



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

WEDNESDAY, MAY 13, 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. **COMMUNICATION FROM THE CHAIR ON THE MATTER OF SERVICE OF SUMMONS AND NOTICES TO APPEAR ON SENATORS WITHIN THE PRECINCTS OF PARLIAMENT**

The Speaker conveyed the following communication from the Chair-

"Honourable Senators,

At the sitting of the Senate held on Thursday, 7th May, 2015, Sen. (Prof.) Lonyangapuo rose, pursuant to standing order 46 of the Senate Standing Orders, seeking the indulgence of the Senate to make a Personal Statement. Sen. (Prof.) Lonyangapuo informed the Senate that on that day he had attended the *Kamukunji* which was held in this Chamber from 11:00 a.m. until about 1:30 p.m.

The Senator stated that on exiting the Chamber, he met with an officer of the National Police Service who identified himself as Corporal Daudi Mutui and who stated that he wished to serve on him a *"Notice to Compel Attendance under Section 52(1) of the National Police Service Act, No. 11A of 2011"*. The Notice was issued by a Mr. Joseph Ngisa Angaza, a police officer attached to the investigation branch who stated that he was investigating a case of robbery with violence contrary to section 295 as read with section 296(2) and stock theft contrary to section 278 of the Penal Code. The Notice went further to compel the Senator to appear at the DCI Headquarters, Mazingira House, situated along Kiambu Road on 8th May, 2015.

The Senator stated that the Notice was served on him immediately upon exit from the Chamber, at the doors of this Chamber, which he stated to be un-procedural. He therefore sought the guidance and protection of the Chair to ensure that what had happened to him did not become the practice in Parliament.

Honourable Senators,

Without going into the substance of the matters covered in the Notice served on the Senator, in his Personal Statement, Sen. (Prof.) Lonyangapuo brought to the attention of the Senate and of your Speaker, the question of service of Summons, Notices to Appear or other related documents on Senators within the precincts of Parliament.

Should Senators, while in the course of the discharge of their functions and while within the precincts of Parliament, be accosted with Summons and Notices to Appear? This was the question posed by Sen. (Prof.) Lonyangapuo.

Honourable Senators,

Members of Parliament, the world-over, by virtue of the offices that they hold, and in order to secure the effective discharge of the functions of those offices, enjoy various powers, privileges and immunities, generally referred to as parliamentary privilege. Parliamentary privilege, in essence, refers to the freedom of a Parliament to conduct its proceedings without interference or obstruction from any other bodies or persons. In Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, parliamentary privilege is defined at page 75 as follows-

'Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members.'

For our Legislature, the National Assembly (Powers and Privileges) Act, Cap. 6 of the Laws of Kenya, which by dint of section 7 of the Sixth Schedule to the Constitution applies to the Senate, provides for various powers, privileges and immunities available to Members of Parliament, including freedom of speech and freedom from arrest for civil debt.

In particular, section 5 provides for freedom from arrest for a civil debt during a session such that no Member of Parliament is liable to arrest for any civil debt except a debt the contraction of which constitutes a criminal offence, whilst going to, attending at or returning from a sitting of the Parliament or a Committee of Parliament.

Section 6 further provides that no process issued by any court in Kenya in the exercise of its civil jurisdiction shall be served or executed within the precincts of Parliament while Parliament is sitting, and nor shall such process be served or executed through the Speaker or any officer of Parliament unless it relates to a person employed within the precincts of Parliament or to the attachment of the Member's salary.

The Honourable Speaker Kaparo, in a ruling made on 24th June, 1997, had the occasion to add clarity to the provisions of section 6 of the Act by stating that *"any person attempting to serve summons on any Honourable Member on days on which the House meets contravenes section 6 of the Powers and Privileges Act, and ...[any such]... purported service of summons is a nullity ab initio"*.

In addition to the National Assembly (Powers and Privileges) Act, the Speakers Rules provide for admission to the precincts of Parliament. In particular, rule 5 restricts the entry of visitors to the precincts of Parliament without the special permission of a Senator a senior officer of Parliament. Rule 9 further requires an officer seeking the audience of a Senator to not only obtain the necessary pass before entering the precincts, but to also wait in the waiting room until escorted.

It is therefore evident from these provisions that in addition to civil process issued under section 6 of the National Assembly (Powers and Privileges) Act, Notices to Appear before investigatory agencies cannot similarly be served on Senators while the Senate or its Committees are sitting. Further no person purporting to serve such Notice on a Senator may do without the special permission and admission to the precincts required under the Speakers Rules.

Honourable Senators,

There is therefore no doubt that the manner in which Sen. (Prof.) Lonyangapuo was served with the Notice to Appear was wanting. The Senator stated in his Personal Statement that the Notice was served on him immediately upon his exit from this Chamber, at the doors of the Chamber, as he left the Kamukunji at 1:30 p.m. in order to prepare for the Plenary sitting of 2:30 p.m.

It cannot surely be that a Senator, while in the course of executing his or her functions in the Senate and its Committees, while within the precincts of Parliament, would do so with apprehension and anxiety not knowing if or when he or she would be accosted with Notices to Appear. This is clearly not the intention of the National Assembly (Powers and Privileges) Act, the Speakers Rules and the practices established on the matter of parliamentary privilege. We cannot have process servers lying in wait for Senators on the corridors of Parliament waiting to accost them with Notices to Appear as they enter or leave the Chamber or Committee Rooms. If this were to be allowed, the business of the Senate would be adversely affected.

In the circumstances, I have directed that, henceforth, no Notices to Appear such as that served on Sen. (Prof.) Lonyangapuo, or other similar documents, should be served on a Senator within the precincts of Parliament while the Senate or the Committees of the Senate are sitting. And further, that no such Notices should be served without the notification and special permission and authorization of your Speaker.

I thank you."

4. **PETITION ON FORMATION OF AN INDEPENDENT COMMISSION TO INVESTIGATE THE BOUNDARY DISPUTE BETWEEN KIRINYAGA AND EMBU COUNTIES IN RESPECT OF 'MWEA TRUST LANDS'**

Pursuant to Standing Order 220 (1) (b), the Senator for Kirinyaga County (Sen. Daniel Karaba) presented a petition on behalf of Kirinyaga '*Mihiriga Kenda*' ('Nine Clans') for formation of an independent commission to investigate the boundary dispute between Kirinyaga and Embu Counties in respect of the area known as 'Mwea Trust Lands'.

Pursuant to Standing Order 226, the Speaker invited Senators to comment on the petition and, pursuant to Standing Order 227, directed that the Petition be committed to the Standing Committee on Legal Affairs and Human Rights.

5. **PAPERS LAID**

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

- a) Report of the Standing Committee on Roads and Transportation on the ongoing Southern bypass road construction in Kikuyu town.
(Chairperson, Standing Committee on Roads and Transportation)
- b) Report of the Standing Committee on Roads and Transportation on the study tour to Qatar and Singapore from 24th October – 3rd November, 2014.
(Chairperson, Standing Committee on Roads and Transportation)

- c) Report of the Sessional Committee on Delegated Legislation and Standing Committee on Finance, Commerce and Budget on;
 - i) The Public Finance Management (National Government) Regulations, 2015;
 - ii) The Public Finance Management (County Government) Regulations, 2015; and
 - iii) Legal Notice for the declaration of the National Government Entities (State organs).

(Chairperson, Sessional Committee on Delegated Legislation)

- d) Performance Report for the Ministry of Energy and Petroleum in accordance with Article 153 (4) (b) of the Constitution of Kenya for the period 1st July to 31st December 2014.

(Vice-Chairperson, Standing Committee on Energy)

- e) Annual Estimates of Expenditure for the three arms of Government for the Financial Year 2015/16 and the Medium Term and the Annual Estimates of Revenue, Loans and Grants for 2015/16 and the Medium Term.

(Sen. (Dr.) Boni Khalwale on behalf of the Chairperson of the Standing Committee on Finance, Commerce and Budget)

6. STATEMENTS

Statements pursuant to the provisions of Standing Order 45 (2) (b)

- i) The Senator for Turkana County (Sen. John Munyes) sought a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding boundary disputes existing between Kenya and the neighbouring states of Somalia, Ethiopia, South Sudan and Uganda.
- ii) A Nominated Senator (Sen. Mshenga Mvita) sought a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding the use of Genetically Modified Organisms (GMOs) technology in Kenya.
- iii) A Nominated Senator (Sen. Beth Mugo) sought a statement from the Chairperson of the Standing Committee on Health regarding the recently reported outbreak of Cholera in the country.
- iv) The Senator for Bungoma County (Sen. Moses Wetangula) sought a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the safety of Kenyans caught up in the unfolding events in Burundi.

7. **THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)**

Order for Second reading read;

Motion made and Question proposed-

THAT, the Public Audit Bill (National Assembly Bill No. 38 of 2014) be now read a Second time.

(The Senate Majority Leader – 12-05-2015)

Debate interrupted on Tuesday, 12th May, 2015 resumed;

There being no other Senator willing to contribute;

Mover replied;

Raising a point of order pursuant to Standing Order 54 (3), the Senate Majority Leader (Sen. Kithure Kindiki) requested for deferment of putting of the Question to the following day.

And the Temporary Speaker (Sen. Elizabeth Ongoro) acceding to his request deferred putting of the question to Thursday, 14th May, 2015.

8. **THE FAIR ADMINISTRATIVE ACTION BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2015)**

Order for Second reading read;

Motion made and Question proposed-

THAT, the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015) be now read a second time.

(The Senate Majority Leader)

Debate arising;

And the time being thirty minutes past six O'clock, the temporary Speaker (Sen. Elizabeth Ongoro) adjourned the business of the Senate without Question put and pursuant to the Standing Orders.

9. **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
Thursday, May 14, 2015 at 2.30 p.m.*

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