



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, FEBRUARY 17, 2016

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **PRESIDING** – the Speaker
4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications -

(i) **Retreat for Leadership of the House**

Honourable Members,

I wish to notify you that the National Assembly has planned a two-day Retreat for the Leadership of the House under the theme of *“Lessons Learnt and consolidating the Gains.”* The Retreat will be held from **18th to 21st February, 2016** at the Serena Beach Hotel in Mombasa.

The Retreat is held with a view to availing an opportunity for the Majority and Minority Party office holders, Members of the House Business Committee, Committee Chairpersons and Parliamentary Service Commissioners to review progress made in fulfilling our Constitutional mandate. The highlight of the Retreat will be discussions with the Chairperson of the Independent Electoral & Boundaries Commission (IEBC), the Cabinet Secretary for the National Treasury, and the offices of the Registrar of Political Parties and Political Parties Dispute Tribunal on the preparations for the next Parliament. This will include consideration of the administrative, legal, and budgetary requirements which ought to be facilitated by Parliament to ensure free and fair elections in 2017. The Secretary to the Parliament of South Africa has also been invited. Thereafter, the resolutions of the retreat will be presented to the House next week.

Thank you”.

(ii) **The Military Veterans Bill, 2013**

“Honourable Members,

You will recall that the Military Veterans Bill (National Assembly Bill No. 34 of 2013), sponsored by the Member for *Aldas* Constituency, the Hon. AdanKeynan was introduced in the House on 14th November, 2013. The Bill seeks to provide for the welfare and benefits of military veterans and their dependents and also to establish the Department of Military Veterans and an Advisory Council in the Executive. You may also recall that the House did consider and pass the Bill at the *Second Reading* on 4th December 2014. The Bill is now therefore due for consideration in the Committee of the Whole House.

Hon. Members, the foregoing notwithstanding, my attention has been drawn to letters from the Cabinet Secretary for Defence and the Chairperson of the Departmental Committee on Defence and Foreign Relations of 20th January, 2016 and 11th March 2014 respectively, questioning the constitutionality of the said Bill. Their contention is that the said Bill is a Money Bill in terms of Article 114 of the Constitution, in so far as it proposes to establish a Government department headed by a Director General, an Advisory Council and a Military Veterans Appeals Board. They further contend that the establishment, administration and operations of these bodies will inevitably occasion the imposition of charges on a public fund and may offend the provisions of Article 132(4) (a) of the Constitution regarding establishment of Departments in the Executive.

It is my considered view that the issues raised in this respect are indeed very fundamental and will determine how this House will proceed with the said Bill. Standing Order 114(3), (a) states and I quote –

“where the Speaker is of the opinion that a legislative proposal is a draft money Bill in terms of Article 114 of the Constitution, direct that the legislative proposal be referred to the Budget and Appropriation Committee and shall be proceeded with only in accordance with the recommendations of the Budget and Appropriation Committee after taking into account the views of the Cabinet Secretary responsible for finance and examining the manner in which the legislative proposal affects the current and future budgets.”

In this regard, I approved the publication of the said Bill on 28th October 2013, having been guided by the recommendations of the Departmental Committee on Defence and Foreign Relations vide a letter dated 29th August 2013, which indicated that the committee had no objection for its publication and on the strength that the Budget and Appropriation Committee's recommendation that the Bill be renamed the Veterans Society Bill would not accord with the substance of the Bill.

Hon. Members, upon publication of the Bill, constitutional objections have been made as aforementioned, not only by the relevant Committee, but also by the Office which is being obliged to implement the Bill upon passage into law. It is now apparent that the recommendations of the Budget and Appropriations Committee may not have been fully incorporated prior to publishing of the said Bill. The Budget and Appropriation Committee had stated in their report that and; I quote:-

“The Committee noted that the Bill has expenditures that shall be borne by the exchequer and the spiral effect it might have on the economy and the retirement benefits of other retired public servants. The Committee recommended the following-

- (i) *The draft Bill should be renamed as Veteran Society Bill;*
- (ii) *The Sponsor of the Bill should study existing policies regarding pensions and see how the Bill can be improved to be in tandem with such policies;*

- (iii) *The proposal, incorporating the above amendments can proceed as drafted."*

The Bill having been published in the format that had been presented to the two Committees and taking into consideration the comments of the Budget and Appropriation Committee vide a letter of 22nd October 2013, it follows that the provisions of Article 114 of the Constitution must apply.

Hon. Members, it is worth noting that the question of constitutionality of a Bill can be entertained at any stage before its passage. In this regard I hereby defer any further proceedings on the Bill in the House until the Budget and Appropriation Committee addresses itself on the "money bill status" of the Bill and make its recommendation(s) known to the House in accordance with the provisions of Article 114 of the Constitution. In addition, the Departmental Committee on Defence and Foreign Relations is at liberty in carrying out its business to consider the other issues of constitutionality in the Bill taking into account the matters raised in the letter from the Cabinet Secretary for Defence.

In the consideration of the Bill, the Budget and Appropriation Committee should invite the Cabinet Secretary for the National Treasury in accordance with Article 114 of the Constitution while the Departmental Committee on Defence and Foreign Relations should invite the Cabinet Secretary for Defence and the Office of the Attorney General to shed light on other issues of constitutionality surrounding the Bill.

Thereafter, I will guide the House on how to proceed with consideration of the said Bill in its next stage, taking into account the recommendations of the two Committees.

Thank you".

5. **PETITION**

The Member for Matungulu (Hon. Stephen Mule) presented a Petition regarding waiver of taxes on raw materials used to manufacture sanitary pads.

Petition referred to the relevant Departmental Committee pursuant to Standing Order 227(2).

6. **STATEMENT ON STATUS OF BUSINESS BEFORE COMMITTEES**

In accordance with the Speaker's Communication of October 14, 2015, the Hon. Abdikadir Omar, Member of the Departmental Committee on Public Accounts Committee appraised the House on the status of the Business pending before the Committee.

7. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) Annual Report and Financial Statements in respect of the following institutions for the year ended 30th June, 2015:-
 - Kenya Electricity Generating Company Ltd (KenGen); and
 - East African Portland Cement Company Ltd.
- (ii) The Annual Report and Financial Statements in respect of the following institutions for the year ended 30th June, 2014:-
 - Kenya Industrial Estates Limited
 - New Kenya Cooperative Creameries Limited

- (iii) The Annual Report and Financial Statements of the Insurance Regulatory Authority for the year ended 31st December, 2014.
- (iv) The Board Report on Project Proposals Approvals, Disbursement Status and Restrictions imposed on Constituency Account for December, 2015 and January, 2016.
- (v) The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2015 and the certificates therein:-
 - Public Service Commission; and
 - Media Council of Kenya.

(The Leader of the Majority Party)

- (vi) The Report of the House Business Committee on its Bench Marking Visit to Italy between 23rd and 27th November, 2015;

(Hon. Dr. Naomi Shaban, Leader of the delegation)

- (vii) The Report of the Departmental Committee on Environment and Natural Resources on its consideration of the Senate amendments to the Climate Change Bill, 2014.

(Hon. Chachu Ganya, Member, Departmental Committee on Environment and Natural Resources)

- (viii) The Reports of the Departmental Committee on Defence and Foreign Relations on its consideration of:
 - The Kenya Regiment (Territorial Force) (Repeal) Bill, 2015; and
 - The Kenya Defence Forces (Amendment) Bill, 2015.

(Chairperson, Departmental Committee on Defence and Foreign Relations)

- (ix) The Report of the Departmental Committee on Health on its consideration of the Biomedical Engineers Bill, 2015.

(Chairperson, Departmental Committee on Health)

8. **NOTICE OF MOTION - REGISTRATION OF PERSONS VETTED AND ISSUED WITH WAITING CARDS AS VOTERS**

(The Hon. Ferdinand Wanyonyi, M.P.)

THAT, aware that voter registration is a crucial exercise in the electioneering process, further aware that for one to register as a voter he requires a National Identification Card; and concerned that thousands of youth do not have identity cards due to the long and tedious process involved in the processing of those cards and further compounded by the centralisation of the process; noting that once a person applies for identification card it is issued with serialised waiting card; further aware that the serial number on the waiting card appears in the identity card; mindful of the fact that many people, especially the youth have applied and been issued with serialised waiting cards; concerned that the ongoing voter registration exercise which commenced on 15th February 2016 is likely to come to a close in a month's time and in effect those youth with serialised waiting cards would not have received their identity cards, this House resolves that the Independent Electoral and Boundaries Commission (IEBC) be authorised to allow all the people who have successfully been vetted and issued with serialised waiting cards to register as voters in the ongoing and future voter registration exercises.

9. **STATEMENT**

The Member for Kitutu Chache South (Hon. Richard Onyonka) gave a statement regarding violation of nuclear Test-Ban Treaty by North Korea.

The Member expressed concern on the violation and informed the House that Kenya should urge North Korea to cease its nuclear and ballistic programme and engage constructively with the international community to achieve peace and security in the North East and world at large.

10. **MOTION – ADOPTION OF THE REPORT ON THE CRISIS FACING THE SUGAR INDUSTRY IN KENYA**

Motion made and Question proposed -

THAT, this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the Crisis Facing the Sugar Industry in Kenya, laid on the Table of the House on Thursday, 12th March, 2015

(Chairperson, Departmental Committee on Agriculture, Livestock & Co-operatives – 16.02.2016)

Debate interrupted on Tuesday, February 16, 2016 resumed;

(Change of Chair from the Speaker to the Second Chairperson)

Amendment proposed –

THAT, the Motion be amended by deleting the full stop at the end and inserting the words “subject to deletion of Paragraph 101”

(Hon. Benjamin Washiali)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, the Motion be amended by deleting the full stop at the end and inserting the following words “subject to amendment of the Report by -

(b) insertion of the following new Paragraphs immediately before Paragraph 102 (Observations of the Committee):-

101A. The key conclusion from investigations on Mumias Sugar Company's exports was that it was a ploy to defraud the Government of the realizable Value Added Tax (VAT). Neither the Management nor the Board of the Company could confirm that the sugar actually left the country.

101B. Although the former Mumias Sugar Company Managing Director Dr. Evans Kidero submitted that documents proving that the consignment indeed left the country in the custody of the Company, the current Mumias Sugar Company management was at pains to prove that indeed the sugar left the country. Documents provided by the management in an attempt to prove that the sugar was indeed exported were not verifiable. The Board of Directors, through the Chairman Mr. Dan

Ameyo, submitted that the Board would carry out a forensic audit on the exports, like it had done on company sugar imports, and give its findings to the Committee within six months.

(Hon. Benjamin Washiali)

Debate on the Motion deferred to another day pending determination of the amendments' admissibility pursuant to Standing Order 56(1).

11. **THE LEGAL AID BILL (NATIONAL ASSEMBLY BILL NO.35 OF 2015)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Legal Aid Bill (National Assembly Bill No.35 of 2015) be now read a Second Time

(The Leader of the Majority Party – 10.02.2016)

Debate interrupted on Wednesday, February 10, 2016 (Afternoon Sitting) resumed;

Mover replied;

Question of the Second Reading deferred to another day.

12. **THE CONTROLLER OF BUDGET BILL (NATIONAL ASSEMBLY BILL NO.21 OF 2015)**

Order for Second Reading read;

Motion made –

THAT, the Controller of Budget Bill (National Assembly Bill No.21 of 2015) be now read a Second Time

(The Leader of the Majority Party)

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

13. **HOUSE 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, February 18, 2016 at 2.30 p.m.

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