



---

**REPUBLIC OF KENYA**  
**ELEVENTH PARLIAMENT**

**(FIRST SESSION)**

**THE NATIONAL ASSEMBLY**

**COMMUNICATIONS FROM THE CHAIR**

---

**THE DIVISION OF REVENUE BILL, 2013**

---

**Honourable Members**, you will recall that yesterday on Tuesday 20<sup>th</sup> April, 2013, the Member for Suba Hon John Mbadi raised the following issues for determination by the Chair.

1. Whether Part 1 of Chapter 8 of the Constitution of Kenya exclusively vests in the National Assembly the role of determining the allocation of national revenue between the levels of government;
2. Whether the Division of Revenue Bill, 2013 is a Bill concerning counties within the meaning of Article 110 of the Constitution;
3. Whether the Division of Revenue Bill, 2013 is required to be introduced in both Houses within the meaning of Article 218 of the Constitution.

Hon Mbadi's issues were subsequently supported by contributions by the Leader of the Majority Party Hon Aden Duale and several other members.

**Honourable Members**, as relates to the first issue, Part 1 of Chapter 8 of the Constitution of Kenya establishes and subsequently sets out the roles of Parliament, including the specific roles of the respective Houses of Parliament.

Article 93 of the Constitution establishes a bicameral Parliament and requires each House to perform its respective roles as set out in the Constitution. The said Article provides as follows-

**93.** (1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.

(2) The National Assembly and the Senate **shall perform their respective functions in accordance with this Constitution.**

The respective roles of the two Houses are expressly set out in Articles 95 and 96 of the Constitution.

Under Article 95 (4) (a) of the Constitution, the National Assembly determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter Twelve. This role is exclusively vested in the National Assembly and there is no provision in Part 1 of Chapter 8 of the Constitution that points to the contrary.

The second issue as to whether the Division of Revenue Bill, 2013 is a Bill concerning counties within the meaning of Article 110 of the Constitution and the third issue as to whether the Division of Revenue Bill, 2013 is required to be introduced in both Houses within the meaning of Article 218 of the Constitution are issues which are intricately inter-related.

Article 110 (1) (c) provides that a Bill concerning county government” means “a Bill referred to in Chapter Twelve affecting the finances of county governments”. An analysis of Chapter Twelve of the Constitution reveals that the only reference to Bills is found in Article 218 of the Constitution which provides as follows:

**218.** (1) At least two months before the end of each financial year, there shall be introduced in Parliament—

(a) a Division of Revenue Bill, which shall divide revenue raised by the national government among the national and county levels of government in accordance with this Constitution; and

- (b) a County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217.

**Honourable Members,** Article 259 of the Constitution requires that the Constitution be interpreted in a manner that best promotes its purposes, values and principles and further that every provision of the Constitution must be construed according to the doctrine of interpretation that the law is always speaking and therefore amongst other things that a function or power conferred by the Constitution on an office may be performed or exercised by the person holding the office.

The provisions of Articles 110 and 218 of the Constitution must therefore be looked at from a holistic and not segregatory manner. The provisions must be looked at in the context of the roles of the two Houses as set out in Part 1 of Chapter 8 of the Constitution as this is the only interpretation that favours that the law is speaking and that the provisions of Part 1 of Chapter 8 of the Constitution were not meant to be without meaning.

Article 110 (1) and 218 of the Constitution must therefore be construed in relation to the provisions of Part 1 of Chapter 8 of the Constitution.

In so doing, the first point to note is that Article 110(1) (c) is worded in the singular and not the plural and the reference therefore is to one of the two Bills referred to in Article 218 and not both. The only Bill in Article 218 that affects the finances of county governments within the jurisdictional role of the House of Parliament as set out in Part 1 of Chapter 8 of the Constitution is the Annual Allocation of Revenue Bill.

Secondly, the opening words of Article 218 of the Constitution that “.....there shall be introduced in Parliament.....” cannot be used to impose a requirement that the intention was to have the two Bills introduced in both Houses as opposed to one. Indeed, such an argument definitely intends to give a dead meaning to the provisions of Part 1 of Chapter 8 of the Constitution that spells out the respective roles of both Houses. More so, the provisions of Article 222 (*Expenditure before annual budget is passed*) and 223 (*Supplementary appropriation*) of the Constitution interchangeably use the word “Parliament”

and “National Assembly” for a function which is undisputedly a function of the National Assembly. The use of the word “Parliament” in Article 218 therefore cannot be used to impose by implication an obligation that directly contradicts the provisions of Part 1 of Chapter 8 of the Constitution.

Thirdly, Article 218 of the Constitution contemplates the Division of Revenue Bill and the County Allocation of Revenue Bill to be introduced in Parliament at least two months before the end of each financial year. Article 260 of the Constitution defines a financial year to be the period of twelve months ending on the thirtieth day of June unless otherwise prescribed in legislation. The Constitution therefore contemplates that the Division of Revenue Bill and the County Allocation of Revenue Bill must be passed within two months of their introduction in the respective Houses. Logically speaking therefore, if the Division of Revenue Bill is subjected to the enactment processes of both Houses and ultimately to the mediation process contemplated under Article 113 of the Constitution with the possibility of the Bill being lost in the process, the effect of it would be to precipitate a constitutional financial crisis of untold parameters. This could not possibly have been the intention of the framers of the constitution. Indeed, Article 259(1)(d) of the Constitution requires that the Constitution be interpreted in a manner that best contributes to good governance.

**Honourable Members**, you will recall however that the Division of Revenue Bill, 2013 was submitted to the Senate pursuant to the provisions of standing order 233(4) that provides as follows-

(4) The Division of Revenue Bill, 2013, having passed by the National Assembly shall stand referred to the Senate in accordance with standing order 142 (concurrence of the other House)

Standing Order 233(4) was formulated pursuant to the spirit of section 191 of the Public Finance Management Act, 2012 which provides that each year when the Budget Policy Statement is introduced, the Cabinet Secretary shall submit to Parliament a Division of Revenue Bill and County Allocation of Revenue Bill prepared by the National Treasury as provided in the Act for the financial year to which that Budget relates. Section 42 of the Act requires Parliament to consider the Division of Revenue and County Allocation of Revenue Bills not

later than thirty days after the Bills have been introduced with a view to approving them, with or without amendments.

**Honourable Members**, on the 28<sup>th</sup> of March, 2013, I swore to respect, uphold and defend the Constitution of the Republic of Kenya. Under Articles 3 and 10 of the Constitution, each one of us has an obligation to respect, uphold, and defend the Constitution whenever we enact, apply or interpret any law or make or implement any public policy decision.

Although the Division of Revenue Bill, 2013 as passed by the National Assembly on 9<sup>th</sup> May, 2013 was submitted to the Senate pursuant to the provisions of the Public Finance Management Act, 2012 as read together with the Standing Orders of the Assembly, I am now persuaded, in the light of the foregoing expositions on the weighty issues raised by Hon Mbadi, that the Division of Revenue Bill is a Bill whose passage the Constitution envisages to be the sole prerogative of the National Assembly. Accordingly, it will incumbent on this House to revisit the said provisions of the Standing Orders and the Public Finance Management, 2012 with a view to harmonizing them with the Constitution.

**Honourable Members**, the National Assembly is still seized of the Bill in its capacity as the originating House for the Bill. However, for purposes of the smooth conduct of business between the two Houses, I am inclined not to make any orders on the Bill until the Bill is formally transmitted back to the House as envisaged in the Standing Orders and the House deals with it as may be appropriate.

I thank you.

**THE HON. JUSTIN B.N. MUTURI, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**  
**May 22, 2013**