



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – SECOND SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, JULY 30, 2014

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **PRESIDING** – the Speaker
4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications –

(i) Delegation from Parliament of Tanzania

Honourable Members, I wish to introduce to you a delegation on the Standing Committee on Budget from the Parliament of the United Republic of Tanzania, who are seated on the Speaker's Row. The delegation comprises of the following Honourable Members –

The Hon. (Dr) Festus Limbu, MP	-	Vice-Chairman/Leader of Delegation
The Hon. John M. Cheyo, MP	-	Member
The Hon. Ritha Mlaki, MP	-	Member
The Hon. (Dr) Goodluck Ole Medeye, MP	-	Member
The Hon. (Dr) Cyril Chami, MP	-	Member
The Hon. Amina Amour, MP	-	Member
The Hon. Josephat Kandege, MP	-	Member
The Hon. Christina M. Lissu, MP	-	Member
The Hon. Assumpter Mshama, MP	-	Member
The Hon. Kidawa Saleh, MP	-	Member
The Hon. Joseph Selasini, MP	-	Member
The Hon. Godfrey Mginwa, MP	-	Member

The delegation is accompanied by the following members of staff –

Mr. Theonest Ruhilabake	-	Assistant Director, Committee Department
Mr. Michael Kadebe	-	Clerk Assistant
Ms. Haika H. Mtui	-	Clerk Assistant

The delegation is in the country to benchmark, learn and share experiences with the Members of this House, and in particular Members of the Select Committee on Budget and Appropriations. The Members will be with us until Friday, 1st August, 2014. The visit is, indeed, timely as it coincides with our parliamentary week, which is aimed at showcasing the Parliament of Kenya to the public.

On my own behalf, and that of the House, I wish to welcome them to the National Assembly of the Republic of Kenya and wish them fruitful engagement.

Thank you".

(ii) Activities lined up to commemorate Parliament Week, 2014

"Honourable Members,

Further to the communication on Parliament Week given during the sitting of Wednesday, 16th July, 2014, I have the following communication to give.

As Hon. Members are aware, Parliament Week commenced with a media breakfast, which was successfully enjoyed on Thursday, 17th July, 2014 within Parliament Buildings. The media breakfast brought together the leadership of Parliament and various representatives of the media industry, and provided a forum for deliberations on matters of concern to Parliament and the media. A series of media appearances by Members of Parliament on various television and radio stations have also commenced and will run throughout this week.

On Monday, 28th July, 2014, a public debate was held at the University of Nairobi's main campus. The theme of the debate was "Separation of powers under the Constitution of Kenya, 2011: A case for the Eleventh Parliament". The public debate was attended by the leadership of Parliament, including the Speaker of the National Assembly, the Deputy Speaker of the Senate, Commissioners of the Parliamentary Service Commission and other hon. Members of Parliament. Distinguished university professors, led by the Vice-Chancellor of the University of Nairobi, Prof. George Magoha, the student fraternity and the general public attended and actively participated in the debate.

Hon. Members, as part of the activities lined up for the Parliament Week, the much awaited sporting activities, pitting the two Houses of Parliament against each other, are scheduled for tomorrow, Thursday, 31st July, 2014 at the Nyayo National Stadium, commencing at 7.00 a.m. The sporting activities will include a football match between Members of the National Assembly and the Senators, a netball match between Members of the National Assembly and Senators, and tug-of-war between the two Houses.

In order to facilitate attendance by hon. Members and the staff of the National Assembly, all committees are requested to defer any committee sittings scheduled for tomorrow, Thursday, 31st July, 2014 at any time before noon. Hon. Members are also requested to note that the Open Day will be held on Friday, 1st August, 2014 at Parliament's public space opposite Sheria House.

Thank you".

(iii) Disorderly Conduct by The Hon. Millie Odhiambo-Mabona

"Honourable Members,

With a very heavy heart, I stand to issue this Communication.

You will recall that on Tuesday February 18, 2014 the House referred an incident to the Committee of Privileges after the Member for Mbita, the Hon. Millie Odhiambo-Mabona made disruptive utterances against the withdrawal of the Hon. James Nyikal who had been suspended by the Chair for disorderly conduct. The Deputy Speaker had ordered her to withdraw for the remainder of the day but before withdrawing she menacingly pointed at the Deputy Speaker claiming she had *"rigged the Standing Orders"*. The matter was reported to the Committee on Privileges which first met on 24th June, 2014 to address it.

Again, on Thursday July 24, 2014 at 5.35 pm the Member for Mbita was reported to have caused damage to property in the Chamber. The property includes three seats and one table.

On these two occasions the Member has neither been remorseful nor apologetic to this House for her very persistent and unfortunate disorderly conduct. As at this afternoon, neither have I received any explanation from the Member regarding the incident nor has she tendered any apology even after a long weekend of, I hope, soul searching and retrospection.

Without pre-empting the hearing of this very grave matter by the Committee on Privileges, I wish to state that in the interest of order and decorum in this House, the incident touching on the Hon. Millie Odhiambo-Mabona is referred to the Committee on Privileges to be considered along with the earlier Breach of Privilege.

By this Communication therefore, Members of the Committee on Privileges are notified of a meeting to consider this matter, among others, on Tuesday, August 5, 2014 at 10.00 am at the Speaker's Boardroom.

Thank you".

(iv) **The Place of Minority Reports and Admissibility of the Report of the Departmental Committee on Justice & Legal Affairs on the Matter of IEBC Commissioners**

The Speaker conveyed the following Communication –

Honourable Members,

You will recall that earlier in the day during the Morning Sitting, the Member for Ugenya the Hon. David Ochieng' on a Point of Order sought the guidance of the Speaker on the admissibility of the Report of the Departmental Committee on Justice and Legal Affairs on the Petition for Removal of the Chairperson and eight other Members of the Independent Electoral and Boundaries Commission. The Member also sought to know the place of a Minority Report in a Report of a Committee as contemplated by Standing Order 199. The Member was supported by the Member for Ugunja the Hon. Opiyo Wandayi. Having perused through the verbatim report for the Morning Sitting, I must thank the two Members for raising these matters, which are indeed, weighty and have implications on the interpretation of our rules of procedure. In summary, the Members sought guidance on the following matters -

- (i) the place of a minority report in the Report of a Committee of the House; and,

- (ii) whether the Report of the Departmental Committee on Justice and Legal Affairs on the Petition for the removal of the Chairperson and Members of the Independent Electoral and Boundaries Commission as tabled on July 17, 2014 is admissible.

Honourable Members,

To begin with, there is a universally accepted principle of democracy that, **"the Majority shall have their way, but the Minority shall also have their say"**. This principle does not decree that the Majority ought to emasculate the voices of the minority, nor does it give the minority a blanket cheque to say anything. To the contrary, this principle encourages the majority in any group to recognize and take into account the views of the minority in that group. In the Courts, particularly the higher Courts, it is not uncommon for judges in a bench to make differing determinations on a matter. However, the decision of the Court is carried by the majority of the members constituting the bench. In Parliamentary parlance, the application of this principal is not new. In the commonwealth of New Zealand, the Speakers have reached a common ruling on this matter, which I wish to quote from a publication called "Speakers' Rulings, 2011". This particular authority is rather long, but due to its importance on the matter before us, I will quote most of it-

"Differing views should be fairly reflected in reports. There is a strong presumption that this will occur. Members who are in the minority have a legitimate expectation that all reasonable steps will be taken to ensure that this convention is followed, even though (Standing Order 242) gives some discretion to committees. This discretion should only be exercised as a last resort when text supplied by a minority is significantly misleading or intemperately expressed, and reasonable efforts to find a compromise have been unsuccessful. Where possible, members should give some advance warning that they are likely to enter differing views, so that their perspectives can be incorporated.

There is no such thing as a minority report, there is only one report presented to the House by a select committee. The minority or differing views may be indicated in a report. No committee is obliged to indicate diverging views in a report. A majority of the committee can refuse to include other views if it wishes. But a majority cannot rewrite a minority's views so that effectively the majority is putting words in the minority's mouth. That would misrepresent diverging views. A minority does not have a blank cheque to include whatever it wishes in the report -

- a majority can refuse to admit differing views altogether. If a minority views are objectionable or too long, there may be a trade-off whereby the minority agrees to cull its contribution. But these must be done consensually; the majority cannot just rewrite the minority's views;*
- a minority contribution, like every contribution, must be relevant to the subject before the committee. The Chairperson rules on relevancy.*

That authority continues to say that *"The indication of minority report is a mechanism to allow the House to be acquainted with the completeness of the issues about which there has been disagreement, before the House can make a resolution."*

Honourable Members,

On the other hand, Erskine May, an authority in parliamentary practice holds this view, *"a report from a committee embodies the conclusions agreed to by the majority of its members, and members who dissent from the report may not make minority reports to be appended to*

it. Nor can members enter their protests against a report. If a member disagrees to certain paragraphs in the report, or to the entire report, they can record their dissent by dividing the committee against those paragraphs, or against the entire report, as appropriate. Members can also put on record their observations and conclusions, as opposed to those of the majority, by proposing an alternative draft report or moving amendments to the draft. Any alternative draft or amendment on which a division takes place is recorded in full in the minutes of proceedings of the committee. Where a committee is unable to agree on a report, it can make a special report to that effect, together with the evidence taken before it, or it can merely report the evidence taken before it to the House without any observations or expression of opinion."

Honourable Members, this now brings me to the practice in our Parliament and the provisions of our Standing Orders. It is common knowledge that, our practice allows Members with dissenting views to have those views recorded in the Report of the Committee. As a matter of fact, before the coming into force of the current standing orders, the practice has been to allow a mention of the differing views and the name of the Member(s) dissenting.

This was the case during the Report of the Departmental Committee on Health on the Matter of Irregularities on the Rolling-out of the Civil Servant's Out-Patient Medical Scheme by the NHIF". In that report, the then Member for Kasipul-Kabondo recorded dissenting views. Similarly, the then Chairperson of the Departmental Committee on Education Research and Technology recorded dissenting views in his Committees' First Report on the nomination of persons to the Teacher's Service Commission. In this last example, the Chairperson went ahead to move the report of the Committee, as this was his duty, notwithstanding that he had differing views on most of the recommendations made by the Committee. This practice has now been codified in our current standing order 199 (5) (6), which read-

"(5) A report having been adopted by a majority of members, a minority or dissenting report may be appended to the report by any member(s) of the Committee.

(6) A report of a select committee including any minority report, together with the minutes of the proceedings of the committee, and with such note or record of any evidence by the committee as the committee may deem fit, shall be laid on the Table of the House by the chairperson of the select committee, or the vice-chairperson or by a member authorized by the committee on its behalf within fourteen days of the conclusion of its proceedings."

Honourable Members, the reading of these rules indicate that, as an advance of our previous practice, those with minority views have been accorded a higher leverage, as they are allowed to have their views recorded substantially, and not just a mere mention and in a rare occasion have a dissenting report appended to the main report. This is in keeping with the spirit of our new Constitution to protect the rights of both the majority and the minority. However, should a Committee not reach consensus, this does not imply that there should be two reports of a committee, or a separate report compiled by the Minority. The rule of thumb is that there can only be one report of a Committee and that is the report that has been supported by a majority of the Members of the Committee, which may, contain, as part of it, a minority report.

This now brings me to the question as to whether the report of the Departmental Committee on Justice and Legal Affairs contains, in it, a minority report. To address this

question, I wish to draw the attention of the House to pages 27, 28 and 29 of the report. Indeed, the title of item no. 6.0 of the Report is "**Report on Minority Views**". That part has captured not only the reasons and named of members with differing views, but also the recommendation of the minority members of the Committee. The Minutes of the Committee for its sittings, particularly those of July 15 and 16, 2014 have also captured these views fairly. This is by far a liberated procedure as compared to our previous practices and which meets the threshold required under standing order 199 (5) (6). Looking at the reasons for dissenting and the alternative recommendations of the minority in this report, am satisfied thatadequate opportunity has been given to the minority to propose an alternative draft report including recommendations for which different shades of opinion have been offered for House to make an informed decision. Having said that, it is my finding that the report of the Committee is admissible and therefore Order No. 9 may therefore be entered upon.

Honourable Members, before I conclude, I am aware of an allegation that was made in the morning to the effect that part of the House may not be accorded fair opportunity to debate this matter. This is far from the truth. As a matter of fact, I want to indicate that, since the debate on this matter is likely to be politically emotive, it is the intention of the Speaker to accord each Member a fair opportunity to speak. To enable this to happen, I will not entertain frivolous points of orders, from either side. Each member speaking should be allowed to speak their mind, but all of you must also keep within the limits of our rules of debate.

Thank you".

5. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Report of the Auditor General on the Financial Statements of Kenya Wildlife Services for the year ended 30th June, 2013 and the certificate of the Auditor General therein;
- (ii) The Report of the Auditor General on the Financial Statements of Sugar Arbitration Tribunal for the year ended 30th June, 2012 and the certificate of the Auditor General therein;
- (iii) The Report of the Auditor General on the Financial Statements of South Nyanza Water Services Limited for the year ended 30th June, 2013 and the certificate of the Auditor General therein;
- (iv) The Report of the Auditor General on the Financial Statements of Water Resources Management Authority for the year ended 30th June, 2013 and the certificate of the Auditor General therein;
- (v) The Report of the Auditor General on the Financial Statements of Nairobi Water Conservation and Pipeline Corporation for the year ended 30th June, 2013 and the certificate of the Auditor General therein;
- (vi) The Report of the Auditor General on the Financial Statements of Ministry of Nairobi Metropolitan Development for the year ended 30th June, 2013 and the certificate of the Auditor General therein;

(The Leader of the Majority Party)

6. STATEMENTS PURSUANT TO STANDING ORDER 44(2)(c)

Pursuant to Standing Order 44(2)(c), the following Members sought statements –

- (i) by the Member for Ndhiwa (Hon. Agostino Neto) from the Leader of the Majority Party on ratification of Treaties or International Conventions by the Government;
- (ii) by the Member for Isiolo County (Hon. Tiya Galgalo) from the Chairperson of the Departmental Committee on Defence and Foreign Relations regarding alleged non-endorsement of the United Nations Declaration on Prevention of Sexual Violence in Conflict Situations, by Kenya;
- (iii) by the Member for Galole (Hon. Dukicha Hassan) from the Chairperson of the Departmental Committee on Administration and National Security regarding failure by the National Police Service to reinstate one Abdulahi Kenso, a former police officer following his dismissal from service on grounds of desertion of duty;
- (iv) by the Member for Laisamis (Hon. Joseph Lekuton) from the Chairperson of the Departmental Committee on Health, concerning the alarming high levels of maternal deaths in the country and specifically in slum areas;
- (v) by the Member for Trans Nzoia County (Hon. Janet Nangabo) from the Chairperson of the Departmental Committee on Administration and National Security regarding the alleged dismissal of police officers attached to the Rapid Deployment Unit of the Administration Police Service; and,
- (vi) by the Member for Ugenya (Hon. David Ouma) from the Chairperson of the Departmental Committee on Agriculture, Livestock and Co-operatives regarding the status of the one million acres irrigation project in Galana.

7. MOTION - ADOPTION OF THE REPORT ON NOMINATION OF MEMBERS TO THE NATIONAL COHESION AND INTEGRATION COMMISSION

Motion made and Question proposed –

THAT, this House adopts the report of the Departmental Committee on Justice and Legal Affairs on the Nomination of Members to the National Cohesion and Integration Commission, laid on the Table of the House on Tuesday 22nd July, 2014, and in accordance with Section 17(1) of the National Cohesion and Integration Commission Act, 2012 and Standing Order 45, **approves** the nomination of the following fifteen (15) persons as commissioners to the National Cohesion and Integration Commission –

- (i) Alice Wairimu Nderitu
- (ii) Morris Dzoro
- (iii) Rose Mghoi Macharia
- (iv) Dr. Roba D. Sharamo
- (v) Anne Munyiva Kyalo
- (vi) Millie Lwanga Odongo
- (vii) Irene Njeri Wanyoike
- (viii) Adan Abdi Mohamed
- (ix) Alasa Osman Hirsi
- (x) Eric Oluoch Ogwang

- (xi) Belinda Akoth Ochiel
- (xii) Francis Xavier Ole Kaparo, EGH, SS
- (xiii) Irene C. Masit
- (xiv) Dr. Joseph Wamocha Nasongo
- (xv) Prof. Gitile J. Naituli

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Debate arising;

Rising in his place on a Point of Order, the Member for Kisumu Central (Hon. Ken Obura) claimed to move that "the Mover be now called upon to reply";

And the Speaker acceding to the claim;

Question put and agreed to;

Thereupon Mover replied;

Question put and agreed to.

8. **PROCEDURAL MOTION – EXTENSION OF SITTING TIME**

Motion made and Question proposed –

THAT, pursuant to the provisions of Standing Order 30, this House resolves to extend its sitting until the conclusion of Business appearing under Order No.9

(The Leader of the Majority Party)

Debate arising;

Question put and agreed to.

9. **LIMITATION OF DEBATE ON MOTION**

Motion made and Question proposed –

THAT, pursuant to the provisions of Standing Order 97, this House resolves that debate on the Motion appearing on Order No.9 be limited to a maximum of 5 minutes for each Member speaking

(The Majority Whip)

Debate arising;

Question put and agreed to.

10. **ADOPTION OF THE REPORT ON THE PETITION FOR REMOVAL OF THE CHAIRPERSON AND MEMBERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION**

Motion made and Question proposed –

THAT, this House adopts the report of the Departmental Committee on Justice and Legal Affairs on the Petition for Removal of the Chairperson and Members of the

Independent Electoral and Boundaries Commission, laid on the Table of the House on Thursday, 17th July, 2014, and in accordance with the provision of Article 251(3) of the Constitution and Standing Order 230(5) finds that the Petition **does not** disclose sufficient ground for the removal of the Chairperson and members of the Independent Electoral and Boundaries Commission.

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Debate arising;

Mover replied;

Question put and agreed to.

And the time being fifteen minutes past Eight O'clock, the Speaker interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders

11. HOUSE ROSE - at fifteen minutes past Eight O'clock

MEMORANDUM

The Speaker will take the Chair on
Thursday, July 31, 2014 at 2.30 p.m.

---X---