



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY AUGUST 25, 2016

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

The Deputy Speaker conveyed the following Communications –

(i) RESERVATION OF PARLIAMENT PARKING SPACE FOR TICAD

“Honourable Members,

I wish to notify you that as part of its support towards the Sixth Tokyo International Conference on African Development (TICAD) Summit, Parliament has reserved its Parking Space for use by First Ladies of African Heads of States and Governments on **Saturday 27th and Sunday 28th August 2016** in the following areas within the Main Parliament Grounds:

- (i) The Senate Car Park adjacent to Parliament Road;
- (ii) The former Ministers' Car Park; and
- (iii) The Car Park facing Uhuru Highway.

Consequently, the parking space within the Main Parliament Grounds shall be unavailable during these two days of Saturday 27th and Sunday 28th August 2016.

I thank you.”

(ii) THE CONSIDERATION OF THE REPORT OF THE JOINT PARLIAMENTARY SELECT COMMITTEE ON MATTERS RELATING TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

“Honourable Members,

As you may recall, yesterday, August 24th, 2016, in the afternoon sitting during the debate on the consideration of the *Report of the Joint Parliamentary Select Committee on Matters Relating to the Independent Electoral and Boundaries Commission (IEBC)*, the Leader of the

Majority Party, the Hon. Aden Duale, rose on a Point of Order seeking direction from the Speaker on matters arising out of the debate. Specifically, he sought determination on whether the Special Motion and the Report could be amended noting the special circumstances that had resulted in the establishment of the select Committee. This was after the Member for Kisumu West, the *Hon. Olago Aluoch* successfully moved the House to amend the Motion to delete sub-paragraph (7) of Paragraph 659 of the Report relating to the recommendation to *restrict candidates seeking political offices from changing parties*- an act commonly referred to as “party-hopping.”

Honourable Members, before I visit the questions that were raised yesterday, may I bring to the attention of the House three important facts regarding this Motion. The three facts will inform my decision: **Firstly**, at the time of giving Notice, the Speaker did designate this particular motion as a Special Motion. By doing so, the Speaker elevated the Motion to the kind of Motions provided for under Standing Order 61 which require certain special considerations which are typically not accorded to ordinary motions in terms of **procedure, timelines and manner of admitting amendments**. As a way of example, a Special Motion includes a Motion to *approve borrowing by National Government*, a Motion for *impeachment of the President*, a motion for *alteration of boundaries of a County* or a Motion for *extension of State of Emergency*, amongst others.

Secondly, even though not expressly indicated in the Order Paper, this particular Special Motion is also deemed to be a Party-Sponsored Motion having been jointly sponsored by the Majority and the Minority Parties in the House. Indeed the signatures of the Leaders of the Majority and the Minority Parties are appended to the Report. This should be a stark reminder to all of us of the **agonizing, consensual and consultative** journey that has culminated into the Report that is before us this afternoon. This also explains why this particular Motion is taking precedence over other motions for adoption of reports. In addition, a motion is phrased in a manner that, if agreed to, will express the judgment or will of the House.

Thirdly, Hon. Members you will agree with me that almost every resolution of the House requires implementation. Invariably, the implementing agencies for most House resolutions are offices outside Parliament. **However, the implementing agency for most of the recommendations contained in the Report before us today is Parliament.** That is not only a rare occurrence but also an opportunity for all of us to display selfless leadership. May I remind us that the implementation of this Report will be majorly actualized, not by necessarily passing the special motion, but by considering the two pieces of legislation annexed to the Report. In other words, while this Report accords the House an opportunity to discuss generally matters relating to IEBC and the conduct of the next general elections, the opportunity to make **binding** decisions and actualize those decisions is reserved in the passage of the two draft Bills- I put emphasis in the words “*binding decisions*”. Indeed except as expressly provided for in the Constitution or an Act of Parliament, decisions of the House can only have legal effect in the form of an Act of Parliament. It is only by legislating that the House could give its sufficient authority to its wishes.

Honourable Members, Allow me now to revisit the questions raised yesterday. You will recall that during the debate, several Members including the Member for Budalangi, Hon. Ababu Namwamba, Nominated Member Hon. Sara Korere and the Member for Kisumu West, Hon. Olago Aluoch spoke on recommendations contained in the report. The Member for Budalangi spoke at length on the admissibility of Notices of Motion as provided for in Standing Order 47. Notably, it was observed that the Speaker has the leeway of directing the re-drafting of Notices of Motion if in the opinion of the Speaker, the Notice is inadmissible. For avoidance of doubt, Standing Order 47(3) states, and I quote;-

“(3) *If the Speaker is of the opinion that any proposed Motion –*

a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders;

b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;

the Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve or that the motion be referred to the relevant committee of the Assembly, pursuant to article 114(2) of the Constitution.”

Further, Honourable Members, the Member for Budalangi and indeed several other Members postulated that some recommendations in the report may be offensive to the general rule of law and ultimately the Constitution. Specifically, the recommendation barring candidates seeking political offices from changing parties was observed to be against the Bill of Rights as enshrined in the Constitution. The agreement with the report would therefore be an attempt to right an obvious wrong. For clarity, Article 36 (1)&(2) state;

“Freedom of association”

36. (1) *Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.*

(2) *A person shall not be compelled to join an association of any kind.”*

Honourable Members, an amendment is moved upon the original motion to modify the question in such a way as to increase its acceptability, build consensus or to present to the House a different proposition as an alternative to the original question. It is on this basis, that I admitted the amendment by the Member for Kisumu West following consultations with the mover and the seconder of the Motion who were Members of the Select Committee. That therefore settles the first question.

Honourable Members, the main question at hand therefore was whether the Motion for adoption had been procedurally amended as proposed by the Member for Kisumu West, *the Hon. Aluoch*. In addressing the question, the Leader of the Majority party, *the Hon. Aden Duale* made reference to the Speaker’s earlier direction that no amendments were to be moved by any Member to the Motion except the Party Leadership, that is, the Majority and Minority Leaders. The relevant Standing Orders therefore apply, and in this case, S.O. 54 and 55.

Honourable Members, Standing Order 54 relates to *amendments to Motion*. Paragraph (1) of the Standing Order states:

54. (1) *Unless otherwise provided in these Standing Orders, any amendment to a Motion which a Member wishes to propose in accordance with these Standing Orders may be moved and, if necessary seconded at any time after the question upon the Motion has been proposed and before it has been put.*

Further, Standing Order 55, relating to ***amendments to be in writing*** states:-

55. (1) *The proposer of an amendment to a Motion shall, before moving it, hand the proposed amendments in writing, signed by the proposer, to the Clerk at least two hours before the order is read.*

(2) *Despite paragraph (1), the Speaker may, in exceptional circumstances, allow a Member to move an amendment to a Motion before the Assembly at any time during consideration of that Motion.*

From the foregoing Honourable Members, having addressed the question as to whether the right procedure was applied to admit the amendment by the Member for Kisumu West, allow me to address the next concerns. **Should we admit more amendments?** - On this question, I will be guided by the decision of the Speaker of July 5th, 2016 when the motion to form the select committee was under consideration. On that day, the Speaker did direct as follows and I wish to quote him:-

“I will overrule all of you and make this direction: That for the reasons given by the Member for South Mugirango, any amendments including those proposed by the Hon. Ben Washiali will have to be agreed on by the two Coalitions. That is the best way to carry this forward.”

Honourable Members, I will therefore uphold that particular decision on any further amendment to this Motion and require any Member seeking to move amendment to obtain prior **written** approval of either the Leader of the Majority Party or the Leader of the Minority Party, in person- meaning that the responsibility to do is not to be delegated.

Honourable Members, The next question is ***What does adopting the report mean?*** Perhaps, the principal concern for all of us should be the relationship between the recommendations of the Report and the Bills that the Committee proposes. May I reiterate that Report in itself makes recommendations but whose actualization lies in the passage of the two Bills. It is therefore in place of the House to look into itself and decide whether to engage in the current processes or await the Bills which will undoubtedly go through all the stages, including Second Reading, and consideration of any amendments at Committee stage, in accordance with the Standing Orders. Even as we do this, let us not overlook the fact that the Report and the two Draft Bills are part of a very long process. As a matter of fact, we are just beginning **step one of nine steps** that will culminate in the actualization of the other crucial processes important to the next general Elections. May I take the liberty to enumerate these steps as follows:-

1. Step one is the adoption of the Report of the Joint Select Committee, which we are doing this afternoon;
2. Step two will be the Passage of the two Bills, i.e. - **Election Offences Bill, 2016** and the **Elections Laws (Amendment) Bill, 2016** by the two Houses;
3. Step three is the Assent of the two Bills;
4. Step four is the appointment of the Selection Panel by the President in accordance with the provisions of the new law;
5. Step five is the nomination of new IEBC Commissioners by the Selection Panel;
6. Step six is the Approval by the **National Assembly** of the new IEBC Commissioners;
7. Step seven is the appointment of the new IEBC Commissioners by the President in accordance to the new law and the Constitution;
8. Step eight is the assumption of office by the new Commissioners including taking of oath of office;
9. Step nine is the handing over by the current IEBC Commissioners to the new Commissioners and vacation of office.

It is important for Members to note that, all these steps ought to be achieved on or before 30th September, 2016. Of importance also is to note that this report and its recommendations are a product of a process that captivated the mood of the Nation. Given that the implementation of the recommendations of the Select Committee will greatly impact on the manner of holding of the next general elections, I call upon the leadership and the entire House to be gallant, rise to the occasion and offer leadership while treating this matter with the sensitivity it deserves.

I thank you!”

5. **MESSAGES**

The Deputy Speaker conveyed the following Message –

APPROVAL OF THE MEDIATED VERSIONS OF THE ENERGY BILL, 2015, THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2015, THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015, THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015, AND THE REPORT OF THE JOINT PARLIAMENTARY SELECT ON MATTERS RELATING TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

“Honourable Members, Standing Order 41(4) requires the Speaker to report to the House any Message(s) received from the Senate at the first convenient opportunity. In this regard, I wish to report to the House that, on Wednesday, August 24, 2016, I received Messages from the Senate on the approval of the Mediated Versions of the following four Bills:

1. The Energy Bill (National Assembly Bill No. 50 of 2015);
2. The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015);
3. The Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015); and
4. The Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015).

Honourable Members, you may recall that the National Assembly also approved the Mediated Versions of the Forest Conservation and Management Bill, 2015 and the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015 on Wednesday, August 24, 2016.

Honourable Members, once the House approves the Mediated Versions of the Energy Bill, 2015 and the Petroleum (Exploration, Development and Production) Bill, 2015 today, I will then proceed to present the said Bills to H.E. the President for assent in accordance with the provisions of Articles 110(5) and 113(3) of the Constitution.

Further, I wish to convey that I have also received a message from the Senate on their approval, **without amendments**, of the Report of the Joint Parliamentary Select on Matters Relating to the Independent Electoral and Boundaries Commission on Wednesday, August 24, 2016. The House therefore stands duly informed.

I thank you.”

6. **PETITIONS**

The Vice Chairperson of the Departmental Committee on Administration and National Security reported to the House on the following Petitions the Petition by residents of Kibwezi Town regarding the relocation of the Kibwezi East Sub-County Headquarters to Kambu Town presented by the Member for Kibwezi East (Hon. Jessica Mbalu).

7. **PAPERS LAID**

The following Papers were laid on the Table –

The Reports of the Departmental Committee on Administration and National Security on;

- (i) Its consideration of the Petition regarding relocation of Kibwezi East Sub County Headquarters to Kambu Town;

- (ii) An inspection visit to Busia and Malaba Border posts from 22nd to 25th October, 2015; and
- (iii) Its consideration of the County Assembly Services Bill (Senate Bill No. 27 of 2014).

(Vice Chairperson, Departmental Committee on Administration and National Security)

8. **STATEMENTS**

The following Statements were made:-

(i) Statements pursuant to Standing Order 44(2)(a)

Pursuant to the provision of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, August 30, 2016.

(ii) Statements pursuant to Standing Order 83

Pursuant to the provision of Standing Order 83, the Member for Nyakach (Hon. Aduma Awour) made a Statement regarding the demise of the late Hon. Dennis Akumu (Former Member for Nyakach).

Thereafter, the Speaker requested Members to observe a moment of silence in honor of the former Member. Subsequently, Members conveyed their condolences.

9. **MOTION – APPROVAL OF THE MEDIATED VERSION OF THE ENERGY BILL (NATIONAL ASSEMBLY BILL NO.50 OF 2015)**

Motion made and Question proposed –

THAT, pursuant to the provisions of Article 113 (2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on its consideration of the Energy Bill, 2015, laid on the Table of the House on Wednesday, 24th August 2016, and **approves** the Mediated Version of the Energy Bill (National Assembly Bill No. 50 of 2015).

(Hon. Jamleck Kamau, EGH, MP - Vice-Chairperson, Mediation Committee)

Debate on the Motion having been concluded on Thursday, August 25, 2016 (Morning Sitting);

Question put and agreed to;

10. **MOTION – APPROVAL OF THE MEDIATED VERSION OF THE PETROLEUM EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2015)**

Motion made and Question proposed –

THAT, pursuant to the provisions of Article 113 (2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on its consideration of the Petroleum (Exploration, Development and Production) Bill, 2015, laid on the Table of the House on Wednesday, 24th August 2016, and **approves** the Mediated Version of the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).

(Hon. Jamleck Kamau, EGH, MP - Vice-Chairperson, Mediation Committee)

Debate on the Motion having been concluded on Thursday, August 25, 2016 (Morning Sitting);

Question put and agreed to.

11. **THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2016)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the National Government Constituencies Development Fund (Amendment) Bill (National Assembly Bill No. 34 of 2016) be now read a Second Time

(Chairperson, National Government Constituencies Development Fund Committee – 25.08.2016)

Debate on the Second Reading having been concluded on Thursday, August 25, 2016 (Morning);

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

12. **THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.30 OF 2015)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Betting, Lotteries and Gaming (Amendment) Bill (National Assembly Bill No. 30 of 2015) be now read a Second Time

(The Leader of the Majority Party – 25.08.2016)

Debate on the Second Reading having been concluded on Thursday, August 25, 2016 (Morning);

Mover replied;

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

13. **SPECIAL MOTION – ADOPTION OF REPORT OF THE JOINT PARLIAMENTARY SELECT COMMITTEE ON MATTERS RELATING TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)**

Motion made and Question proposed –

THAT, pursuant to the resolution of the House of July 6, 2016 regarding the establishment of a Joint Parliamentary Select Committee on matters relating to the

Independent Electoral and Boundaries Commission (IEBC), and paragraphs 7 and 8 of the Houses of Parliament (Joint Sitzings) Rules, this House –

- (i) **adopts** the Report of the Committee laid on the Table of the House on Thursday, August 18, 2016;
- (ii) **commits** to the recommendations of the Committee regarding:
 - a) allegations against Commissioners and the Secretariat of the Independent Electoral and Boundaries Commission, specifically on credibility, impartiality, integrity and independence;
 - b) legal mechanisms for the vacation from office of the current Commissioners and the Secretariat of the Independent Electoral and Boundaries Commission in accordance with the Constitution;
 - c) legal, policy and institutional reforms to strengthen the Independent Electoral and Boundaries Commission so as to ensure the August, 2017 elections are free and fair and are administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner; and
 - d) legal, policy and institutional reforms to improve the electoral system and processes so as to ensure the August, 2017 elections are free and fair and are administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner; and
- (iii) **resolves** to establish a mechanism by which it shall oversight the implementation of the recommendations in the Report and the electoral processes until the 2017 General Elections,

subject to deletion of sub-paragraph (7) of paragraph 659 on page 215 of the Report.

(Motion as amended)

(Deputy Leader of the Majority Party – 24.08.2016)

Debate deferred on Wednesday, August 24, 2016 (Afternoon Sitting) resumed;

Mover replied;

Question put and agreed to.

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.

14. **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
Tuesday, August 30, 2016 at 2.30 p.m.

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