



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – SECOND SESSION

VOTES AND PROCEEDINGS

SPECIAL SITTING

TUESDAY, DECEMBER 30, 2014 AT 2.30 P.M

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.
3. COMMUNICATION FROM THE CHAIR ON CIRCUMSTANCES
OCCASIONING THE SPECIAL SITTING

The Speaker made the following Communication from the Chair-

"Honourable Senators,

I wish to welcome you from the Christmas holiday and also thank you for finding time from the busy December festivities to attend this special sitting of the Senate.

By a letter dated 23rd December, 2014, and pursuant to Standing Order 29 (1) of the Senate Standing Orders, the Senate Minority Leader supported by fifteen (15) other Senators, requested the Speaker to appoint a day for a Special Sitting of the Senate to deliberate on the matter of the introduction, debate, passage and the enactment of the Security Laws (Amendment) Bill, (National Assembly Bills No. 39 of 2014).

Honourable Senators,

Having considered the request by the Senate Minority Leader, I was satisfied that it met the requirements of Standing Order 29 (2). It is in this respect that I convened this special sitting of the Senate, by *Gazette* Notice No. 9288 of 23rd December, 2014, which was carried in a Special Issue of the *Gazette* of 24th December, 2014.

Standing Order 29 (5) requires that whenever the Senate meets for a Special Sitting, the Speaker shall specify the business to be transacted on the appointed day and the business so specified shall be the only business before the Senate during the special sitting, following which the Senate shall stand adjourned until the day appointed in the Senate Calendar, in this case, Tuesday, 10th February, 2015.

Indeed, Honourable Senators will observe that at Order Number 2 on today's Order Paper, pursuant to these provisions of the Standing Orders and as indicated in the *Gazette* notice, the Senate Minority Leader will be giving Notice of a Motion for the deliberation on the introduction, debate, passage and the enactment of the Security Laws (Amendment) Bill, (National Assembly Bills No. 39 of 2014). You will observe also that the Motion has, with the approval of the Speaker, been listed at Order No. 3 of the Order Paper.

Honourable Senators,

It is noteworthy, and I wish to emphasize to all Honourable Senators, that debate on the Motion shall be limited to the substance of the Motion; namely, the matter of the introduction, debate, passage and the enactment of the Security Laws (Amendment) Bill, (National Assembly Bills No. 39 of 2014). It is therefore not permissible and out of order for any matter to be introduced or canvassed other than the Motion before the Senate.

Thank you."

4. **NOTICE OF MOTION** – (The Senate Minority Leader)

THAT:

WHEREAS on 8th December, 2014, the Security Laws (Amendment) Bill, National Assembly Bills No. 39 of 2014 was published;

AND WHEREAS the Bill sought to make amendments to the following array of laws relating to security-

- (1) The Public Order Act (Cap. 56);
- (2) The Penal Code (Cap. 63);
- (3) The Extradition (Contiguous and Foreign Countries) Act (Cap. 76);
- (4) The Criminal Procedure Code (Cap. 75);
- (5) The Registration of Persons Act (Cap. 107);
- (6) The Evidence Act (Cap. 80);
- (7) The Prisons Act (Cap. 90);
- (8) The Firearms Act (Cap. 114);
- (9) The Radiation Protection Act (Cap. 243);
- (10) The Rent Restriction Act (Cap. 296);
- (11) The Kenya Airports Authority Act (Cap. 395);

- (12) The Traffic Act (Cap. 403);
- (13) The Investment Promotion Act (Cap. 485);
- (14) The Labour Institutions Act (No. 12 of 2012);
- (15) The National Transport and Safety Authority Act (No. 33 of 2012);
- (16) The Refugees Act (No. 12 of 2006);
- (17) The National Intelligence Service Act (No. 28 of 2012);
- (18) The Prevention of Terrorism Act (No. 30 of 2012);
- (19) The Kenya Citizenship and Immigration Act (No. 12 of 2011);
- (20) The National Police Service Act (No. 11A of 2011); and
- (21) The Civil Aviation Act (No. 21 of 2013).

AND WHEREAS the Bill was introduced in the National Assembly and read a First Time on Tuesday, 9th December, 2014;

AND FURTHER WHEREAS the Bill was passed by the National Assembly on Thursday, 18th December, 2014, assented to on Friday, 19th December, 2014 and thereafter published in the Kenya *Gazette* Supplement No. 167 on 22nd December, 2014 as Act No. 19 of 2014;

COGNIZANT THAT Article 110(3) of the Constitution requires that before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

FURTHER COGNIZANT THAT Article 96 of the Constitution provides that the Senate represents the Counties and serves to protect the interests of the Counties and their Governments and further participates in the law-making function of Parliament by considering, debating and approving Bills concerning Counties as provided in Part 4 of Chapter Eight of the Constitution;

RECALLING that the Supreme Court of Kenya in Supreme Court Advisory Opinion No. 2 of 2013 reaffirmed the central role of Senate in the legislative process and in particular with respect to Bills that concern County Governments and further pronounced itself on the manner in which, pursuant to Article 110(3) of the Constitution, the Speakers of the two Houses are to jointly resolve the question as to whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

AND NOTING IN PARTICULAR that on legislation relating to security the Supreme Court of Kenya in Supreme Court Advisory Opinion No. 2 of 2013 cited, with approval, the *Final Report of the Task Force on Devolved Government* Vol. 1: *A Report on the Implementation of Devolved Government in Kenya* [page. 18] which stated, *inter alia*, that “although security and policing are national functions, how security and policing services are provided affects how county governments discharge their agricultural functions. As such, a bill on security and policing would be a bill concerning counties”

AND WHEREAS despite the Supreme Court's Advisory Opinion, the National Assembly failed to adhere to the requirements of Article 110(3) and (4) of the Constitution in respect to the Security Laws (Amendment) Bill, National Assembly Bills No. 39 of 2014 by considering the Bill and proceeding to secure presidential assent to the Bill without seeking the concurrence of the Speaker of the Senate in terms of Article 110(3) and without referring the Bill to the Senate in terms of Article 110(4) of the Constitution;

CONCERNED that the exclusion of the Senate in the consideration and enactment of legislation that relates to security adversely impacts the Senate's ability to represent the Counties and to protect the interests of the Counties and their Governments in security matters which are of great concern to the Counties and to the County Governments and which affect the functions and powers of County Governments;

FURTHER CONCERNED that the continued exclusion of the Senate in the legislative process in the national Parliament could eventually result in the weakening and eventual dismantling of the devolved system of government which is the cornerstone of the Constitution of Kenya, 2010;

RECALLING the resolution of the Senate of **Thursday, 13th November, 2014** on the processing of legislation between the two Houses;

OBSERVING that despite the resolution of the Senate, the unconstitutional and unprocedural processing of legislation continues to persist as evidenced by the consideration and passage by the National Assembly of the Security Laws (Amendment) Bill, National Assembly Bills No. 39 of 2014;

NOW THEREFORE THE SENATE RESOLVES-

1. That the Security Laws (Amendment) Act, No. 19 of 2014 is unconstitutional and therefore null and void as the consideration and passage of the Bill violated Article 110(3) and (4) of the Constitution;
2. That the Security Laws (Amendment) Act, No. 19 of 2014 be included in the compendium of Bills set out in the Resolution of the Senate of **Thursday, 13th November, 2014** in respect of which the Senate is seeking an Advisory Opinion from the Supreme Court on the constitutional status of Acts of Parliament which have been passed by one House of Parliament and assented to in contravention of Article 110(3) of the Constitution.

The Senate Majority Leader raised a point of order objecting the consideration by the Senate of the proposed Motion on grounds that the matters contemplated therein were *sub judice*, in terms of Standing Order 92 (1) and (2) and consequently provided evidence to that effect in accordance with Standing Order 92 (4).

PAPER LAID

Certified copies of Petition No. 628 to the High Court of Kenya at Nairobi (Milimani Law Courts) in the matter of the Constitution of Kenya and Enforcement and Interpretation of the Constitution between Coalition for Reform and Democracy (CORD) as Petitioner against The Republic of Kenya (First Respondent) and the Attorney General (Second Respondent).

(The Senate Majority Leader – as evidence of his claim of sub judice)

And the Speaker acceding to the claim, and having considered the admissibility of the paper laid and the matter pending determination by the court, directed that the Motion would not be considered by the Senate as that would violate the *sub judice* rule.

And there being no other business, the Speaker adjourned the Senate at fifty minutes past Five O'clock, without question put pursuant to the Standing Orders.

5. SENATE ROSE - at fifty Minutes past Five O'clock.

MEMORANDUM

*The Speaker will take the Chair on
Tuesday, February 10, 2015 at 2.30 p.m.*

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