



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

PROCEDURE FOR THE REMOVAL OF A CABINET SECRETARY

Honourable Members,

This Communication relates to Order No. 9 appearing in today's Order Paper which is the Motion asking the House to resolve that the President dismisses the Cabinet Secretary for Education, Science and Technology. I have chosen to make this Communication firstly on account of the fact that this is the first time that a Motion of this nature has progressed up to this stage, and secondly, because this process is *quasi-judicial*.

Honourable Members,

For the avoidance of doubt, Clauses 6 to 10 of Article 152 of the Constitution provides as follows, and I quote:

(6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—

(a) on the ground of a gross violation of a provision of this Constitution or of any other law;

(b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or

(c) for gross misconduct.

(7) If a motion under clause (6) is supported by at least one-third of the members of the National Assembly—

(a) the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and

(b) the select committee shall, within ten days, report to the Assembly whether it finds the

allegations against the Cabinet Secretary to be substantiated.

(8) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.

(9) If the select committee reports that it finds the allegations

(a) unsubstantiated, no further proceedings shall be taken; or

(b) substantiated, the National Assembly shall—

(i) afford the Cabinet Secretary an opportunity to be heard; and

(ii) vote whether to approve the resolution requiring the Cabinet Secretary to be dismissed.

(10) If a resolution under clause (9) (b) (ii) requiring the President to dismiss a Cabinet Secretary is supported by a majority of the members of the National Assembly—

(a) the Speaker shall promptly deliver the resolution to the President; and

(b) the President shall dismiss the Cabinet Secretary.

Having said this, **Honourable Members**, Standing Orders 61, 64 and 66 come into perspective. My reading of the said provisions of the Constitution and the Standing Orders lays down the following seven steps to be followed during consideration of this Special Motion. The first steps relate to the manner of drafting the Motion and collecting the requisite number of signatures (at least eighty eight), seeking the Speaker's approval on the Motion, and finally giving Notice of the Motion in the House. These three steps have already been fulfilled, including collecting the required number of signatures in support of the notice of Motion. However, even though 95 signatures were appended to the Notice of Motion as originally submitted to my office and to the House, that number has reduced **by one** as the name and signature the Member for Bungoma County, the Hon. Reginalda Wanyonyi, MP appeared twice in the list.

Honourable Members, It is important at this point to explain how the various thresholds in this process are arrived at. To begin with, Article 122(4) of the Constitution provides that, and I quote:

“(4) In reckoning the number of members of a House of Parliament for any purpose of voting in that House, the Speaker of that House shall not be counted as a member”

Consequently, the denominator of the membership of the National Assembly on a question of determining the numbers required during division is 349 Members as

opposed to 350. Secondly, any decimal points resulting from calculation of thresholds are rounded off to the next whole number based on the Parliamentary parlance that a mathematical fraction of a member equates to a full whole number of an individual Member, irrespective of the fraction. In this case, therefore, the one-quarter of the total National Assembly Membership required for purposes of the Notice of Motions is 87.8 Members, which is rounded off to 88 Members. In addition, Standing Order 66(3) requires that the Order Paper on which such a Motion is listed sets out the name of the Member sponsoring the Motion and the names of Members supporting the Notice of Motion. It is for this reason therefore that today's Order Paper, as published contains not only these names but also the particulars upon which the Motion is made. It is also important to bear in mind that Standing Order 68 requires that a Motion for the removal of a person from office takes precedence over all other business on the Order Paper for the day.

Honourable Members, This now brings me to the fourth step in this procedure, which is the discussion of the Motion in this House. Since this is a Special Motion, Standing Order 61(2)(a) requires that the Motion be discussed by the House **within seven days following the giving of the Notice of Motion**. It is for this reason that this Motion is appearing in today's Order Paper, being the sixth day following the giving of that Notice.

At this juncture, **Honourable Members**, it is important for you to note that for this Motion to move to the next level, it has to be supported by at least one-third of the total voting Membership, namely 117 Members, when the Question is finally Put. It is equally important to also note that **so long as the Motion obtains the support of at least 117 Members, it will move to the next stage even if those opposing it number more than 117 Members**. If the Motion attains this threshold of 117 Members when I finally Put the Question, the following two actions comprising the fifth step will take place-

- (i) First, I will require the Committee on Selection to immediately retreat into a meeting for the purpose of nominating eleven Members to the Select Committee that shall investigate the matter in detail;
- (ii) Secondly, the Chairperson of the Committee on Selection will be expected to move a Motion tomorrow afternoon, namely, Thursday, July 9th, 2015, for approval of the nominees which requires a simple majority.

Honourable Members, The sixth step is where the Select Committee investigates the allegations and particulars contained in the Motion. The Committee will be expected to hear the Cabinet Secretary either in person, through a representative or both in person and through a representative. I must offer caution at this earliest opportunity that this process is and must remain *quasi-judicial* including the requirement of affording witnesses the opportunity to be heard in the examination of all the particulars of the claims. The Committee shall ensure that it submits its report to the House within ten days of its formation. If the Committee reports to the House that the allegations against the Cabinet Secretary cannot be substantiated, no further proceedings shall be undertaken. If, on the other hand, the Committee concludes that the allegations against the Cabinet Secretary are substantive, the Committee shall table its report in the House together with a Notice of Motion for adoption of the said report, ushering in the next step.

The seventh step **Honourable Members,** is for the National Assembly to prioritize the debate on the Report of the Select Committee. It is important for Members to note that the debate will have to be concluded within fourteen days of the giving of the Notice of Motion for the Adoption of the Committee's Report in line with Standing Order 61(2)(b). A date on which the Cabinet Secretary shall appear before the House to provide further clarification and/ or respond to matters arising from the findings shall be set. This avenue shall accord the Cabinet Secretary an opportunity to be heard before the House makes its decision on the matter. The Committee's report, together with any other evidence adduced including notes or papers presented to the Committee, shall be availed to the Cabinet Secretary at least three days before the day scheduled for his appearance before the House.

Honourable Members, If the Motion to adopt the Report of the Select Committee obtains the support of the majority of the House Membership, ($50\% + 1 = 174.5 + 1 = 175.5$) that is, 176 Members, when the Question for its adoption is Put, the Motion shall be adopted and I will promptly deliver to the President the resolution requiring the President to dismiss the Cabinet Secretary. As the House dispenses with the Special Motion currently before the House, it is important to adhere to the required timelines and thresholds stipulated in both the Constitution and in our Standing Orders, and the general procedure outlined herein.

Honourable Members, Finally, the limitation of time on this Motion will be guided by the resolution of the House made on February 11, 2015 regarding the manner of allotting speaking time in a debate on any Motion including a Special Motion. This is

clearly shown as item I on Page 635 of the Order Paper. However, any Member is at liberty to move a Motion for the reduction of the stated time limits so long as he or she does so in good time.

Thank you!

THE HON. JUSTIN B.N. MUTURI, E.G.H, MP
SPEAKER OF THE NATIONAL ASSEMBLY
July 8, 2015