



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT- (FOURTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

**ON CONSIDERATION OF THE PETITION BY CONCERNED CITIZENS ON
CONTINUED VIOLATION OF LABOUR LAWS AND TAX EVASION BY BIDCO
AFRICA LIMITED**

Honourable Members,

You will recall that on Tuesday, October 25th, 2016 during the afternoon sitting, the Member for Kiambu, Hon. Jude Njomo presented a public petition on behalf of former and current employees of BIDCO Africa Limited.

The Petitioners on whose behalf the petition was presented prayed that the House—

- (i) Investigate and inquire into the allegation on the matters raised in the petition;
- (ii) Require the Kenya Revenue Authority pursuant to the powers bestowed on it by law to investigate the tax evasion practices espoused in the petition and report to the National Assembly, the Petitioners and the public as a matter of urgency;
- (iii) Require the state labour and employment institutions to urgently address their concerns and take appropriate action; and
- (iv) Make any other order or direction that it deems fit in the circumstances of the petition.

Honourable Members, You will further recall that I committed the subject petition to the Departmental Committee on Labour and Social Welfare to consider and report its findings to the House within sixty (60) days in accordance with Standing Order 227 (2).

Honourable Members, since the committal of the Petition, I wish to bring to the attention of the House that I have received letters from two law firms, Ngatia & Associates Advocates and TripleOK Law Advocates both dated 26th October, 2016. The two law firms claim to act for BIDCO Africa Limited which is the subject of the Petition. In the letters, it is contended that the issue of tax evasion for which the intervention of the House has been sought through the Petition is currently before Court in two cases, High Court Civil Appeal No. 33 of 2016 **COMMISSIONER OF CUSTOMS SERVICES vs BIDCO OIL REFINERIES LIMITED** filed on 29th January 2016 and High Court Petition No. 217 of 2016 **OKIYA OMTATAH OKOITI & Another vs BIDCO AFRICA LIMITED & 4 Others** filed on 26th May 2016. The letters urge the House not to consider the Petition in light of the pending proceedings and further note that paragraph 11 of the Petition is misleading to the extent that it avers that the issues in respect of which the petition is made are not pending before any Court of law or any constitutional or legal body. Their averment is to the effect that the subject matter of the Petition in so far as it relates to the issue of tax evasion is *sub judice*.

Honourable Members, the *sub judice* Rule is set out and Standing Order 89 which provides—

- (1) Subject to paragraph (5), no Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.

(2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

(3) In determining whether a criminal or civil proceeding is active, the following shall apply—

- (a) criminal proceedings shall be deemed to be active when a charge has been made or a summons to appear has been issued;
- (b) criminal proceedings shall be deemed to have ceased to be active when they are concluded by verdict and sentence or discontinuance;
- (c) civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance;
- (d) appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.

(4) A Member alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.

(5) Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the House or a Committee.

The Rule is premised on the constitutional principle of separation of powers by which Parliament should not be seen as trying to deal with matters that properly belong to the Judiciary. For the Rule to apply, the matter alleged to be pending before the Court or other legal body must be active and there must be a likelihood of prejudice to the fair determination of the issue under

consideration if the House or its Committees refer to it in debate. I must note that the House voluntarily imposes the Rule on itself, subject to the discretion of the Chair and that the Chair has discretion to allow reference to a matter notwithstanding that it is active and that there is a likelihood of prejudice to its fair determination by the courts.

Honourable Members, I note that the letter received from Ngatia & Associates Advocates encloses the pleading filed by Mr. Okiya Omtatah Okoiti in High Court Petition No. 217 of 2016. In the case, Mr. Omtata seeks the a number of declarations from the Court against BIDCO and other respondents, including, and I quote—

“A declaration that, as at 31st December 2015, and as stated in the whistle-blower report, the 1st Respondent’s total tax exposure on the unpaid duty (including VAT) was some Kshs. 4,394,779,047.00”

The above declaration sought from the Court is similar to the one sought in the Petition seeking the intervention of this House. The discussion of the issues relating to tax evasion by the subject of the Petition may indeed prejudice the determination of the cases.

Honourable Members, you will also note that Standing Order 223 (g) requires a petitioner to indicate whether issues in respect of which the petition is made are pending before any court of law or other constitutional or legal body. The object of Standing Order 223 (g) is to provide the House with information it may use to determine whether consideration of a petition and the resolution of issues arising from it may prejudice their fair determination by a Court or other constitutional or legal body concurrently dealing with the same matter. This therefore begs the question why the Petitioners willfully averred that there were no pending proceedings in Court over the subject matter of the Petition

relating to the issue of evasion of taxes. This may only lead to the inference that disclosure of that fact would have adversely affected the cause of the Petitioners.

I trust that the matters being prayed for in this Petition especially with regard to labour violations are perfectly within the remits of this House. In my view, I trust that the Departmental Committee on Labour and Social Welfare would take the pronouncements that I have made in the past relating to Parliamentary inquiry into matters touching on individuals and private companies as well as the fact that, that does not oust the jurisdiction. In addressing this matter, the Committee is directed that in its consideration of the Petition, the matters touching on issue to do with taxes payable by the subject of the Petition must be avoided pending the final determination of that matter in Civil Appeal No. 33 of 2016 and High Court Petition No. 217 of 2016, since any resolution of the House relating to the issue would still require that the matter may end up being taken up by other relevant agencies of Government, which, in effect would end up going to the same civil jurisdiction of the High Court and other courts superior to it.

I, therefore, rule that the Petition would continue to be considered by the Departmental Committee on Labour and Social Welfare to the extent only of the matters relating to labour laws violations. The Committee is accordingly guided.

I Thank you!

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

October 27, 2016