

REPUBLIC OF KENYA



ELEVENTH PARLIAMENT- (SECOND SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

COMMUNICATION ON THE DECLARATION OF PERSONAL INTEREST BY MEMBERS

Honourable Members,

You will recall that on Wednesday, June 26, 2014 the Chairperson of the Departmental Committee on Education, Research and Technology rose on a Point of Order seeking guidance from the Speaker regarding failure by the Member for Homabay, Hon. Peter Kaluma to declare interest in a matter for which he had sought a Statement from the Committee. Among the issues sought in the Statement were-

- I. The sources and terms/conditions of funding for the building projects undertaken in the University;
- II. Measures being taken to ensure that the office of the Vice Chancellor of the University is occupied by a duly appointed person;
- III. Reason, other than discrimination, as to why some persons holding Doctor of Philosophy (PhDs) degrees and distinctions in their various fields of study remain engaged as assistant lectures contrary to traditions; and

Honourable Members, The Chairperson averred that Hon. Peter Kaluma had represented one Dr. Elena Korir in a suit against Kenyatta University, the subject matter of which is related to the Statement sought. The Chairperson further indicated that some of the witnesses presented to give evidence included the said Dr. Elena Korir among others and thus necessitating direction in view of the provision of Standing Order 90. She also claimed that the matter is likely to be active in court and therefore, *sub judice*.

Honourable Members, From the onset, it should be noted that it is the responsibility of Members declare any interest that they may have on *any* matter before the House. Most parliamentary jurisdictions have long-standing rules and norms regarding the declaration of interest by Members. Erskine May, an authority in parliamentary practice and procedure in the book titled, *Parliamentary Practice* (24th Edition) notes that;

'...in debate, a Member is required to declare 'any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have, or may be expecting to have.'

In the UK House of Commons, Members are also expected to declare non-registrable interests which might be thought to influence them. Such interests have been held to include financial interest, financial interests of close family members, and any other circumstances which, though exempt from the requirement to register, might be thought to have a bearing on a Member's financial position. Members are also expected, by practice, to ***declare non-financial interests***.

In the case of the European Parliament, Article 3 (1) of the Code of Conduct for Members of the European Parliament with respect to financial interests and conflict of interest states that;

'...a conflict of interest exists where a Member of the European parliament has a personal interest that could improperly influence the performance of his or her duties as a member. Therefore, 'Members shall disclose, before speaking or voting in plenary or in one of Parliament's bodies, or if proposed as rapporteur, any actual or potential interest in relation to the matter under consideration, where such conflict is not evident from the information declared....'

Honourable Members, Our Standing Order 90 states that-

" 90 (1) A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.

(2) Personal interest include pecuniary interests, propriety interest, personal relationships and business relationships."

Further, Article 75 (1) of the Constitution states that- 'A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids- *any conflict between personal interest and public official duties*. In addition, Article 122 (3) require that- *'a member shall not vote on any question in which the*

member has pecuniary interest.' The spirit of the Constitution thus expects of Members to at all times declare any personal interests that they may have on any matter before the House.

Honourable Members,

This Rule apply not only to debates in the House, but to almost all proceedings of the House or its Committees in which Members have an opportunity to speak such as debate in committees, presentation of a public petition and meetings of a select committee at which evidence is heard. In the House of Commons for example, the committee on Standards and Privileges regards it as a very serious breach of the rules if a Member fails to register or declare an interest which was relevant to a proceeding he had initiated. Precedence on this matter includes a resolution on 22 June, 1858, by the House of Commons, **"that it is contrary to the usage and derogatory to the dignity of this House that any Member should bring forward, promote or advocate in the House any proceedings or measure in which he may have acted or been concerned for in consideration of any pecuniary fee or reward"**

Invariably, the main purpose of a declaration of interest is to ensure that fellow Members of the House and the public are made aware, at the appropriate time when a Member is participating in the proceedings of the House, of any past, present or expected future financial interest which might reasonably be thought to be relevant to those proceedings. This Rule is based from the one of the maxims of Equity that **"he who comes into equity, must come with clean hands"** and **"he who seeks equity, must do equity"**. The norm of the House has been that Members declare their interests in matters before the House in which case, they may choose to contribute or abstain from further contribution.

Honourable Members,

Having established the general practice on the declaration of interest by Members, the questions that confront us now are three-fold: One, what sanctions do we apply to a Member who fails to declare interest? Secondly, if we were to nullify his or her entire matter as placed before the House, is it the Member that we will be punishing, or his/her constituents? Lastly, is it possible to discern and separate the issues for which interest ought to have been declared and mete sanctions separately? Hon. Members, in an attempt to answer these questions, I am guided by our standing orders, the practices I have referred to and the tenets of equity. However, I am also reminded

that equity regards substance rather than form. For that reason, formalities, no matter how important, ought not to frustrate justice.

Having said that, I now wish to respond to the issues raised by the Chairperson of the Departmental Committee on Education, Research and Technology as follows-

- i) **THAT**, the representation of one Dr. Elena Korir by the Member for Homa Bay as her advocate, though on a private capacity, should have been declared before or during the presentation of the matter to the committee and by extension the House. The client relationship that existed, and which had a correlation with the present contestations creates interest on the part of the Hon. Peter Kaluma. As a rule, the failure to declare interest amounts to abuse of privilege. However, out of the matters that the Member had raised in his statement, only item three (III), regarding the discrimination of staff, required the declaration of interest by the Member for Homa Bay. Since the Member failed the basic tenets of equity on that particular matter, I therefore direct that the Committee proceeds with the prosecution of the rest of the matters raised in the statement save for that item, which relates to the alleged discrimination of staff. The said item is dropped forthwith and should not be addressed by the Committee; and,
- ii) **THAT**, whereas the Chairperson alluded to a matter that she claimed was active in a court of law, the claim does not meet the threshold required for a matter to be declared *sub judice*. The chair failed to prove her claim. I therefore do not see anything that would require me to invoke the provisions of Standing Order 89.

Thank you!

THE HON. (DR) JOYCE C. LABOSO, MGH, MP
DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY
July 23, 2014