



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT- (THIRD SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATIONS FROM THE CHAIR

**ON THE MANNER OF CONSIDERING A PRESIDENTIAL
MEMORANDUM ON A BILL CONCERNING COUNTY
GOVERNMENTS**

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, some of 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.

Hon. Members, 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 Presidents 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.

I Thank you!

THE HON. JUSTIN B.N. MUTURI, E.G.H, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Tuesday, June 16, 2015