



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

TUESDAY, JULY 21, 2015 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.
3. COMMUNICATION FROM THE CHAIR - VETTING PROCESS OF THE NOMINEES FOR APPOINTMENT AS THE GOVERNOR AND DEPUTY GOVERNOR OF THE CENTRAL BANK OF KENYA

The Speaker conveyed the following Communication from the Chair

"Honourable Senators,

On Thursday, 25th June, 2015, the Senator for Kakamega County (Sen. (Dr.) Boni Khalwale) while on a point of order sought the Chair's directions on the vetting process of the nominees for appointment as the Governor and Deputy Governor of the Central Bank of Kenya. Sen. (Dr.) Khalwale drew the attention of the Chair to the provisions of Sections 13 and 13B of the Central Bank of Kenya Act, CAP 491 which require the approval of Parliament before the nominees are appointed to office.

Specifically, Sen. (Dr.) Khalwale-

- a) stated that the National Assembly had undertaken and concluded the vetting process and approved the nominees and that the Senate was not involved in the vetting and approval of the nominees as required by the Central Bank of Kenya Act; and
- b) reminded the House that in a similar provision of another statute, a precedent had been set where the Inspector-General of Police was vetted by a Joint Vetting Committee of both Houses. The Senator sought guidance from the Chair on what intervention the Senate would

undertake to ensure the appointment of the Governor and Deputy Governor of the Central Bank of Kenya was done through due process.

The matter was also canvassed by the Senate Minority Leader who further sought to know the implications of an appointment without vetting by the Senate as required by the law.

Honourable Senators,

Article 231 of the Constitution establishes the Central Bank of Kenya and mandates Parliament to enact legislation to provide for the composition, powers, functions and operations of the Central Bank of Kenya. The legislation contemplated by this Article is the Central Bank of Kenya, Act, CAP 491 of the Laws of Kenya.

Section 11 of the Central Bank of Kenya Act, provides for the composition of the Board of Directors of the Bank as follows-

- a) a Chairperson,
- b) a Governor,
- c) the Permanent Secretary to the Treasury or his representative who shall be a non-voting member; and
- d) five other non-executive directors (who shall be appointed by the President with the approval of Parliament).

Further, Sections 13 and 13B of the same Act establish the offices of the Governor and two Deputy Governors who shall be appointed by the President with the approval of Parliament. For the benefit of Senators, Article 93(1) of the Constitution provides as follows-

93. (1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.

Honourable Senators,

The chronology of events in this matter appears to be as follows-

- a) On Wednesday, 3rd June 2015, the Speaker of the National Assembly communicated a Message from H.E the President regarding nominees to the positions of the Chairperson, Governor and Deputy Governor of the Central Bank of Kenya;
- b) In the said communication, the National Assembly was informed that-

Pursuant to section 11 of the Central Bank of Kenya Act, H.E. the President, had nominated Mr. Jairus Mohammed Nyaoga to the position of Chairperson of the Board of Directors of the Central Bank of Kenya;

Pursuant to sections 13 and 13B of the same Act, H.E. the President had nominated Dr. Patrick Ngugi Njoroge and Mrs. Sheila M'Mbijjewe to the positions of Governor and Deputy Governor of the Central Bank of Kenya, respectively; and

H. E. the President was seeking the approval of the National Assembly on the said nominations.

- c) The nomination by H.E the President was not sent to the Senate;
- d) The approval of the Senate was not sought;
- e) The National Assembly commenced the vetting process through its Departmental Committee on Finance, Planning and Trade, which Tabled its report endorsing the three nominees on 17th June, 2015; and
- f) The National Assembly, on Thursday 18th June, 2015 debated the Report on the approval of the nominees and passed it without amendments.

Honourable Senators,

From the foregoing chronology, it should be noted that-

- a) The Central Bank of Kenya Act requires the approval by Parliament, that is both the National Assembly and the Senate, before the Governor and the Deputy Governor are appointed to office; and
- b) The Senate has not been involved in the vetting and approval processes for the nominees for the positions of Governor and Deputy Governor; as required by the Act.

Honourable Senators,

When this matter came to the attention of the Speaker on 23rd June, 2015, the Speaker wrote a letter to the Speaker of the National Assembly and copied to the Attorney-General, the Cabinet Secretary for National Treasury, the Chairperson of the Commission for the Implementation of the Constitution (CIC) and the Chairperson of the Commission on Administrative Justice.

In the letter, the Speaker drew their attention to the relevant provisions of the law and informed them that any purported approval or appointment made otherwise than in accordance with the provisions of the Central Bank of Kenya Act would not be proper and would amount to a nullity in law for

all purposes. However, as of today, no response or acknowledgement of this letter has been received.

Honourable Senators,

I therefore wish to conclude by responding to Sen. (Dr.) Khalwale's enquiry by reiterating only that the Constitution as read with the Central Bank of Kenya Act at Sections 13 and 13B require that both the National Assembly and the Senate vet and approve the nominee for the position of Governor and the position of Deputy Governor of the Central of Kenya.

The Senate has not been informed of any nominees for the positions and has accordingly neither vetted nor approved any person for appointment to these positions.

I thank you."

4. COMMUNICATION FROM THE CHAIR - CONSULTATIVE MEETING WITH THE CABINET SECRETARY FOR EDUCATION AND CABINET SECRETARY FOR INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

The Temporary Speaker (Sen. Elizabeth Ongoro) conveyed the following Communication from the Chair:-

"Honourable Senators,

As you may recall, the issue of the closure of the Garissa Teachers' Training College has generated a lot of interest in this House, with numerous concerns being raised on the education crisis in Garissa, Wajir and Mandera Counties.

Honourable Senators,

Arising from the numerous concerns, on the 1st of July, 2015, I directed that the Cabinet Secretary for Education and the Cabinet Secretary for Interior and Coordination of National Government be invited to come and address the various concerns at a meeting of the Standing Committee on Education where all Senators are invited.

Consequently, on 16th July, 2015, the Office of the Clerk of the Senate informed the two Cabinet Secretaries and invited them to a consultative meeting to discuss the closure of the Garissa Teachers' Training College and the education and security crisis in the north eastern part of Kenya.

Hon. Senators, this meeting has been confirmed to take place in this Chamber tomorrow, Wednesday, 22nd July 2015 at 10.00 a.m.

I would like to urge all Honourable Senators to plan to attend the consultative meeting to deliberate on these very important matters.

I thank you."

5. STATEMENTS

a) Statement pursuant to Standing Order 45(2) (a)

The Senator for West Pokot County, (Sen. John Lonyangapuo) made a Statement on a county issue on the arrest of several youth in West Pokot County after raising integrity issues over the management of funds allocated to the county government of West Pokot.

Thereupon, the Senator informed the Senate that Messrs. Bruno Lomenwo, Allan Pkite Rengete, Elijah Lokori Kaseuseu and Malik Kassachoon had raised concern regarding the inflated cost of construction of nurse houses in dispensaries across the county and, as a result, the youths were being harassed by the police on the pretext that the incident was creating unnecessary tension in the area.

The Senator therefore appealed to the Kenya Anti - Corruption Commission and the Director of the Criminal Investigations Department (CID) to intervene in the matter and inquire into the circumstances under which the youths were arrested, and also take measures to stop the harassment and victimization of the youth.

b) Statement pursuant to Standing Order 45(2) (c)

- i. The Senator for Turkana County (Sen. John Munyes) sought a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the alleged killing of police officers by cattle rustlers from the Toposa tribesmen from Eastern Equatorial State of South Sudan in Lokichoggio town.
- ii. The Senator for Vihiga County (Sen. George Khaniri) sought a Statement from the Chairperson of the Sessional Committee on Devolved Government regarding capacity building for county officials who perform specific security and enforcement functions.

6. THE UNIVERSITIES (AMENDMENT) BILL (SENATE BILL NO. 31 OF 2014)

Order for Second Reading read;

Motion made and Question proposed-

THAT, the Universities (Amendment) Bill (Senate Bill No. 31 of 2014) be now read a Second Time.

(Sen. Halima Abdille – 15.7.2015)

Debate interrupted on 15th July, 2015 resumed;

Debate arising;

And the time being thirty two minutes past Six O'clock, the Temporary Speaker (Sen. Elizabeth Ongoro) interrupted proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

7. SENATE ROSE - at thirty two minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, July 22, 2015 at 2.30 p.m.*

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