

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 31st May, 2017

The House met at 2.30 p.m.

*[The Deputy Speaker (Hon. (Dr.)
Laboso) in the Chair]*

PRAYERS

QUORUM

Hon. Deputy Speaker: Ring the Quorum Bell.

(The Quorum Bell was rung)

Members, we are now properly constituted. Please, let us settle down and start business.

PAPERS LAID

Hon. (Ms.) Abdalla: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Environment and Natural Resources on the Petition by the residents of Kajiado North Constituency regarding the closure and relocation of Ngong Dump site.

Hon. Deputy Speaker: We also have another Paper by the Departmental Committee on Health.

Hon. (Dr.) Pukose: Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

Report of the Departmental Committee on Health on the following Petitions:

1. By the Children Sickle Cell Foundation of Kenya on enactment of legislation on prevention, control and management of sickle cell anaemia;
2. On the violation of the Nutritionists and Dieticians Act and amendments to the Nutritionists and Dieticians Act 2007.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Chair of the National Government Constituencies Development Fund (NG-CDF).

Hon. Lessonet: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:

The NG-CDF Board Constituency Allocation for the Financial Year 2017/2018.

Hon. Deputy Speaker: Next Order!

Hon. Kimani Ichung'wah, do you have a Statement? We are in that Order now.

POINTS OF ORDER**ENFORCEMENT OF REGULATIONS ON INSTALLATION
OF SOLAR HEATING SYSTEMS BY ERC**

Hon. Ichung'wah: Thank you, Hon. Deputy Speaker. I was consulting with the Chairman of the Departmental Committee on Administration and National Security.

Article 94 of the Constitution on the role of Parliament vests the legislative authority with Parliament in this republic. Indeed, Section 5 of the article states that no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation. This conferring of authority is generally through delegated legislation, namely, regulations, orders, legal notices, *et cetera*. To this end and in line with Section 6 of the same article, the Statutory Instruments Act provides for the procedures to be followed in instances of delegation. Further, the House through the Standing Orders established mechanisms or the disposal of statutory instruments thus allowing for their implementation.

Further, the country is currently being faced by a disturbing scenario in the construction and ownership of homes sector. The Energy Regulatory Commission (ERC), through statements in the Press, I think in the print media, which has been widely circulated, has given ultimatums to owners and occupiers of domestic residential premises, educational institutions, health institutions as well as restaurants to ensure the installation of solar heating system. This is apparently on the grounds of powers bestowed on the ERC by the Solar Water Heating Regulations of 2012.

However, I have established that these regulations have never been presented to this House for consideration as required by law. It will, therefore, be an upfront not only to the authority of Parliament to purport to implement a regulation with the force of law without having the necessary approval of Parliament, but it also beats logic why a Government agency like the ERC would implement an obviously illegal regulation. It begs the question: On whose behalf the commission may be acting or purporting to enforce regulations that they purport to have the force of law without the approval of this House.

It is my humble request that you direct the relevant Committee namely, the Committee on Delegated Legislation, to urgently look into this matter. Without that, Parliament will be abrogating its duty of defending interests of the people that we represent. I must declare my interest in this matter. I am a landlord. I am also a home owner. Therefore, anybody purporting to come and implement such regulations will be directly affecting many home owners and hotel owners. Not just home owners and landlords, but even schools, educational institutions and hospitals. They are saying it is illegal not to have those water heating solar systems in our schools. The fines they are proposing are very punitive. It is a fine of Kshs1 million and a jail term of up to a year or both.

Therefore, I beg that you give appropriate directions to the relevant House Committee.

Thank you, Hon. Deputy Speaker.

(Applause)

Hon. Deputy Speaker: Okay. I think the Committee on Delegated Legislation just needs to take up that matter clearly, as it seems to be an urgent matter. Before we proceed to Order No.8, I want to recognise the presence in the Public Gallery of a delegation from the Presbyterian Church of East Africa (PCEA) from Tena Area of Embakasi West Constituency, Nairobi County. You are welcome in the National Assembly. We also have in the same Public Gallery Red Rose Primary School, Kibra Constituency of Nairobi County. You are welcome in the National Assembly, to partake of our proceedings.

Hon. Gikaria, you seem to be restless. What is not in order?

DELAYED SUBMISSION OF REPORT ON PETITION

Hon. Gikaria: Almost two months ago, when you were seated there as the substantive Speaker, I requested for a report on a petition regarding a primary school's land that has been grabbed. The petition was referred to the Departmental Committee on Lands. You had given directive. Two months down the line now, we do not have a report. I do not know what to do and you had directed that the report be brought before the House. The 60 days expired a long time ago and you had directed that the report be tabled on the Floor of the House so that we could deliberate. That school is missing out on the NG-CDF funds. The school is suffering. We wanted the Committee to ensure that we could take the next step of trying to acquire a title deed.

Secondly, this may not be for you, but the Parliamentary Service Commission (PSC). For the last one-and-a-half weeks, we have seen some young men and women lining up going towards the County Hall to drop applications for employment. I think the PSC needs to be a little bit humane. These boys are lining up for over six hours or the whole day. I think it is a bad precedent. It is a bad face for Parliament to see people queuing. Sometimes, and even now, they affect the flow of traffic around that place. I am not saying they should not line. The main problem is the hours they stand waiting to be attended to are long. I thought the PSC needed to be more humane in future and maybe invite them to a place.

Thank you, Hon. Deputy Speaker.

(Applause)

Hon. Deputy Speaker: That is really a good observation. I hope the PSC is listening and is going to do something about these queues.

Hon. Kihagi: It is true that Hon. Gikaria's petition has been pending before the Committee, but the Committee has dispensed with the matter. A report has been written and it is awaiting the Speaker's approval for tabling. Maybe by next week, if the Speaker approves, it shall be tabled among other petitions. Currently, the Committee has reports that are awaiting approval so that they can be tabled.

Hon. Deputy Speaker: Okay. So, you have heard something has been done. It is only waiting approval.

I guess the long queues you are seeing are a reflection of what is happening in our country and the high level of unemployment. Even us, as legislators, these are some of the things that we are grappling with, including our elective seats in terms of coming back or not coming back.

Members, we want to move to the next Order.

MOTION

ELECTION OF MEMBERS TO EALA

THAT, pursuant to Article 50 of the Treaty for the Establishment of the East African Community and Rule 13(5) of the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017, this House adopts the Report of the Joint Parliamentary Select Committee on the Election of Members to the East African Legislative Assembly on its consideration of the nominees for election as Members of the East African Legislative Assembly, laid on the Table of the House on Wednesday, May 17, 2017.

(Hon. Katoo on 18.5.2017)

(Resumption of Debate interrupted on 30.5.2017)

Hon. Deputy Speaker: Members, I want to give an opportunity to the Mover. It had been moved and seconded. Debate was ongoing and there was an amendment by Hon. Mwadeghu. You have something on your amendment?

Hon. Mwadeghu: Yes, Hon. Deputy Speaker.

I had just moved. While it was being seconded, the issue of quorum was raised. After due consultation among ourselves, taking into consideration that the Senate did pass this Report without amendments, I wish to withdraw the amendment because it is still not a property of the House under Standing Order No.51 read together with Standing Order No.54.

Having consulted, it is apparent that I did not have to consult the Leader of the Majority Party because he assumed powers--- The other Member of Parliament and the Chairman has come back. He has resumed his position. The reason I feel I should withdraw this amendment is that, if it goes through, having been passed by the Senate without any amendment, the implications are obvious. We will have to wait for the next six months before this Motion can be brought to this House. In that regard, it is my humble request to my colleagues that they take our decision and my decision as the Whip of the Minority Party to withdraw my amendment in good taste and faith. It has no other implications. It is so that we can move forward so that by next week, we can have the names, which can be debated and the voting can go on so that we do not stop matters in the EALA.

I withdraw.

(Hon. Mwadeghu withdrew his proposed amendments)

Hon. Deputy Speaker: You have withdrawn. Hon. Chepkong'a?

(Several Hon. Members walked out of the Chamber)

Members, if you could stay in the Chamber, maybe we could dispense with this matter quickly.

Hon. Chepkong'a: I rise pursuant to Standing Order No.83. He moved his amendment and it was seconded. So, it became the property of the House.

Hon. Deputy Speaker: We had not put the Question. It was not. We had not even proposed the Question.

Hon. Wakhungu *Off-record.*

Hon. Chepkong'a: Hon. Deputy Speaker, I can only take direction from you and not from the Member for Kiminini.

Hon. Deputy Speaker: Okay, I can give you direction because I was the one presiding.

Hon. Chepkong'a: He cannot arrogate himself the powers of the Speaker when the Speaker is still sitting here. We know, Hon. Deputy Speaker, that you are running for governorship, but you have not left.

Hon. Deputy Speaker: No, I am here.

Hon. Chepkong'a: The powers have not been delegated to the Member of Kiminini.

Hon. Deputy Speaker: Those powers are still with me.

Hon. Chepkong'a: They are solely still with you. I am guided, if you tell me that the Question had not been put.

Hon. Deputy Speaker: Not even proposed.

Hon. Chepkong'a: Okay.

Hon. Deputy Speaker: Yes, quorum was called even before proposing the Question. So, it is quite in order for you to withdraw. There is no damage done. The Standing Orders have been followed.

Members, can we then proceed? I will just give chance to some two or so Members. We need to dispense with this matter, Members.

Hon. Leader of the Majority Party?

Hon. A.B. Duale: Hon. Deputy Speaker, as I contribute to the election of Members to the EALA, it has taken the leadership of the Coalition for Reforms and Democracy (CORD) to read the law and waste a lot of time of the House to come and withdraw an amendment. The law, Rule 6 is very clear. If you have three nominees, you bring nine. If you have four, you bring 12.

I am very happy that the men in the Senate who are from CORD were with me in this House. We had the likes of Senators Anyang'-Nyong'o, James Orengo, Johnstone Muthama, David Musila and Bonny Khalwale. They said the coalition is breaking the law. Senator Mutula Kilonzo Junior, a respectable man who represented Kenya in this case when Senator Anyang'-Nyong'o filed it, was a member of the Committee. However, my good friend, who is aspiring to be the Governor of Taita Taveta, just listens to only one man. He does not read the law. He only listens to "Baba". At this rate of listening to "Baba", the people of Taveta will not even give you that position. We spoke here and agreed that the members we selected from both sides led by Hon. Chepkong'a---

(Hon. Mwadeghu interjected)

I am saying it. You had your time. It is good to listen to "Baba". I also listen to President Uhuru Kenyatta but I also read and tell him: "Mr. President, this is not the right law." However, you come here in the morning and say: "Baba sent me." You come back in the afternoon and say: "Baba sent me." My friend, at that rate, you will not go to heaven. If it is about loyalty to "Baba", some of us were more loyal to "Baba" in 2007.

We have wasted time. We changed the rule and this House approved the rules and they were gazetted. The election of EALA was to be held between 23rd and 25th this month. So, as we sit here, the deadline for the election was on 25th May 2017. So, even if we approve this Report as per the Senate, the Committee must go back, sit and gazette a new date.

Secondly, and more fundamental, according to the timelines that they have approved, gazetted and signed by the two presiding officers, the last day for the timelines is 2nd June, which is on Friday, and there is no sitting of the House. So, even if you withdraw your amendment at this hour, you are still in high seas. You are in the middle of the sea with no life saver. With the deadline of 15th June that we have, I do not foresee--- Therefore, even if we pass this Report, the Committee of Hon. Chepkong'a, Hon. Kato, Hon. Maanzo, Hon. Wamunyinyi, Senator Mutula Kilonzo Junior and Senator Murkomen has to go back and sit and gazette new rules, timelines and dates. So, my brother, you will still go back to "Baba" because you created murky. You did not read the law. So, you are withdrawing at a time when it is not helping anybody. On day one, we said let CORD Coalition bring nine names. By now, we could have voted because we have 27 Members of Parliament who applied for EALA.

(Hon. Mwadeghu stood at his place)

I am on the Floor. We are not in a primary school. Hon. Deputy Speaker has to give you the chance. So, we need to have 27 members. Fifty eight members applied for the Jubilee Party's slots. We selected 15. Forty eight members applied for the four slots of CORD Coalition. We expected 12 members. The Chamber is the polling station and the Clerk is the Returning Officer. These members, who are the constituents and the voters, were supposed to select nine members from the 27 members. Once we select the nine members from the 27 members, then those nine members will represent the Republic of Kenya and, by extension, the Parliament of Kenya in the EALA. In those nine members, the House must look at the regional and gender balance.

We have wasted three weeks because of lack of quorum. Now that my good friend, Hon. Mwadeghu, has withdrawn his amendment, let us spend less time and approve. I told the Speaker yesterday, if the Senate has approved the Report and the National Assembly amends it, the outcome could have been the collapse of the whole process. That is the reading. There could have been no mediation. There was no mediation anticipated where the two Houses differ on a Report of a Committee. It is different when it is a Bill.

I really thank Hon. Mwadeghu, my very good friend. You know he is a very good Catholic. He is a man of God, but he decided not to speak to God. When you are faced with a serious problem, you hold the Bible or Quran and then God guides you on the right path, but he decided to listen to "Baba" alone. "Baba" is a human being. Uhuru Kenyatta is a human being.

Hon. Mwadeghu: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, Hon. Mwadeghu.

Hon. Mwadeghu: Is Hon. Duale in order to impute ill motive on my part and to mislead this House that we wasted time here, when he himself stood up to say there was no quorum and he walked out with a lot of impunity and, Hon. Deputy Speaker, you did not take any steps against him?

That was impunity.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Millie Odhiambo?

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Deputy Speaker. I would want to request the Leader of the Majority Party to declare his interest in this matter. We have been told that he is delaying this Report because he has an interest. This is because he knows he is likely not to come back to Parliament. Can he declare his interest in this matter?

Hon. Deputy Speaker: Hon. Members, none of us knows who is going to come back and who is not going to come back. Just ignore it. The Leader of the Majority Party, just ignore that comment.

Hon. A.B. Duale: Hon. Deputy Speaker, you know Hon. Millie Odhiambo burnt her House to get an Orange Democratic Movement (ODM) certificate.

(Laughter)

She burnt her own house to get an ODM certificate. So, I cannot talk to her. Let me address the good point of order by my friend. I will never burn my house and I am coming back as Leader of the Majority Party.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Madam Speaker.

Hon. A.B. Duale: Relax, you do not need to burn your house and kill your bodyguard.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Madam Speaker.

Hon. A.B. Duale: Hon. Deputy Speaker, I think we have now agreed in principle. We have agreed with the leader. I think now the debate is good. We will agree with the Senate and I am sure we are happy. Let us elect 27 members, put the Question and we move forward and do the election.

Hon. Deputy Speaker: Order, Hon. Members! I think you all know.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Madam Speaker. *(Inaudible)*

Hon. Deputy Speaker: Order, Hon. Millie! It has been expunged.

Hon. (Ms.) Odhiambo-Mabona: *(inaudible)*

Hon. Deputy Speaker: Okay, Hon. Millie, you have been heard. Are we okay?

Hon. Members: *Off record.*

Hon. Deputy Speaker: I need the Mover to respond.

Hon. Wakhungu: Thank you, Hon. Deputy Speaker. I think this matter has been resolved. We are just repeating ourselves and time is not on our side. In line with our Standing Orders, may I call upon the Mover to reply so that we can move on?

Hon. Deputy Speaker: Is that the feeling of the Members?

Hon. Members: Yes.

Hon. Deputy Speaker: The Mover, Hon. ole Metito

Hon. Katoo: Hon. Deputy Speaker, in replying, I just want to plead with Members, that we put the interest of the East African Community (EAC) first. Even if we were to do the voting in the earliest time possible time on Tuesday next week, Kenya is going to be late by a day or two because Members of East African Legislative Assembly (EALA) are going to be sworn in next week on Monday 5th. If there is a way we could do as a House to fast track the process, we better do it.

I beg to reply.

Hon. Deputy Speaker: Hon. Members, I want to defer putting of the Question for about 15 minutes for us to be properly constituted. In the meantime, we can move to the next Order as we sort that out.

Hon. Members: Ring the Bell.

QUORUM

Hon. Deputy Speaker: It is in the Members' interest that we ring the bell instead of moving to the next Order. Members, who are inside, do not move. I therefore order that the Quorum Bell be rung.

(The Quorum Bell was rung)

We can now put the Question. After confirming that we are sufficient in number, I proceed to put the Question.

(Question put and agreed to)

BILL

Second Reading

THE COMPANIES (AMENDMENT) BILL

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the Companies (Amendment) Bill (National Assembly Bill No. 23 of 2017) be now read a Second Time.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Those Members proceeding out of the Chamber do it quietly since we need to listen to the Leader of the Majority Party.

Hon. A.B. Duale: The Companies (Amendment) Bill, 2017 seeks to amend the Companies Act 2015 in order to improve on the operationalisation of this Act. This is a very important Act which was passed in 2015. It is one of the milestones of the Jubilee administration. Since Independence, this piece of legislation has not been in place. One year later, for it to ease the operationalisation of this Act, the Office of the Attorney-General and the stakeholders felt that they needed to bring some amendment to minimal sections of that law. Kenya is part of the global market and in order to attract investments, it is imperative that the laws relating to the Companies Bill, 2017 is not only meant to improve provisions to the extent of directors' liabilities or the extent of---

Hon. Odanga: On a point of order, Hon. Deputy Speaker.

Hon. A.B. Duale: I know you want to raise quorum matter. We want to debate!

QUORUM

Hon. Odanga: Thank you, Hon. Deputy Speaker, the Bill being moved by the Leader of the Majority Party is a very important one to the citizens of this country. We cannot afford to have it moved and discussed here when we do not have sufficient quorum.

Hon. Deputy Speaker, I want to bring to your attention the fact that we do not have a quorum.

(Loud consultations)

Hon. Deputy Speaker: I have established that we do not have a quorum. So, let us have the Quorum Bell ringing.

(The Quorum Bell was rung)

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the bell has rung for 10 minutes. We have been unable to raise a quorum and, therefore, the House stands adjourned until Tuesday, 6th June, 2017 at 2.30p.m.

The House rose at 3.30 p.m.