



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT- (THIRD SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATIONS FROM THE CHAIR

**PROCEDURE FOR THE APPLICATION OF STANDING ORDER 62
CONCERNING A FURTHER VOTE ON INSTANCES REQUIRING
A FIXED MAJORITY**

Honourable Members,

I wish to inform the House that I have received a Letter from the Hon. David Ochieng' dated August 26, 2015 in which he seeks to have the House undertake a further vote on the Question on the Motion for the Second Reading of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 1 of 2015), of which the Member is the Sponsor. The request is based on failure by the Motion to obtain the stipulated threshold of two thirds of the House Membership when the Question was put on August 25, 2015. You will recall, Honourable Members, that upon the Question on the Motion for the Second Reading of the aforementioned Bill being put, the Ayes totaled 216, the Nays were 28, with four abstentions being recorded.

Honourable Members, as you will recall two other Bills seeking to amend the Constitution together with a Special Motion for the Extension of Period in Respect to Legislation having Constitutional Timeline were also considered in the same sitting. Concerning the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No. 26 of 2013) sponsored by Hon. Lati Lelelit which failed to garner the stipulated majority support of 233 Members, I did make an instantaneous ruling directing that a further vote be taken within five sitting days pursuant to Standing Order 62(2).

Honourable Members,

For the avoidance of doubt, Standing Order 62(2) and (3) provides as follows, and I quote:

(62) (2) Notwithstanding paragraph (1), whenever a Bill or a special Motion the passage of

which requires a special majority in the Assembly fails to obtain the required majority and the vote results in a majority of the "Ayes" but the "Noes" have not numbered at least one third of all the Members of the Assembly, the Speaker may, direct that a further vote be taken on the particular question, and the further vote shall be taken within five sitting days from the day the first vote was taken.

(3) If the Speaker does not so direct any further vote, or if on such further vote the fixed majority is not obtained, the Speaker shall declare that the Motion is negatived.

Honourable Members, it is important to note that the provisions of Standing Order 62 have been in existence since the 7th Parliament and my predecessors applied the provisions of the Standing Order in relation to Bills or Special Motions which required a fixed majority sparingly. Indeed, during the ruling I made on July 28, 2015, I did mention that the provisions of Standing Order 62 ought to be sparingly referred to and seldom used. Similar provisions also exist in other jurisdictions which allow for reconsideration of House decisions upon a motion to bring back for further consideration a matter previously decided. For instance, according to the Robert's Rules of Order referred to in the United States, a motion to reconsider must be made after the action on the original motion. Until the motion to reconsider is disposed of or lapses, the effect of the original vote is suspended, and no action may be taken to implement it. Further, in the U.S. House of Representatives, immediately following a vote, the Speaker typically announces that, *"without objection, a motion to reconsider is laid on the table."*

Honourable Members, the Mason's Manual for Legislative Procedure, which is the official parliamentary authority in most US legislatures, also states that, and I quote: *".....every legislative body has the inherent right to reconsider a vote on any action previously taken by it. When not otherwise provided by law, all public bodies have a right during the session to reconsider action taken by them as they think proper, and it is the final result only that it is to be regarded as the thing done."* This provision is also replicated in the Rules of Procedure of Canada and in particular, Rule 9A.11 which provides for reconsideration Stage for Private Bills. From the foregoing, it is therefore clear that the provisions of Standing Order 62(2) not only exist but are also applied in a number of jurisdictions.

Honourable Members, allow me now to examine the issue at hand which is that the Hon. David Ochieng' seeks to have the House undertake a further vote on the Question on the Motion for the Second Reading of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 1 of 2015). Indeed, during the afternoon Sitting on Wednesday, August 26, 2015, the same issue of undertaking a further vote on the Hon. Ochieng'-sponsored Bill was brought up, with a substantial

majority of the Members who contributed to the resultant debate supporting calls for a further vote. Various reasons were forwarded as the basis for the further vote, including the premise that the drafters of the Standing Orders foresaw the possibility of crucial Bills and Motions being shot down by a small minority and hence created a window of opportunity for the House to re-think its stance. There were also considerable views by Members that there was need to allow for a further vote as the Bill was of great national interest and hence it would be fair for the Speaker to allow members to deliberate on the Bill again.

Honourable Members, before I make a determination on the issue arising, allow me to examine the provisions of Standing Order 62(2) which I had referred to earlier. A close reading of the provision indicate that the provision does not state expressly the procedure for prompting the Speaker to rule on whether or not a further vote is to be taken. Indeed, in the case of the Bill sponsored by Hon. David Ochieng', the Member did not request for a further vote on the floor immediately after the vote. However, as mentioned earlier, I have in my possession a Letter from the Sponsor of the Bill seeking to have the House take a further vote on the Motion. The Letter was delivered to my Office on August 26, 2015, more than fifteen hours after the vote had taken place. In the case of the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No. 26 of 2013) by Hon. Lati Lelelit, the member requested for a further vote soon after the vote had taken place. In addition, a number of Members supporting his request also stood in their places as though claiming a division.

Honourable Members, in view of the foregoing, and pursuant to Standing Order 62(2), I am of the view that in the absence of an explicit procedure of prompting the Speaker to rule on whether or not a further vote is to be taken, the request by Hon. David Ochieng' for the House to undertake a further vote on the Motion for the Second Reading of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 1 of 2015) should be granted. Indeed to determine otherwise, Honourable Members, the Speaker would be in clear violation of Standing Order 62(2). Furthermore, the issue for determination by the Speaker is one that involves a question on the power of the House to take a further vote and to that extent the constitutional right of the House. According to the Practice of the House of Representatives of Australia and I quote-

"In any matter which might involve or touch on the constitutional rights or powers of the House, the view has been taken that, other things being equal, the Speaker should not take decisions which could have the effect of limiting these rights and powersas the House is a master of its own destiny"

It is for this reason that I am of the view that to rule that the House cannot take a further vote on the Bill would be not only in contravention of well-founded principles of Parliamentary Practice but also the Constitution, in particular, on the powers of the House to make decisions in terms of Articles 95 and 122 of the Constitution.

Honourable Members, however, there is need for a procedure to be established for prompting the Speaker to invoke the provisions of Standing Order 62(2) to be used in future if such a case arises again. This is to avoid a scenario which creates uncertainty on the fate of Bills. Indeed, as seen in the case of the Hon. David Ochieng, after the Motion failed to attain the two-thirds threshold when the House was adjourned, Honourable Members went away with the knowledge that the Motion for the Second Reading of the Bill had been defeated, and with it the Bill itself.

Honourable Members, allow me to refer to Erskine May on Parliamentary Practice in relation to the procedure of prompting the Speaker in the House. Standing Order No. 59 of the House of Lords in relation to the right of a Lord to record a protest against any decision of the House provides that the *“entry of a protest must be made not later than the end of business on the next sitting day....”* Further, the Robert's Rules of Order referred to in the United States which I had alluded to earlier, also provides that a motion to reconsider must be made within a limited time after the action on the original motion, usually at the same sitting or on the next day within the session.

Honourable Members, it is for this reason that I am of the view that in future any Member wishing to prompt the Speaker to invoke the provisions of Standing Order 62(2) must do so on the floor of the House immediately the Speaker announces the result of the vote and must also be supported by other Members in rising. Indeed, the Bill by Hon. David Ochieng is one of national interest and as such Kenyans should be in full knowledge and aware of the debate and in particular be certain of its fate at all stages to avoid eliciting a debate on its existence. This debate could as a matter of fact have arisen in the case of Honourable David Ochieng's Bill between the time at which the Motion was defeated and the time in which he delivered the Letter to the Speaker requesting the House to take a further vote as a considerable period of time had lapsed. The requirement that certain number of members should support a member wishing to invoke the provisions Standing Order 62(2) is also paramount to avoid an abuse of the process and deter Members from making frivolous and vexatious requests on the premise of invoking Standing order 62(2) even on Motions or Bills that do not need a fixed majority.

Honourable Members, in summary therefore, it is my finding-

- (1) **THAT**, the request by Hon. David Ochieng' for the House to undertake a further vote on the Motion for the Second Reading of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 1 of 2015) **be granted** and consequently executed within five sitting days from the day of the first vote in terms of Standing Order 62(2) in this case being **1st October, 2015** to be preceded by the further vote on the Third Reading of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 26 of 2013) proposed by the Hon. Lati Leleit, MP
- (2) **THAT**, in future any Member wishing to request for a further vote on a Question on a Special Motion or a Bill the passage of which requires a fixed majority of the House membership shall only be granted-
 - (a) if the Sponsor of the said Special Motion or Bill rises in his or her place immediately the Speaker announces the vote results and seeks the further vote;
 - (b) if at least thirty (30) Members stand in their places indicating their support for the further vote.

Honourable Members,

As the House dispenses with further votes on the Bills seeking to amend the Constitution sponsored by Hon. David Ochieng' and Hon. Lati Leleit, I wish to refer Honourable Members back to my aforementioned ruling of July 28, 2015 in which I expressly pointed out that any legislation to amend the supreme law of the land requires sufficient and extensive consultations and consensus-building. I call upon all Members to make use of this window of opportunity to decide with **FINALITY** whether you wish to amend the Constitution in the manner proposed by your two Honourable Colleagues.

Thank you!

THE HON. JUSTIN B.N. MUTURI, E.G.H, MP
SPEAKER OF THE NATIONAL ASSEMBLY
August 27, 2015