



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT - FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, NOVEMBER 29, 2016

1. The House assembled at thirty minutes past two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Hon. Speaker
4. **COMMUNICATION FROM THE CHAIR**

The Speaker conveyed the following Communication –

Visiting Women Parliamentarians from the Parliament of the United Republic of Tanzania

"Honourable Members,

I wish to introduce to you a delegation of Women Parliamentarians from the Parliament of the United Republic of Tanzania seated at the Speaker's Gallery. The delegation comprises the following Members of Parliament and a staff:

1. The Hon. Leah Jeremiah Komanya, M.P
2. The Hon. Esther Mmasi, M.P
3. The Hon. Lucy Mugereli, M.P
4. The Hon. Annatropia Theopist, M.P and
5. Ms. Salome Anyoti, Staff

Honourable Members,

The delegation is in the country on an exchange programme with their KEWOPA counterparts. They have been here since Monday, 28th November, 2016 and will depart on Friday 2nd December, 2016. I welcome them to the National Assembly and wish them fruitful engagements in the course of their stay in the country.

I thank you!"

5. MESSAGES

The Speaker conveyed the following message from the President

Nomination of persons for appointment as members of the National Climate Change Council

“Honourable Members, pursuant to the provisions of Standing Order No. 42(1) of the National Assembly Standing Orders, I wish to convey to the House a Message from His Excellency the President, asking Parliament to approve the following persons for appointment as members of the National Climate Change Council:

1. Mr. Suresh Patel;
2. Mr. John Kioli;
3. Ms. Cynthia Wechabe; and
4. Dr. Jane Mutheu Mutune.

In the Message, His Excellency the President conveys that, in exercise of powers vested in him under section 7 of the Climate Change Act, 2016, he has nominated the said persons from the entities listed in sub-section (2) paragraphs (f), (g), (h) and (i) of the Act, respectively. Further section 7(4) of the same Act provides that the names of persons nominated for appointment under subsection (2) paragraphs (f), (g), (h) and (i) shall be submitted to Parliament for approval before appointment. A plain reading of section 7(4) of the said Act implies that the approval process is to be considered by both Houses of Parliament.

Honourable Members, as you may be aware, it is a matter of public notoriety that the approval of appointment of persons to public office generally falls within the province of the National Assembly. Nonetheless, there are exceptional instances where the Constitution or the applicable laws require a bi-cameral approval of public appointments. A precedent was already established last year during the appointment of the Inspector-General of Police, whose vetting was undertaken by both Houses of Parliament. In this regard, the vetting process for appointment of members of the National Climate Change Council will proceed in a manner similar to that of the Inspector-General of Police.

Honourable Members, for clarity, allow me to guide the House as follows:-

- (i) THAT, the vetting of the nominees for appointment as members of the National Climate Change Council shall be conducted by the Departmental Committee on Environment and Natural Resources, jointly sitting with the relevant Committee of the Senate;
- (ii) THAT, the quorum of the joint sittings will be the respective quorums of each of the committees as stipulated in the respective Standing Orders;
- (iii) THAT, as contemplated under Rule 9(6) of the Joint Rules unless a decision is reached by consensus, any vote to be taken in the joint sittings of the Committees shall be by separate Houses. This will ensure that the numerical difference of the individual Members representing the Houses in the joint sittings has no effect on the decisions of the joint sittings of the Committees;
- (iv) THAT, the joint Committees shall, having conducted the vetting hearings, submit a Joint Report to the respective Houses in the manner contemplated by Paragraph 7 of the Joint Rule No. 9; and
- (v) THAT, the approval process shall be conducted in accordance with the provisions of the Public Appointments (Parliamentary Approval) Act of 2011.

Honourable Members, section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that the relevant Committee should table its Report for consideration within fourteen (14) days from the date when the notification of nomination is conveyed to the House. The Act also requires that the public be given a seven (7) days notification for submission of views regarding the suitability of nominees proposed for appointment to an office requiring approval of Parliament. In this regard, and in accordance with the provision of Article 259(5)(a) of the Constitution as read together with section 5 of the said Act, the counting of the seven (7) days' notification to the public shall start running on the day following the day when the notice is published in the dailies.

Further Section 9 of the said law provides thus:-

"If after the expiry of the period for consideration specified in Section 8, Parliament has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved."

Honourable Members, it is therefore advisable that the concerned committees expeditiously proceed to jointly notify the nominees and the public. Thereafter, the two committees should commence the joint approval hearings and table a Joint Report in good time, to enable the Houses of Parliament to consider the Report. This Message, together with the resumes of the nominees stand committed to the Departmental Committee on Environment and Natural Resources, sitting jointly as earlier explained.

I thank you."

6 PETITIONS

The Member for Yatta Constituency (Hon. Francis Mwangangi, MP) presented a Petition on behalf of residents of Kivingoni Sub-Location and Ndalani Ward regarding alleged irregular acquisition of land in Ndalami Ward, Yatta Constituency.

The Petition was referred to the Departmental Committee on Lands pursuant to the provisions of Standing Order 227.

7. PAPERS LAID

The following Papers were laid on the Table –

- a) Annexure to the Budget Policy Statement on Programme, Sub-Programmes, Expected Outcomes, Outputs and Key Performance Indicators; (to be referred to the Budget and Appropriations Committee);
- b) The Reports of the Auditor-General on the Financial Statements in respect the following Constituencies for the year ended 30th June, 2015 and the certificates therein:-
 - (i) Kilgoris Constituency;
 - (ii) Emurua Dikirr Constituency;
 - (iii) Baringo South Constituency;
 - (iv) Kuresoi North Constituency;
 - (v) Kangema Constituency;
 - (vi) Runyenjes Constituency;
 - (vii) Buuri Constituency;
 - (viii) Sirisia Constituency; and
 - (ix) North Horr Constituency.

(The Leader of the Majority Party)

- c) The Reports of the Departmental Committee on Lands on:
 - (i) Its Consideration of the Land Value Index Laws (Amendment) Bill, 2016; and
 - (ii) Land Disputes in Solai between the Shareholders and Directors of Nyandarua Progressive Agencies Limited in Nakuru County.

(The Vice-Chairperson, Departmental Committee on Lands)

8. NOTICE OF MOTION

The following Notice of Motion was given:

THAT, this House adopts the Report of the Departmental Committee on Lands on Land Disputes in Solai between the Shareholders and Directors of Nyandarua Progressive Agencies Limited in Nakuru County, laid on the Table of the house on Tuesday, November 29, 2016.

(The Vice-Chairperson, Departmental Committee on Lands)

9. MOTION-REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE INSURANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 28 OF 2016)

Motion made and Question proposed -

THAT, this House do agree with the Report of Committee of the whole House on its consideration of the Insurance (Amendment) Bill (National Assembly Bill No. 28 of 2016)

(The Leader of the Majority Party)

Question put and agreed to.

Bill read a Third Time and **passed**.

10. MOTION - REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.66 OF 2015)

Motion made and Question proposed -

THAT, this House do agree with the Report of Committee of the whole House on its consideration of the Universities (Amendment) Bill (National Assembly Bill No.66 of 2015)

(The Leader of the Majority Party)

Question put and agreed to.

Motion made and Question proposed -

THAT, the Universities (Amendment) Bill (National Assembly Bill No.66 of 2015) be now read a Third Time

(The Leader of the Majority Party)

Question put and agreed to.

Bill read a Third Time and **passed**.

11. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The First Chairperson in the Chair

(i) The Competition (Amendment) Bill (National Assembly Bill No. 24 Of 2016)

Clauses 3, 4, 5, 6, 7, 8 & 9 - agreed to

Clause 10 - amendment proposed -

THAT, clause 10 of the Bill be amended by deleting paragraph (a) and substituting therefor the following paragraph—

(a) by deleting subsection (1) and substituting therefor the following subsection-

(1) The Authority may, in consultation with the Cabinet Secretary and by notice in the *Gazette*, set the threshold for any merger excluded from the provisions of this Part.

(Vice Chairperson, Departmental Committee on Finance, Planning and Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 10 - as amended agreed to

New Clause 11A proposed -

THAT the Bill be amended by inserting the following new clause immediately after clause 11—

Amendment of section 48 of No. 12 of 2010

11A. Section 48 of the principal Act is amended by inserting the following subsection immediately after subsection (1)—

(1A) Upon receipt of a written decision as contemplated under section 46(6) from the Authority, a party may file an appeal to that decision to the Tribunal.

(Vice Chairperson, Departmental Committee on Finance, Planning and Trade)

Motion made and Question proposed -

THAT, the New Clause 11A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed -

THAT, the New Clause 11A be part of the Bill

Question put and agreed to;

Clause 2 - amendment proposed –

THAT, clause 2 of the Bill be amended by deleting paragraph (b) and substituting therefor the following paragraph—

(b) by deleting the definition of the term “undertaking” and substituting therefor the following new definition—

“undertaking” means any business intended to be carried on, or carried on for gain or reward by a person, a partnership or a trust in the production, supply or distribution of goods or provision of any service and includes a trade association.

(Vice Chairperson, Departmental Committee on Finance, Planning and Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 2 - as amended agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments.

(ii) The Contempt of Court Bill (National Assembly Bill No. 32 of 2016)

Clauses 3 & 4 - agreed to

Clause 5 - amendment proposed –

THAT clause 5 of the Bill be amended—

- (a) in paragraph (a) by deleting the word “and”; and
- (b) by deleting sub clause (2).

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 5 - as amended agreed to

Clause 6 - amendment proposed –

THAT clause 6 of the Bill be amended by deleting the words "in the course of the hearing of a proceeding" appearing in paragraph (c).

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 6 - as amended agreed to

Clause 7 - agreed to

Clause 8 - amendment proposed –

THAT clause 8 of the Bill be amended by inserting the words "with the leave of the court" immediately after the words "the Director of Public Prosecutions".

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 8 - as amended agreed to

Clauses 9, 10, 11 & 12 - agreed to

Clause 13 - amendment proposed –

THAT clause 13 of the Bill be amended by—

- (a) in sub clause (1) deleting the words "reasonable grounds" and substituting therefor the word "reason"; and
- (b) in sub clause (3) deleting the words "reasonable grounds" and substituting therefor the word "reason."

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 13 - as amended agreed to

Clauses 14 , 15, 16 17 & 18 - agreed to

Clause 19 - amendment proposed –

THAT clause 19 of the Bill be amended in sub clause (2) by—

- (a) deleting the words "at the discretion of"; and
- (b) inserting the word "reasonable" immediately after the words "it may be subject to".

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 19 - as amended agreed to

Clauses 20, 21, 22, 23, 24, 25 & 26 - agreed to

Clause 27 - amendment proposed –

THAT clause 27 of the Bill be amended in paragraph (j) —

- (a) by deleting the word "wrongfully" and substituting therefor with the word "forcibly";
and
- (b) by deleting the expression "a" and substituting therefor with the expression "an."

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 27 - as amended agreed to

Clause 28 - amendment proposed –

THAT clause 28 of the Bill be amended in sub paragraph (1) by inserting the expression "to" immediately after the words "is liable".

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 28 - as amended agreed to

Clause 29 - agreed to

Clause 30 - amendment proposed –

THAT clause 30 of the Bill be amended by deleting the word "ninety" wherever it appears and substituting therefor with the word "thirty."

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 30 - as amended agreed to

Clauses 31, 32, 33 & 34 - agreed to

Clause 35 - amendment proposed –

THAT clause 35 of the Bill be amended by deleting the words "be in addition to and not in derogation of the provision of" and substituting therefor the word "supersede."

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 35 - as amended agreed to

Clauses 36 & 37 - agreed to

Clause 38 - amendment proposed –

THAT the Bill be amended by deleting clause 38 and inserting the following new clauses—

Repeal of section 35 of No. 28 of 2015. **38B.**The Court of Appeal (Organization and Administration) Act is amended by deleting section 35.

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 38 - as amended agreed to

New Clause 34A proposed -

THAT the Bill be amended by inserting the following new clause immediately after Clause 34 —

34A. A Court shall not initiate proceedings for contempt of Court in relation to a decision made or directions given by a Speaker of a House of Parliament in the performance of his or her official responsibilities.

Motion made and Question proposed –

THAT, the New Clause 34A be read a Second Time

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 34A be part of the Bill

Question put and agreed to;

Schedule - agreed to

Clause 2 - agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments.

11. **HOUSE RESUMED** - the Third Chairperson in the Chair

(i) **The Competition (Amendment) Bill (National Assembly Bill No. 24 Of 2016)**

Bill reported with amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report;

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question deferred.

(ii) The Contempt of Court Bill (National Assembly Bill No. 32 of 2016)

Bill reported with amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question deferred.

12. THE NATIONAL HONOURS (AMENDMENT) BILL (SENATE BILL NO. 16 OF 2014)

Motion made and Question proposed –

THAT, the National Honours (Amendment) Bill (Senate Bill No.16 of 2014) be now read a Second Time

(Chairperson, Departmental Committee on Administration and National Security)

Debate interrupted on Thursday, November 17, 2016 resumed;

Mover replied;

Question deferred.

13. THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2016)

Motion made and Question proposed –

THAT, the Land Value (Amendment) Bill (National Assembly Bill No.40 of 2016) be now read a Second Time

(The Leader of Majority Party)

Debate arising;

Mover to reply.

And the time being thirty minutes past Six O'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

MEMORANDUM

The Speaker will take the Chair on
Wednesday, November 30, 2016 at 9.30 a.m.