



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – (FOURTH SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, OCTOBER 27, 2016

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**

The Speaker issued the following two (2) Communications:-

(i) APPOINTMENT OF MEMBERS TO THE MEDIATION COMMITTEE ON THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2014)

“Hon. Members, you may recall that yesterday, Wednesday, October 26, 2016, I conveyed a Message from the Senate regarding its decision on the Assisted Reproductive Technology Bill (National Assembly Bill No. 36 of 2014). In the Message, it is noted that the Bill was lost at Second Reading on October 19, 2016. The effect of this is that the Bill now stands committed to a Mediation Committee in accordance with the provisions of Article 112 of the Constitution. Indeed, the Senate has already nominated five (5) Senators to the aforesaid Mediation Committee.

Hon. Members, arising from the above and in consultation with the Leadership of the Majority and Minority Parties in the House, I have appointed the following Members to represent the National Assembly in the Mediation Committee:

- (1) The Hon. Millie Odhiambo-Mabona, MP;
- (2) The Hon. John Sakwa, MP;
- (3) The Hon. (Dr.) James Nyikal, MP;
- (4) The Hon. Cecilia Ngetich MP; and
- (5) The Hon. Florence Kajuju, MP.

Hon. Members, the Mediation Committee is advised to expeditiously commence the process of developing an agreed version of the Bill in line with the provisions of Article 113 of the Constitution.

I thank you!”

(ii) 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 25, 2016 during the afternoon Sitting, the Member for Kiambu, Hon. Jude Njomo, MP 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 the provisions of 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 TripleOKLaw 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 Okiiti & 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. Omtatah seeks 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 whistleblower 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 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 with regard to the matters touching on issues 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 of that would still require that the matter may end up being taken up by other relevant agencies of Government, which might still 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!"

5. **PETITIONS**

The Member for Kiambu (Hon. Jude Njomo, MP) presented a Petition on behalf of residents of Indian Bazaar area in Kiambu County, regarding pollution and establishment of a dumpsite in Hekima Estate, Kiambu County;

Petition referred to the Departmental Committee on Environment and Natural Resources pursuant to Standing Order 227.

6. **PAPERS**

The following Papers were laid on the Table;

- (i) The Report of the Departmental Committee on Justice and Legal Affairs on the progress the implementation of the Election Laws (Amendments) Act, 2016 and the preparations for the 2017 General Elections.

(The Chairperson, Departmental Committee on Justice and Legal Affairs)

- (ii) The Report of the Select Committee on Delegated Legislation on its consideration of the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016.

(The Chairperson, Select Committee on Delegated Legislation)

- (iii) The Report of the Constitutional Implementation Oversight Committee on its consideration of a Petition by one Mr. Rage Ismael Hussein concerning the need for Parliament to introduce a Bill to amend the Constitution.

(The Chairperson, Constitutional Implementation Oversight Committee)

- (iv) The Report of the Departmental Committee on Environment and Natural Resources on its consideration of:

- (a) Petition regarding irregular gazettment of Boni/Ijara Forest; and
- (b) Petition regarding deforestation in Kakamega rain forest.

(The Chairperson, Departmental Committee on Environment and Natural Resources)

7. **NOTICES OF MOTION**

Hon. William Cheptumo, MP –

“THAT, this House adopts the Report of the **Select Committee on Delegated Legislation** on its consideration of the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016 and pursuant to Standing Order 210(4)(b), recommends that the Regulations be **annulled** in entirety.”

8. **STATEMENTS**

The following Statements were made -

- (i) Pursuant to the provisions 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, November 15, 2016.
- (ii) Rising on a point of Order, the Member for Garrissa Constituency (Hon. Aden Duale, MP) sought the Speaker's ruling on the constitutionality of Standing Order 176 on Discharge of a Member from a Committee. The Speaker acknowledged that the matter was alive before the Procedure and House Rules Committee and committed to give a ruling upon resumption of the House from recess.

9. **PROCEDURAL MOTION - EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEE FOR APPOINTMENT AS THE CHAIRPERSON OF THE NATIONAL AUTHORITY FOR CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE (NACAADA)**

Motion made and Question proposed –

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 approval for appointment of Lt. Col. (Rtd) Julius Ayub Githiri, as the Chairperson of the National Authority for Campaign Against Alcohol and Drug Abuse (NACAADA), **notified** to the House on 18th October, 2016, by a further period of not more than fourteen (14) days from 1st November, 2016.

(Leader of the Majority Party)

Debate arising;

Question put and **agreed to**.

10. **MOTION - APPROVAL FOR THE APPOINTMENT OF THE DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF KENYA**

Motion made and Question proposed –

THAT, pursuant to the provisions of Article 166(1)(a) of the Constitution, and Section 8 (1) of the Public Appointments (Parliamentary Approvals) Act, 2011, this House **adopts** the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of the Nominee for Appointment as the Deputy Chief Justice of the Republic of Kenya, laid on the Table of the House on Wednesday, October 26, 2016, and **approves**

the appointment of the **Honourable Lady Justice Philomena Mbete Mwilu** as the Deputy Chief Justice of the Republic of Kenya.

(Vice Chairperson, Departmental Committee on Justice and Legal Affairs)

Debate arising;

Question put and agreed to.

11. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The Third Chairperson in the Chair

The Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014)

Clause 2 - agreed to

Provisions related to the Cancer Prevention and Control Act, No.15 of 2012 - agreed to.

Provisions related to the National Transport and Safety Authority Act - amendments proposed

THAT, clause 2 of the Bill be amended in the schedule to the proposed amendments to the National Transport and Safety Authority Act by deleting–

- (a) paragraph (a) of the proposed amendment to section 4(1);
- (b) paragraph (a) of the proposed amendment to section 6(1); and
- (c) the proposed new section.

(Hon. Chachu Nganya, MP)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Provisions relating to the National Transport and Safety Authority Act as amended- agreed to.

The National Authority for the Campaign Against Alcohol and Drug Abuse Act, No. 14 of 2012– amendments proposed

THAT, the Bill be amended in clause 2 in the Schedule in the proposed amendments to the National Authority for the Campaign Against Alcohol and Drug Abuse Act, No. 14 of 2012–

- (a) in the proposed amendments to section 5–
 - (i) by deleting paragraph (b); and
 - (ii) by deleting paragraph (c);
- (b) by deleting the proposed amendments to section 6.

(Hon. Wanjiku Muhia, MP)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Provisions related to the National Authority for the Campaign Against Alcohol and Drug Abuse Act, No. 14 of 2012 as amended – agreed to.

Provisions related to the Sports Act, No. 25 of 2013 – agreed to

Provisions related to the Pyrethrum Act, No. 22 of 2013 - amendments proposed

THAT, clause 2 of the Bill be amended in the Schedule by deleting the proposed amendments to the Pyrethrum Act, No. 22 of 2013 and substituting therefor the following new amendments—

The Pyrethrum Act,
No. 22 of 2013

Section 6(2)

- (a) renumber paragraph (c) as paragraph (e) appearing immediately after paragraph (d);
- (b) delete the word “two” and substitute therefor the word “one” in subparagraph (i) of paragraph (e);
- (c) insert the following new sub paragraph immediately after subparagraph (i) in paragraph (e)—
 - “(ia) one person shall be nominated by the Council of Governors;”

Insert the following new subsections immediately after subsection (3)—

(3A) In nominating and appointing members under this section the nominating persons and bodies' shall uphold the principle of one-third gender representation.

(3B) Appointments to the Board shall take into account the national values referred to in Article 10 of the Constitution and the principle that the composition of the Board taken as a whole shall reflect the regional and ethnic diversity of the people of Kenya.

(Vice Chairperson, Departmental Committee on Agriculture, Livestock and Cooperatives)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Provisions related to the Pyrethrum Act, No. 22 of 2013 as amended – agreed to.

Provisions related to the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, No.56 of 2012 – agreed to

Provisions related to the National Honours Act, No. 11 of 2013 – agreed to.

Clause 2 - agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments;

12. **HOUSE RESUMED** - the Third Chairperson in the Chair

The Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014)

Bill reported with amendments;

Motion made and Question proposed-

THAT, the House do agree with the Committee in the said report

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question put and agreed to;

Motion made and Question proposed –

1 THAT, the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014) be now read a Third Time

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question put and agreed to

Third Reading deferred.

13. Pursuant to the provisions of Standing Order 40(2), the Speaker directed the re-organization of the Order Paper. Thereupon Business appearing as Order Nos. 11-24 was deferred.

14. **MOTION - ADJOURNMENT OF THE HOUSE IN ACCORDANCE WITH THE CALENDAR OF THE NATIONAL ASSEMBLY (2016)**

Motion made -

THAT, pursuant to the provisions of Standing Order 28 and notwithstanding the earlier resolution of the House of 18th February, 2016 on the Calendar of the Assembly (Regular Sessions), this House adjourns until Tuesday, November 15, 2016.

(The Leader of the Majority Party)

Debate arising;

Change of Chair from Third Chairperson to Deputy Speaker

And the time being thirty minutes past Six O'clock, the Deputy Speaker adjourned the House without Question put pursuant to the Standing Orders.

15. **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, November 15, 2016 at 2.30 p.m.

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