



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – THIRD SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, MARCH 17, 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 MANAGEMENT OF COMMITTEES**

The Speaker conveyed the following communication-

"Honourable Members,

In the recent past there has been concern on the manner in which Committees are being managed and particularly by Chairpersons and Members. It is on the basis of these concerns that I am issuing this communication to address critical issues that affect the management and operations of Committees.

The importance of Committee cannot be gainsaid and as alluded to during the just concluded Leadership Retreat in Mombasa, Committees serve as the reference point for legislation, oversight and involvement of the public in the affairs of the legislature. It is the manner in which committees conduct their business that builds or destroys the image of the legislature.

(i) **Management of Committees**

Hon. Members, the management of Committees as you are all aware is vested in the Office of the Speaker, Liaison Committee (Standing Order 217 (2)) the Chairpersons of Committees (Standing Order 180) and the office of the Clerk. The four offices working in synergy enable the operations of Committees run efficiently and effectively thereby ensuring that the House executes its legislative and oversight mandate as provided under Article 95 of the Constitution.

While the Speaker, Liaison Committee and the Chairpersons of Committees offer strategic leadership and direction, the office of the Clerk is facilitative in nature and has over the years come to be regarded as the backbone of the Committee System in all parliamentary democracies. In our case the office and the role of the Clerk is provided for under Article 128 of the Constitution, the Parliamentary Service Commission Act and the Powers and privileges Act as well as the Standing Orders.

In the day to day operations, Committees are managed by committee clerks and other officers who give procedural advice to the Committee; take minutes of the committee proceedings; receive and preserve documents on behalf of Committees and carry out other important logistical and administrative duties. The secretariat also assists in official communication, arranging appearance of witnesses, advising chairperson and members on procedures in Committees. In essence the Committee secretariat is responsible for coordinating the affairs of the Committee and ensuring that the committee gets the needed support to be effective in discharging its mandate.

The effectiveness of any oversight Committee has therefore a bearing on the services provided by the Committee secretariat and the synergy between the secretariat and the Chairperson of the Committee. I urge all Chairpersons to accord the secretariat the necessary support in the discharge of their duties and more importantly in the application of the Standing Orders and the unwritten practices of the House.

(ii) Conduct of meetings

Hon. Members,

In the recent past there has been a worrying trend in the frequency at which Committee Members are holding meetings to the exclusion of the secretariat and more so the Committee clerks. There are allegations that members sit without the secretariat to strategize on how to alter Committee reports in favour of persons under investigations, and this is in the public domain. This must stop. I urge all members not to be party to these discipicable schemes. Otherwise we shall have no Parliament to speak about. Clerks are officers of the House and just as is the case with the House which cannot sit without Clerks at the Table, Committees should not meet or transact any business without the secretariat. A Committee meeting is therefore not complete in the absence of a Committee Clerk and secretariat and will henceforth be treated as an informal gathering or a *Kamukunji*.

Committees are within their powers to exclude any person or the public from its proceedings for justifiable reasons pursuant to Article 118 and Standing Order 254 but such exclusion however does not apply to committee clerks who are part and parcel of the committee architecture.

(iii) Official Communication

Hon. Members,

I have also noted with concern, the manner in which Committees conduct their official communication with Government institutions and other agencies as well as the private sector. There is a growing and worrying trend where Chairpersons write directly to government officials on various issues before Committees in total disregard of the official channels of communication. Some Chairpersons and members of Committees even summon Cabinet Secretaries, Heads of Parastatals and other government officials through phone calls and media. I have addressed this matter in my previous Communications and I wish to reiterate that all correspondence from the National Assembly communicating House and or Committee resolutions must be through the hand of the Clerk and all official documents tabled before Committees shall be under the custody of the Clerk. Committee Chairpersons and Members have no business in writing letters to Cabinet Secretaries on official business of Committees or even in the storage of official documents before Committees.

(iv) Attendance of Committee meetings

Hon. Members,

The attendance of Committee Sittings by Members is important for an effective oversight Committee. It has been brought to my attention that some Committees are finding it extremely difficult to raise quorum within the required time as provided for in the Standing Order 185 which states as follows *"Unless quorum is achieved within thirty minutes of the appointment time, a meeting of a committee of the House shall stand adjourned to such further time or day as the chairperson of the committee may appoint"*. Committees are also unable to sustain quorum during deliberations of bills, Sessional papers, inquiries and petitions before them. This has brought embarrassment and loss of dignity to Committees and Parliament especially when witnesses have been invited and meetings do not take off or end up with one or two members conducting the business of the Committee. It has been reported that in many instances a member asks a question but is not available to listen to the response by the Cabinet Secretary or accounting officers.

Further there have been instances when Committees fail to raise the requisite numbers necessary for adoption of Reports, thus draft reports remain pending before Committees for unnecessary long periods as was the case with the departmental Committee on Labour and Social Welfare on the Tassia Infrastructure project inquiry, the PAC report on the judiciary among others.

I exhort members to fully participate in Committee Sittings to enrich their deliberations and be seized of the matters under consideration to enable Committees to come up with impeccable findings and recommendations. Let us all ensure that retreats and field visits are properly utilized to conduct business and not picnics and beach holidays, as is alleged. There must be value for money on any committee activities.

I wish to remind members that they should attend committee meetings without fail. If they fail the provisions of Standing Order 187 will apply where failure to attend four (4) consecutive meetings without permission will lead to removal from a committee. Any member discharged from a committee due to lack of attendance will not be eligible for re-appointment to any other committee.

As agreed in the Leadership retreat I hereby direct that the provisions of Standing Orders recording sitting of committees and on quorum be implemented to the letter.

(v) Committee Reports

Hon. Members,

Committees communicate to the House through Reports. It is therefore imperative that committees prioritize consideration of Bills, Sessional Papers, Statutory Instruments, Audit Reports and Petitions and submit reports within the statutory timelines. Some Committees have taken inordinately long to conclude inquiries, engaging in unending investigations while others re-open inquiries even after going for report writing. An example is the Departmental Committee on Agriculture, Livestock and Cooperatives which has been inquiring into the sugar crisis in Western Kenya for the past one year and only managed to table its report last week. The delay in concluding inquiries and producing Reports on time leads to unnecessary speculation and fuels rumours of rent seeking. This waste of public resources on unending "investigations" will not be acceptable and moving forward an Inquiry by a Committee should not take more than two months to conclude and a report submitted thereafter pursuant to Standing Order 199.

(vi) Consideration of Bills by Committees

Hon. Members,

Standing Order 114 (b) provides that the Speaker on receipt of a legislative proposal which no committee is in charge " *refer the legislative proposal to the relevant committee for pre-publication scrutiny and comment, and the committee shall submit its comments on the legislative proposal to the Speaker within fourteen days of receipt of the legislative proposal*" . Most committees have failed to meet this requirement in terms of undertaking the pre-publication scrutiny and in producing reports of such scrutiny within the required time.

The wisdom behind pre-legislative scrutiny is to harmonise views and reduce the number of amendments brought on a bill during Committee of the Whole. This has however not worked as evidenced by the many amendments brought by Committee Chairpersons on bills that were referred to them for pre-legislative scrutiny. This has been attributed to the fact that Committees do not conduct pre- publication scrutiny. Committees have also failed in their duty in terms of producing reports on bills after the First Reading pursuant to provisions of Standing Order 127 (3)(4) and (5). Committees have been accused of giving preference and more attention to issues appearing in the press particularly on procurement in place of Bills and other legislative agenda. While it is within the mandate of Committees to deal with issues of public interest, it should not be the main pre-occupation.

I urge Committees to take legislation and other business before them seriously and report within the stipulated time frames.

Finally Hon. Members, this is a House of procedure and rules and therefore I urge you Members to conduct your official business within the provisions of the Constitution, Statutes and the Standing Orders.

Thank you".

5. **PETITION**

Pursuant to Standing Order 220(b), the Member for Machakos County (Hon. (Dr.) Susan Musyoka) presented a Petition on behalf of a Mr. Raphael M. Kitivi, a former administration police officer, regarding reinstatement and payment of his dues.

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

6. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (*pursuant to section 8 of the Treaty Making and Ratification Act, 2012*)
- (ii) The Mutual Defence Pact between the Republics of Kenya, Uganda and Rwanda (*pursuant to section 8 of the Treaty Making and Ratification Act, 2012*)

- (iii) The Traffic (Amendments) Rules, 2015, and the Explanatory Memorandum (*in accordance with section 11 of the Statutory Instruments Act, 2013 and section 54 of the National Transport and Safety Authority Act, 2012*)
- (iv) The National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015 and the Explanatory Memorandum (*in accordance with section 11 of the Statutory Instruments Act, 2013 and section 54 of the National Transport and Safety Authority Act, 2012*)
- (v) The National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 and the Explanatory Memorandum (*in accordance with section 11 of the Statutory Instruments Act, 2013 and section 54 of the National Transport and Safety Authority Act, 2012*)
- (vi) The Report of the Departmental Committee on Defence and Foreign Relations on the Vetting of Major-General (Rtd) Lucas K. Tumbo, nominee for appointment as Ambassador to the Federal Republic of Somalia.

(Chairperson, Departmental Committee on Defence and Foreign Relations)

- (vii) Report of the Departmental Committee on the petition regarding the status of the leased land meant for expansion of Moi International Airport.

(Chairperson, Departmental Committee on Lands)

7. **NOTICE OF MOTION** - (Chairperson, Departmental Committee on Defence and Foreign Relations)

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Vetting of Major-General (Rtd) Lucas K. Tumbo, nominee for appointment as Ambassador to the Federal Republic of Somalia, laid on the Table of the House on Tuesday, March 17, 2015

8. **NOTICE OF MOTION - ADJOURNMENT OF THE HOUSE UNDER STANDING ORDER 33 TO DISCUSS A MATTER OF DEFINITE NATIONAL IMPORTANCE REGARDING RECENT TERRORIST ATTACKS IN MANDERA COUNTY**

Rising in his place on a Point of Order, the Member for Mandera East (Hon. Isaac Shaban) claimed to move a Motion for the adjournment of the House under the provisions of Standing Order 33 in order to discuss a definite matter of national importance regarding recent terrorists attacks in Mandera County;

And the Speaker having acceded to the claim;

And there being sufficient number of Members rising in their places in support of the claim;

Thereupon, the Speaker directed that the Motion be moved at thirty minutes past Five O'clock today.

9. **NOTICE OF MOTION** – (Chairperson, Departmental Committee on Justice & Legal Affairs)

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, this House resolves to extend the period for consideration of the nominees for appointment as Commissioners to the Judicial Service Commission by a further ten (10) days, from 20th March, 2015

10. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

Third Chairperson of Committees in the Chair

The Protection Against Domestic Violence Bill (National Assembly Bill No.28 of 2013)

Clause 9 - amendment proposed –

THAT, clause 9 of the Bill be amended—

(a) by deleting subclause (1) and replacing with a new subclause (1) as follows—

“(1) Any person who reasonably suspects that an offence of domestic violence is being or has been committed may give such information to the police officers or any other person in authority”;

(b) in subclause (2) by deleting the words “by virtue of such reporting attacks, intimidates or does any harmful act to the person providing information” appearing immediately after the words “person who” and substituting therefor the words “attacks, intimidates or harms a person who reports domestic violence”;

(c) by deleting subclause (3);

(d) by deleting subclause (4);

Proposed amendments (c) and (d) withdrawn;

(e) by deleting subclause (7);

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 9 - as amended agreed to

Clause 10 - amendment proposed –

THAT, clause 10 of the Bill be amended—

(a) by deleting subclause (1) and replacing with a new subclause (1) as follows—

“(1) A person who is in a domestic relationship with another person may apply to Court for a protection order in respect of that other person.”

(b) in subclause (2), by deleting the word “shall” appearing immediately after the word “application” and substituting therefor the word “may”;

(c) in subclause (3) by deleting the word “shall” appearing immediately after the word “application” and substituting therefor the word “may”;

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 10 - as amended agreed to

Clause 11 - amendment proposed –

THAT, clause 11 of the Bill be amended in subclause (2)—

(a) by inserting the words “a parent, guardian, probation officer, police officer, person acting on behalf of a non-governmental organization concerned with the welfare of victims of domestic violence or, with leave of court, any other person.” Immediately after the word “through”;

(b) by deleting paragraphs (a), (b), (c), (d), (e), (f), (g) (h), (i) and (j);

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 11 be further amended in sub clause (2)(a) by inserting the words “Director of Children Services” immediately after the word probation officer

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 11 - as amended agreed to.

Clause 12 - amendment proposed –

THAT, clause 12 of the Bill be amended in subclause (2) by deleting paragraph (b);

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 12 - as amended agreed to

Clause 13 - agreed to

Clause 14 - amendment proposed –

THAT, clause 14 of the Bill be amended in subclause (4) by deleting the words "and, if the respondent fails to appear, the court shall, subject to section 23(3), issue a warrant for the arrest of the respondent" appearing immediately after the words "to the order";

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 14 - as amended agreed to

PROGRESS REPORT

Motion made and Question proposed –

THAT, the Committee of the whole House do report progress on the Protection Against Domestic Violence Bill (National Assembly Bill No.28 of 2013)

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Question put and agreed to

11. **HOUSE RESUMED** - the Fourth Chairperson in the Chair

PROGRESS REPORT

Motion made and Question proposed –

THAT, the Committee of the whole House do report progress on the consideration of the Protection Against Domestic Violence Bill (National Assembly Bill No.28 of 2013)

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Question put and agreed to.

12. **ADJOURNMENT OF THE HOUSE UNDER STANDING ORDER 33 TO DISCUSS A MATTER OF DEFINITE NATIONAL IMPORTANCE REGARDING RECENT TERRORIST ATTACKS IN MANDERA COUNTY**

Motion made and Question proposed –

THAT, the House do now adjourn

(Hon. Isaac Hassan)

Debate arising;

SUSPENSION OF A MEMBER PURSUANT TO PROVISIONS OF STANDING ORDER 107

Pursuant to the provisions of Standing Order 107, the Fourth Chairperson ordered the Member for Uguja(Hon.OpiyoWandayi) to withdraw from the precincts of the Assembly for the remainder of the Sitting day for gross disorderly conduct;

Thereupon, the Member withdrew from the Chamber.

Debate interrupted resumed;

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

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
Wednesday, March 18, 2015 at 9.30 a.m.

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