



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT- (FOURTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

ON CONSIDERATION OF THE ELECTION LAWS (AMENDMENT) BILL, 2016

Honourable Members,

You will recall that yesterday, Wednesday, August 30th, 2016 during the afternoon sitting, during the Second Reading of the Election Laws (Amendment) Bill, 2016, the Member for Kisumu Town West, Hon. Olago Aluoch rose on a Point of Order seeking direction from the Speaker on matters arising out of the debate. Specifically, he sought determination on whether the Members could propose amendments to the Bill in light of the Communication from the Speaker with regard to further amendments to the Report of the Joint Committee on matters relating to the Independent Electoral and Boundaries Commission. The Member additionally sought direction from the Speaker on whether it would be proper for the House to continue debate on the Bill in its present form, which according to the Honourable Member, does not conform to the resolution of the House on the Report of the Joint Committee on matters relating to the Independent Electoral and Boundaries Commission with regard to the recommendation to *restrict candidates seeking political offices from changing parties*- an act commonly referred to as “party-hopping”.

Honourable Members,

On the question of proposing amendments to the Bill, I am guided by the

the Communication of Thursday, 25th August, 2016 on the consideration of the Report of the Joint Parliamentary Select committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC). On that day, the Speaker did direct as follows and I quote—

“May I reiterate that Report in itself makes recommendations but whose actualization lies in the passage of the two Bills. It is therefore in place of the House to look into itself and decide whether to engage in the current processes or await the Bills which will undoubtedly go through all the stages, including Second Reading, and consideration of any amendments at Committee stage, in accordance with the Standing Orders.”

From the foregoing, it is quite clear that any prescription on amendments in the Communication only applied to the consideration of the Report of the Joint Parliamentary Select Committee. Members of the House are therefore at liberty to propose amendments to and indeed to amend the Bill in the usual manner as provided for under the Standing Orders. That settles the issue.

Honourable Members,

On the second issue on whether it is proper for the House to continue debate on the Bill, allow me to revisit the resolution of the House on the Report of the Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission. You will recall that the Hon Olago Aluoch had successfully moved the House to resolve to delete sub-paragraph (7) of Paragraph 659 of the Report relating the to the recommendation to *restrict candidates seeking political offices from changing parties*- an act commonly referred to as “party-hopping”. During the debate on the adoption of the Report and also in the Point of Order that is the subject of this Communication, the Honourable Member urged that the recommendation in the Report and clauses 8, 9, 10, 11 and 12 of the Bill contravene the political rights of an individual by prescribing timelines that restrict the individual from either changing

parties or standing as an independent candidate in contravention of Article 38 of the Constitution and the freedom of association.

Honourable Members,

The Constitution and legislation passed by this House outline a clear framework for the enjoyment of political rights and the place and regulation of political parties in our democracy, respectively. Article 38 of the Constitution provides, and I quote—

“(1) Every citizen is free to make political choices, which includes the right—

(a) to form, or participate in forming, a political party;

(b) to participate in the activities of, or recruit members for, a political party; or

(c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—

(a) any elective public body or office established under this Constitution; or

(b) any office of any political party of which the citizen is a member.

*(3) Every adult citizen has the right, **without unreasonable restrictions**—*

(a) to be registered as a voter;

(b) to vote by secret ballot in any election or referendum; and

(c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.”

A clear reading of Article 38 reveals that the political rights are not absolute but are subject to reasonable restrictions. The Constitution empowered Parliament to legislate on the regulation of the enjoyment of political rights including prescribing any reasonable restrictions. Article 82(1) of the Constitution, in this regard, provides—

“(1) Parliament shall enact legislation to provide for—

- (a) the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of the National Assembly and county assemblies;*
- (b) the nomination of candidates;*
- (c) the continuous registration of citizens as voters;*
- (d) the conduct of elections and referenda and the regulation and efficient supervision of elections and referenda, **including the nomination of candidates for elections;** and*
- (e) the progressive registration of citizens residing outside Kenya, and the progressive realisation of their right to vote.”*

Honourable Members,

As you may recall, the Tenth Parliament, in line with the requirement under Article 82 of the Constitution, passed the Elections Act, 2011 to regulate, among others, the procedure for the nomination of candidates by political parties. Indeed, the Act currently obliges political parties as well as persons intending to stand as independent candidates to submit various documentation to the Independent Electoral and Boundaries Commission within stipulated timelines and generally regulates the activities of political parties and candidates in the period before an election. The Act requires parties to—

- (a) conduct primaries at least forty five days before the general election at section 13;
- (b) submit their membership lists to the Commission at least forty five days to a general election at section 28; and
- (c) To submit their nomination rules to the Commission at least ninety days before the general election at section 27.

Further, Honourable Members, the Constitution itself prescribes a timeline that “locks out” independent candidates from being members of a political party. Article 85 of the Constitution provides—

*“Any person is eligible to stand as an independent candidate for election if the person—
(a) is not a member of a registered political party and has not been a member for **at least
three months immediately before the date of the election;”***

Honourable Members,

It is therefore evident that the timelines contained in the Election Laws (Amendment) Bill, 2016 are not new or unusual. The timelines, and indeed the rest of the Bill, constitute proposals placed before the House for consideration, adoption, amendment or rejection. I must note that, in addition, I have scrutinized the Bill and I do not find any provision that may be interpreted as violating the fundamental rights and freedoms afforded under the Constitution, including the freedom of association and political rights. This, as I have previously ruled, does not preclude any individual from seeking a determination of the constitutionality of the provisions of the Bill **after its enactment** in the High Court as the body mandated to interpret the Constitution under Article 165.

Please be guided accordingly.

I thank you!

THE HON. JUSTIN B. N. MUTURI, E.G.H, MP
SPEAKER OF THE NATIONAL ASSEMBLY

September 1st, 2016