best to allow the process to go on, and adjourn the House because it cannot proceed without a clearly defined majority and minority leadership.

Regarding concerns about whether you will be fair, sometimes, justice goes beyond the law. You are a known party leader within a coalition. The party has Members who sit in this House. You would have to be an angel not to favour one party. Even with this decision, some may be tempted to think that it is what drove your decision. You are an experienced and articulate lawyer. How is it that you made a decision that the court has found to be incorrect? I think we should consider whether someone who is a leader of a party can also be the Speaker of the House.

Hon. Speaker: Read the judgement. Hon. Ruth Odinga.

Hon. Ruth Odinga (Kisumu County, ODM): Thank you, Hon. Speaker. I have been waiting for an opportunity to speak for quite some time now.

First, I must state that I am not a lawyer and do not know much about the law. However, what puzzles me is how lawyers respect court rulings only when they favour them. But when they do not, they claim that we have quasi-judicial decisions in Parliament.

The court has nullified your decision, meaning we must go back to the *status quo ante*. Under the previous arrangement, it was obvious that the Azimio Coalition was the Majority Party. Going back to the *status quo ante* is the correct position. I am not having one minute because it is too short.

Secondly, most of the parties in Azimio have not left the Coalition. While some parties have stated that they want to leave, they are yet to formally exit. They are still there. Therefore, they are still within the Coalition.

Thirdly, one of the issues you are accused of is impartiality. Even in your demeanour and how you determine who speaks here, your impartiality shows. If you are the one to decide who holds the majority, we already know the side you will take. Someone else should make that decision.

Hon. Speaker: Order, Hon. Ruth Odinga. You are grossly out of order. If you wish to challenge the Speaker, you should bring a formal Motion for discussion.

Next is Hon. Ruku.

Hon. Ruku GK (Mbeere North, DP): Thank you, Hon. Speaker. First, I congratulate and thank you for the leadership you have shown in this House over the past two-and-a-half years. You have led us with a lot of wisdom and acumen. I also congratulate the Leader of the Majority Party, Hon. Kimani Ichung'wah, for an incredible job during this period.

The Judiciary delayed this ruling for two years, and as they say, justice delayed is justice denied. That does not mean the ruling is spot on. The separation of powers in our Constitution is a critical principle that underpins how the three Arms of Government should operate and function.

If you refer to the Registrar of Political Parties, you will get the results of the membership within coalitions. This will give you a straight answer on which side is the majority in this House. I am sure this is not a difficult ruling. You will be able to retreat and come up with an answer guided by the Registrar of Political Parties. I am sure the results will show that the Kenya Kwanza Coalition is the Majority Party in this House. Therefore, we stand to appoint the Leader of the Majority Party.

Hon. Speaker: Hon. (Dr) Oundo. Hon. Members, I will close this debate at 6:00 p.m. For those who will have the opportunity to speak, please take a moment to compose your ideas.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Speaker. As a country and as Members of Parliament, we swore to protect the Constitution of Kenya. Respecting a court decision is not a matter of discretion; it is a must. Until the High Court decision is appealed or set aside, we have no other option but to accept and obey it. The ruling brings us

to these questions: When is an election held? When are the results announced? Once the results are declared, does any other body in this country have the power to change the composition of this Parliament? Elections were held in August 2022, and the numbers were clear. Those numbers have not changed. Article 108 of the Constitution is very clear on the structure. The ruling you are being invited to make is not even a ruling until we annul the court order. We will then have no choice but to accept that the decision you made has been annulled. The decision you made was that Kenya Kwanza was the Majority Party. The opposite is straightforward. If your decision has been annulled, you have to go back and find the details of who was the Majority Party then, because that is the decision that is being annulled. I do not know what else we have to do.

Regarding your position as Speaker and a member of FORD Kenya, it is neither here nor there. We leave it to your conscience to determine if this impacts your impartiality or not. You are an elder, and we respect you. We do not wish to go into that matter.

Hon. Speaker: Hon. Bisau.

Hon. Bisau Kakai (Kimini, DAP-K): Thank you, Hon. Speaker. I received and read the court ruling carefully. I have also listened to the lawyers in the House. Surprisingly, starting with the first item—whether it is correct for you to remain as the party leader of FORD Kenya and the Speaker—I want to state that our Constitution is clear under Article 77(2), which states that appointed State officers shall not hold political party positions. However, you are not an appointed State officer, but an elected leader. I remember that my neighbour, Hon. (Dr) Pukose, was your chief agent. Many of us, including my brother the Senior Counsel Hon. (Dr) Otiende Amollo, voted for you. Therefore, we park it and we leave it at that. Across the border, your colleague, Anita Among, the Speaker of the Parliament of Uganda, is now vying for a position in the National Resistance Movement (NRM). Dr Tulia Ackson is also an elected Speaker. So, there is nothing that restricts you from remaining the FORD-K party leader and being the Speaker at the same time.

On the other issue of the Majority and Minority parties, I have read the ruling. The court has not come out clearly to interpret the law. Paragraph 508(iii) of their decision says: “An order of *certiorari* is hereby issued quashing the Hon. Speaker’s ruling or determination contained in his Communication from the Chair made on 6th October 2022 on the Majority and Minority parties in the National Assembly.”

Hon. Speaker: Give him half a minute more.

Hon. Bisau Kakai (Kimini, DAP-K): We expect our courts to give us clear rulings. The court is telling you to retreat and tell us who the Majority Party is. They have mentioned both the Minority and Majority parties, but they are not saying who is what. We expect our courts to give us clear direction. What we require from you, Hon. Speaker, is to give us direction on the Majority and Minority parties.

Thank you.

Hon. Speaker: Hon. Kimani Ichung’wah.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Thank you, Hon. Speaker. Mine is a point of order on a matter of decorum in the House. I was scrolling my phone on what is going on and I saw Hon. Salasya, the Member for Mumias East, livestreaming the proceedings of the House and recording himself from his seat at the back. The House and the Parliamentary Service Commission (PSC) have given us live coverage on national television. We cannot belittle the work of this House through such uncouth methods as recording on your phone and livestreaming what is going on in the House and saying very unpalatable things on live media. I request that you ask him to delete those things and apologise to the House.

Hon. Speaker: Hon. Salasya, is that correct?

Hon. Peter Salasya (Mumias East, DAP-K): Hon. Speaker, I have sat here for a very long time without being given an opportunity to speak.

Hon. Speaker: Order, Hon. Salasya. Is what is being alleged correct?

Hon. Peter Salasya (Mumias East, DAP-K): I do not know what he is talking about. I do not run my social media platforms. I have been raising my hand...

Hon. Speaker: Order, Hon. Salasya! The issue is: Are you livestreaming the proceedings and making unpalatable comments along the way?

Hon. Peter Salasya (Mumias East, DAP-K): Hon. Speaker, I do not know what Hon. Ichung'wah is talking about. I also have a contribution to make on the ongoing debate.

Hon. Speaker: Hon. Salasya, be honourable, my dear young man. If you are not honourable, it is very easy for Parliament to ask for the logs on your phone and see what you are doing. If you say it is true, then the Speaker will take some other remedial action. If you do not, it is a matter that can find your way to the Committee of Powers and Privileges, with unintended consequences. Why are you doing so?

Hon. Peter Salasya (Mumias East, DAP-K): I will have to confirm what he is talking about.

Hon. Speaker: Hon. Salasya, dishonesty is not a virtue.

Hon. Peter Salasya (Mumias East, DAP-K): Hon. Speaker, I do not know what he is saying, unless I go and confirm. I also raised my hand so that I could make my contribution.

Hon. Speaker: Order, Hon. Salasya. I believe that when you are in the Chamber, you listen and follow the proceedings. Take your seat. What we are discussing this afternoon is a very serious matter. The independence and leadership of this House is the issue being discussed. Every Member who has spoken here – your seniors and peers whom you have listened to – have been focused. They include the Members who have sat here for a long time. You complain that you have been raising your hand. Many Members also want to contribute. Hon. Lotee has been sitting here. We have Hon. Ferdinand Wanyonyi here – a *mzee* who has been sitting here from the time the House reconvened. The issue is why you are streaming the proceedings live and making comments along the way – comments that your colleagues are saying are unpalatable. That is the issue that has been raised by the Member for Kikuyu. You have even forgotten to switch off your phone. It is still streaming, I am told.

Hon. Peter Salasya (Mumias East, DAP-K): I do not know if Hon. Ichung'wah can say what I have commented on.

Hon. Speaker: Order, Hon. Salasya. I will instruct the Clerk-at-the-Table to get the logs on your phone. If I find what is being alleged to be correct, I will invite a member to file a complaint with the Powers and Privileges Committee for appropriate action. You can also be named.

Hon. Wamumbi.

(Hon. Eric Wamumbi spoke off the record)

Okay.

Hon. Robert Mbui, I will allow you to contribute. Clerk-at-the Table, proceed to get the details on Hon. Salasya's phone and furnish the Speaker with the same immediately.

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Speaker, for giving me this opportunity. I find this debate a little misplaced, because I do not know whether as a House we are supposed to be discussing court rulings. I thought what we generally do with court rulings is implement them. We have spent the whole afternoon discussing the court ruling and whether the judges were right or wrong.

Hon. Speaker: Hon. Robert Mbui, do not take us back. When Hon. Millie Odhiambo, who is your leader, raised the issue, you were here. The House was given direction by the Speaker. I expect your contribution to tell the House which way you want us to go. To go back and say that for the last three hours we have been debating in futility, you are taking a wrong

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trajectory. I know you are a senior member and a leader. We should have given you an opportunity at the beginning, but you also started by very unorthodox conduct.

Hon. Robert Mbui (Kathiani, WDM): Hon. Speaker, I was only trying to claim my position as the Deputy Leader of the Majority Party based on the ruling that we read from the court. The issue of the Majority and Minority parties, which is what we are discussing, is not an issue that is supposed to be decided by the Speaker or even this House. This is a decision that was made by Kenyans when they cast their votes during the last general elections.

On the issue of making a ruling as to which coalition forms the Majority or Minority, what we are supposed to do is to convey the information from the Registrar of Political Parties, which indicates how many members are in each coalition. I think we now have this problem because Parliament and politics in Kenya have become very indecent. It is important that when people are elected on a certain coalition, they spend their five years in it. If anyone feels that they do not want to belong to any coalition, the law is very clear that one should seek a fresh mandate from the people. What we have been doing in Kenya is that people get elected on a ticket of a party and, in the middle of the term, they jump ship and go to another party. At one time, our leader, Hon. Raila Amolo Odinga, was in a certain political party. He was dissatisfied. He left, went for a by-election and was re-elected back to the House. This business of people just crossing over to other parties is the problem. That is why we are here today.

I want us to respect the court ruling. The Majority Party is the Azimio Coalition and the Minority Party can take up their position on the other side.

Thank you.

Hon. Speaker: Thank you, Hon. Robert Mbui. Hon. Ferdinand Wanyonyi, proceed.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Speaker, as you retreat to look at the ruling, the best thing to do is to look at the coalitions we had before the election and after the election, and see which one has a majority of the membership. If you get the number each coalition has, you will be able to know who the Members are. As you can see, we are late.

(Hon. Fatuma Mohammed consulted loudly)

Hon. Speaker: Order, County Member of Parliament for Migori.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Speaker, as you retreat, you need to look at whether it is Azimio One-Kenya Alliance or the Kenya Kwanza Coalition which has the majority. If it is Azimio One-Kenya Alliance, look at how many people it has because people have moved out and others have come in. If it is Kenya Kwanza, also see how many people it has so that you are able to know who the majority are. It is as simple as that. That will enable us to move forward.

I rest my case. Thank you.

Hon. Speaker: Thank you. Hon. Kimani.

Hon. Kuria Kimani (Molo, UDA): Thank you very much, Hon. Speaker. On the issue of whether the Speaker is supposed to belong to any particular political party, the law is very clear on every appointive and elective position that a person in this country holds. I have looked at that and there is nowhere that there is such a requirement. Where the law requires that a particular person belongs to or does not belong to a political party, it expressly says so.

Hon. Speaker, I have studied this judgement. Paragraph 493 says:

“It will be remembered that our Constitution at Article 99(1) (C) only singles out the Speaker as the *Ex-Official* Member of the National Assembly unlike all the other Members because of his special status”.

The Judges who made this ruling did not even bother to read what Article 99(1)(C) of the Constitution says. Article 99(1) of the Constitution says:

“Qualification and disqualification for election as Members of Parliament.

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- (1) Unless disqualified under clause (2), a person is eligible for election as a Member of Parliament if the person-
- (a) is a registered voter;
 - (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament; and,
 - (c) Is nominated by a political party, or is an independent candidate who is supported...”

The reference to the Article of the Constitution that they purport to quote for this particular judgement does not say that. Therefore, the question we are asking ourselves is whether the Judiciary should interpret the law or make the law. By quoting an Article of the Constitution that is completely unrelated to that particular judgement, is an attempt to make a law - something which they should not do. Their work should be to interpret.

That is my submission, Hon. Speaker.

Hon. Speaker: Before I give the next Member a chance, Hon. Salasya, I am told you want speak but not contribute because you are under quarantine on the issue raised. The Clerk tells me you want to say something on that.

Hon. Peter Salasya (Mumias East, DAP-K): Hon. Speaker, on whatever Hon. Ichung’wah said, if he felt that I had bad intention, I apologise. But also, as, we, the people’s
....

Hon. Speaker: Order, Hon. Salasya. Were you recording? You have said, ‘if’. That is like you are not remorseful. If you were recording, it is not permitted by our Standing Orders. If you did that, let me guide you as a young Member because I want you to grow in your leadership. There is a lot of decency in apologizing. The Bible says the greatest word in human relations is the word “sorry”. If you did that, say sorry and delete those logs and we go on.

Hon. Peter Salasya (Mumias East, DAP-K): Hon. Speaker, I apologise. I will delete.

Hon. Speaker: Delete all those logs and let the Clerk confirm.

Hon. Waluke, John.

Hon. John Koyi (Sirisia, JP): Thank you very much Hon. Speaker for giving me this chance. The ruling of the High Court

Hon. Speaker: After Hon. Waluke, I will give chance to two or three other Members before we close.

Hon. John Koyi (Sirisia, JP): The ruling of the High Court has been overtaken by events because it took almost three years. The case was filed under a certificate of urgency. The three-judge bench should have acted very quickly and given their ruling immediately. It is not stated anywhere that the Speaker cannot hold a political office. Hon. Speaker, make a ruling on the Majority and Minority parties. There is very little difference in terms of work and salaries. People are aligning themselves politically for the next general elections.

I plead with the Members of this House to consider that time is of the essence and we are almost headed to elections. The Majority and Minority sides should remain as they are. I do not see any hitch that can force one to say that...

Hon. Speaker: Hon. Timothy Kipchumba.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Speaker. Article 3(1) of the Constitution provides that every person has an obligation to respect, protect, and uphold the Constitution. As a House, we have an obligation to respect court decisions. The effect of the court’s decision is that your ruling is a nullity. I have read that ruling. I beseech you not to proceed to issue a direction on this matter until it is appealed before the Court of Appeal.

There are unsettled matters in that decision that must be subjected to the test of the Court of Appeal. One of the issues touches on your election to the Office of the Speaker. You

may not be able to render a decision on that particular part of the ruling. For the House to be safe, we should get a stay so that the status quo obtains. That will protect this House.

Whichever decision you make in this House will have a political impact. My opinion is to appeal the Bench's decision so that we retain the status quo as it is, and not the status quo ante.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Lotee.

Hon. Titus Lotee (Kacheliba, KUP): Thank you, Hon. Speaker. Reading through the ruling of the High Court makes me believe that you are a better qualified lawyer than the three judges who made the ruling. Why am I saying so? I listened to the ruling three years later. This matter was filed under certificate of urgency and yet, the ruling was made three years later. This points to our dysfunctional court systems. If they can do that to this House on such a weighty matter, what are they doing to the common *mwananchi*? How are the cases of the common *mwananchi* adjudicated?

Lastly, as a Member of the Azimio la Umoja Coalition, we contested this decision when it was made in October 2022. At that time, the Azimio la Umoja Coalition had 171 Members and the Kenya Kwanza Coalition had 165 Members. Several Members of the Azimio la Umoja Coalition wrote letters and 14 Members exited the coalition. It is on that basis that you made a decision stating that since those Members had exited the Azimio la Umoja Coalition and joined the Kenya Kwanza Coalition, the Kenya Kwanza Coalition would become the Majority Party. The Political Parties Act is very clear that 21 days after an election, political parties can shift. As long as they write letters and officiate their agreements, it is accepted. The 21-day window lapsed on 6th October 2022. I know that you got those letters. Hon. Speaker, you made a ruling that I...

Hon. Speaker: Hon. Lotee, you have made your point. Rahim Dawood.

Hon. Rahim Dawood (North Imenti, Independent): Thank you, Hon. Speaker. First of all, you are not a leader of the Luhya Nation. You are a national leader. I want to correct that misinformation which was done earlier.

Secondly, two Members of Parliament have cast aspersions on you, which is completely out of order. I was here when the former Speaker, Hon. Justin Muturi, was being impeached. He was seated where you are. The two leaders need to apologise.

Thirdly, we, as Independent Members, are not being counted at all. If Azimio la Umoja-One Kenya Coalition Party said they had 174 Members and Kenya Kwanza had 165 Members, the 10 Members who aligned with the Kenya Kwanza Coalition boosted the coalition's numbers to 175. Azimio la Umoja-One Kenya Coalition Party is just a name. It is a still-born. It is not anywhere at all. Orange Democratic Party (ODM) and Wiper Democratic Movement-Kenya are on their own. Let us not be told about Azimio la Umoja-One Kenya Coalition Party. One of the Members who is my friend, Hon. Junet Mohamed, has been asked its address and he does not know. So, it does not exist at all.

(Several Members spoke off the record)

I can be shouted down, but it does not exist. Thank you, Hon. Speaker.

Hon. Speaker: The Member for Kinango will be the last one to contribute on this matter.

Hon. Gonzi Rai (Kinango, PAA): Mhe. Spika, kwanza, nataka nikushukuru. Kwa sababu nina dakika mbili, niliposoma *judgement* hii, nilikumbuka mwaka wa 1982 wakati ilitangazwa hapa nchini kulikuwa na jaribio la mapinduzi. Tuiangalieni hii *judgement* kwa jicho jingine kwa sababu naona kama kuna njama kutoka kwa mahakama ya kujaribu kupindua

Bunge hili. Kwa hivyo, Mhe. Spika, wakati utaenda kupumzika na kuandika *judgement* yako, ni mpaka tujue tunaelekea wapi.

Mwisho, tunaishi kama familia tukiwa hapa Bungeni. Lakini, naomba niulize wale ndugu wanaojiita wafuasi wa Azimio la Umoja-One Kenya Coalition Party, je, mnavyofanya ni ungwana? Wakati wote tunazungumza tukijua kuwa sisi ni jamii moja. Mahakama ilitoa maamuzi, lakini ilipewa maombi 34 na ikajibu machache tu. Hawakujibu maombi sita. Hatujamaliza siku 14 za kukata rufaa. Leo, tayari hapa tuko katika kizimba. Ni kama hatuwezi kusubiri siku 14 za kukata rufaa ndio haya mambo yaletwe.

Kwa hivyo, Mhe. Spika, nenda uketi chini, lakini kumbuka kitengo chetu cha mahakama kina njama fiche ambayo hatujui lengo lake. Kwa sababu tunaheshimu mahakama, tutakata rufaa na matokeo yake yataongoza mwelekeo wa Jumba hili. Tutamaliza mambo ya Jumba hili, lakini sio watu wa mahakama kuja kutupangia tutakavyokwenda. Nafikiri wanafahamu vizuri hii Nyumba ina kinara ambaye atatoa maamuzi yake kuhusu jinsi tunavyopaswa kuendelea na shuhuli zetu kama Bunge.

Hon. Gladys Boss (Uasin Gishu County, UDA): On a point of order, Hon. Speaker.

(Hon. Raphael Wanjala spoke off the record)

Hon. Speaker: Hon. Raphael Wanjala, what is it? Let me hear the point of order from the Hon. Deputy Speaker first.

Hon. Gladys Boss (Uasin Gishu County, UDA): Hon. Speaker, when I contributed to the debate earlier, I notified the House while you were absent, when the court case verdict came out. I asked the Clerk of the National Assembly to write to the Registrar of Political Parties confirming the arrangement of parties and the numbers, together with their coalition agreements. So, I want your permission to table them.

Thank you, Hon. Speaker.

Hon. Speaker: Go ahead and table them. Then, pass them on to the Clerk. Hon. Raphael Wanjala, what is it? I had said that the Member for Kinango would be the last one to contribute on this matter.

Hon. Raphael Wanjala (Budalangi, ODM): I want to debate, Hon. Speaker.

Hon. Speaker: You will be the very last one to contribute. You have two minutes.

Hon. Members: No! No! He has contributed!

Hon. Speaker: Has he contributed?

(Loud consultations)

Okay. You are the very last Member to speak. You have two minutes.

(Several Members spoke off the record)

Hon. Wanjala had not debated. He just rose on several irrelevant points of order.

Hon. Raphael Wanjala (Budalangi, ODM): Thank you, Hon. Speaker. It is true and without any doubt in my mind, that...

Hon. Moses Kirima (Central Imenti, UDA): On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Kirima.

Hon. Moses Kirima (Central Imenti, UDA): Hon. Speaker, some of us have been raising our hands from the time we came in and yet, Hon. Wanjala has spoken a number of times.

Hon. Speaker: Just seek an opportunity to speak instead of making Hon. Wanjala a reference. Hon. Wanjala has been rising on several irrelevant points of order, but has not contributed. After Hon. Wanjala, I will give you, Hon. Kirima, to close.

Okay, Hon. Wanjala. Give him the microphone.

Hon. Raphael Wanjala (Budalangi, ODM): Hon. Speaker, I know you understand the law. In this House, not all of us are lawyers or competent to critic the rulings of the Court. You have been in the Courts and you know that if anybody is in doubt of court orders, he or she should seek an appeal. If you are not in doubt, then implement it. Each one of us here is trying to debate and say what they want. Some of us are not competent to talk about the rulings. We are going nowhere. Hon. Caroli Omondi was very clear on what was supposed to be done for us to resolve this issue. Anybody who is aggrieved will always go to the Court of Appeal.

Hon. Speaker: Hon. Wanjala, there is a point of order by the Member for Matuga. Yes, Hon. Tandaza.

Hon. Kassim Tandaza (Matuga, ANC): Is the Hon. Member in order to say that we are not competent to discuss a matter that is before us? Is he in order?

Hon. Speaker: He is out of order, and he is discussing! Go on, Hon. Wanjala.

Hon. Raphael Wanjala (Budalangi, ODM): Hon. Speaker, we have a procedure of withdrawing from coalitions. You do not write letters right, left and centre. We have a procedure on how to move out of our political parties. You have to resign and go back for a by-election. So, anybody purporting to have withdrawn from Azimio la Umoja and yet he or she did not follow the procedures, their withdrawal is null and void. Hon. Speaker, we call upon you; and we do not want people *wakupake uchafu*. You are clean and we want you to do a proper thing by giving Azimio la Umoja their rightful position.

If anybody is in doubt, let them appeal the decision.

Hon. Speaker: Let us have Hon. Kirima and then we close.

Hon. Moses Kirima (Central Imenti, UDA): Thank you, Hon. Speaker. The Constitution states that this House, the Courts and the Executive are just creatures of the Constitution, and should be respected. This House being a quasi-judicial body, hopes to have its independence without being interfered with by any other body. That is because the three bodies which are creatures of this Constitution, cannot be interfered with by each other. I have been an Officer of the Court for a long period. By the time a ruling is given, the Court usually asks about the status quo of a position. What is the status quo, or what is the position at the time it is delivering the ruling?

In this issue, the Court gave the ruling as it was in the Year 2022; which means, it has taken about three years before it gave the ruling on the status quo of the position. Things have shifted because when it comes to politics and the interpretation of the law as it is, the status quo is not cast in stone, it shifts as per the situation at that particular time when things are taking place.

Hon. Speaker, Article 95 of the Constitution of Kenya clearly states that one of the roles of the National Assembly is to represent the people and special interests in the National Assembly.

The second one is that the National Assembly deliberates on and resolves issues of concern to the people. What is being debated on in this House, today, concerns our people. We are carrying out a role that has been provided for by the Constitution.

The truth is that, currently, Kenya Kwanza Coalition is the Majority in this House. We cannot deny it in all aspects. We should also consider the fact that we are now under the Broad-Based Government. Almost all the Members are on one side, except the about 35 dissenting Members. So, as it is, we should not negate what has already been earned by Kenyans through this House. What we are doing now is a public relations exercise. We will, therefore, appeal

this Ruling. It is clear that the Ruling given by the Speaker on this matter, before this House, will stand.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, we have sufficiently ventilated on this matter since 2.40 p.m. I thank Hon. Millie Odhiambo for raising the matter that has triggered the debate.

I also thank all of you for the tremendous input. Each one of you has had his or her say, except a few. To those who have not spoken, like Hon. Martin Owino and Hon. Mulyungi, when it rains, it does not soak everybody.

(Laughter)

Sometimes, it soaks a few while others get away. I have looked at the documents tabled by the Deputy Speaker, and I can confirm that they are genuine and admissible. They will form part of our direction.

I also direct the House that Order No.8, on the Constitution of the House Business Committee, be stepped down for reasons that are known to all.

MOTION

APPOINTMENT OF MEMBERS TO THE HOUSE BUSINESS COMMITTEE

THAT, pursuant to the provisions of Standing Order 171(1)(f), this House approves the appointment of the following Members to the House Business Committee in addition to those specified under paragraphs (a), (b), (c), (d) and (e) –

1. Hon. Omboko Milemba
2. Hon. Robert Mbui
3. Hon. Faith Wairimu Gitau
4. Hon. Samuel K. Chepkonga
5. Hon. Adan Wehliye Keynan
6. Hon. Tom Joseph Francis Kajwang'
7. Hon. Sarah Paulata Korere
8. Hon. Joshua Mbithi Mwalyo
9. Hon. Umul Ker Kassim Sheikh

(Motion deferred)

Hon. Speaker: Two, as expected, we will not sit tomorrow morning. This is because we have no House Business Committee to prioritise or programme Business for the House and therefore, you have a free morning. We will assemble at 2.30 p.m. I will try to burn the midnight oil, with the Clerks-at-the-Table and lawyers, to sift through what all of you have said today. I will then advise you accordingly, tomorrow afternoon, in the direction I will give. As I said, remember that the Court quashed the decision, and the Ruling of the Speaker on Declaration of the Majority Party and it stands. The Court has no capacity nor power to declare who the Majority and Minority is. That is a matter for this House. We will give you direction so that you can continue with your roles of legislation, oversight and representation in guiding our country. This will ensure that we do not lose time.

I want to thank each one of you very much, even those who threw brickbats at the Speaker. I am seasoned, mature and used to those kinds of things and therefore, have no time to begrudge anybody. Whenever you want to say anything against the Speaker, do I, as long as

you do it in good faith, I will take it. However, if you do it maliciously, of course, then it begs that I will deal with you.

(Hon. Raphael Wanjala spoke off the record)

Yes! Even Hon. Wanjala will deal with you.

(Laughter)

On that note, Hon. Members, let us be upstanding. Suffice to mention, Hon. Pukose, you must be here tomorrow to give your Statement on Social Health Authority (SHA).

ADJOURNMENT

Hon. Speaker: Hon. Members, the time being 6.25 p.m., the House stands adjourned until tomorrow, 12th February 2025, at 2.30 p.m.

The House rose at 6.25 p.m.

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