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REPUBLIC OF KENYA  
ELEVENTH PARLIAMENT- (FOURTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

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**ON THE ADMISSIBILITY PROPOSED AMENDMENTS BY THE HON. BENJAMIN WASHIALI ON THE REPORT OF THE CRISIS FACING THE SUGAR INDUSTRY IN KENYA AND ADMISSIBILITY OF PAPERS LAID**

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**Honourable Members,**

As you would recall, the debate on the Motion for Adoption of the Report of the Crisis Facing the Sugar Industry in Kenya commenced on Tuesday, 16<sup>th</sup> February, 2016, but was not concluded by the time the House rose at 6.30 pm on that day. Upon resumption of debate during the afternoon sitting of yesterday, 17<sup>th</sup> February, 2016, the Member for *Mumias East*, the Hon. Benjamin Washiali moved several amendments to the Report whose notice had been published in the Order Paper. The import of his amendments, which are also published in today's Supplementary Order Paper on pages 037 and 038, is three fold: Firstly, Hon. Members, the Member for *Mumias East* successfully moved the House to delete paragraph 101 of the Report, which he justifiably claimed was inadvertently restated in the Report. That particular amendment was carried by the House. Secondly, the Member also moved the House to make two observations, by way of new paragraphs 101A and 101B. In moving this second amendment, I allowed the Member to also move the third part of his proposal, which was to amend the Report by inserting **three new** recommendations which he rightfully claimed were **corroborated** by the proposed observations and were therefore, inseparable.

**Honourable Members,** The Member for Mumias indeed concluded moving these two amendments and requested the Member for Mukurweini, the Hon. Kabandowa Kabando, to second his proposal. It is at this juncture that the Deputy

Leader of the Minority Party, the Hon. Jakoyo Midowo rose on a *point of order*, claiming that the proposed amendments would offend the provisions of Standing Order 48 relating to *amendment of notice of motion*. You will recall that several other Members rose and spoke on that particular point of order. Further, the Deputy Leader of the Minority Party claimed that the Member for *Mumias East* has been doing business with Mumias Sugar Company Limited and as such he ought to have declared his interest before moving the amendment. To substantiate his claim, the Deputy Leader of the Minority Party laid several papers, whose admissibility I was later asked to determine. Further, and most importantly, the Member for *Kisumu West* the Hon. John Olago Aluoch also claimed that the proposed amendments would offend the provisions of Standing Order 56, relating to **scope and relevance of amendments to a motion**. Related to this was the procedural question of the admissibility of the amendments, particularly to the extent that the House was being asked to make certain observations whose evidence was not adduced by anyone at the time of taking evidence before the Departmental Committee on Agriculture, Livestock and Cooperatives. In this regard, the Member sought clarification from the Speaker on whether the Member for *Mumias East* was in order to move his amendments yet he was a Member of the Departmental Committee on Agriculture, Livestock and Cooperatives and therefore had the opportunity to **dissent on record** during the adoption of the Report by the Committee, or seek a **Minority Report** in accordance with the provisions of Standing Order 199(5).

### **Honourable Members,**

It is indeed evident that the debate on the Adoption of this particular Report is one that has elicited unique arguments which raises several key issues that the Speaker need to make a determination on before this debate on the Report resumes. You will recall that, before I deferred the debate yesterday evening, I dismissed the claim by the Deputy Leader of the Minority Party challenging the amendments on the basis of Standing Order 48. As a matter of fact, I did say that the provisions of that Standing Order would have been applicable to the Chairperson of the Departmental Committee on Agriculture, Livestock and Fisheries had he chosen to move those amendments at the time of moving the Motion for the Adoption of the Report. Having said that, the issues

that now remain for my determination as deduced from yesterday's debate are as follows-

(1) Should the Speaker admit the papers laid by the Deputy Leader of the Minority Party claiming to link the Member for *Mumias East* with contracts at the Mumias Sugar Company? If I admit the said papers, would they be relevant to the Motion under debate so as to obligate the Member for *Mumias East* to declare his interest in the Motion in keeping with the provisions of Standing Order 90?

(2) In light of the provisions of Standing Order 56 and to the extent that the amendments proposed by the Member for *Mumias East* contain a proposal asking the House to make certain observations whose evidence was not adduced in the Committee, should the Speaker admit the amendments on the observations and the consequent three recommendations, which the mover claimed to be inseparable?

**Honourable Members,** Permit me now to examine each of the issues raised. Firstly, I will answer the question on whether the Papers tabled by the Deputy Minority Leader allegedly linking the Honourable Benjamin Washiali with the Mumias Sugar Company are admissible. The Papers as tabled before the House consist of copies of deposits vouchers from various Banks for varying dates between the years 2011 and 2012. However, I am unable to confirm the authenticity and genuineness of the said vouchers. As such the vouchers as presented are **not admissible** as records of the House. Further, the Papers also consist of copies of correspondences dated the years 2011, 2012 and 2013 on the letter head of Mumias Sugar Company Ltd and addressed to M/s. Warm and Barn Hill Company Limited of P.O Box 384-50102, Mumias. The correspondences seem to be award letters of contracts for grading and spot gravelling of several roads. The letters bear signatures of officials of Mumias Sugar Company Limited. My decision is based on rendition of a precedence made by my predecessor on September 10, 2009, *on documents tabled by then Minister for Justice, National Cohesion and Constitutional Affairs* where he indicated that presence of letterhead and signatures on a copy of a document of this nature may suffice for the purposes of admitting the document as part of the records of the House. In this regard, the copies of letters **are admissible** as records of this House.

**Honourable Members,**having made that determination, the next question is **whether the Papers are relevant for purposes of establishing, in terms of Standing Order 90, whether the Honourable Member ought to declare personal interest on matters concerning the Report.** The relevancy question is one that calls into inquiry the issue of whether the correspondence relate to the Honourable Member or rather whether a link either directly or indirectly can be proven between the Honourable Member and the issue at hand, in this case the Report before the House.

**Honourable Members,**As you would recall, yesterday I did inquire from the Honourable Benjamin Washiali whether he knew Warm and Barn Hill Company Limited to which the letters have been addressed to. The Honourable Member is on record as having said that he did not know the Company and had indeed also never heard of it. In view of the foregoing, the chain process is indeed rendered nugatory as there exist no correlation or link between the Honourable Member for Mumias East and the Mumias Sugar Company and the Report before this House. To this effect, I am therefore of the view that in the absence of any other evidence to demonstrate the contrary, the Papers consisting of the correspondences tabled before the House though admissible as I had stated earlier, they fail the relevancy test. However, it is important to note that the Member for *Homabay Town*, the Hon. GeorgePeter Kalumaduring yesterday's debate undertook to confirm that the Honourable Benjamin Washiali indeed does business with Mumias Sugar Company Limited. Pursuant to Standing Order 91(2), *if a Member has sufficient reason to convince the Speaker that the Member is unable to substantiate allegations instantly, the Speaker shall require that such Member substantiates the allegations not later than the next sitting day...."*. In this regard and in the absence of any evidence, as clearly seen from Standing Order 91(2), I have no option but rule that the allegations made against the Honourable Benjamin Washiali are,at the moment, unsubstantiated.I will be allowing the Member for *Homabay Town* to substantiate his allegations at a later time. However, I must hasten to remind Members to refrain from the temptation to drift away from the Motion before the House, which is the *Adoption of the Report on the Crisis Facing the Sugar Industry in Kenya*. In this regard, I will not entertain any attempts to use the privilege of this House to casually slander the Member for *Mumias East*, or indeed

any other Member of this House in the pretext of debating the particular Motion before us this afternoon, or any other business.

**Honourable Members,** Allow me now to proceed and examine the last issue which was whether the amendments proposed by the Honourable Benjamin Washiali are indeed admissible in light of Standing Order 56(1). That particular rule of procedure states, and I quote, “.....every amendment shall be relevant to the Motion which it seeks to amend and shall not raise any question which, in the opinion of the Speaker should be raised by a substantive Motion after notice is given”, end of quote.**Honourable Members,** Having examined the Report, it is clear that the Member for *Mumias East* did not sign his consent for the adoption of the Report in the Committee. However, a close examination of the Report also indicates that there is no record of the Honourable Member dissenting with the opinion for the adoption of the Report. As you are all aware, failure to sign a Report cannot be interpreted to simply infer a protest or dissent. Indeed, failure to sign the Report is an action that can be implied or explained by various line of thoughts including and not limited to the Member being absent during the adoption of the Report or mere acts of inadvertent omissions. Having said that, allow me to examine our Standing Orders in determining how dissent is recorded in Reports. Standing Order 199(5) on the Reports of the Committees provide that “a report having been adopted by a majority of members, a minority or dissenting Report may be appended to the Report by any member of the Committee”. A close reading of this provision indicate that a Member seeking to dissent or protest adoption of a Report need to make clear dissenting views which should be on record in terms of a minority Report being appended to the Majority Report.

**Honourable Members,** This is also the practice in comparable jurisdictions. Indeed, referring to Erskine May on Parliamentary Practice 24<sup>th</sup> Edition, on the issue of Minority Reports it reads and allow me to quote “If a member disagrees to certain paragraphs in the Report, or to the entire Report, he can record his disapproval by dividing the committee against those paragraphs to which he objects or against the entire report as the circumstances of the case can require and can put on record his observations and conclusions as opposed to those of the majority, by proposing an alternative draft or minority Report.....” end of quote. Further, referring to Mason’s Manual of Legislative Procedure, I quote “The minority members of a Committee may

*collectively, or individually present views with the Committee Report.....A member of a committee who does not agree with the Report may be permitted to state that person's views following the filing of the committee Report" end of quote'.*

**Honourable Members,**As seen from our Standing Orders and other comparable jurisdictions, it is indeed clear that a Member who does not agree with a Report ought to have his or her dissenting views recorded and as provided for in our Standing Orders the protest should be in form of a minority Report. The Honourable Benjamin Washiali, as a member of the Committee therefore ought to have had his dissenting views recorded or a minority Report appended to the majority Report which is before this House. Had the Member done this, the Honourable Member would have been at liberty to move the House to delete the Majority Report so that only his Minority Report or views would be adopted by the House in the end.

**Honourable Members,**Further, moving on to examine the amendments by the Honourable Member, what the Member in short is requesting this House to do is to make observations and recommendations which fundamentally alter the observations and recommendations as presented in the Report that is before this House. It is clear from the Report and the remarks of the Committee Chairperson yesterday that no evidence was adduced in the Committee to allege the observations which the Member for *Mumias East* is now asking the House to consider and vote on. This begs the question; **on what basis would the House be considering or even confirming those observations?** On the converse, would it not have been prudent for the Committee to apply the provisions of Article 125 to require the attendance of persons before it so as to examine any evidence to support or discharge the claims which are now being offered by the Member for *Mumias East*? It is my view that allowing the House to involve itself in *merely* confirming observations that contains fundamental claims that fails the tests of examination for validity and authenticity, would be a clear disregard of the very import of Article 125 of the Constitution, which gives the House and its Committees the *quasi-judicial* authority to exhaustively examinesuch claims. In this regard, I am of the opinion that such amendments ought to have been raised as a substantive motion for *quasi-judicial* examination before the Committee, or carried in a

minority Report to the House. Since the Member also claimed that the amendments relating to his proposed observations are inseparable to the proposed recommendations, my findings likewise apply to both the observations and the consequent proposed recommendations.

**Honourable Members,**

In summary, I hereby make the following determinations-

1. **THAT**, the copies of Bank Deposit slips laid before the House yesterday by the Deputy Leader of the Minority Party are NOT admitted as records of the House;
2. **THAT**, the copies of the correspondences laid before the House yesterday by the Deputy Leader of the Minority Party while admitted as records of the House, are NOT **relevant** to the Motion as they do not disclose any conflict of interest on the part of the Member for *Mumias East*;
3. **THAT**, in light of that finding, I do not see anything obligating the Member for *Mumias East* to declare his interest on the Motion before the House under Standing Order 90; and,
4. **THAT**, the inseparable amendments proposed by the Honourable Member for *Mumias East* relating to Observations and the Recommendations are inadmissible as they offend the provisions of Standing Order 56(1) and will not be entered upon by the House.

Please be guided accordingly.

**I Thank you!**

**THE HON. JUSTIN B.N. MUTURI, E.G.H, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

**February 18, 2016**