



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, JULY 06, 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 conveyed the following Communication –

Implication of a Court Order issued on the Application of Standing Order 111 and the Suspension of a Member from the Service of the House:-

"Honourable Members,

Yesterday, as you would recall, the Leader of Majority Party, Hon. Aden Duale sought directions from the Speaker on matters arising out of media reports of a Court Order reversing a matter of proceedings of this House. The Court Order stayed the decision of this House to suspend the Hon. James Opiyo Wandayi for the remainder of the Session of the House in terms of Standing Order 111 pending the hearing and determination of the Judicial Review Application filed by the Honourable Member. In light of the Court Order, the Leader of Majority sought clarification on the following fundamental issues –

- (i) what is the fate of the Standing Orders and in particular the disciplinary procedure set out in Standing Orders 107-112 of the National Assembly Standing Orders that are made pursuant to Articles 75(2)(a) and 124(1) of the Constitution";
- (ii) what is the fate of the power of the House to make Standing Orders and how far can the House provide for the orderly conduct of its proceedings and what is envisaged by the use of the word "orderly conduct?"; and,
- (iii) what is the fate of the privileges conferred on this House by virtue of Article 117(2) of the Constitution and the National Assembly (Powers and Privileges) Act?.

Several Members including Hon. Olago Aluoch, Hon. T.J Kajwang and Hon. Kimani Ichungw'a also debated on the issue and requested the Speaker to make a ruling on the same. Prior to the debate in the House, my office had also received correspondence from

Hon. Peter Kaluma and Hon. Jakoyo Midiwo requesting the Speaker to pronounce himself on the matters relating to Standing Order 111.

Honourable Members, indeed, the question as to what is the import of the Court Order is one of great importance to this House as it raises fundamental issues touching on the principle of separation of powers as contemplated in our Constitution. As you are all aware, our Standing Orders are made pursuant to Article 124 of the Constitution to govern the manner in which we conduct our business as a House. Can the Court therefore pronounce itself on the internal rules and procedures of the National Assembly without encroaching into the powers of Parliament to conduct its business? This is a weighty question, which the Court Order issued by the High Court reversing the decision of this House now presents. Simply put, what is the Speaker required to do in light of the Court Order staying the decision of this House?

Honourable Members, as you are all aware, Article 107 of the Constitution provides that the role of the Speaker is to preside over or chair the proceedings of this House. The role of the Speaker is however not limited to presiding over the proceedings of the House but one which extends to ensuring that the House functions effectively and freely. Allow me to refer to the *Canadian Parliamentary Review*, "The Speakership: A New Zealand Perspective" which perhaps best illustrates the role of the Speaker and I quote:-

"Those crucial separation of powers so fiercely fought over hundreds of years, remain today and establish, to my mind, the breadth and depth of the Speaker's role. The role is not just chairing or presiding over the House. It is, in full context about ensuring the House of Representatives is free and able to function effectively both as a Legislature and in the vital role of holding the Crown or Executive to account. This view of the Speaker's role guides my interpretation of Standing Orders and also my role as "Minister" responsible for the Parliamentary Service."

The decision of the House, which the Court Order has now stayed, is one that was therefore made by the Speaker in exercise of powers, which have been bestowed on him by the Constitution and the Standing Orders. Indeed, the Speaker does not take part in any debate and does not vote on the decisions of this House.

Honourable Members, permit me now to refer to the words of Speaker Lenthall uttered in 1642 in the British House of Commons when King Charles went into the House in 1642 and demanded to know the whereabouts of certain Members of Parliament who had opposed his proposal to raise taxes. In response, the Speaker told the King and I quote—

"May it please your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here..."

In light of the foregoing and since the Court Order seeks to stay the decision made by this House, the Speaker's hands are therefore tied, his eyes cannot see, his tongue cannot speak and he is subject to the direction of this House. Consequently, the Speaker has no option but to refer the matters raised by the Leader of Majority Party and other Members back to this House for determination. However, as you are aware, the Court Order relates to the issue of disciplinary proceedings raised by a House of Parliament against its Member, which is a question of the privilege of the House in terms of Article 117(2) of the Constitution. With this in mind, I direct that the matters raised including the issues canvassed in the letters by Hon. Peter Kaluma and Hon. Jakoyo Midiwo be taken up by the Committee on Privileges as the body mandated under the National Assembly Powers and Privileges Act to

consider and advise the House on matters of privilege by Tuesday 19th July 2016. The Committee is also at liberty to relook at the events of 31st March 2016 for purposes of Article 75 of the Constitution and make such recommendations as may be appropriate. The Committee shall advise the House on the way forward as regards the Court Order and the issues raised by the Honourable Members.

I further direct that in the meantime, pending the conclusion of the matter by the Committee on Privileges, the Honourable Member James Opiyo Wandayi is deemed a stranger and shall not be allowed within the precincts of Parliament except for purposes of attending the summons of the Committee on Privileges as and when required by the Committee.

The House and officers of the House are accordingly advised!

I thank you!"

5. **MESSAGE FROM THE SENATE**

The Speaker conveyed the following Message from the Senate –

Establishment of a Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission

"Honourable Members,

Pursuant to the provisions of Standing Order 41(4) of the National Assembly Standing Orders and Rule 9(2) of the Houses of Parliament (Joint Sittings) Rules, I wish to report to the House that I have received a Message from the Senate on the approval of a Motion on 'Establishment of a Parliamentary Select Committee on Matters relating to the Independent Electoral and Boundaries Commission.' The Message reads in part, and I quote, that:-

"... the Senate, by way of a resolution passed on Tuesday, 5th July 2016, approved the Motion on the establishment of a Joint Parliamentary Select Committee on Matters relating to the Independent Electoral and Boundaries Commission, the electoral laws and processes."

Honourable Members, you may recall during today's Morning Sitting, the National Assembly did approve a similar Motion. As you may be aware, the Select Committee has thirty (30) days within which to execute its mandate and report to both Houses. In this regard, the Co-chairpersons are advised to consider convening the Committee's first sitting as a matter of urgency. Further, the Clerk of the National Assembly is directed to facilitate the operations of the Committee in the terms contained in the motion.

I thank you."

6. **PETITION**

The following Petition was conveyed by the Speaker:

"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 a petition signed by one Mr. Kipkorir Arap Menjo, a Director at the Kenya Farmers Association (KFA) on behalf of representatives of maize growers in Uasin Gishu County.

Honourable Members, the Petitioners allege that the National Cereals and Produce Board (NCPB) inordinately delayed distribution of Government subsidized fertilizer to farmers for the planting season that commenced in February 2016. The Petitioners further allege that the subsidized fertilizer, which was later distributed, was substandard and adulterated, thereby causing seedling failure that has subjected farmers to heavy losses. He avers that the representatives of Maize Growers in Uasin Gishu County have raised the matter with the National Cereals and Produce Board to no avail.

Honourable Members, the Petitioners pray that the National Assembly:-

- i) investigates the alleged adulteration of fertilizer and recommends appropriate action against the management of the National Cereals and Produce Board if found culpable;
- ii) recommends an assessment of losses incurred by the farmers as a result of seedling failure and recommends commensurate compensation to the affected farmers;
- iii) recommends that the government puts in place a seamless and water tight mechanism for timely distribution of the subsidized fertilizer to farmers across the country;
- iv) amends relevant laws to provide stiffer penalties to culprits propagating the menace; and
- v) makes any other order or direction that it deems fit in the circumstances of the case.

Honourable Members, pursuant to the provisions of Standing Order 227, the Petition stands committed to the Departmental Committee on Agriculture, Livestock and Cooperatives for consideration.

I thank you."

7. **PAPERS LAID**

The following Papers were laid on the Table of the House –

- a) Court Order and Pleadings in respect of the Suspension of the Member for Ugunja Constituency (Hon. James Opiyo Wandayi, MP) from the Service of the House;
- b) The National Treasury Quarterly Economic and Budgetary Review (QEBR) for the Third Quarter, Financial Year 2015/2016, period ending 31st March 2016;
- c) The Final Report of the Judges and Magistrates Vetting Board on the Vetting of Judges and Magistrates in Kenya;
- d) Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the Year ended 30th June 2015 and the certificates therein:-
 - (i) Small Enterprises Finance Company Limited;
 - (ii) Consolidated Bank of Kenya Limited;
 - (iii) Constituency Development Fund – Lamu Constituency;
 - (iv) Constituency Development Fund – Malindi Constituency;
 - (v) Constituency Development Fund – Sabatia Constituency;
 - (vi) Constituency Development Fund – Lagdera Constituency; and
 - (vii) Constituency Development Fund – Fafi Constituency;

(The Leader of the Majority Party)

- e) The Report of the Departmental Committee on Defence and Foreign Relations on the its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Defence Cooperation.

(Chairperson, Departmental Committee on Defence and Foreign Relations)

8. **NOTICE OF MOTION**

The following Notice of Motion was given:

The ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Defence Cooperation, laid on the Table of the House on Wednesday, 6th July, 2016, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Defence Cooperation.

(Chairperson, Departmental Committee on Defence and Foreign Relations)

9. **STATEMENTS REGARDING STATUS OF BUSINESS PENDING BEFORE COMMITTEES**

In accordance with the Speaker's Communication of 14th October 2015, the Chairpersons for the Chairpersons of the following Committees apprised the House on business pending before their respective Committees:

- a) The Joint Committee on National Cohesion and Equal Opportunities; and
- b) The Budget and Appropriations Committee.

10. **MOTION – RECONSTITUTION OF THE COMMITTEE ON APPOINTMENTS**

Motion made and question proposed;

THAT, pursuant to the provisions of Standing Order 204, this House approves the appointment of the following Members to the Committee on Appointments:-

- (i) The Hon. Katoo Ole Metito, M.P.;
- (ii) The Hon. Amina Abdalla, M.P.;
- (iii) The Hon. Jackson Kiptanui, M.P.;
- (iv) The Hon. Jamleck Kamau, M.P.;
- (v) The Hon. Isaack Ali Shaban, M.P.;
- (vi) The Hon. Gideon Konchellah, M.P.;
- (vii) The Hon. Cecily Mbarire, M.P.;
- (viii) The Hon. Moses Cheboi, M.P.;
- (ix) The Hon. Nelson Gaichuhie, M.P.;
- (x) The Hon. Esther Murugi, M.P.;
- (xi) The Hon. Abass Ahmed Ibrahim, M.P.;
- (xii) The Hon. Boniface Gatobu, M.P.;

- (xiii) The Hon. David Wafula, M.P.;
- (xiv) The Hon. Ibrahim Abdi Sane, M.P.;
- (xv) The Hon. Roselinda Soipan, M.P.;
- (xvi) The Hon. Aisha Jumwa, M.P.;
- (xvii) The Hon. Chrisantus Wamalwa, M.P.;
- (xviii) The Hon. Millie Odhiambo, M.P.;
- (xix) The Hon. (Maj. Rtd) Marcus Muluvi, M.P.;
- (xx) The Hon. (Dr.) Alice Nyanchoka, M.P.;
- (xxi) The Hon. Thomas Mwadeghu, M.P.;
- (xxii) The Hon. Fatuma Ibrahim Ali, M.P.; and
- (xxiii) The Hon. Elijah Memusi, M.P.

(Majority Party Whip)

Debate arising;

Question put and agreed to.

11. **MOTION – RECONSTITUTION OF THE COMMITTEE OF PRIVILEGES**

Motion made and Question proposed –

THAT, pursuant to the provisions of Section 10 of Parliamentary Powers and Privileges Act, and Standing Order 175, this House **approves** the appointment of the following Members to the Committee of Privileges:-

- (i) The Hon. Kimani Ichungwah, M.P.;
- (ii) The Hon. Joyce Emanikor Akai, M.P.;
- (iii) The Hon. Jamleck Kamau, M.P.;
- (iv) The Hon. Peter Shehe, M.P.;
- (v) The Hon. Barchelei Kipruto, M.P.;
- (vi) The Hon. (Dr.) James Murgor, M.P.;
- (vii) The Hon. Jakoyo Midiwo, M.P.;
- (viii) The Hon. (Dr) Susan Musyoka, M.P.;
- (ix) The Hon. Rashid Bedzimba, M.P.; and
- (x) The Hon. Florence Mwikali Mutua, M.P.

(Majority Party Whip)

Debate arising;

Question put and agreed to.

12. **MOTION - APPOINTMENT OF MEMBERS TO THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

Motion made and Question proposed –

THAT, pursuant to the provisions of Standing Orders 175, and further to the resolutions of the House of October 08, 2013 and April 28, 2016 on appointment of Members to respective Committees, this House further **approves** the appointment of the following Members to the Departmental Committee on Justice and Legal Affairs:-

- (i) The Hon. Olago Aluoch, M.P.;
- (ii) The Hon. T. J. Kajwang, M.P.;

- (iii) The Hon. Fatuma Ibrahim Ali, M.P.;
- (iv) The Hon. Peter Kaluma, M.P.;
- (v) The Hon. Ben Momanyi Orari, M.P.;
- (vi) The Hon. David Ouma Ochieng, M.P.;
- (vii) The Hon. Neto Agostinho, M.P.;
- (viii) The Hon. (Bishop) Mutua Mutemi, M.P.;
- (ix) The Hon. Christine Oduor Ombaka, M.P.;
- (x) The Hon. Mwamkale William Kamoti, M.P.; and
- (xi) The Hon. Benjamin Andayi, M.P.

(Majority Party Whip)

Debate arising;

Debate interrupted to allow debate a Motion on Adjournment of the House pursuant to the provisions of Standing Order 28 in accordance with the Calendar of the Assembly (Regular Sessions).

13. **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, this House adjourns until Tuesday, July 19, 2016 in accordance with the Calendar of the Assembly (Regular Sessions)

(The Leader of the Majority Party)

Debate arising;

And the time being thirty minutes past Six O'clock, the First Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

14. **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, July 19, 2016 at 2.30 p.m.

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