



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

THURSDAY, OCTOBER 01, 2015 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.
3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker issued the following communications from the Chair-

(a) On the Joint Sitting of the Houses of Parliament of Tuesday, 6th October, 2015 at 2:30 pm for Purposes of Address by Visiting Dignitary

"Honourable Senators,

The Speakers of the Houses of Parliament have received a request from the Office of the President to allow His Excellency (Dr.) Jakaya Mrisho Kikwete, President of the United Republic of Tanzania to address a joint sitting of the Houses of Parliament on Tuesday, 6th October , 2015. His Excellency President Kikwete will be on a state visit to Kenya.

Honourable Senators,

Standing Order 25(2) states as follows-

"The Speaker may, in consultation with the Speaker of the National Assembly, arrange for a joint sitting of Parliament for purposes of an address by a visiting Head of State or such other visiting dignitary".

In this respect, Honourable Senators, I wish to inform the House that, the Speaker of the National Assembly and I have consulted and consented to the request. This is therefore to invite all Senators to a Joint Sitting of the Houses of Parliament which will be held on Tuesday, 6th October, 2015 in the National Assembly Chamber, Main Parliament Buildings at 2. 30 p.m. for purposes of an address by His Excellency (Dr.) Jakaya Mrisho Kikwete, President of the United Republic of Tanzania. This being the first time that a visiting Head of State will be formally addressing our Parliament, I wish to take this earliest opportunity to request all of you, Hon. Senators, to avail yourselves for this auspicious occasion.

Honourable Senators,

Due to the enormous legislative agenda before the Senate particularly the various Bills, the Senate will continue its normal sitting shortly after the address by His Excellency President Kikwete.

I thank you".

(b) Procedure for Disposal of the Presidential Memoranda on the Public Audit Bill, 2014 (National Assembly Bill No. 38 of 2014) and the Public Procurement and Asset Disposal Bill, 2014 (National Assembly Bill No. 40 of 2014)

"Honourable Senators,

I wish to make a Communication with respect to His Excellency, the President's Memoranda on the Public Audit Bill (National Assembly Bill No. 38 of 2014) and the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014). This Communication is intended to give guidance on the procedure for the disposal of the Presidential Memoranda on the two Bills.

As Honourable Senators will recall, pursuant to Article 112(1)(b) of the Constitution, the Senate passed both Bills, with amendments, on 20th May, 2015 and subsequently forwarded the Bills to the National Assembly for concurrence on 22nd May, 2015.

The National Assembly did not concur with some of the Senate's proposals to the Public Audit Bill. Accordingly, the Bill was referred to a Mediation Committee to develop a version of the Bill that would be presented to both Houses for approval. The Mediation Committee on the Public Audit Bill was constituted on 26th May, 2015, and its Report was tabled in the Senate on 27th May, 2015.

Honourable Senators, you will further recall that in a Communication issued on 23rd July, 2015, I informed the Senate that I had received a Message from the National Assembly regarding the receipt of a Presidential Memorandum on the Public Procurement and Asset Disposal Bill, 2015. The Message from the Speaker of the National Assembly stated as follows-

"Pursuant to the provisions of Standing Orders 41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

THAT WHEREAS, in exercise of powers conferred on him by Article 115 of the Constitution, His Excellency the President refused to assent to the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and referred the Bill to Parliament for reconsideration;

AND WHEREAS, the National Assembly, on Thursday, June 18, 2015 reconsidered and passed the Bill, fully accommodating the President's reservations and without proposing any amendments to the said reservation;

NOW THEREFORE, in furtherance of the provisions of Article 115(3) and (4), I hereby forward the Memorandum of the President, containing his reservations to the Bill, to the Senate for reconsideration."

Honourable Senators, will further recall that in the same Communication, I ruled on the procedure for the disposal of the Memorandum. In so doing, I specifically observed that the Standing Orders of both Houses provide for the establishment of a Joint Committee to consider the President's reservations on a Bill. Consequently, I informed the Senate of the Senate's Membership to the Joint Committee and a Message to this effect was forwarded to the National Assembly on 24th June, 2015.

Honourable Senators,

On 14th July, 2015, I reported to this House that I had received a Message from the National Assembly informing this House of receipt by the National Assembly of a Presidential Memorandum on the Public Audit Bill. The Message stated as follow-

"Pursuant to the provisions of Standing Orders 41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

THAT WHEREAS, in exercise of powers conferred on him by Article 115 of the Constitution, His Excellency the President refused to assent to the Public

Audit Bill (National Assembly Bill No. 38 of 2014) and referred the Bill to Parliament for reconsideration;

AND WHEREAS, the National Assembly, on Tuesday, June 23, 2015 reconsidered and passed the Bill, fully accommodating the President's reservations and without proposing any amendments to the said reservation;

NOW THEREFORE, in furtherance of the provisions of Article 115(3) and (4), I hereby forward the Memorandum of the President, containing his reservations to the Bill, to the Senate for reconsideration."

I also reported that I had received a Message from the Speaker of the National Assembly regarding the appointment of members of the Joint Committee on the Presidential Memorandum on the Public Audit Bill, 2014 and the Public Procurement and Asset Disposal Bill, 2014.

The Joint Committee held its first sitting on 6th August, 2015. In accordance with Standing Order 158(2) of the Senate Standing Orders, which is replicated in the National Assembly Standing Orders as Standing Order 155(2), the Senate and the National Assembly were to receive the Report of the Committee within fourteen days. The fourteen days lapsed on 20th August, 2015 without the Joint Committee tabling a Report as contemplated under Standing Order 158(2) of the Senate Standing Orders.

What then is the fate of the Presidential Memoranda in the absence of a Report of the Joint Committee?

Honourable Senators,

Standing Order 158(5) provides that "Where the Joint Committee fails to submit a report under Paragraph (2), or the report of the Joint Committee is to the effect that the Committee has failed to agree to the President's reservations or where the Joint Committee fails to agree on a version of proposed amendments to the President's reservations, the President's reservations shall be taken to have been approved by Parliament upon laying of the report on the Table of the Senate under Paragraph (2)".

Honourable Senators will recall that in the Communication issued on 23rd July, 2015, I observed that Standing Order 158(5), though it may be aimed at ensuring expeditious disposal of a Presidential Memorandum, does not accord with the Constitution. This is because Article 115 of the Constitution requires that each House of Parliament specifically pronounces itself on a Presidential Memorandum. I therefore ruled that to the extent that Standing Order 158(5) provides for a "*deeming*" of approval by the Senate of the President's reservations upon laying of the Report on the Table of the Senate without consideration by the Senate, it does not accord with Article 115 of the Constitution and it must, therefore, yield to Article 115.

In the circumstances, I invoked Standing Order 1 to find that where a Joint Committee fails to submit a report under Paragraph (2), or the report of the Joint Committee is to the effect that the Committee has failed to agree on the President's reservations or where the Joint Committee fails to agree on a version of proposed amendments to the President's reservations, the Senate shall consider a Motion "That the Senate approves the Bill fully accommodating the President's reservations". This Motion may be moved by a Member of the Joint

Committee, by the Senate Majority Leader or by a Senator designated by the Senate Majority Leader.

Honourable Senators, in considering the Motion, the Senate may-

- (a) Pursuant to Article 115(2) of the Constitution, amend the Bill in light of the President's reservations or amend the Bill in a manner that fully accommodates the President's reservations. This would require the vote of a majority of the Delegations in the Senate, which is twenty-four delegations; or
- (b) Pursuant to Article 115(4) of the Constitution, pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations. This would require the vote of two-thirds of the delegations in the Senate, which is thirty-one delegations.

There are, however, two questions that arise. First, what would be the fate of the President's reservations where the Senate does not obtain the twenty-four delegations required to accept the President's reservations?

And, secondly, what would be the fate of the President's reservations where the Senate does not obtain the thirty-one delegations required to reject the President's reservations?

In either case, is it possible to "*deem*" an acceptance or a rejection by the Senate by dint of failing to obtain the requisite numbers? The answer is in the negative. Article 115 of the Constitution would appear to require that the Senate must pronounce itself on the President's reservations by either accepting or rejecting the reservations. There is no room for deeming of either an acceptance or a rejection. A specific resolution must be made by the Senate.

Consequently, the only action that would take the agenda forward is either an acceptance or a rejection of the President's reservations by the requisite numbers. It would appear that any other action that does not result in an outright acceptance or rejection of the President's reservations would put the Bill in a "*Constitutional Purgatory*" requiring some new action that would re-ignite and bring the legislative process to a close. In this regard, the following may occur-

- (a) Firstly, since it is evident from the rendition of Article 115 of the Constitution that the legislative process on any Bill only comes to an end when there is agreement between the Legislature and the Executive, having found none, this may provide the occasion for further consultations between the Legislature and the Executive on the President's reservation. Such consultation may result in a re-submission of the Motion, at an appropriate time, in accordance with the Standing Orders;

- (b) Firstly, since it is evident from the rendition of Article 115 of the Constitution that the legislative process on any Bill only comes to an end when there is agreement between the Legislature and the Executive, having found none, this may provide the occasion for further consultations between the Legislature and the Executive on the President's reservation. Such consultation may result in a re-submission of the Motion, at an appropriate time, in accordance with the Standing Orders;
- (c) Secondly, it is also possible that the situation could mark the end of the life of the Bill as published and, instead, result in the introduction of a new Bill which could either exclude the contested provisions or include the provisions in a negotiated format; and
- (d) As a third possibility, the failure to accept or reject the President's reservations may be an indicator that Parliament does intend to enact new legislation on the matters covered in the Bill and that it would rather retain the existing legislative framework. The legislative process would, therefore, come to an end.

The above notwithstanding, it is important that Honourable Senators bear in mind that the two Bills in question are Bills that are subject to the Constitutional timelines stipulated in Article 261 of the Constitution as read with the Fifth Schedule to the Constitution. Thus, legislation on these matters, whether in the form of the two published Bills or in the form of new Bills, requires to be enacted by Parliament on or before 27th August, 2016.

Honourable Senators,

Having said this, I now direct that the matter of the two Bills be placed on the Order Paper next week for the giving of Notice of Motion in the manner I have explained.

I thank you".

(c) On the Sittings of the East African Legislative Assembly (EALA)

"Honourable Senators,

This is to bring to your attention that plenary sittings of the East African Legislative Assembly (EALA) will be held here in Nairobi from 6th to 14th October, 2015. This will be the 2nd Meeting of the 4th Session of the 3rd Assembly.

Honourable Senators, H. E. the President of the Republic of Kenya, the Hon. Uhuru Muigai Kenyatta, CGH, has graciously requested me to address a special sitting of the Assembly on his behalf, on Tuesday, 6th October, 2015 at 11. 00 am. This particular sitting will be held here in the Senate Chamber.

In this respect, Honourable Senators, I wish to invite all of you to this auspicious occasion.

I thank you".

(d) On the Senators' Retreat to discuss the Second Criteria on Revenue Sharing Among County Governments

"Honorable Senators,

At a meeting of the Senate Standing Committee on Finance, Commerce and Budget with the Commission on Revenue Allocation on 8th July, 2015, it was resolved that there was need to hold a retreat of all Senators to discuss the second criteria for revenue sharing among county governments.

Article 96(3) of the Constitution mandates the Senate to determine the allocation of national revenue among counties. Further, Article 217 requires the Senate to determine, once every five years, the basis for allocating among the counties the share of national government that is annually allocated to the county level of government.

To this end, there shall be a retreat between the Senate and the Commission on Revenue Allocation from 15th October 2015 to 18th October 2015 at Serena Hotel, Mombasa. The travel dates will be the 15th October 2015 and 18th October 2015.

I urge all Senators to attend this very important retreat and to contribute substantially in the discussions on the second criteria on revenue sharing. The Senate must be on the forefront in determining the fate of the counties and the parameters to be used in allocating national revenue to the counties.

I thank you".

(e) Visit to the Senate by pupils and teachers from Chepkitony Primary School

The Deputy Speaker (Sen. Kembi Gitura) issued the following communication from the Chair-

"Honourable Senators,

I wish to recognize the presence of the students and teachers from Primary School from Elgeyo Marakwet County. They are seated in the Public Gallery.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you."

4. PAPERS

The following papers were laid on the Table of the Senate:-

- (a) Report of the Auditor-General on the financial operations of Narok County Assembly for the year ended 30th June, 2014.

(Chairperson, Sessional Committee on County Public Accounts and Investments)

- (b) Report of the Standing Committee on Labour and Social Welfare on the following Bills-

(i) The Persons with Disabilities (Amendment) Bill (National Assembly Bill No. 43 of 2013);

(ii) The Senior Citizens Care and Protection Bill, (Senate Bill No. 43 of 2014);

(iii) The Employment (Amendment) Bill (Senate Bill No. 1 of 2015); and

(iv) The County Library Services Bill, (Senate Bill No. 6 of 2015).

(Chairperson, Standing Committee on Labour and Social Welfare)

- (c) The Business of the Senate for the week commencing Tuesday, 6th October, 2015.

(The Senate Majority Leader)

5. NOTICE OF MOTION- (Sen. Isaac Melly)
(Ministry of Sports, Culture and the Arts)

THAT, WHEREAS Kenya is traditionally known for its outstanding performance in athletics especially in middle and long distance running;

AND WHEREAS athletics is part of Brand Kenya efforts and has immensely contributed to marketing the country abroad;

APPRECIATING that the Kenyan athletes are good ambassadors and have greatly improved the image of the country;

FURTHER APPRECIATING the performance of the team that participated in the recently concluded 2015 IAAF Championships in Beijing, China and were ranked number one overall out of the thirty two countries that participated;

NOTING the sterling performance that yielded winning a total of sixteen medals of which seven were gold, six silver and three bronze;

RECOGNIZING that the country won a gold medal in the elusive 400 meters hurdles which has not been our specialty and a gold medal in the field event of javelin;

ALSO APPRECIATING the Sterling performance of our sportsmen and sportswomen who participated in the just concluded All African Games in Congo

Brazzaville where they won a total of twelve medals of which three were gold, five silver and four bronze and finished in position nine out of thirty seven countries that participated;

COGNIZANT that such outstanding performance will inspire and spur upcoming athletes and generally boost the Kenyan spirit;

The Senate–

- (a) records its commendation to the Kenyan teams for the sterling performance at the IAAF World Championships in Beijing, China and the All African Games in Congo Brazzaville;
- (b) calls upon the National Government to recognize and honor the teams with appropriate awards; and
- (c) resolves that this Resolution of the Senate with the Hansard report on the deliberations on this Motion be forwarded to our athletes and sportsmen/sportswomen who participated in the respective events.

6. STATEMENTS

(a) Statements Pursuant to Standing Order 45 (2) (b)

- (i) The Senator for Bungoma County, (Sen. Moses Wetang'ula), sought a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding an incident that occurred on 29th September, 2015, in which some citizens were allowed to demonstrate along Harambee Avenue and Parliament Road while others were barred from demonstrating.
- (ii) Nominated Senator (Sen. Catherine Mukiite) sought a Statement from the Chairperson of the Standing Committee on Finance Commerce and Budget regarding rising inflation rates and declining state of the Country's economy.

(b) Statement pursuant to Standing Order 45 (2) (c)

Pursuant to the provisions of Standing Order 45(2)(c), the Senate Majority Leader (Sen. Kithure Kindiki) issued a Statement regarding the Business of the Senate for the week commencing Tuesday, 6th October, 2015.

7. THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILL NO.35 OF 2014)

Order for Second Reading read;

That, the Petition to County Assemblies (Procedure) Bill (Senate Bill No. 35 of 2014) be now read a Second Time.

*(Chairperson, Standing Committee on Legal Affairs and Human Rights –
22.09.2015) - Division*

Order deferred.

8. THE OFFICE OF THE COUNTY PRINTER BILL (SENATE BILL NO. 42 OF 2014)

Order for Second Reading Read;

That, the Office of the County Printer Bill (Senate Bill No. 42 of 2014) be now read a Second Time.

(Sen. Sang' – 23.09.2015) - Division

Order deferred.

9. MOTION – APPRECIATION AND RECOGNITION OF KENYAN ATHLETES
(Ministry of Sports, Culture and the Arts)

Motion made and Question proposed.

THAT, WHEREAS Kenya is traditionally known for its outstanding performance in athletics especially in middle and long distance running;

AND WHEREAS athletics is part of Brand Kenya efforts and has immensely contributed to marketing the country abroad;

APPRECIATING that the Kenyan athletes are good ambassadors and have greatly improved the image of the country;

FURTHER APPRECIATING the performance of the team that participated in the recently concluded 2015 IAAF Championships in Beijing, China and were ranked number one overall out of the thirty two countries that participated;

NOTING the sterling performance that yielded winning a total of sixteen medals of which seven were gold, six silver and three bronze;

RECOGNIZING that the country won a gold medal in the elusive 400 meters hurdles which has not been our specialty and a gold medal in the field event of javelin;

ALSO APPRECIATING the Sterling performance of our sportsmen and sportswomen who participated in the just concluded All African Games in Congo Brazzaville where they won a total of twelve medals of which three were gold, five silver and four bronze and finished in position nine out of thirty seven countries that participated;

COGNIZANT that such outstanding performances will inspire and spur upcoming athletes and generally boost the Kenyan spirit;

The Senate–

- a) records its commendation to the Kenyan teams for the sterling performance at the IAAF World Championships in Beijing, China and the All African Games in Congo Brazzaville;
- b) calls upon the National Government to recognize and honor the teams with appropriate awards; and
- c) resolves that this Resolution of the Senate with the Hansard report on the deliberations on this Motion be forwarded to our athletes and sportsmen/sportswomen who participated in the respective events.

(By leave of the Senate)

(Sen. Isaac Melly)

Debate arising;

There being no other Senator willing to contribute;

The mover replied;

Before the Question was put and pursuant to Standing Order 72, the Deputy Speaker ruled that the question did not affect counties.

Question put and **agreed to.**

RESOLVED ACCORDINGLY-

THAT, WHEREAS Kenya is traditionally known for its outstanding performance in athletics especially in middle and long distance running;

AND WHEREAS athletics is part of Brand Kenya efforts and has immensely contributed to marketing the country abroad;

APPRECIATING that the Kenyan athletes are good ambassadors and have greatly improved the image of the country;

FURTHER APPRECIATING the performance of the team that participated in the recently concluded 2015 IAAF Championships in Beijing, China and were ranked number one overall out of the thirty two countries that participated;

NOTING the sterling performance that yielded winning a total of sixteen medals of which seven were gold, six silver and three bronze;

RECOGNIZING that the country won a gold medal in the elusive 400 meters hurdles which has not been our specialty and a gold medal in the field event of javelin;

ALSO APPRECIATING the Sterling performance of our sportsmen and sportswomen who participated in the just concluded All African Games in Congo Brazzaville where they won a total of twelve medals of which three were gold, five silver and four bronze and finished in position nine out of thirty seven countries that participated;

COGNIZANT that such outstanding performances will inspire and spur upcoming athletes and generally boost the Kenyan spirit;

The Senate–

- a) records its commendation to the Kenyan teams for the sterling performance at the IAAF World Championships in Beijing, China and the All African Games in Congo Brazzaville;
- b) calls upon the National Government to recognize and honor the teams with appropriate awards; and
- c) resolves that this Resolution of the Senate with the Hansard report on the deliberations on this Motion be forwarded to our athletes and sportsmen/sportswomen who participated in the respective events.

10. **MOTION** – (Sen. Fatuma Dullo)
(Ministry of Interior and Coordination of National Government)

WHEREAS Article 51 of the Constitution of Kenya protects the rights of detained persons, persons held in custody and other imprisoned persons under the law, and requires Parliament to enact legislation to provide for the humane treatment of such persons with due regard to the relevant international human rights instruments;

OBSERVING that international instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Basic Principles for the Treatment of Prisoners set standards on the treatment of persons, including the right to be treated with respect; protection from discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

AWARE of the deplorable state of correctional services throughout the country including poor living conditions in the institutions of both officers and prisoners, the poor state of sanitation and nutrition, overcrowding, lack of proper medical

attention, frequent outbreak of communicable diseases and frequent reports of deaths of inmates leading to a high rate of recidivism and the inability of former inmates to reintegrate into society;

APPRECIATING the urgent need to align the Prisons Act and Borstal Institutions Act with the Constitution of Kenya and the international instruments on the rights of detained persons;

NOW THEREFORE, the Senate resolves to establish a Select Committee to undertake an inquiry into the policy and legislation pertaining to the treatment of detained persons as well as the state of correctional institutions in Kenya, including prisons and Borstal institutions, and to submit a Report to the Senate within three months, with recommendations on such policy and legislative interventions as may be necessary to align the existing legislation on correctional services with the Constitution of Kenya and in compliance with international standards on the rights of detained persons and such other recommendations as may be necessary;

AND FURTHER that the Members of the Select Committee are-

1. Sen. Fatuma Dullo
2. Sen. (Dr.) Zipporah Kittony
3. Sen. (Dr.) Boni Khalwale
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Stewart Madzayo
6. Sen. Liza Chelule
7. Sen. Judith Sijeny
8. Sen. Mutula Kilonzo Jr.
9. Sen. Stephen Sang'
10. Sen. Joy Gwendu
11. Sen. Moses Kajwang'

Order deferred.

11. **MOTION** – (The Chairperson, Standing Committee on Roads and Transportation) (Ministry of Roads and Infrastructure)

THAT, this House adopts the Report of the Standing Committee on Roads and Transportation on visits to Lamu and Nakuru Counties, laid on the table of the House on Wednesday 29th July, 2015.

Order deferred

12. **MOTION** – (The Chairperson, Sessional Committee on Implementation) (Ministry Agriculture, Livestock and Fisheries)

THAT, this House adopts the report of the Sessional Committee on Implementation on its visit to Mombasa, Kilifi and Kwale Counties to follow up on the resolution of the House to support the coconut industry, undertaken between 25th and 28th April, 2015 laid on the table of the House on Wednesday 29th July, 2015.

Order deferred

13. **THE SENIOR CITIZENS CARE AND PROTECTION BILL (SENATE BILL NO. 43 OF 2014)**

Order for Second Reading;

Motion made and Question proposed-

That, the Senior Citizens Care and Protection Bill (Senate Bill No. 43 of 2014) be now read a Second Time.

(Sen. (Prof) Wilfred Lesan - 29.09.2015)

Order deferred.

14. **THE HIV AND AIDS PREVENTION AND CONTROL (AMENDMENT) BILL (SENATE BILL NO. 4 OF 2015)**

Order for Second Reading Read;

Motion made and Question Proposed-

THAT, the HIV and Aids Prevention and Control (Amendment) Bill (Senate Bill No. 4 of 2015) be now read a Second Time.

(Sen. (Dr.) Wilfred Machage)

And the time being thirty minutes past Six O'clock, the Deputy Speaker adjourned the Senate without Question put pursuant to the Standing Orders.

15. **SENATE 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
Tuesday, October 06, 2015 at 2.30 p.m.
At the National Assembly Chamber*

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