



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, JULY 28, 2015

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

The Speaker conveyed the following Communications –

- (i) **Consideration and Scope of Presidential Reservations Pursuant to Article 115 of the Constitution- Referral of Bills to Parliament for Reconsideration**

“Honourable Members,

“You may recall that, on Thursday, 25th June, 2015, the Member for Rarieda, Hon. (Eng) Nicholas Gumbo rose on a Point of Order and sought guidance from the Speaker on the following matters relating to Presidential referral of Bills to Parliament for reconsideration -

- (i) whether, in expressing his reservations and sending a Bill back to Parliament for reconsideration upon refusal to assent under Article 115 of the Constitution, the President can make specific proposals for amendment to the particular Bill;
- (ii) whether the specific proposals for amendment made by the President should go through the entire law-making process of consideration by the relevant committee, including pre-publication scrutiny, public hearings, and First, Second and Third Readings;
- (iii) whether accepting of the text proposed by the President and which has not been subjected to the ordinary law-making process as outlined in (b) above should require a two-thirds majority; and,

- (iv) whether, the House would be properly constituted if, at the time of putting the question on the President's reservations or recommendations, there are less than two-thirds of all the Members present in the House.

Honourable Members, The main substance of the concerns raised by the Member for Rarieda was that , by making specific proposals for amendment to a Bill, the President was encroaching on the legislative mandate of the House and thereby contravening the principle of separation of powers. The matter was similarly canvassed by several other Members who rose on that point of order to make their contributions. I am indeed grateful to all those who spoke on that day and submitted your views on these very weighty matters. You are aware that, on a number of occasions during the term of this 11th Parliament, the President has referred back Bills to this House for reconsideration, with memoranda outlining his reservations on those Bills and giving his recommendations thereon. Whenever that happens, the recommendations contained in the memoranda are subjected to the Committee of the Whole House for consideration and concurrence. It is this procedure, among other issues, which is now being contested by the Hon. Gumbo and several other of his colleagues.

Honourable Members, I will address the matters raised by the Hon. Gumbo and canvassed by several other Members under the following four broad subjects: the First one is the ***Form of Presidential reservation to a Bill***, the second one is ***the Procedure for consideration of Presidential reservations***; the third subject is ***the Voting threshold in consideration of Presidential reservations*** and lastly, ***How Presidential reservations relate to the principle of separation of powers***. Let me begin with the first subject, which is the Form of President's Reservations to a Bill. Honourable Members, in most jurisdictions, the legislative process provides for assent to Bills by the President as the head of the Executive arm of Government. Indeed, our own system, through the provisions of Article 115 of the Constitution requires that all legislations by Parliament should be presented to the President for assent.

Allow me to visit upon some relevant jurisdiction. In the Constitution of the United States of America, Article I requires every Bill passed by the Congress of the United States to be presented to the President of the United States for his approval. When the President is presented with the Bill, he can either sign it into law, return the Bill to the originating House with his **objections** to the Bill - *I put emphasis on the word objections*. Section 7 of the Article provides as follows-

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law"

Honourable Members, The United States experience is such that the veto power does not give the President the power **to amend or alter the content of legislation but rather the ability to accept or reject a Bill passed by Congress**. The President returns the unsigned Bill to the originating House of Congress within a ten day period usually with a memorandum of disapproval or a "veto message." In this case, the Congress can override a veto by passing the Bill by a two-thirds vote in both the House and the Senate. It is argued that this legislative override prevents the President from blocking a Bill when significant support for it exists. By practice, it can be observed that the two-third requirement is a high standard to meet and therefore broad support for Bill is needed to reach this threshold. Therefore, the President's veto power in the legislative process is significant since the Congress rarely overrides vetoes. Statistics show that as at May 2015, out of 2,566 vetoes by various Presidents of the USA, the Congress has only managed to override 110 of them.

Honourable Members, a study of yet another comparable legislative jurisdiction, that is the Philippines, offers a similar scenario with regard to Presidential assent to Bills. Section 27 of Article VI of the 1987 Philippines Constitution provides as follows-

"Every Bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the Bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law.

Further, in Philippines, the President is empowered to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto does not affect the item or items to which he does not object.

Honourable Members, an important observation in the practices in the United States of America and Philippines is that the President only expresses reservations to a Bill and there is no constitutional requirement for the President to give specific recommendations on a Bill. Further, the power to veto the Legislature is expressed **in the same terms as it exists in Article 115 of our Constitution**. The Presidents participation in the law making process can therefore be said to be a constitutional dispensation both in the United States and in the Philippines. The Legislature however has the final say in both jurisdictions just as is the case in the Kenyan situation.

Honourable Members, the situation is however slightly different in India and South Africa where their Constitutions bear greater semblance to the Kenyan context. For instance, in India, assent to Bills is governed by Article 111 of their Constitution which provides as follows-

"When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom: Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom"

This provision of the Constitution of India bears great semblance to the provisions of section 46 of the Constitution of Kenya that was repealed by the Constitution of Kenya 2010. The said section provided as follows-

(3) The President shall, within twenty-one days after the Bill has been presented to him for assent, signify to the Speaker that he assents to the Bill or refuses to assent to the Bill.

(4) Where the President refuses to assent to a Bill he shall, within fourteen days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly including his recommendation for amendments .

(5) In reconsidering a Bill referred to it by the President, the National Assembly was expected to take into account the comments of the President and either (a) approve the recommendations proposed by the President with or without amendment and resubmit the Bill to the President for assent; or (b) refuse to accept the recommendations and approve the Bill in its original form by a resolution supported by a vote of not less than sixty-five per cent of all the Members of the National Assembly (excluding ex officio Members) in which case the President shall assent to the Bill within fourteen days of the passing of the resolution.

At this juncture Honourable members, it is important for me to observe that the practice of our successive Parliaments has for the past been largely informed by the provisions of section 46 of the repealed Constitution. The point of order raised by Hon Gumbo therefore gives this House an opportunity to examine its practice and see how this practice corresponds to the provisions of the new Constitution.

Honourable Members, the said section 46 of the previous Constitution was replaced by the current Article 115 of the Constitution which provides as follows-

(1) Within fourteen days after receipt of a Bill, the President shall—

(a) assent to the Bill; or

(b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

(2) If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part—

(a) amend the Bill in light of the President's reservations; or

(b) pass the Bill a second time without amendment.

(3) If Parliament amends the Bill fully accommodating the President's reservations, the appropriate Speaker shall re-submit it to the President for assent.

(4) Parliament, after considering the President's reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations, by a vote supported—

(a) by two-thirds of members of the National Assembly; and

(b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.

(5) If Parliament has passed a Bill under clause (4)—

(a) the appropriate Speaker shall within seven days re-submit it to the President; and

(b) the President shall within seven days assent to the Bill.

(6) If the President does not assent to a Bill or refer it back within the period prescribed in clause (1), or assent to it under (5) (b), the Bill shall be taken to have been assented to on the expiry of that period."

A comparison of the two provisions reveals that, whereas section 46 of the repealed Constitution contained express provision empowering the President to return a Bill back to the National Assembly by submitting a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly including his recommendation for amendments, Article 115 of the current Constitution omits this express requirement for submission of recommendations and empowers the President to refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

However, Honourable Members, despite the lack of an express provision in Article 115 requiring the President to submit his recommendations on a Bill, the Constitution does not prohibit this practice either. **Indeed, it is a cardinal principle of interpretation of law that whatever is not prohibited by the Constitution or any law is presumed to be allowed by the same.** A keen reading of Article 115 reveals that the President, in referring a Bill back to Parliament, is at a mandatory obligation to note his reservations but may choose to include or not to include specific recommendations on how to deal with the reservation.

Honourable Members, in light of this finding, the real issue for clarification is how to deal with a situation where the President expresses his reservations to a Bill and makes specific recommendations in that regard and the threshold of voting in such instances. To this extent, I must emphasize that where the President chooses to make specific recommendations to the House, the House is not bound to accept the specific recommendations in the form submitted by the President. That is why the Constitution at Article 115(2) contemplates Parliament to put into place **appropriate procedures** for this

kind of scenario. However, in the absence of such procedures in our Standing Orders, I am convinced, pursuant to the discretion conferred upon me by Standing Order 1(2) that any committee or member of the House is free to propose alternative amendments to the Presidential recommendations so long as such amendments have the effect of **fully accommodating** the Presidents reservations- I put emphasis on the words "*fully accommodating*". The voting threshold for the passage of such alternative recommendations or proposals made by the President is a simple majority as contemplated by Article 121 of the Constitution. However, where a committee or member of the House proposes an alternative amendment that **does not** fully accommodate the reservations of the President, the provisions of Article 115(4) will apply and the amendments will only be passed if supported by two thirds of the Members of the House.

Honourable Members, an issue arising consequential to the foregoing finding is the question of who determines whether or not an alternative amendment proposed by a committee or a member has the effect of fully accommodating the Presidents reservations. The Kenyan Constitution is silent on this issue. In South Africa's legislative practice, this power is vested in the House in the first instance, in the Presidency in the second instance and finally in the Courts in the ultimate instance. It is also noteworthy that in South Africa, unlike in our case, the power of the President to express reservations to a Bill passed by Parliament is restricted only to the constitutionality of the Bill.

The relevant provisions of the South African Constitution is Article 79 which provide as follows-

(1) The President must either assent to or sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.

(2) The joint rules and orders must provide for the procedure for the reconsideration of a Bill by the National Assembly and the participation of the National Council of Provinces in the process.

(3) The National Council of Provinces must participate in the reconsideration of a Bill that the President has referred back to the National Assembly if –

(a) the President's reservations about the constitutionality of the Bill relate to a procedural matter that involves the Council; or

(b) section 74(1), (2) or (3)(b) or 76 was applicable in the passing of the Bill.

(4) If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill; if not, the President must either –

(a) assent to and sign the Bill; or

(b) refer it to the Constitutional Court for a decision on its constitutionality.

(5) If the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it.

Honourable Members, it follows therefore that in the absence of a similar provision in our Constitution as to the avenue for determination of whether an alternative amendment passed by the House fully accommodates the reservation of the President in the manner contemplated under Article 115(4) of our Constitution, it is incumbent upon the Speaker to make this determination in the first instance pursuant to Standing Order 1(2) and the President to make a similar determination upon return of the Bill to him for assent pursuant to Article 115(3). If the President feels that the alternative amendments made by the House do not fully accommodate his reservations, then he will refer the Bill back to the House and the provisions of Article 115(4) will apply where the House will require two thirds majority to resubmit the Bill back to the President for Assent, this time for a second round.

Honorable Members, having said that, you will recall that the House recently considered the President's reservations and recommendations on the Public Procurement and Disposal Bill, 2015 and the Public Audit Bill, 2015. To the extent that the House has made a decision on the President's Reservations to these two Bills, I do not intend to permit the House re-open debate or revisit those decisions. It is for this reason that the Membership of the National Assembly in the Joint Committee formed on request of the Senate is required to convey and uphold that decision. I also remind the Membership of the National Assembly in the Joint Committee that the Committee's period of consideration of the two items referred to it is not limitless, especially recalling that the two are laws that initially ought to have been passed by August 27th, 2014.

Honourable Members, I will now focus on the second subject, which is the *Procedure for Consideration of Presidential Reservations*. In seeking to answer the question as to whether a reservation or recommendation by the President should be subjected to a process similar to that obtains in the consideration of a Bill, one needs to be alive to the express provisions of the Constitution: Firstly, the sequence of Part 4 of Chapter Eight of the Constitution of Kenya which sets out the procedures for enacting legislation is such that Article 115 of the Constitution appears after the sequence of events contemplated in Articles 109 (*Exercise of legislative powers*), Article 110 (*Bills concerning county government*), Article 111 (*Special Bills concerning county governments*), Article 112 (*Ordinary Bills concerning county governments*), Article 113. (*Mediation committees*), Article 114 (*Money Bills*). Indeed, that is why Article 115 on *Presidential assent and referral* is sequentially arranged to come before Article 116. (*Coming into force of laws*).

Secondly, the provisions of Article 115 seem to be self contained as regards to the procedures to be adopted by Parliament in considering the Presidents reservations. To this extent, the provisions of Article 115(3) and (4) do not contemplate Parliament going back to the entire process of enactment but only contemplate Parliament passing the Bill a second time. This second passage does not in any way negate the fact that the Bill was passed by House a first time after going through the entire sequence that culminates in passage that is to say publication, First Reading, Second Reading and Third Reading. The resubmission of a Bill by the President under Article 115 does not in any way negate these stages unless if the President decided to submit a totally new Bill outside the scope of what the House has passed, which would be uncharacteristic of the conventional legislative limits.

Thirdly, Honourable Members, we must not lose sight of the fact that, in whatever form the President expresses a reservation, what the President is seeking is essentially an amendment to the Bill in question. The President is merely seeking to avail himself of an opportunity similar to that enjoyed by Members of this House, namely, to participate in the law making process as expressly contemplated by Article 115. You are all aware that when Members are proposing amendments during Committee Stage, those amendments are only considered during that stage and are not subjected to other processes that a Bill goes through prior to that stage. Reservations or recommendations by the President should therefore not be treated differently, and should only be considered at the Committee Stage. This is indeed the practice on many comparable legislative jurisdictions within and outside the commonwealth.

Honourable Members, having settled the second subject, let me now focus on the Third item, which is the question of ***Voting Threshold during Consideration of Presidential Reservations***. In doing so, I wish to draw the attention of Members to the provisions of Article 121 of the Constitution. This provisions clearly indicates that, for purposes of the National Assembly, the quorum required for transaction of any business in the House is fifty Members. Article 115(4)(a) on its part provides that for the House to override or amend reservations by the President, a vote to that effect must be supported by at least two-thirds of the Members. On the flipside, and in the absence of a similar provision giving a specific threshold, the House requires a simple majority to concur with those reservations or recommendations.

Honourable Members, a distinction need to be made between the threshold required in transacting business in the House and the one required in taking a decision on a particular matter or motion. For purposes of the former, the requisite quorum is the one prescribed by Article 121; for purposes of the latter, majority of the members present and voting will suffice save for instances when a particular threshold is prescribed, as in the case of Article 115(4)(a). Indeed, the requirement for specific thresholds to pass a certain decision is not unique to Article 115. For instance, there are three different thresholds essential in the deliberative process of removal of a Cabinet Secretary from Office under Article 152(6) to (10). Members are at liberty to choose to be absent when the question is being put if the intention is to cause the motion to be defeated. The presence of a minimum of fifty members in the House therefore suffices for purposes of considering a Presidential Memorandum, but when voting to override or vary the reservations, two-thirds majority of the Members must be present in the House so as to vote to override the reservation, or to vary the reservation in a manner that has the effect of not fully agreeing with the President. **The absence of at least two-thirds majority at the time of putting the question does not in any way imply that the House is improperly constituted.** However, should the number of those present when voting amount to at least two thirds, but after the results, the number of those voting to negate the president's recommendation result in a majority, which is however less than two-thirds, while those voting to agree with the President number less than a third of all the Members of the House, the Speaker is at liberty to direct that another vote be taken in another day pursuant to the provisions of Standing Order 62(2). The effect of that provision, which is seldom applied, is to give the House a second opportunity to attempt to raise the required constitutional threshold, but which should be applied very sparingly.

Honourable Members, this now brings me to the Fourth and final subject which is **Consideration of Presidential Reservations as relates to the Principle of Separation of Powers**. Members are aware that in most jurisdictions, the legislative process provides for assent to Bills by the President as the head of the Executive arm of Government. Indeed, our own system, through the provisions of Article 115 of the Constitution requires that all legislations by Parliament should be presented to the President for assent.

Different reasons have been advanced on the need for a Presidential assent, given the principles of *separation of powers* between the arms of Government. They include the need to prevent hasty and ill-considered legislation by the Parliament and to prevent legislation which may be unconstitutional.

Honourable Members, in its basic form, the concept of separation of powers divides the institutions of government into three branches, to wit, legislative, executive and judiciary: the legislature makes the law; the executive puts the law into operation; and the judiciary interprets the law. The powers and functions of each are separate and carried out by separate personnel. No single agency is able to exercise complete authority, each being interdependent on the other. The doctrine enables the three branches to act as checks and balances on each other. Each branch's interdependence helps keep the others from exceeding their power, thus ensuring the rule of law and protecting individual rights.

Honourable Members, the doctrine of separation of powers presupposes the following forms of separation-

- (a) a separation of institutions; and
- (b) a separation of functions, where each institution exercises the function for which it is designed.

In reality, however, these are not mutually exclusive options. Any system of separation of powers must involve at least a measure of both. In their book, *Constitutional and Administrative Law*, O. Hood Phillips and Paul Jackson state as follows:

"A complete separation of powers, in the sense of a distribution of the three functions of government among three independent sets of organs with no overlapping or co-ordination, would (even if theoretically possible) bring government to a standstill. What the doctrine must be taken to advocate is the prevention of tyranny by the conferment of too much power on any one person or body, and the check of one power by another."

Hon. Members, Separation of powers therefore seeks to achieve the following objectives-

- (a) Prevention of abuse of public power through concentration of power. In *Federalist No. 47*, James Madison stated as follows:

"The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny."

Power thus divided should prevent absolutism (as in monarchies or dictatorships where all branches are concentrated in a single authority) or corruption arising from the opportunities that unchecked power offers.

- (b) Enhancing efficiency of government. Separation of powers in this respect recognizes that each of the branches is peculiarly well equipped to exercise the particular functions assigned to it.

Honourable Members, in the Constitution of Kenya, 2010, the concept of separation of powers is given effect and is apparent in the way the various functions of Government have been apportioned among the three branches of Government. However, as indicated above, separation of powers does not connote complete independence of one branch from the other. There is no better way to illustrate instances where the powers of one branch overlap with the powers of the other than in the appointment of various state officers under the Constitution. Under Article 130 of the Constitution, the national executive consists of the President, the Deputy President and the Cabinet. Article 132(2) provides for the appointment of various state officers by the President, with the approval of the National Assembly. By taking part in the appointment process, the National Assembly, which is the legislative arm of government, is clearly taking part in what is clearly a function of the executive arm of the government.

Honourable Members, in view of the foregoing, it is apparent that, by sending a Bill back to Parliament with his reservations for reconsideration pursuant to Article 115 of the Constitution, the President cannot be deemed to contravene the doctrine of separation of powers, as no branch of government is completely independent of the other. He is merely exercising the limited legislative function conferred on his office under Article 115 of the Constitution.

As I conclude Honourable Members, I wish to observe that by making this considered Communication, I am conscious that my findings will have implication on the manner in which the National Assembly relates with the Presidency, the Office of the Attorney-General and indeed the Senate on the expected form and content of the President's Reservations on a Bill, and the procedure for considering those reservations under Article 115 of the Constitution. The summary of my Communication is therefore as follows-

- (i) **That**, in submitting his reservations on a Bill to the House, the President is not prohibited from including his preferred text of the particular clause, section, subsection or paragraph of the Bill;
- (ii) **That**, just like amendments to Bills, the text proposed by the President on a Bill need **NOT** be subjected to the other stages subjected to a Bill upon publication, - that is, publication, First Reading, Second Reading and Third Reading;
- (iii) **That**, any committee or member of the House is free to propose further amendments to the Presidential recommendations. So long as such amendments have the effect of **fully accommodating** the Presidents reservations, the voting threshold for the passage of such amendment or, indeed the proposals made by the President, is a simple majority as contemplated by Article 121 of the Constitution. Any other

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proposed amendment, that does not **fully accommodate** the reservations, or indeed a total override of the Presidents reservation, including his proposed text, would attract the two-third requirement;

- (iv) **That**, pursuant to the provisions of Standing Order 1(2), the determination of whether a proposed amendment by a Member or a Committee to the President's reservations would have the effect of **"fully accommodating"** those reservations shall be made by the Speaker on case by case basis; and,
- (v) **That**, the absence of at least two-thirds majority at the time of putting the question does not in any way imply that the House is improperly constituted.

Comment [U1]:

The House is hereby accordingly guided.

Thank you".

- (ii) **Conduct of Members during previous Question Time before the Departmental Committee on Finance, Planning and Trade on matters touching on the National Youth Service**

"Honourable Members,

You may recall that on Wednesday, July 8, 2015 during the morning sitting, the Member for Ugunja, the Hon. Opiyo Wandayi stood on a point of order seeking guidance from the Speaker regarding an incident that occurred on Tuesday, July 7, 2015 during Question Time before the Departmental Committee on Finance, Planning and Trade. On this day, Members will recall that the Cabinet Secretary for Devolution and Planning appeared before the said Committee to answer Questions, including one whose notice was given by the Hon. Opiyo Wandayi in line with our amended Standing Orders. It was claimed that during that particular sitting, the proceedings of the Committee became disorderly, with some Members shouting down their colleagues and being generally disruptive in contravention of the provision of Standing Order 107. It was also claimed that the conduct of some Members, part of whom used unparliamentary language against their colleagues and witnesses, but whose names were not properly brought to the attention of the Speaker, may have amounted to abuse of the privilege of the House. The Member also sought to know whether the Question should be revisited due to the improper manner in which it was canvassed before the said Committee and the fact the rightful Committee for referral of the said Question ought to have been the Departmental Committee on Labour and Social Welfare.

Honourable Members, you will also recall that the Deputy Speaker did undertake to request me to issue a Communication on the matter based on the fact that she attended the said sitting of the Departmental Committee on Finance, Planning and Trade in her capacity as the Member for Sotik Constituency.

From the ensuing debate, I have deduced the following as issues requiring determination-

- (i) whether the proceedings of the Departmental Committee on Finance, Planning and Trade on that particular day were conducted in accordance with the requirements of our Standing Orders and parliamentary practice and if not, whether the Speaker should order a repeat of that particular Question time before the same Committee or indeed before the Departmental Committee on Labour and Social Welfare;
- (ii) whether the conduct of Members present during the Committee sitting in question constitutes a breach of privilege of the House; and,
- (iii) whether a matter before a Committee can be brought to the floor of the House before the Committee formally tables its report.

Honourable Members, you will recall that on 7th July, 2015, I did make a *Communication from the Chair* in which I settled the last part of the first question. In that Communication, I did observe that the particular Question was inadvertently placed before the Departmental Committee on Finance, Planning and Trade since the subject of the national youth service falls within the purview of the Departmental Committee on Labour and Social Welfare. I also did rule that the error did not invalidate the proceedings of the Departmental Committee on Finance, Planning and Trade as the fault was not on the part of either Committees.

Honourable Members, I have informally learnt that the conduct of business in the said sitting of the Departmental Committee on Finance, Planning and Trade had its fair share of challenges and difficulties. It is claimed that the disorder was mainly attributable to Members themselves. It would not only be unfair to the witnesses, but would also amount to a breach of our own standing orders and form ground for poor precedence, if I were to order a repeat of the Question time on the basis of such claims- even if they were factual. Regarding the claims of poor conduct of Members before the Committee on that day, I will revisit my observations made when I delivered a Communication regarding claims of abuse of privilege by the Membership of the Public Accounts Committee earlier in the year. From the onset, it is important to remind the House that the said Communication followed a formal letter addressed to myself by the then Chairperson of the Public Accounts Committee. In that particular Communication, which I intend to uphold, I did observe that, and I quote-

"Honourable Members, that now brings me to the question of whether the Speaker or the House has jurisdiction on a matter that has been canvassed or indeed settled in a Committee. Faced with a similar question, Speaker Statham of the New Zealand House of Representatives ruled in 1921 that, "The House has no cognisance of anything taking part before a Committee, unless it is reported by the Committee through its Chairperson, or the matter relates to a question of privilege". Later in 1979, Speaker Harrison of the same House, upholding the ruling of his predecessor, observed that, "The Speaker has no jurisdiction or authority whatsoever to get involved in proceedings of a select committee, unless approached by the Chairperson following a resolution of the Committee calling the Speaker to adjudicate on any matter, or if the matter is

one of the Privilege of the House or Personal Privilege of a Member of that Committee"

Honourable Members, I have not received any formal complaint from the Chairperson of the Departmental Committee on Finance, Planning and Trade. In the circumstances therefore, I do not find the claims made by the Honourable Member for Ugunja to constitute breach of Privilege of the House.

Honourable Members, having said that, let me take this early opportunity to remind you that the requirement for Cabinet Secretaries to appear and answer questions before Committees is informed by Article 153(3) and read together with the provisions of Article 95 (2) that ***"the National Assembly deliberates on and resolves issues of concern to the people"***. I have no doubt that the matters contained in the Question raised by the Hon. Opiyo Wandayi may have been of concern to the people of Ugunja constituency. You will all agree with me that during the First and Second Sessions of this Parliament, we had quite some challenges settling on a pragmatic procedure for actualizing these two provisions of the Constitution. The result is the ingenuity that is now practiced every Tuesday where Members' Questions are answered by Cabinet Secretaries appearing before respective Committees. It behoves upon all of us, irrespective of our political parties, to uphold and jealously safeguard this nascent procedure as opposed to making a mockery of it! When Members get involved in exchange of words and shouting matches before witnesses and in the full glare of the public and the media, it is the institution of Parliament that earns the embarrassment. I therefore agree with your colleague who, in that particular debate, alluded that even in instances where political expediency require individual members to take certain positions, deliberative skills and ingenuity are crucial to avoid creating the impression that you have abdicated the duties that you individually swore to discharge as Members of Parliament.

I thank you".

(iii) Commonwealth Parliamentary Association, African Region Conferences

Honourable Members,

In the coming month of August, our Parliament will have the honour of hosting two important international conferences of the Commonwealth Parliamentary Association, Africa Region. The first one, the *6th Commonwealth Women Parliamentarians Conference* will take place from the 6th – 9th, August, 2015 while the second conference, the *46th CPA, Africa Region, Conference* is scheduled to take place from the 9th – 15th August, 2015. Both of them will be held at the Safari Park Hotel, Nairobi.

Honourable Members, it is my pleasure and honour to invite each one of you to the two conferences. The Women conference is expected to attract more than one hundred (100) participants from member Countries, Government Officials, Civil Society and Non-Governmental Organizations. Her Excellency the First Lady of the Republic of Kenya has been invited to officially open the conference on Friday, August 7, 2015. All Members and especially women Parliamentarians are invited to attend. In the following week, that is, Tuesday, August 11, 2015, H.E. The President of the Republic

of Kenya has been requested to Officially open the Second Conference where over four hundred (400) participants from Africa and beyond are expected to attend.

The two conferences come at a time when the Country is positioning itself as the preferred conference tourism destination. The conferences will therefore go a long way in enhancing that aspiration in addition to advancing the objectives of the commonwealth family of nations.

I hope that each one of us will take an interest in the said events and will endeavour to interact, network and share experiences with colleagues from other jurisdictions. In order to enable Members to attend, I will be requesting the House Business Committee to consider allowing a short recess on the week of the main conference, that is, between August 10 and 14, 2015.

Thank you".

(iv) Delegation from Parliament of Malawi

"Honourable Members,

I wish to introduce to you a Delegation from the Parliament of Malawi. The delegation, which is seated at the Speaker's Row, comprises of the Hon. (Dr.) Clement Chiwaya, MP, the Second Deputy Speaker and the Hon. Frank Mwenifumbo, MP.

They are accompanied by Mr. Leonard Mengezi, Chief Public Relations Officer, Mr. Chikosa Matandara, Chief Audio Visual Officer, Mrs. Maleka Bambi, Secretary to the Second Deputy Speaker, and Mr. Daudih M. Mandla, Special Assistant to the Second Deputy Speaker

The delegation is in the country to learn from and share experiences with Members of this House, including the leadership, on House practice and procedure, the Committee system, the operations of the office of the Deputy Speaker, and management of constituency offices, among others. They have been with us since Thursday, 23rd July 2015 and are scheduled to complete their tour on Friday, 31st July 2015. On my behalf and that of the Honourable Members, I wish to welcome them to the National Assembly and wish them fruitful engagements.

5. MESSAGES

The Speaker conveyed the following Messages from the Senate –

Honourable Members,

Standing Order 41(4) relating to Messages from the Senate provides that "If a message is received from the Senate, at a time when the House is in session, the Speaker shall report the message to the House at the first convenient opportunity after its receipt and in any event not later than the next sitting day."

In this regard Hon. Members, I wish to report that I have received two Messages from the Senate vide letters dated July 14, 2015.

(i) **Message on the Parliamentary Service (Amendment) Bill and the National Government Coordination (Amendment) Bill.**

Honourable Members, the first Message states -

'THAT, the Parliamentary Service (Amendment) Bill (Senate Bill No. 21 of 2014) and the National Government Coordination (Amendment) Bill (Senate Bill No. 30 of 2014) were published in the Kenya Gazette Supplement Nos. 79 and 104 of May 30, 2014 and July 2, 2014 respectively as Bills originating in the Senate. Further, the Parliamentary Service (Amendment) Bill, 2014 was passed by the Senate on Wednesday, July 8, 2015 with amendments, and the National Government Coordination (Amendment) Bill, 2014 was passed by the Senate on Wednesday, July 8, 2015, without amendments, and in the form attached hereto.'

In accordance with the provisions of Article 110 of the Constitution, the Senate now seeks the concurrence of the National Assembly to the said Bills.

I am aware that the Clerk has circulated the Bills in accordance with our Standing Orders. However, before the two Bills are read a First time, I hereby refer the Bills to the Budget and Appropriations Committee for consideration and recommendation in accordance with the provisions of Article 114 of the Constitution. Thereafter, the necessary directions regarding First Reading of the said Bills will be given taking into consideration the recommendations of the Budget and Appropriations Committee.

(ii) **Message on the National Drought Management Authority Bill**

Honourable Members, the second Message reads,

'THAT, the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) as published in the Kenya Gazette Supplement No. 160 of November 15, 2013 and passed by the National Assembly on November 12, 2014, was passed by the Senate on Wednesday, July 8, 2015 with amendments and in the form attached hereto'.

The Senate now seeks concurrence of the National Assembly with the amendments to the Bill.

Again, and in accordance with the provisions of Standing Order 145, the Clerk has circulated the amendments to all Members. In this regard, the amendments are hereby committed to the Departmental Committee on Environment and Natural Resources for consideration. The Committee is expected to submit its report to the House within twenty one (21) days to enable the House Business Committee to prioritize consideration of the Senate amendments.

(iii) **Message on the Establishment of Joint Parliamentary Committee on Catering and Health Club Services**

Honourable Members, I also wish to convey that on July 14, 2015, I received another Message from the Senate in respect of a resolution on the **Establishment of a Joint Parliamentary Committee on the Catering and Health Club Services**.

Honourable Members, the message states, and I quote;

"THAT pursuant to the resolution by the Parliamentary Service Commission during its 211th meeting held on June 15, 2015, to reconstitute the National Assembly Catering and Health Club Committee into a Joint Parliamentary Committee on the Catering and Health Club Services; and further pursuant to

Article 124 (2) of the Constitution, Standing Order No. 216 (3) of the Senate and Rule 9 (1)(c) of the Houses of Parliament (Joint Sittings) Rules, on Tuesday, 7th July, 2015, the Senate resolved to establish the a Joint Parliamentary Committee on the Catering and Health Club Services".

The Senate also seeks to inform the National Assembly that it has nominated 29 of its members to the proposed Joint Committee.

Honourable Members, as you may be aware, this House is already seized of a Motion of the same nature. However, you will recall that on July 9, 2015, debate on the Motion was adjourned pursuant to Standing Order 96 so as to allow for consultations. This message from the Senate is therefore in compliance with provisions of Joint Rule 9(2) of the Standing Orders, which requires that establishment of a Joint Committee be by way of a resolution made by both Houses, and that the resolution be communicated to the other House by way of a message. This is therefore for the information of the National Assembly.

Thank you".

6. **PETITIONS**

The Speaker conveyed the following Petitions –

(i) **Enactment of a Legislation to provide for Registration of Properties in Kenya**

"Honourable Members,

Standing Order 225 (2) (b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office is in receipt of one petition.

The Petition is signed by one Mr. Gitonga Wathanga, a Kenyan citizen, regarding enactment of a legislation to provide for registration of property in Kenya. In the

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Petition, the Petitioner prays that the National Assembly, through the Departmental Committee on Justice and Legal Affairs initiates the process of enacting legislation in regard to registration of properties and or amend all the relevant laws to provide for a mandatory requirement for registration of property by the owners; establishing of a property registry in the Office of the Attorney General; and ensuring that all property transactions undertaken by banks bear the names of the buyer and seller as account holder.

Honourable Members, pursuant to the provisions of Standing Order 227, the Petition stands committed to the Departmental Committee on Justice and Legal Affairs for consideration.

Thank you".

(ii) **Enactment of Legislation towards development of Kiswahili as a National Language**

Honourable Members,

Standing Order 225 (2) (b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office is in receipt of one petition.

The Petition is signed by one Major (Rtd) Joel Kiprono Rop, a resident of Bomet County, regarding enactment of a legislation to provide for development of Kiswahili as a National language in Kenya. In the Petition, the Petitioner prays that the National Assembly, through the Departmental Committee on Labour and Social Welfare –

- (i) initiates the process of amending the Constitution and/or all the relevant law to develop Kiswahili as a national language; and
- (ii) establishes a framework for Kiswahili exchange programme for teachers, pupils and student in both primary and secondary schools between Kenya and other Swahili speaking countries.

Honourable Members,

Pursuant to the provisions of Standing Order 227, the Petition now stands committed to the Departmental Committee on Labour and Social Welfare for consideration.

Thank you".

7. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Report of the Auditor General and Summary on the Appropriation Accounts and the Fund Accounts of the Republic of Kenya for the year 2013/2014;

- (ii) The Public Finance Management (Affirmative Action Social Development Fund) (Amendment) Regulations, 2015;
- (iii) The Regulation of Wages (Agricultural Industry) (Amendment) Order, 2015, and the Regulation of Wages (General)(Amendment) Order, 2015;
- (iv) Legal Notice No.104 of July 22, 2015 on the Income Tax Act (Cap 470);
- (v) The Constituencies Development Fund board Report on Projects Approvals and Disbursements Status, June 2015 including restrictions on Constituency Accounts;
- (vi) The Annual Report and Financial Statements of Bondo University College for the year ended 30th June, 2012 and the certificate of the Auditor General therein;
- (vii) The Annual Report and Financial Statements of the Postal Corporation of Kenya for the year ended 30th June, 2013 and the certificate of the Auditor General therein;
- (viii) The Annual Report and Financial Statements of the National Communications Secretariat for the year ended 30th June, 2013
- (ix) The Annual Report and Financial Statements of the Communications Commission of Kenya for the year ended 30th June, 2013 and the certificate of the Auditor General therein;
- (x) The Annual Report and Financial Statements of the Pest Control Products Board for the year ended 30th June, 2014 and the certificate of the Auditor General therein; and,,
- (xi) The Annual Report and Financial Statements of Rongo University College for the year ended 30th June, 2014 and the certificate of the Auditor General therein;

(Leader of the Majority Party)

8. **NOTICE OF MOTION - ADJOURNMENT OF THE HOUSE UNDER STANDING ORDER 33 TO DISCUSS A MATTER OF DEFINITE NATIONAL IMPORTANCE THE RECENT VISIT BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, BARACK OBAMA**

Rising in his place on a Point of Order, the Hon. Aden Duale, Leader of the Majority Party claimed to move a Motion for the adjournment of the House under the provisions of Standing Order 33 in order to discuss a definite matter of national importance regarding the recent visit to Kenya by the President of the United States of America, Mr. Barack Obama.

And the Speaker having acceded to the claim;

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And there being sufficient number of Members rising in their places in support of the claim;

Thereupon, the Speaker directed that the Motion be moved at Five O'clock today.

9. THE LEGAL AID BILL (NATIONAL ASSEMBLY BILL NO.35 OF 2015)

(The Leader of the Majority Party)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1)

10. THE COMPANIES BILL (NATIONAL ASSEMBLY BILL NO.22 OF 2015)

Motion made and Question proposed –

THAT, the Companies Bill (National Assembly Bill No.22 of 2015) be now read a Second Time.

(The Chairperson, Departmental Committee on Justice and Legal Affairs – 08.07.2015)

Debate interrupted on Wednesday, July 9, 2015 resumed;

(Change of Chair from the Speaker to the Third Chairperson)

11. ADJOURNMENT OF THE HOUSE UNDER STANDING ORDER 33 TO DISCUSS A MATTER OF DEFINITE NATIONAL IMPORTANCE REGARDING THE RECENT VISIT BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, BARACK OBAMA

Motion made and Question proposed –

THAT, the House do now adjourn;

(Leader of the Majority Party)

Debate arising;

And the time being Seven O'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

12. HOUSE ROSE - at Seven O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, July 29, 2015 at 9.30 a.m.

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