



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT- (SECOND SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATION FROM THE CHAIR

**ON SPECIAL MOTIONS FILED UNDER ARTICLE 152(6) OF THE
CONSTITUTION OF KENYA**

Honourable Members,

Every Member has a right under Article 152(6) of the Constitution to move the House to remove a Cabinet Secretary. Before giving notice of such Motion under Article 152(6) of the Constitution, the Member must deliver to the Clerk a copy of the proposed Motion in writing stating the grounds and particulars in terms of Article 152(6) of the Constitution upon which the proposed Motion is made. The Notice must be signed by the Member and signed in support by at least one-quarter of all the Members of the Assembly.

I wish to notify the House that pursuant to the aforementioned provisions, I have received a Notice of Motion from the Hon. Mithika Linturi, MP of his intention to move a Motion for removal of the Cabinet Secretary for Devolution and Planning, Ms. Ann Waiguru in accordance with the provisions of Article 152(6) of the Constitution of Kenya. The mover of the proposed Motion has satisfied all the requirements and the Motion has been forwarded to the House Business Committee to allocate time. Once allocated time, the Order Paper on which the Motion is listed must set out the grounds and particulars upon which the proposed Motion is made, the name of the Member sponsoring the Motion; and the names of the Members in support of the Motion.

Holding Executive to account is an inalienable right of Parliament which, while performing its oversight role under the Constitution, is exercising the power delegated to it by the people of Kenya under Article 1 of the Constitution. Thus, Members bringing Motions as per the provisions of Article 152(6) of the Constitution are indeed exercising that role of oversight.

In a 1999 Report prepared at the request of the Speaker of the National Assembly in South Africa by Hugh Corder, Saras Jagwath and Fred Solta of the Faculty of Law, University of Cape Town entitled, "REPORT ON PARLIAMENTARY OVERSIGHT AND ACCOUNTABILITY", the authors stated, and I quote:

"Oversight is the function of the legislature which flows from the separation of powers and the concept of responsible government, like law-making, which entails certain powers. Foremost among these is the power to hold the executive accountable. Monitoring the implementation of laws goes to the heart of the oversight tool..... the legislature is in this way able to keep control over the law it passes and to promote constitutional values of accountability and good governance. Thus oversight must be seen as one of the central tenets of democracy.....accountability is also designed to encourage open government. It serves the function of enhancing public confidence in government." In brief, this oversight role of Parliament entails overseeing the effective Management of government departments in order to improve service delivery and the rule of law.

Honourable Members,

This cardinal role of Parliament must, however, be exercised responsibly and with decorum. Whereas Members are at liberty, upon stating the grounds and particulars in terms of Article 152(6) of the Constitution, to propose Motion for removal of Cabinet secretaries, the entire process should be structured and should uphold the integrity of the House. The Chair is dismayed to learn through other means of the intention of certain Members to exercise their right under provisions of Article 152 (6) of the Constitution, without those Members first having the courtesy to discuss with the office of the Clerk of their intentions. I wish to remind Members that provisions of Standing Order 85, prohibit Members from anticipating the debate on matters that are likely to be brought before the House within a reasonable time. Special Motions, including the Motions for removal of Cabinet Secretaries fall within this category as they are given priority in the House. Prosecuting matters relating to these Motions outside the Chamber compromises the sanctity of the floor of the House as a forum for debate among the people's representatives.

Honourable Members,

Special motions, as I have already stated, require that they should be dealt with without delay. Indeed Standing Order 64 (2) (a) and (b) give timelines on actions to be taken by the Speaker and the House when a Motion of this nature is delivered to the Clerk of the Assembly. However, there is no time limit given to the proposer of the Motion to give Notice once the House Business Committee has allocated time for its debate. Reading of the relevant Standing Orders presupposes that the entire process should be resolved either way within a reasonable time. The intention to move Motion and the processes preceding the hearing itself must not be allowed to hang like a sword of Damocles on the head of any State Officer nor allowed to drag on

indefinitely. The Damocles must either fall or be removed, and the Speaker will demand justice and fairness for Public Officers for which the House has a right to remove when Members are exercising this oversight role. Obviously, the Speaker will not countenance endless fishing expeditions. Accordingly, and using Standing Order 1 (1) which states as follows:

“In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the House, any procedural question shall be decided by the Speaker”,

I therefore order that whenever a Special Motion is filed and having been approved by the Speaker and time for its debate has been allocated, the Member who intends to move the Motion must give Notice of the Motion within three sitting days, failure to which the Motion shall be deemed to have been withdrawn and shall not be moved again in the same Session, except with the leave of the Speaker. In the case of the Motion by Hon. Linturi, MP, the three days period will start counting from tomorrow Morning Sitting.

I also wish to direct that Members should refrain from commenting on the substance of the Motions intended to be filed under provisions of Article 152 (6) and Standing Order 66 and that any Member wishing to introduce such Motion should, as a matter of courtesy, first inform the Speaker of his/her intention. Thereafter, they need to discuss with the Clerk of the Assembly who will advise on the process and in particular the need to have a clearly stated Heading of the Motion with the grounds and particular upon which the proposal is made stated in general terms. This will enable Members in support of such a Motion to understand the contents and vouch for what they signing for. This is more important as Standing Order 64(5) provides that any signature appended to the list accompanying the Motion cannot be withdrawn.

Thank You.

HON. JUSTIN MUTURI, EGH, M.P
SPEAKER OF THE NATIONAL ASSEMBLY
TUESDAY, JUNE 10, 2014