



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

**ON THE 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 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!

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

Tuesday, July 28, 2015