



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – SECOND SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, JUNE 04, 2014

1. The House assembled at thirty minutes past Two O'clock.

2. The Proceedings were opened with Prayer.

3. **PRESIDING** – the Speaker

4. **ADMINISTRATION OF OATH**

The Speaker administered the Oath of Office to the following Member –

MUNENE, Mary Wambui

5. **COMMUNICATION FROM THE CHAIR – PREMATURE DISCLOSURE OR PUBLICATION OF COMMITTEES' EVIDENCE, PROCEEDINGS OR DRAFT REPORTS**

The Speaker conveyed the following Communication from the Chair –

"Honourable Members,

"On Wednesday April 23, 2014 the Leader of Majority Party the Hon. Aden Duale rose on a Point of Order to challenge the premature disclosure and publication by the Nation Media Group and the Standard Media Group of Committee evidence and draft report prior to the tabling of the *Report of the Public Accounts Committee (PAC) on the Hire of an Aircraft for the Deputy President for a Tour of Four African Nations in May 2013*.

The Hon. Duale claimed that the report of the Committee was carried by one of the dailies on its headlines for two consecutive days, and particularly on the second day, with virtually the entire report and the committee recommendations covered blow by blow. He wanted to know when the Committee adopted the report, and if the report was adopted before the House went on recess, why the report was not tabled then, and whether the report was tabled within fourteen days after it was adopted in compliance with Standing Order 199(6). He also demanded to know whether Members or the staff of the Committee could have occasioned this premature disclosure. He similarly wanted to know if the report tabled by the Chairperson of PAC is the very same report whose contents and findings the newspapers carried and what the act portends to the integrity of Parliament.

Reacting to the matter, the Chair of PAC Hon. AbabuNamwamba said the Committee is not party to the speculation, the rumour-mongering and the leakage of the report and that the report was becoming public for the first time. He assured the House that the Public Accounts Committee did exercise due diligence and was confident of the integrity and the sanctity of the Report that he had just tabled.

Honourable Members,

Unauthorized disclosure of committee evidence, documents, proceedings or reports is not a new thing. The motivation to disclose information range from carrying favour with a journalist to party political advantage. Again, not all disclosures would necessarily interfere with the work of a committee and as such would not necessarily be considered contempt. However, the disclosure of certain information held by committees such as *in camera* evidence or other confidential documents has a real potential to interfere with the work of parliamentary committees by undermining the operations of committees and should be taken seriously. An unauthorised disclosure of an incomplete report has even more serious consequences.

Most parliamentary jurisdictions have long-standing rules regarding the custody of records of the House and the requirement for the Speaker to authorise their release. This principle stems from the privilege of Houses of Parliament to control their own proceedings.

Even more, jurisdictions have adopted a standing rule or order that deals specifically with the unauthorised disclosure of committee proceedings. In the New South Wales Legislative Assembly, Standing Order 297 provides that:

"A Member or any other person shall not disclose evidence, submissions or other documents and information presented to the committee which have not been reported to the House unless such disclosure is first authorised by the House or the committee."

Standing Order 240 of the House of Representatives of New Zealand states that:

"the proceedings of a Select Committee or a Subcommittee other than during the hearing of evidence are not open to the public and remain strictly confidential to the Committee until it reports to the House".

Our own Standing Orders put such a caveat. Standing Order 86 provides that:

"No Member shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the House".

Despite these provisions, some Committee Members in a number of Parliaments have unwittingly continued to disclose information from committees. Thus, in recent years it has become common for Parliamentary jurisdictions to place the onus for investigating unauthorised disclosures on the relevant committee, as opposed to a privileges committee or the House itself. This approach requires committees to determine whether the source of the unauthorised disclosure can be determined and whether in the view of Committee Members the leak is serious enough to interfere with the work of the committee and therefore constitute contempt. It is then for the House to determine whether contempt has been committed, and what punishment should be handed down.

Erskine May, a foremost authority in Parliamentary practice and procedure in his book, the *Parliamentary Practice* (23rd Edition, pp. 776-7) notes that if Committee evidence or reports are prematurely disclosed certain procedures should be followed -

- “(1) the Committee should carry out its own investigation to try to discover the source of a leak, in particular by formally asking all members of the committee and the committee's staff if they can explain how the leak came about;
- (2) the Committee should decide whether or not the leak constitutes a substantial interference, or the likelihood of such, with the work of the committee, with the select committee system or with the functions of the House;
- (3) it should inform the Liaison Committee, so that it may take a view;
- (4) in light of the views of the Liaison Committee it should make a special report to the House to that effect, outlining the action it has taken and the conclusions it has reached;
- (5) such a special report would automatically be referred to the Committee on Standards and Privileges without a debate in the House: it is then for that Committee to consider the matter and make a report to the House, whereupon the House would consider its recommendations.”

Of particular note is step (2), whether the “leak constitutes a substantial interference with the work of the committee”. This is important in terms of deciding what action to take. The type of material that is disclosed is also important in determining what course of action to take.

The 122nd Report of the New South Wales Senate Committee of Privileges, *Parliamentary privilege – unauthorised disclosure of committee proceedings*, of June 2005, p. 37, considered that the disclosure of a draft committee report would usually not be so serious as to constitute contempt. Exceptions would be disclosures resulting in serious consequences: Thus the report quoted above added,

“...it is up to the parliamentary committee concerned to undertake the necessary disciplining of its members, rather than raising the question as contempt. It is only in circumstances such as the divulging of a draft report which may jeopardize court proceedings or police investigations, that the Committee of Privileges would entertain advising other committees that the matter should be raised as a contempt.”

However, the disclosure of *in camera* or confidential evidence is a much more serious matter and is usually treated as contempt regardless of the circumstances. The release of *in camera* evidence undermines the operations of a committee in that persons providing information or evidence to committees in confidence may lose confidence in the committee process and future witnesses may not be as forthcoming as they would have been.

It is often difficult for committees to determine who is responsible for an unauthorised disclosure and accordingly it is difficult for any deterrent action to be taken. It is also inevitable that the people with the greatest motive for premature disclosure of evidence or information will be Members of committees themselves.

The fact that most unauthorised disclosures are considered to be insufficiently serious to warrant an extensive investigation, does not remove the real potential that exists for interference with the operations of parliamentary committees if *in camera* or other confidential material is disclosed.

To quote the Australian House of Representatives Practice, 5th Edition (p. 687):

"A committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a member of the committee or parliamentary employee assigned to the committee) unless they have been reported to the House or their publication has been authorized by the House, the committee or subcommittee".

This is a blanket prohibition which precludes unauthorized disclosure of all or part of a report, or its contents.

Honourable Members,

Having established the practice on how incidents of the unauthorised disclosure are treated in Parliamentary jurisdictions, I now wish to respond to issues raised by Hon. Duale.

I have established that the Report in question was adopted by the Members and signed by the Chair on 3rd April, 2014 and pursuant to Standing Order 199(6), should have been tabled within fourteen days. However, as you are aware the House went on recess on 3rd of April and reconvened on 22nd April, 2014. On the question of whether the Report tabled is the same report on whose contents and findings the two dailies carried, a perusal of the report reveals that the reports in the newspapers are more than an accurate and extensive lifting from the report of the Public Accounts Committee as tabled in the House. One of the Papers had even the temerity to state that it had in its custody a copy of the report. The House may wish to note that when the matter was raised by Hon. Duale, the Chair of PAC Hon. AbabuNamwamba, categorically stated that the Committee was not part of the leakage. He continued to state, and I quote,

" .. I want to assure the House that the Committee has exercised due diligence. We have been careful not to release even a scrap of paper relating to this matter while we were discussing it. This Committee will definitely get to the root source of this leakage, rumour-mongering or speculation on this Report. I assure this House on the integrity and the sanctity of the Report that we have just tabled".

Honourable Members,

There is no doubt that the Report was leaked before it was tabled in the House. Since it is difficult at this stage for Chair to determine who may have released the contents of the Report of the Public Accounts Committee, I wish to rule that it is in the interest of this House that the evidence received by a committee, the proceedings of a committee, and draft committee reports, should never be disclosed by any person before the committee has reported to the House. This rule should apply to all persons who have access to committee information, including committee Members and their staff, any witness who gives evidence to a committee, any person who provides a written submission to a committee, and any person to whom committee information has been improperly disclosed. This may include another Member, staff of a Member, a Departmental officer, or a member of the media.

I would also like to warn all recipients of unauthorised disclosures that they should know that they have an obligation to immediately inform the Clerk of the National Assembly or the committee secretariat when they receive such information, and the circumstances of such receipt, return the information to the committee secretariat as soon as possible and not disclose the information to any person or record or copy it in any way. Everyone should know that any contravention of the rule against unauthorised disclosure may constitute contempt of Parliament for which this House will not hesitate to take the necessary punitive action to mitigate against such breaches.

Obviously, the act of leaking the Report lowers public confidence in the Committee, the Committee system and brings to disrepute the dignity the Parliament generally. On the question of who leaked the Report, I leave the Members of the Public Accounts Committee to be pricked by their conscience even as they carry out investigation as promised by the Chairperson.

In addition to the issues raised by Hon. Duale on disclosure of Committee proceedings, it has also come into my attention that the Committee has baptized the report '*the Hustler's Jet Inquiry*'. Perusal of the evidence adduced and the Committee report indicates that the word has not been used by any of the witnesses for any one reading the report to understand its usage. A report has only one reference for House record and any reference to it by any other name is unacceptable and amounts to introducing extraneous issues to the Committee. I will therefore give direction on this matter.

Honourable Members, it is not uncommon for the Speaker, who is actually the Chairman of all Committees, to give such directions as necessary on Committee work if in his opinion certain matters contained in the Committee report are likely to contravene the Standings or the practice of the House. Indeed on 2nd July 1996, the then Speaker Mr. Francis Kaparo, directed that the use of a certain word in the Public Accounts Report report had flouted the provisions of the Standing Orders and ruled that the word be deleted and substituted with another word.

The then Speaker stated and, I quote:

"Hon. Members, it has been brought to my attention that certain recommendations of the outgoing Public Accounts Committee contravened the provision of Standing Order No. 76 and, I have, therefore, directed the Clerk of the House who is also the Secretary of the Committee, to make sure that all recommendations are correctly recorded in accordance with the Standing Orders of the House. Instructions given specifically followed that the word 'President' should be deleted from wherever it appears in the recommendations and the word 'Government' be substituted in its place".

In the case of the report before us today, the use of the word 'Hustler' in this context is superfluous as the aircraft in question has a clear reference and therefore the use of the word "Hustler" will not convey the true position on the matter under inquiry. I therefore rule that the word 'Hustler' in this report is un-parliamentary and I direct the Clerk of the Assembly to cause the said word to be deleted and the report be republished minus the offending word for consideration by the House.

Thank you".

6. **PETITION**

Pursuant to Standing Order 220(b), the Member for Ndhiwa (Hon. Neto) presented a Petition for the recognition of land title deeds and removal of caveat on land title deeds in Tendwet Location in Narok County.

7. **PAPERS LAID**

The following Papers were laid on the Table of the House –

- (i) The Report of the Public Investments Committee on the procurement of the Tender for the Proposed Kenya Bureau of Standards Coast Regional Offices and Laboratories in Mombasa.
(Chairperson, Public Investments Committee)
- (ii) Special Audit Report on the Judicial Service Commission and the Judiciary from the Office of the Auditor-General;
- (iii) The Report of the Auditor-General on the Financial Statements of Public Complaints Committees on Environment for the year ended 30 June 2013, and the certificate therein;
- (iv) The Report of the Auditor-General on the Financial Statements of National Environment Tribunal for the year ended 30 June 2013, and the certificate therein;
- (v) The Report of the Auditor-General on the Financial Statements of Constituencies Development Fund Board for the year ended 30 June 2013, and the certificate therein;
- (vi) The Report of the Auditor-General on the Financial Statements of Kenya Citizens and Foreign Nationals Management Service for the year ended 30 June 2013, and the certificate therein; and
- (vii) Annual Report of the Parliamentary Service Commission for the 2012-2013 Financial Year
(The Leader of the Majority Party)
- (viii) The Budget and Appropriations Committee Report on the Estimates of Revenue and Expenditure for 2014/2015;
- (ix) Combined reports of the Public Budget Hearings for Estimates of Expenditure and Revenue held in eight centers on 20th May 2014 and in Nairobi on 22nd May 2014; and
- (x) A compendium of the Departmental Committees Reports on scrutiny of 2014/15 Budget Estimates.

(Chairperson, Budget and Appropriations Committee)

8. **NOTICE OF MOTION** – (Chairperson, Public Investment Committee)

THAT, this House adopts the Report of the Public Investments Committee on the procurement of the Tender for the Proposed Kenya Bureau of Standards Coast Regional Offices and Laboratories in Mombasa, laid on the Table of the House today, Wednesday, June 04, 2014.

9. **NOTICE OF MOTION** – (Chairperson, Public Investment Committee)

THAT, this House adopts theReport of the Public Investments Committee on the Procurementand Financing of the Construction of the Standard Gauge Railway from Mombasa to Nairobi (Phase I), laid on the Table of the House on Tuesday, April 29, 2014.

10. **NOTICE OF MOTION** – (Chairperson, Public Investment Committee)

THAT, this House adopts theReport of the Public Investments Committee on the Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited, laid on the Table of the House on Tuesday, April 29, 2014

11. **NOTICE OF MOTION** – (Chairperson, Public Investment Committee)

THAT, this House adopts theReport of the Public Investments Committee on the Procurement and Financing of the National Social Security Fund Tassia II Infrastructure Development Project, laid on the Table of the House on Wednesday, April 30, 2014.

12. **NOTICE OF MOTION** – (Chairperson, Public Investment Committee)

THAT, this House adopts theReport of the Public Investments Committee on the Restructuring of Kenya Petroleum Refinery Limited, laid on the Table of the House on Tuesday, April 29, 2014.

13. **NOTICE OF MOTION** – (Chairperson, Budget and Appropriations Committee)

THAT, this House adopts theReport of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for 2014/2015, laid on the Table of the today, Wednesday June 04, 2014.

14. **NOTICE OF MOTION** – (Hon. Patrick Wangamati)

THAT, aware that in 2013 the British Government agreed to pay Kenyans who were abused, tortured, maimed and detained by British colonial forces during the Mau Mau uprising in 1952 and onwards compensation of Ksh2.5 billion as an out of court settlement; further aware that the compensation was only paid to a section of Mau Mau victims from Kiambu and Nyeri counties, leaving out victims from Meru, Kirinyaga, Murang'a, Embu, Kajiado and other parts of Kenya; cognizant of the fact that the leaders from the two counties initiated a court process claim for compensation to the victims who were eventually compensated; noting that the struggle for independence in this country involved various communities and individuals like the followers of *Dini yaMusambwa* movement who took part in the uprising against the colonial government; also aware that the British government has accepted to release further compensation money, on condition that only the victims who are still alive and can prove that they were tortured will be compensate from these monies, this House resolves that the government ensures that compensation from the British government goes to all affected homes and families of victims who are still alive all over the country.

15. **STATEMENTS PURSUANT TO STANDING ORDER 44(2)(c)**

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

- (i) the Member for Yatta (Hon. Francis Mwangangi) from the Chairperson of the Departmental Committee on Environment and Natural Resources concerning the deplorable state of the Ngong and Nairobi Rivers;

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- (ii) the Member for Nyatike (Hon. Edick Anyanga) from the Chairperson of the Departmental Committee on Agriculture, Livestock and Co-operatives regarding establishment of Irrigation Projects to boost food production in the country;
- (iii) the Member for Garsen (Hon. Ibrahim Sane) from the Chairperson of the Departmental Committee on Transport, Public Works and Housing concerning the alleged irregular suspension of employees of the Kenya Airports Authority and in particular, the suspension of one Mr. Mohammed Garisso Komorah on 29th June 2006;
- (iv) The Member for Samburu West (Hon. Lati Lelelit) from the Chairperson of the Departmental Committee on Administration and National Security regarding demonstrations by University students in Maralal over cattle rustling that left one person dead and several injured;
- (v) statement by the Member for Alego Usonga (Hon. George Omondi) from the Chairperson of the Departmental Committee on Administration and National Security regarding closure of Mwer Administration Police Camp was withdrawn by request of the Member; and
- (vi) statement by the Member for Kibra (Hon. Kenneth Okoth) from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the status and management of the Kenya Railways Corporation's Pension Scheme was dropped;

16. **THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2013)**
(The Leader of the Majority Party)

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2013) be now read a Second Time

(The Leader of the Majority Party – 03.04.2014)

Debate interrupted on Tuesday, June 03, 2014 resumed;

Mover replied;

Question of the Second Reading deferred to another day;

17. **ADOPTION OF THE REPORT OF THE SELECT COMMITTEE ON PRODUCTION AND TRADING OF KHAT (MIRAA)**

Motion made and Question proposed –

THAT, this House adopts the Report of the Select Committee on investigation into matters Relating to Production and Trading of Khat (*Miraa*), laid on the Table of the House on Thursday, 5th December, 2013.

Debate arising; *(Hon. Florence Kajuku)*

Amendment proposed –

THAT, the Motion be amended by –

- (i) deleting the fullstop after the figure “2013”
- (ii) inserting the words “subject to the deletion of the words ‘barrier surrounding’ appearing under recommendation 8 on page 60 and substituting therefor the words ‘scientific basis of’”

(Hon. James Nyikal)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Debate on the Motion as amended resumed;

Mover replied;

Question of the Motion deferred to another day

18. **ADOPTION OF THE REPORT ON THE STATUS OF THE SAN MARCO SPACE APPLICATION CENTER**

Motion made –

THAT, this House adopts the Report of the Joint Committees on Energy, Communication and Information; and Education, Research and Technology on the Status of the San Marco Space Application Center in Malindi, laid on the Table of the House on March 12, 2014.

(Dr. Wilbur Ottichilo)

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.

19. **HOUSE ROSE** - at thirty minutes past Six O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Thursday, June 05, 2014 at 2.30 p.m.

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