



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT- (FOURTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

ON THE IMPLICATION OF A COURT ORDER ISSUED ON THE APPLICATION OF STANDING ORDER 111 AND THE SUSPENSION OF A MEMBER FROM THE SERVICE OF THE HOUSE

Honourable Members,

Yesterday, as you would recall, the Leader of Majority Party, Hon. Aden Duale sought directions from the Speaker on matters arising out of media reports of a Court Order reversing a matter of proceedings of this House. The Court Order stayed the decision of this House to suspend the Hon. James Opiyo Wandayi for the remainder of the Session of the House in terms of Standing Order 111 pending the hearing and determination of the Judicial Review Application filed by the Honourable Member. In light of the Court Order, the Leader of Majority Party sought clarification on the following fundamental issues-

- (1) what is the fate of the Standing Orders and in particular the disciplinary procedure set out in Standing Orders 107-112 of the National Assembly Standing Orders that are made pursuant to Articles 75(2)(a) and 124(1) of the Constitution?
- (2) what is the fate of the power of the House to make Standing Orders and how far can the House provide for the orderly conduct of its proceedings and what is envisaged by the use of the word "orderly conduct"?

(3) what is the fate of the privileges conferred on this House by virtue of Article 117(2) of the Constitution and the National Assembly (Powers and Privileges) Act?

Several Members including Hon. Olago Aluoch, Hon. T. J. Kajwang and Hon. Kimani Ichungw'a also debated on the issue and requested the Speaker to make a ruling on the same. Prior to the debate in the House, my office had also received correspondence from Hon. Peter Kaluma and Hon. Jakoyo Midiwo requesting the Speaker to pronounce himself on the matters relating to Standing Order 111.

Honourable Members,

Indeed, the question as to what is the import of the Court Order is one of great importance to this House as it raises fundamental issues touching on the principle of separation of powers as contemplated in our Constitution. As you are all aware, our Standing Orders are made pursuant to Article 124 of the Constitution to govern the manner in which we conduct our business as a House. Can the Court therefore pronounce itself on the internal rules and procedures of the National Assembly without encroaching into the powers of Parliament to conduct its business? This is a weighty question which the Court Order issued by the High Court reversing the decision of this House now presents. Simply put, what is the Speaker required to do in light of the Court Order staying the decision of this House?

Honourable Members,

As you are all aware, Article 107 of the Constitution provides that the role of the Speaker is to preside over or chair the proceedings of this House. The role of the Speaker is however not limited to presiding over the proceedings of the House but one which extends to ensuring that the House functions effectively and freely. Allow me to refer to the *Canadian Parliamentary Review*, "*The Speakership: A New Zealand Perspective*" which perhaps best illustrates the role of the Speaker and I quote..

"Those crucial separation of powers so fiercely fought over hundreds of years, remain today and establish, to my mind, the breadth and depth of the Speaker's role. The role is not just chairing or presiding over the House. It is, in full context about ensuring the House of Representatives is free and able to function effectively both as a Legislature and in the vital role of holding the Crown or Executive to account. This view of the Speaker's role guides my

interpretation of Standing Orders and also my role as “Minister” responsible for the Parliamentary Service.”

The decision of the House, which the Court Order has now stayed, is one that was therefore made by the Speaker in exercise of powers which have been bestowed on him by the Constitution and the Standing Orders. Indeed, the Speaker does not take part in any debate and does not vote on the decisions of this House.

Honourable Members,

Permit me now to refer to the words of Speaker Lenthall uttered in 1642 in the British House of Commons when King Charles went into the House in 1642 and demanded to know the whereabouts of certain Members of Parliament who had opposed his proposal to raise taxes. In response, the Speaker told the King and I quote—

“May it please your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here...”

In light of the foregoing and since the Court Order seeks to stay the decision made by this House, the Speaker’s hands are therefore tied, his eyes cannot see, his tongue cannot speak and he is subject to the direction of this House. Consequently, the Speaker has no option but to refer the matters raised by the Leader of Majority Party and other Members back to this House for determination. However, as you are aware, the Court Order relates to the issue of disciplinary proceedings raised by a House of Parliament against its Member, which is a question of the privilege of the House in terms of Article 117(2) of the Constitution. With this in mind, I direct that the matters raised including the issues canvassed in the letters by Hon. Peter Kaluma and Hon. Jakoyo Midiwo be taken up by the Committee on Privileges as the body mandated under the National Assembly Powers and Privileges Act to consider and advise the House on matters of privilege by Tuesday 19th July, 2016. The Committee is also at liberty to relook at the events of 31st March, 2016 for purposes of Article 75 of the Constitution and make such recommendations as may be appropriate. The Committee shall advise the House on the way forward as regards the Court Order and the issues raised by the Honourable Members.

I further direct that in the meantime, pending the conclusion of the matter by the Committee on Privileges, the Honourable Member James Opiyo Wandayi is deemed a stranger and shall not be allowed within the precincts of Parliament except for

purposes of attending the summons of the Committee on Privileges as and when required by the Committee.

The House and officers of the House are accordingly advised!

I thank you!

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

July 6, 2016