



**REPUBLIC OF KENYA**

**ELEVENTH PARLIAMENT – THIRD SESSION**

**NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**TUESDAY, JUNE 16, 2015**

1. The House assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer
3. **Presiding** – the Speaker
4. **COMMUNICATION FROM THE CHAIR ON THE MANNER OF CONSIDERING A PRESIDENTIAL MEMORANDUM ON A BILL CONCERNING COUNTY GOVERNMENTS**

The Speaker conveyed the following Communication –

Honourable Members,

You will recall that on Thursday, June 11, 2015, I indicated that I would be giving guidance on the manner of considering Presidential Memoranda on Bills considered in both Houses of Parliament. This was occasioned by the Messages received from H.E. the President on Bills recently concluded by Parliament including *the Public Procurement and Asset Disposal Bill, 2014*, *the Public Audit Bill, 2014* and *the Public Procurement and Asset Disposal (Amendment) Bill, 2013*.

Hon. Members, the provisions of our Standing Orders are not in tandem with the expectations of the Constitution. Specifically, the provisions of Standing Order 155 which commits Presidential Memoranda on a Bill considered by both Houses to a Joint Committee, clearly offend the provisions of Article 115 of the Constitution. While Standing Order 155 foresees the adoption of a report of a Joint Committee of the two Houses, Article 115 of the Constitution requires that any amendment to the President's recommendations or indeed a total rejection of the recommendations should be supported by a vote of at-least two-thirds of the Members of the National Assembly AND two-thirds of the delegations in the Senate. I put emphasis on the use of the word 'and' in the requirement posed by the Constitution.

Hon. Members, for the avoidance of doubt, Article 115 (4) of the Constitution which stipulates the process for the referral of a Bill by the President, states and I quote;

*"Parliament, after considering the President's reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations, by a vote supported—*

*(a) by two-thirds of members of the National Assembly; and  
(b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate."*

The interpretation of this, Hon. Members, is that the provisions of the Standing Orders become vacant in relation to the provisions of the Constitution. In the consideration of Presidential Memoranda, the Constitution provides for three (3) possible outcomes from Parliament. These are:-

- (i) Parliament may amend the Bill in light of the President's reservation and recommendation. This requires a simple majority in both Houses;
- (ii) Parliament may pass the Bill a second time without amendment; or
- (iii) Parliament may pass the Bill with amendments that do not fully accommodate the President's reservations and recommendation.

The second and third outcomes require a vote supported by at-least two-thirds of the Members of the National Assembly and two-thirds of the delegations in the Senate.

Having said that, Hon. Members, in regards to the consideration of a Presidential Memorandum on a Bill concerning County Governments, I wish to guide as follows:-

- (i) the President's Memorandum ought to be submitted to the House that originated the Bill as happens currently;
- (ii) the Presidential Memorandum review process should start in the originating House, whereupon it should be read and submitted to the relevant Departmental Committee, if necessary, and thereafter considered in that House, at Committee of the Whole House. At this stage, any amendment or total rejection of any of the President's reservations and recommendation should be subjected to the 2/3 majority requirement;
- (iii) after passage, the Speaker of the originating House should then submit the Presidential Memorandum in its original form and any decision including any amendments or total rejection proposed by that House to the Speaker of the Second House;
- (iv) the Second House should then consider the Memorandum in its original form together with the decision made by the originating House and while in the Committee of the Whole, make its own resolution including amendments or total rejection of the President's reservations and recommendation. In making the amendments or rejections, the 2/3 majority vote requirement is also mandatory;
- (v) the Speaker of the Second House should then convey the decision of the that House to the Speaker of the originating House, indicating –
  - (a) the decision of the Second House on the Presidential Memorandum in its original form;
  - (b) the decision of the Second House on the amendments or total rejection proposed by the originating House; and
  - (c) any new amendment, or total rejection proposed by the Second House.

- (vi) the originating House would then consider the Presidential Memorandum for a second time, only if there are any new amendments or total rejections proposed by the Second House;
- (vii) the Speaker of the originating House thereafter conveys the decision of Parliament to the President.

Hon. Members, while this considered guidance seeks to clear the lacuna presently experienced in the consideration of Presidential Memoranda to a Bill concerning County Government, a more purposeful consideration of the procedure will soon be developed during the review of our Standing Orders. In the meantime and in exercise of the provisions of Standing Order No.1 of the National Assembly Standing Orders, I forthwith suspend the operation of Standing Order 155, as it clearly contradicts the provisions of Article 115 of the Constitution.

Thank you".

5. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Ministry of Education, Science and Technology Annual Progress Report for the Financial Year 2014/2015;
- (ii) The Report of the Auditor-General on the Financial Statements of the Ministry of Energy and Petroleum for the year ended 30<sup>th</sup> June, 2014 and the certificate therein;
- (iii) The Report of the Auditor-General on the Financial Statements of the Office of the Attorney-General and Department of Justice for the year ended 30<sup>th</sup> June, 2014 and the certificate therein;
- (iv) The Report of the Auditor-General on the Financial Statements of Constituencies Development Fund for Embakasi North Constituency for the year ended 30<sup>th</sup> June, 2014 and the certificate therein;
- (v) The Report of the Auditor-General on the Financial Statements of Constituencies Development Fund for Kibra Constituency for the year ended 30<sup>th</sup> June, 2014 and the certificate therein;
- (vi) The Report of the Auditor-General on the Financial Statements of Constituencies Development Fund for Kamukunji Constituency for the year ended 30<sup>th</sup> June, 2014 and the certificate therein; and,
- (vii) The Report of the Auditor-General on the Financial Statements of Constituencies Development Fund for Ruaraka Constituency for the year ended 30<sup>th</sup> June, 2014 and the certificate therein;

*(The Leader of the Majority Party)*

6. STATEMENTS

(a) The Chairperson, Budget and Appropriations Committee issued a Statement on adjustments of the 2015/2016 Budget Estimates to finance Ksh.3.3 billion proposed by the Mediation Committee on the Division of Revenue, 2015 for transfers to counties. He observed that in making the recommendations, the Committee incorporated the views of the Houses based on the following criteria:-

(i) absorptive capacity of the spending agencies;

(ii) targets and outputs of the year; and

(iii) the Budget constraints, that is, the need to adhere to macro-economic framework to ensure compliance to the spending ceilings.

The Chairperson added that that it was on this basis that the Committee made adjustments to the different agencies including the Salaries and Remuneration Commission, the Judiciary as well as the Parliamentary Service Commission.

(b) Rising of a Point of Order under Standing Order 43 (2), the Member for Malava (Hon. Moses Injendi) made a Statement regarding the Basic Education Regulations, 2015. He noted that though the House through the Committee on Delegated Legislation was already considering the Regulations, user-agencies within the education sector were already implementing provisions of the Regulations including the nomination of members to school boards by County Directors of Education. *(The Speaker directed that the Committee on Delegated Legislation reports on the status of all Statutory Instruments by June 30, 2015. He also observed that even though the House had not pronounced itself on the regulations, the law allows operationalization after lapse of the statutory timelines awaiting the resolution of the House.)*

(c) Pursuant to the provisions of Standing Order 43(2), the Chairperson of the Departmental Committee on Administration and National Security (Hon. Asman Kamama) made a Statement regarding misrepresentation of facts in respect to the rejection of the nomination of Amb. (Dr.) Monica Juma for appointment as Secretary to the Cabinet. He noted that contrary to reports made in the media, the Committee, in coming up with the recommendation for rejection acted in utmost impartiality and was guided by the Constitution and the Public Appointments (Parliamentary Approval) Act, 2011. He stated the Committee was neither influenced nor did it seek to be influenced in making a decision in the vetting process. He added that persons with evidence of any wrong-doing alleged to have been committed by Members of the Committee should forward the same to the relevant government agencies for investigation.

7. THE COMPANIES AND INSOLVENCY LEGISLATION (CONSEQUENTIAL AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 25 OF 2015)  
(The Leader of the Majority Party)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(2)

8. **MOTION - THE SPECIAL REPORT ON THE RESTRUCTURING OF KENYA PETROLEUM REFINERY LIMITED**

Motion made and Question proposed –

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

*(The Chairperson, Public Investment Committee)*

Debate arising;

*Change of the Chair from the Speaker to Fourth Chairperson of Committees*

Mover replied;

Question of the Motion deferred to another day.

9. **MOTION - THE REPORT ON STATUS OF IMPLEMENTATION OF HOUSE RESOLUTIONS**

Motion made –

THAT, this House notes the Report of the Committee on Implementation on Status of Implementation of House Resolutions from May 2013 to February 2015, laid on the Table of the House on Thursday, April 02, 2015.

*(The Chairperson, Select Committee on Implementation)*

And the time being thirty minutes past Six O'clock, the Fourth Chairperson of Committees interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

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

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**M E M O R A N D U M**

The Speaker will take the Chair on  
Wednesday, June 17, 2015 at 9.30 a.m.

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