

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 11<sup>TH</sup> February, 2015

The House met at 9.30 a.m.

*[The Speaker (Hon. Muturi) in the Chair]*

### PRAYERS

**Hon. Speaker:** Hon Members, there is a communication I am about to give and it relates to the business listed as Order No. 8. I will not give it at this point; I will give it when we get to Order No. 7.

### COMMUNICATION FROM THE CHAIR

#### PROCEDURE FOR APPOINTMENT OF HOUSE BUSINESS COMMITTEE

**Hon. Speaker:** Hon. Members, before we proceed to Order No.8, being the Motion for approval of Members of the House Business Committee (HBC), I wish to make the following communication.

Hon. Members, you will recall that yesterday I guided the House that the provisions of Standing Order No.175(1) and (2) apply to the process of nomination and approval of Members of the HBC. For clarity, Standing Order No. 175(1) and (2) reads as follows:-

Standing Order No. 175(1):

“The Selection Committee” - it is important that hon. Members listen to this – “shall, within seven days upon nomination of members to serve in any committee of the House, present the list to the House for approval.”

The emphasis is “to serve in any committee”.

“(2) Whenever a Motion for approval of a list under paragraph (1) is moved in the House, no objection against the proposed membership of a Member in a select committee shall be permitted and objections, if any, shall be formulated against the proposed membership as a whole.”

Hon. Members, you will all agree with me that the plain reading in that rule applies to approval processes whose nominations are made by the Committee on Selection.

However, the provisions of Standing Order No. 172 bring in a different application. Paragraph 2 thereof reads as follows:-

“The Committee on Selection shall nominate members to serve in committees, save for the membership of the House Business Committee and the Committee on Appointments”.

Hon. Members, it is clear that the Committee on Selection has power to select members to serve in any committee, save on the House Business Committee and the Committee on Appointments, and, indeed, by extension, it does not appoint the Members to serve on the Committee on Selection itself.

Therefore, this provision expressly precludes the Committee on Selection from the process of nomination of members to serve on the House Business Committee and two other committees, as I have explained. Therefore, it means that Standing Order No. 175, including the provision that the House cannot object to any name proposed for approval, does not apply to the process of approval of names of members of the House Business Committee, the Committee on Appointments and, by extension, the Committee on Selection itself.

However, hon. Members, that exemption does not give the House the authority to originate the name of any Member. Therefore, should you wish to move any amendment to delete any name, you are at liberty to do so, but not to replace such name with another one since paragraph (d) of Standing Order 171(1) vests the authority of originating the individual names in the parliamentary political parties.

Indeed, the 9<sup>th</sup> Parliament was faced with similar circumstances on 31<sup>st</sup> March 2004 when the House rejected the entire list of Members of the House Business Committee and had to resort to rescinding its decision, after realising that it was technically impossible to operate without the House Business Committee for six months. The then Speaker, hon. Francis ole Kaparo, guided that House that instead of rejecting the entire list, the House should have either moved amendments to delete the specific names that they desired to remove, or have the vote taken individually on each name for the House to either approve or reject.

Hon. Members, in the case of the Motion before us today, I now rule that it is in order for any hon. Member to move amendments to delete any name, or names, proposed for appointment as members of the House Business Committee, but not to replace such name or names. Any proposal for replacement must originate from the concerned parliamentary political party.

We will, therefore, proceed with the debate that was interrupted yesterday afternoon; be accordingly guided.

Thank you, hon. Members.

*(Applause)*

## MOTION

### APPOINTMENT OF HOUSE BUSINESS COMMITTEE

**Hon. Speaker:** What is your point of Order, hon. Serut?

**Hon. Serut:** On a point of order, hon. Speaker. Let me thank you for your ruling, but that particular Standing Order does not mention the position of independent candidates and non-parliamentary political party members. Where do some of us fall, hon. Speaker?

**Hon. Speaker:** It is very easy. When names are originated as clearly stipulated there, they are forwarded to the Speaker. The Speaker goes through the lists to ensure that independents and non-parliamentary political parties Members that may be represented in the House do not suffer. So, independents and other non-parliamentary political parties are protected by the Speaker. However, should they choose to be owned by any of the coalitions in the usual manner - we have seen some animal called Baby Oryx being owned by lions - then they are entitled to so be owned.

However, it is fair to also appreciate that even the non-parliamentary political parties cannot expect to fill all the positions in committees. This is because if that were to happen, then it would mean there would be, in more than 10 committees, a situation which will also be untenable and undesirable. So, we will proceed with that understanding and make sure that for my purpose, the independents are represented in this key committee that prioritises business.

Let us proceed.

Yes, Leader of Majority Party.

**Hon. A.B. Duale:** Thank you, hon. Speaker. At least this morning I found my card; it got lost on 18<sup>th</sup> December, 2014.

Hon. Speaker, I thank you for the wise guidance and communication you made this morning. Yesterday hon. Members raised a number of issues and now we have opened the gate. You have used precedent and practice of substantive Chairs like you, so that we move on.

I want to tell my colleagues that we have started our new Session. It is a very important Session, it is the Budget cycle. We are here to serve the people of Kenya and, as you said, the first agenda at the beginning of any Session is to appoint the House Business Committee, so that we retreat to Room 9 and set the business for this afternoon and for the remaining days of the Third Session of the 11<sup>th</sup> Parliament in 2015. Now that you have solved the puzzle, or the quagmire, for me, the Minority whips and my good friend, hon. Wafula Wamunyinyi, it is good that we do not spend more time on this matter. We need to dispose of this matter and, under your leadership, retreat to Room 9.

Among the serious business that has a timeline are the two constitutional Bills that we must send to the Senate. The Senate has until end of April to dispose of the Public Audit Bill, 2014 and the Public Procurement and Asset Disposal Bill, 2014. These are very important Bills. If we agree, then this afternoon, through your guidance in the House Business Committee, we can start on those Bills and wait for the Budget Policy Statement and deal with all the other matters. We are far much better than we were yesterday afternoon. I am sure the list belongs to the plenary. What the leadership does is to look at the parliamentary strengths, and take into consideration our independent colleagues.

So, the list is here, it belongs to the House. Now you have the chance to move an amendment and remove so and so; the list is before us; please, let us dispose of it very fast. If somebody wants to move an amendment, let him or her move it. If he or she wants to remove "X," "Y," or "Z" colleagues, let us do it. However, let us save time and do the work the Kenyan people have sent us here to do, The House Business Committee should be constituted very fast. We need to do the calendar for the Third Session, and also come up with the programme and the business for this week and subsequent days in the year.

Thank you, hon. Speaker.

**Hon. Speaker:** I think hon. Eseli has an interjection: Happy New Year hon. (Dr.) Simiyu.

**Hon. (Dr.) Simiyu:** Happy New Year, hon. Speaker. Thank you for your wise ruling on this matter which hopefully unlocks the impasse of last night. Now that the House Business Committee membership is essentially nominated by political parties in the House, is it then okay for hon. Members from other political parties to decide which person the political party should nominate? That is because if, say, my political party has nominated an hon. Member to the HBC, is it not the responsibility of my party? Is it really the party then nominating because if then the House is allowed to delete that name or add another name, then are we really allowing that political party to have its say, as it were? So, I do not mean to question your ruling because it unlocks the impasse of last night, but I think it is a very critical matter that needs to be considered as to the right of the political right to nominate a person of their choice.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. (Dr.) Simiyu raises a very fundamental issue which I think the last HBC was faced with in the appointment of the Minority Whip to serve in the HBC. But I believe through consultations--- Even though your own Standing Orders provide that for anybody to serve in any Committee they must be approved by the House, I believe what prevailed at that time was wise counsel through consultations. Even though the House has ultimate authority to approve, there is need to also respect the positions of each nominating political party. I think that is the route we took when we finally approved the appointment of the Minority Whip to sit in the HBC. But remember that, at the end of the day it is still you, as the House, that must make the final decision. The Speaker cannot impose his will or desire on the House and, indeed, on any political party.

Hon. (Prof.) Nyikal, you also wanted to raise an issue?

**Hon. (Prof.) Nyikal:** Thank you, hon. Speaker, for giving me this opportunity. I appreciate your ruling and I concur with what hon. (Dr.) Simiyu has said, but I want to make an appeal that considering where we have come from and how we ended the last Session; and considering the statements you made yesterday which I really concur with; that there are events that took place in the last Session that may not have been very nice and may have affected the reputation of this House--- Despite that, I think you took a wise position that we move on and that such events should be avoided as much as possible. In that situation, it would be my view to start this Session on a conciliatory note. Let this list pass as it is and let us start the businesses of the House because if attempts are made to make changes, I get the impression - and I have been getting comments in the corridors - that it will take us right back to where we were, where people will see you having taken a stand of reconciliation and letting the events of the past pass, we may use this opportunity to revisit those issues in somehow a back-door way. Therefore, my appeal is that we let the Committee start its work. It has worked before and if we have other issues, we can do that as we proceed with the businesses of the House, instead of blocking ourselves at the very beginning.

Thank you, hon. Speaker.

**Hon. Speaker:** I will give hon. Njenga a chance to make his intervention. Hon. Members, it is fair to appreciate. I am aware that many Committees have applied to me for leave to sit at various hours this morning and in the afternoon, but I have taken the liberty to refuse to approve those requests because when a Committee meets to deliberate on a matter, it has to bring a report to the plenary. Before that report comes to the plenary, it passes through the HBC for prioritisation. So, if we do not have a HBC, of what use is it for other Committees to sit? I have taken the liberty not to approve those requests because I am guided by the fact that the HBC shall be appointed within seven days on assembly. So, starting yesterday, we have a maximum of seven days within which to form or appoint this Committee. In the meantime, I am open to all manner of requests for consultations but Committees, be advised. The Director of Committees has been instructed accordingly not to allow any Committee and all rooms where Committees are supposed to meet have been locked until we deal with the issue of the HBC. It is not good for you to meet to spend taxpayers' money out there listening to witnesses and others when you will have nowhere to take your report to. It means there is a possibility that whatever you are doing there will be an exercise in futility.

Let us hear hon. Njenga.

**Hon. Njenga:** Hon. Speaker, in view of your guidance and taking into account that this is a new year - how we ended the other year was bad - the public opinion outside there is that we should have value for time. I propose that there is no need of debating so much. We always move from the known to the unknown. In this particular case, you have taken us through the known. We will move to the future and then the unknown will be unearthed. I will request you to call the Mover to reply and we move on.

**Hon. Speaker:** Is that okay?

**Hon. Members:** Yes!

**Hon. Speaker:** I will then put the Question.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**Hon. Speaker:** I will advise the Nays to always take heavy breakfast before coming in the morning. Leader of Majority Party!

**Hon. A.B. Duale:** Hon. Speaker, today is Wednesday. Yesterday was Tuesday and we want to start on a good footing; on a footing of reconciliation and a footing of bipartisanship. The HBC Members sit very late hours every Tuesdays. For some of us, the only Committee we are members of is the HBC. I am happy today you have brought equality that if the HBC is not there, then every hon. Member will miss the little allowances that they are given. I want to urge my colleagues to pass it and show unity. Let us work for the people of Kenya.

I beg to move.

*(Question put and agreed to)*

**Hon. Speaker:** Yes hon. Chepkong'a, what is your point of order? There is a point of order, hon. Members from hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, hon Speaker. I wish you a Happy New Year. In view of the fact that we have exhibited very good conduct this morning, would you allow us to meet as committees who have serious matters? That is because the behaviour appears to be very good and the mood is also generally good. Would it be in order hon. Speaker that we ask you to exercise the same mood so that we can continue? Thank you.

**Hon. Speaker:** Hon. Members making their way into the Chamber, hon. Chepkong'a, the Chair of the Departmental Committee on Justice and Legal Affairs is making a passionate appeal that the earlier order that no committee sits be rescinded. Having considered that the House has moved in a particular direction, the earlier order that committees should not sit is, hereby, rescinded.

*(Applause)*

There are those committees that had applied to sit. There are some which wanted to sit from 10.30 a.m. others at 11.00 a.m. others at 12.00 p.m. and others at 3.30 p.m. Since I am aware that they are considering budget proposals, those committees may proceed and the approvals will be ready in the next ten minutes when they can collect the orders. The Director of Committees is, hereby, informed accordingly to permit those meetings to take place.

#### ADJOURNMENT

**Hon. Speaker:** Hon. Members, the House is adjourned to resume at 2.30 p.m. this afternoon. The House Business Committee is to meet in Room No. 9 at 10.15 a.m.

The House rose at 10.05 a.m.