



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, OCTOBER 22, 2015

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **PRESIDING** – the Speaker
4. **COMMUNICATION FROM THE CHAIR REGARDING PROCESSING OF SPECIAL MOTIONS UNDER ARTICLES 145, 150(2), 152(6) AND 251 OF THE CONSTITUTION**

The Speaker conveyed the following Communication –

“Honourable Members,

As you may be aware, instances have arisen in the recent past when this House has been made to grapple with procedural issues relating to Special Motions arising out of the provisions of Article 145 of the Constitution (*Removal of the President by impeachment*) and Article 152(6) of the Constitution (*Removal of Cabinet Secretary*) and Article 251 (1) (*Removal from office of a member of a constitutional Commission*). In this regard, it is therefore necessary to revisit and clarify the procedures outlined in our Standing Orders as relates to the processing of these Special Motions. Firstly, this clarification is necessary in light of recent pronouncements by the courts of law which have brought new interpretation dimensions. My office has also recently received inquiries from various actors including the Kenya National Commission on Human Rights on the threshold required in impeachment processes of state officers. Secondly, this communication is necessitated by the emerging incidences where Members who had initially signed the Special Motions request to withdraw their signatures from the Special Motions before the Special Motions are considered by the House therefore raising questions on whether a Member can withdraw a signature once appended on a list.

Honourable Members,

Before revisiting the procedures relating to the impeachment processes, it is paramount that we examine the provisions in the Constitution relating to the impeachment process.

The provisions relating to the removal of the President by impeachment are found in Article 145 of the Constitution which provides as follows-

145 (1) *A member of the National Assembly, supported by at least a third of all the members, may move a motion for the impeachment of the President—*

- (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 President has committed a crime under national or international law; or*
- (c) for gross misconduct.*

By virtue of Article 150(2) of the Constitution, this provision also applies to the impeachment of the Deputy President.

The provisions for removal of a Cabinet Secretary from office are found in Article 152(6) of the Constitution which provides as follows-

156 (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.*

The removal from office of members of constitutional commissions or the holders of independent offices is governed by Article 251 of the Constitution which provides as follows-

251 (2) *A member of a commission (other than an ex-officio member) or the holder of an independent office, may be removed from office only for -*

- (a) serious violation of this Constitution or any other law including a contravention of Chapter Six;*
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;*

Honourable Members,

From a close reading of the Constitution, the grounds for removal of the President, Deputy President, Cabinet Secretaries, and members of constitutional commissions and the holders of independent offices are largely similar. Further, other than the difference in the threshold required to support the Motion, the constitutional provisions relating to the removal of the President, Deputy President and the Cabinet Secretary are similar in wording.

The American impeachment process, a constitutionally based remedy, provides a legislative mechanism for investigating and trying allegations of some forms of serious conduct on the part of the President, the Vice-president and "civil officers of the United States".

The fundamental issue that each Parliament House contemplating impeachment of a state officer must confront is whether the conduct in question falls within the constitutional parameters. In the United State of America, the thresholds are of such nature as “treason, bribes or other high crimes and misdemeanours”.

In most jurisdictions where legislatures have been given powers of removal, the impeachment process is a complex and cumbersome mechanism. The thresholds are not precisely defined in the Constitution itself, and therefore it is the House responsibility to determine grounds and particulars based on their respective Constitutions. In most cases the Constitutional framework is skeletal, providing minimum guidance as to the nature of the proceedings and leaving the void to be filled to a great extent by the House Rules, Procedures and precedents.

Moving on to our National Assembly procedures for impeachment of the President, the Deputy President and the Cabinet Secretaries, Part XIV of the Standing Orders clearly outline the procedure for removal from the respective state offices. In particular, the procedure for removal of President by impeachment is outlined in standing Order 64 which provides as follows-

64. *(1) Before giving notice of Motion under Article 145 (1) of the Constitution, the Member shall deliver to the Clerk a copy of the proposed Motion in writing-*

- (a) stating the grounds and particulars in terms of Article 145(1) of the Constitution upon which the proposed Motion is made;*
- (b) signed by the Member; and*
- (c) signed in support by at least a third of all the Members.*

By virtue of Standing Order 65, this procedure also applies for the impeachment of the Deputy President.

The procedure of removal of a Cabinet Secretary by the House is outlined in Standing Order 66(1) which stipulates as follows-

66*(1) Before giving notice of Motion under Article 152(6) of the Constitution, the Member shall deliver to the Clerk a copy of the proposed motion in writing-*

- (a) stating the grounds and particulars in terms of Article 152(6) of the Constitution upon which the proposed motion is made;*
- (b) signed by the Member; and*
- (c) signed in support by at least one quarter of all the members of the Assembly.*

Honourable Members

Having looked at the relevant provisions of the Constitution and the Standing Orders, it is now important to look at the recent developments in the courts of law in relation to impeachment processes. You will recall that Articles 145, 150(2), 152(6) and 251(2) (a) and (b) of the Constitution require, as a ground for removal from office of the President, Deputy President, Cabinet Secretary or member of a constitutional commission or independent office, a threshold of either **gross** violation of the Constitution or other laws or of **gross** misconduct. Under Article 75(3) of the Constitution, a person who has been dismissed or otherwise removed from office for misconduct in a state office is disqualified from holding any other State Office.

At a preliminary level, the Concise Oxford English Dictionary defines the word “gross” as *“blatantly wrong or unacceptable”*.

The High Court of Kenya in the case of Martin Nyaga Wambora & 30 others v County Assembly of Embu & 4 others (Embu Constitutional Petition No. 7 and 8 of 2014) considered the issue of the required threshold for determining what amounts to a gross violation of the Constitution or a gross misconduct in impeachment processes.

The High Court at paragraphs 232, 233, 234, 235 and 236 of its judgment made precedent setting pronouncements of which I seek your indulgence to read out the relevant pronouncements-

232. It has been argued that the gross violation attributed to Mr. Wambora had not been demonstrated. Gross violation of the Constitution or any other law is a ground for removal from office as provided under Article 181(1)(a). The question that then arises is how you qualify gross violation. Who is the one to assess that the allegations amount to gross violation?

233. In stating what amounts to gross violation, the Supreme Court of Nigeria in Hon. Muiwa Inakoju and Others v Hon Abraham Adeolu Adeleke held that:

- (i) “The word “gross” in the subsection does not bear its meaning of aggregate income. It rather means generally in the context atrocious, colossal, deplorable, disgusting, dreadful, enormous, gigantic, grave, heinous, outrageous, odious and shocking. All these words express some extreme negative conduct. Therefore a misconduct which is the opposite of the above cannot constitute gross misconduct. Whether a conduct is gross or not will depend on the matter as exposed by the facts. It cannot be determined in vacuum or in a vacuum but in relation to the facts of the case and the law policing the facts.
- (ii) Gross misconduct is defined as (a) a grave violation or breach of the provisions of the Constitution and (b) a misconduct of such nature as amounts in the opinion of the House of Assembly to gross misconduct.
- (iii) By the definition, it is not every violation or breach of the Constitution that can lead to the removal of a Governor or Deputy Governor. Only a grave violation or breach of the Constitution can lead to the removal of a Governor or Deputy Governor. Grave in the context does not mean an excavation in earth in which a dead body is buried, rather it means, in my view, serious, substantial, and weighty.

234. With regard to what amounts to gross violation the Court in Wambora 1 observed at paragraph 253;

“...whatever is alleged against a Governor must:

- (a) Be serious, substantial and weighty.
- (b) There must be a nexus between the Governor and the alleged gross violations of the Constitution or any other written law.

- (c) The charges framed against the Governor and the particulars thereof must disclose a gross violation of the Constitution or any other written law.
- (d) The charges as framed must state with degree of precision the Article(s) or even sub-Article (s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated.”

235. On appeal, the Court of Appeal at Nyeri as regards what amounts to gross violation, held at paragraph 46 in Wambora 1 Appeal that:

“We reiterate that what constitutes gross violation of the Constitution is to be determined on a case by case basis. Gross violation of the Constitution includes violation of the values and principles enshrined under Article 10 of the Constitution and violation of Chapter six (Leadership & Integrity) of the Constitution; or intentional and/or persistent violation of any Article of the Constitution; or intentional and blatant or persistent violation of the provisions of any other law. The rationale for this definition is that the values and principles embodied in the Constitution provide the bedrock and foundation of Kenya’s constitutional system and under Article 10(1) these values bind all state organs, state officers, public officers and all persons. We hasten to state that the facts that prove gross violation as defined above must be proved before the relevant constitutional organ. Examples of the constitutional Articles whose violation amounts to gross violation include:

- i. Chapter 1 on the Sovereignty of the People and Supremacy of the Constitution more specifically Articles 1, 2, and 3 (2) of the Constitution.
- ii. Chapter 2- Article 4 that establishes Kenya as a sovereign multi-party Republic & Article 6 that establishes devolution and access to services.
- iii. Article 10 on national values and principles of good governance.
- iv. Chapter 4 on the Bill of Rights.
- v. Chapter 6- Articles 73 to 78 on Leadership and Integrity.
- vi. Chapter 12 - Article 201 on principles of public finance.
- vii. Chapter 13- Article 232 on values and principles of public service.
- viii. Chapter 14 - Article 238 on principles of national security.
- ix. Article 259 (11) on advice and recommendation.
- x. Any conduct that comes within the definition of the offence of treason in the Penal Code (Cap 63 of the Laws of Kenya).”

236. A body exercising its quasi-judicial function should be very careful in deciding what amounts to gross violation or misconduct. The Supreme Court of Nigeria in Hon. MuiwaInakoju(supra) warned that:

“It is not a lawful or legitimate exercise of the constitutional function in section 188 for a House of Assembly to remove a Governor or a Deputy Governor to achieve a political purpose or one of organized vendetta clearly outside gross misconduct under the section. Section 188 cannot be invoked merely because the House does not like the face or look of the Governor or Deputy Governor in a particular moment or the Governor or

Deputy Governor refused to respond with a generous smile to the Legislature qua House on a parliamentary or courtesy visit to the holder of the office. The point I am struggling to make out of this light statement on a playful side is that section 188 is a very strong political weapon at the disposal of the House which must be used only in appropriate cases of serious wrong doing on the part of the Governor or Deputy Governor, which is tantamount to gross misconduct within the meaning of subsection (11). Section 188 is not a weapon available to the Legislature to police a Governor or Deputy Governor in every wrong doing. A Governor or Deputy Governor, as a human being, cannot always be right and he cannot claim to be right always. That explains why section 188 talks about gross misconduct. Accordingly, where misconduct is not gross, the section 188 weapon of removal is not available to the House of Assembly.”

Honourable Members,

Indeed, as stated earlier, I have also recently received inquiries on the need to amend the Standing Orders to clearly identify the issues of threshold in impeachment processes. However, although the Standing Orders have not addressed the issues of threshold, in light of the foregoing judicial pronouncements by the courts of law, the rule of law requires that the Special Motions brought before the House under Articles 145, 150(2), 152(6) and 251 of the Constitution should comply with the foregoing thresholds established by the courts of law.

It is important for the House to note that the question of determining what constitutes gross violation of the Constitution or gross misconduct is one that clings and hangs on the impeachable authority of the House and is excisable in two instances under the Standing Orders; firstly at the point of the approval of the Motion for impeachment or dismissal and secondly at the point of investigations conducted by the relevant select committee.

In the first instance, Standing Order 47(3) (b) and (e) requires the Speaker to take into account constitutional and evidential requirements while determining the admissibility or otherwise of a Motion including all Special Motions brought under Part XIII of the Standing Orders which relates to Special Motions. In this respect, the Speaker would in effect be examining whether the Special Motion as presented contains and meets the threshold of the grounds envisaged under the relevant Article of the Constitution. This implies that a duty is imposed on the Speaker to examine the facts as stated in the Special Motion amounting to alleged gross violation of the Constitution or gross misconduct and to this extent; the Speaker must be guided by the interpretation precedent set by the courts of law.

In the second instance, Article 145(3) vests the impeachment authority of Parliament in respect of the President and the Deputy President on a Select Committee of the Senate which is mandated to investigate and report to the Senate whether its finds the allegations against the President or Deputy President substantiated and in this case whether the grounds stated amount to gross violation of the Constitution or any other law and gross misconduct. Subsequently, if the allegations are substantiated, the Senate is mandated pursuant to Article 145(6) (b) to take a vote to approve the resolution requiring the President or Deputy President to be impeached. Similarly, Article 152(7) of the Constitution vests the impeachment authority of a Cabinet Secretary on the National Assembly through a Select Committee which is mandated to investigate and report to the House whether it finds the allegations against the

Cabinet Secretary substantiated and in this case whether the grounds stated amount to gross violation of the Constitution or any other law and gross misconduct. Subsequently, if the allegations are substantiated, the House is mandated pursuant to Article 152(9) (b) to take a vote to approve the resolution requiring the Cabinet Secretary to be dismissed. This implies that a duty is imposed on the Special Committees of the Houses to examine and interrogate the facts as stated in the Special Motion amounting to alleged gross violation of the Constitution or gross misconduct and to this extent, the findings of the Special Committees must be guided by the interpretation precedent set by the courts of law.

In respect of removal from office of members of constitutional commissions and independent offices, Article 251(6) places the obligation to make the finding on the thresholds at the second instance on an independent Tribunal constituted in accordance with the Article.

Honourable Members,

The second issue that has precipitated this communication is the emerging incidences where some Members who had initially signed a Special Motion request to withdraw their signatures in support of the Special Motion before the Motion is considered by the House as provided for under the Standing Orders.

Both Standing Orders 64 and 66(1) require the Member to deliver to the Clerk a copy of the proposed Motion in writing, before giving the Notice of Motion to impeach or dismiss as may be the case under the relevant Article of the Constitution. The copy of the proposed Motion given to the Clerk is required to be accompanied by the proposed Motion in writing signed by the Member; and signed in support by at least a third of all the Members. For instance, Standing Order 66 provides as follows-

66.(1) Before giving notice of Motion under Article 152(6) of the Constitution, the Member shall deliver to the Clerk a copy of the proposed Motion in writing

- (a) stating the grounds and particulars in terms of Article 152(6) of the Constitution upon which the proposed Motion is made;*
- (b) signed by the Member; and*
- (c) signed in support by at least one quarter of all the Members of the Assembly*

(2) A Motion under paragraph (1) shall be disposed of in accordance with Standing Order 56(2).

(3) An Order Paper on which the Motion under paragraph (1) is listed shall set out-

- (a) the grounds and particulars upon which the proposed Motion is made;*
- (b) the name of the Member sponsoring the Motion; and*
- (c) the names of the Members in support of the Motion.*

(4) Any signature appended to the list as provided under paragraph (3) shall not be withdrawn.

Standing Order 66(4) provides that any signature appended to the list as provided for under paragraph (3) shall not be withdrawn. Paragraph (3) refers to the list of signatures set out in the Order Paper and not the one attached to the copy of the Notice of Motion sent to the Clerk under paragraph (1)

Honourable Members,

The Standing Orders are therefore clear that a Member can withdraw a signature given in support of a Special Motion before the Special Motion is listed in the Order Paper. However, this creates unpredictability and uncertainty on the impeachment processes and may also create room for abuse of the impeachment processes where Members may be unduly influenced or coerced in withdrawing signatures that were earlier appended on a list. Looking at comparable jurisdictions, the need for predictability and certainty in the conduct of the business of the House and the need to adopt a practice that resonates with the practice in other jurisdictions cannot be overstated. Indeed, the practice in the Parliament of Uganda is such that once signatures have been appended to a Special Motion, the signatures cannot be withdrawn. Their rules of procedure provide for a sequence of events as follows-

- *A Member who is desirous of moving a motion for the removal of the President shall notify the Clerk in writing of his or her intention, citing the grounds for the proposed motion and giving detailed particulars supporting such ground*
- *The Clerk shall, within three days upon receipt of the notice of a motion, notify by causing the notice, grounds and particulars supporting the grounds of the proposed motion to be pinned on the Members' notice board*
- *The Clerk shall on the date and time of pinning the notice of motion on the Members' notice board also cause to be prepared and deposited with the Sergeant-at-Arms, for a period of ten working days, a list of all Members of Parliament with an open space against each name for purposes of appending of signatures which list shall be titled "SIGNATURES IN SUPPORT OF THE NOTICE OF MOTION TO REMOVE THE PRESIDENT."*
- *After one third of the Members have appended their signatures on the list signifying support for the proposed motion, the Sergeant At Arms shall, with immediate effect, forward the list to the Clerk who shall not later than twenty four hours transmit the notice of motion, the grounds and all supporting particulars and signatures to the Speaker.*
- *Any signature appended to the notice shall not be withdrawn.*
- *If within the ten days referred to in sub-rule (5), less than a third of the Members have appended their signatures on the same, the notice shall lapse.*

It is important to remind Members that the office of the Clerk is a technical office which assists members with the processing of various technical instruments that form the various business of the House. It is therefore important for members to consult with this office before embarking on the process of collecting signatures as is the process in Uganda.

Honourable Members,

In light of my foregoing exposition and in conclusion thereof, I now direct as follows-

- (i) **That** all Special Motions brought before the House under Articles 145, 150(2), 152(6) and 251 of the Constitution should comply with thresholds established by the courts of law as to what constitutes gross violation of the Constitution or gross misconduct under the Constitution;
- (ii) **That** the question of determining what constitutes gross violation of the Constitution or gross misconduct is one that clings and hangs on the impeachable authority of the House and is excisable in two instances -firstly at the point of the approval of the Special Motion for impeachment or dismissal by the Speaker pursuant to Standing Order 47(3) (b) and (e) which requires the Speaker to be satisfied of the constitutional and evidential propriety of the Special Motions and secondly at the point of investigations conducted by the relevant Select Committee or Tribunal pursuant to the provisions of the relevant Article of the Constitution;
- (iii) **That** in order to facilitate the Speaker and the House to comply with the obligation under paragraph 2, averments made in the Special Motions should be accompanied by the necessary evidence including annextures and sworn testimonies in respect of the allegation as may be necessary.
- (iv) **That** Members wishing to bring a Special Motion within the confines of Articles 145, 150(2) and 152(6) of the Constitution should get drafting assistance from the office of the Clerk **before** embarking on the collection of signatures and before submitting to the Clerk a copy of the proposed Motion as contemplated in the Standing Orders.
- (v) **That** for purposes of certainty and good order in the conduct of the business of the House and notwithstanding the provisions of Standing Order 66(4), no withdrawal of signatures will in future be permitted where the Member has sought assistance from the Office of the Clerk as indicated above prior to embarking on the collection of signatures.
- (vi) **That** the Procedure and House Rules Committee relook at the Standing Orders with a view to incorporating the best practices on the issues raised in this Communication during the next review.

I thank you”.

5. PETITIONS

The following Petitions were presented:

- (a) Pursuant to Standing Order 225(2)(b), the Speaker conveyed the following Petition by one David O. Gesicho, a resident of Kakamega County regarding mandatory voter registration and voting for Kenyan citizens

“Honourable Members,

Standing Order 225 (2) (b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office is in receipt of a petition signed by one David O. Gesicho a resident of Kakamega County regarding mandatory voter registration and compulsory voting by Kenyan Citizens.

The Petitioner has raised concern that there is general disinterest/apathy by a significant portion of eligible Kenyan population to participate in the elections of representatives at the National and County level as well as elections of the President and Governors. This is demonstrated by the low voter registration and voter turnout during elections.

Honourable Members,

The Petitioner- therefore prays that the National Assembly, through the Departmental Committee on Justice and Legal Affairs: -

- (i) enacts legislation to provide for mandatory registration as votes, of all eligible Kenyan citizens; and
- (ii) enacts legislation to obligate all registered voters to vote at General Elections.

Honourable Members,

Pursuant to the provisions of Standing Order 227(1), this Petition stands committed to the Departmental Committee on Justice and Legal Affairs for consideration and the Committee is expected to engage the Petitioner and report to the House within sixty day.

I thank you!”

- (b) The Member for Meru County (Hon. Florence Kajuju) presented a Petition on behalf of residents of Meru County regarding cases of insecurity, boundary conflict, cattle rustling, sexual abuse, loss of life and property in Meru County.

Petition committed to the Departmental Committee on Administration and National Security pursuant to Standing Order 127(1)

6. **PAPERS LAID**

The following Papers were laid on the Table –

- (a) The Reports of the Auditor-General on the Financial Statements of the Constituencies Development Fund for the year ended 30th June, 2014 and the certificates therein, in respect of the following Constituencies:-

- (i) Chesumei Constituency;
- (ii) Matayos Constituency;
- (iii) Dadaab Constituency;
- (iv) Ijara Constituency;
- (v) Awendo Constituency;
- (vi) Dagoretti South Constituency;

- (vii) Pokot South Constituency;
- (viii) Malindi Constituency;
- (ix) Matuga Constituency;
- (x) Kaloleni Constituency;
- (xi) Marakwet West Constituency;
- (xii) Kapenguria Constituency;
- (xiii) Aldai Constituency;
- (xiv) Keiyo South Constituency; and
- (xv) Machakos Town Constituency.

(Deputy Leader of the Majority Party)

- (b) The Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the Petition by the stakeholders of the New Kenya Co-operative Creameries on the imminent privatization of new KCC;

(Hon. Kareke Mbiuki, on behalf of the Chairperson, Departmental Committee on Agriculture, Livestock and Co-operatives)

- (c) The Reports of the Departmental Committee on Administration and National Security on its consideration of the:

- (i) Petition by Hon. Dr. Susan Musyoka, MP on behalf of Mr. Raphael Kitivi, a former Police Officer on reinstatement and payment of his dues;
- (ii) Petition by Hon. Sammy Mwaita, MP on behalf of Mr. R. O Abednego Etyanga on alleged intimidation and victimization through irregular transfer / posting by the Principal Secretary for Interior and Coordination of National Government, Dr. (Amb.) Monica K. Juma;
- (iii) Petition by Hon. Alois Lentoimaga, MP on behalf of Residents of Samburu Constituency regarding action towards recovery of illegal firearms within the North Rift Region; and,

(Hon. David Gikaria, on behalf of the Chairperson, Departmental Committee on Administration and National Security)

- (iv) The Report of the Departmental Committee on Administration and National Security on its consideration of a Petition by Mr. Simon Katee, on behalf of Juhudi Community Support Centre, seeking the removal of Maj. (Rtd.) Mulu Shadrach Mutia as a Commissioner of the National Police Service Commission.

(Chairperson, Departmental Committee on Administration and National Security)

7. **NOTICE OF MOTION** - **REPORT ON THE PETITION FOR REMOVAL OF A MEMBER OF THE NATIONAL POLICE SERVICE COMMISSION**

(Chairperson, Departmental Committee on Administration and National Security)

THAT, this House adopts the Report of the Committee on Administration and National Security on the Petition by Mr. Simon Katee, on behalf of Juhudi Community

Support Centre, seeking the removal of Maj. (Rtd) Mulu Shadrach Mutia as a Commissioner of the National Police Service Commission laid on the Table of the House today Thursday 22nd October, 2015 and, in accordance with the provisions of Article 251(3) of the Constitution and Standing Order No. 234, finds that the Petition discloses sufficient grounds for the removal of the said Commissioner from the National Police Service Commission.

8. **STATEMENT PURSUANT TO STANDING ORDER 44(2)(a)**

Pursuant to the provision of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, October 27, 2015.

9. **PROCEDURAL MOTION – REDUCTION OF PUBLICATION PERIOD FOR A BILL**

Motion made and Question proposed –

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the National Government Constituencies Development Fund Bill (National Assembly Bill No. 59) from 14 to 13 days.

(Hon. Moses Lessonet)

Debate arising;

Question put and agreed to.

10. **THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND BILL (NATIONAL ASSEMBLY BILL NO. 59 OF 2015)**

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1)

11. **THE PARLIAMENTARY POWERS AND PRIVILEGES BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2014)**

Order for Third Reading read;

THAT, the Parliamentary Powers and Privileges Bill (National Assembly Bill No.35) be now read a Third Time

(The Leader of the Majority Party – 21.10.2015)

Debate on the Bill having been concluded on Wednesday, October 21, 2015 (Afternoon Sitting);

Question put and agreed to.

Bill read a Third Time and **passed**.

12. **THE COURT OF APPEAL (ORGANIZATION AND ADMINISTRATION) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2015)**

Order for Second Reading read;

THAT, the Court of Appeal (Organization and Administration) Bill (National Assembly Bill No.52 of 2015) be now read a Second Time

(The Leader of the Majority Party – 15.10.2015)

Debate on the Bill having been concluded on October 21, 2015;

Question put and agreed to.

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

13. **THE HEALTH RECORDS AND INFORMATION MANAGERS BILL (NATIONAL ASSEMBLY BILL NO. 24 OF 2015)**

Order for Second Reading read;

THAT, the Health Records and Information Managers Bill (National Assembly Bill No.24 of 2015) be now read a Second Time

(Hon. Agostino Neto – 14.10.2015)

Debate on the Bill having been concluded on Wednesday, October 21, 2015 (Morning Sitting);

Question put and agreed to.

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

14. **MOTION – CONSIDERATION OF THE SENATE AMENDMENTS TO THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2013)**

Order for Motion read;

Motion made and Question proposed –

THAT, the House do agree with the Report of the Committee of the whole House on Consideration of the Senate Amendments to the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013)

(Hon. Chachu Ganya, Member, Departmental Committee on Environment and Natural Resources)

Debate on the Motion having been concluded on Wednesday, October 21, 2015 (Afternoon Sitting);

Question put and agreed to.

15. **MOTION – CONSIDERATION OF SENATE AMENDMENTS TO THE MINING BILL NATIONAL ASSEMBLY BILL NO.9 OF 2014)**

Order for Motion read;

Motion made and Question proposed –

THAT, the Senate Amendments to the Mining Bill National Assembly Bill No.9 of 2014) be considered

(Hon. Chachu Ganya, Member, Departmental Committee on Environment and Natural Resources – 21.10.2015(PM))

Debate arising;

Debate on the Motion having been concluded on Wednesday, October 21, 2015 (Afternoon Sitting);

Question put and agreed to.

16. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The Second Chairperson in the Chair

Senate amendments to the Mining Bill (National Assembly Bill No.9 of 2014)

Clause 4 - Senate amendment

THAT, clause 4 of the Bill be amended –

Clause 4(a) –

by deleting the definition of the word “community” and substituting therefor the following new definition –

“community” means a people living in a ward or wards within which minerals are situated and who are affected by the exploration of the minerals or mining operations with respect to the minerals;

Debate arising;

Question put and **negatived**.

Clause 4(b) –

by inserting the following new definition immediately after the definition of the word “corporation” –

“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act;

Debate arising;

Question put and agreed to

Clause 4(c) - as amended agreed to

(c) by deleting the definition of the word “strategic minerals” and substituting therefor the following new definition –

“strategic minerals” means minerals declared as such by the Cabinet Secretary with the approval of the Cabinet and by notice in the *Gazette*;

(Hon. ChachuGanya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived;**

Clause 5 -Senate amendment

THAT, clause 5 of the Bill be amended by inserting the words “and the principles of leadership and integrity set out under Chapter Six of the Constitution” immediately after the words “of the Constitution”.

(Hon. ChachuGanya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 5 - as amended agreed to.

Clause 7 -Senate amendment

THAT, clause 7 of the Bill be amended in sub-clause (2) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “in the Gazette”.

(Hon. ChachuGanya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived;**

Clause 9 -Senate amendment

THAT, clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

(1A) The Cabinet Secretary shall, immediately upon receipt of a report under subsection (1) issue to the person an acknowledgement in writing of the receipt of the report.

(Hon. ChachuGanya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 9 - as amended agreed to.

Clause 16 -Senate amendment

THAT, clause 16 of the Bill be amended in sub-clause (3) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “Cabinet Secretary shall”.

(Hon. ChachuGanya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived**;

Clause 20 -Senate Amendment

THAT, clause 20 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

(5) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Mines under subsection (1) is entitled to fair, prompt and full compensation for such damage in accordance with this Act.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 20 - as amended agreed to.

Clause 21 -Senate amendment

THAT, clause 21 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

(3) In exercising the powers under subsection (2), the Director or a duly authorised officer shall ensure that as little damage or inconvenience as possible is caused to the legitimate owner or lawful occupier of the land in respect of which the powers are exercised.

(4) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Geology under subsection (1) shall be entitled to fair, prompt and full compensation for such damage in accordance with this Act.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 21 - as amended agreed to.

Clause 30 -Senate amendment

THAT, clause 30 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause (2) –

(2) The Mineral Rights Board shall comprise of –

(a) a chairperson with demonstrable knowledge and experience of the minerals and mining sector, who shall be appointed by the President;

(b) the Principal Secretary responsible for matters relating to mining;

(c) the Principal Secretary responsible for the National Treasury;

(d) one person who shall be nominated by the Council of County Governors from amongst the Governors;

(e) the Chairperson of the National Land Commission;

(f) the Director of Mines who shall be the secretary to the Mineral Rights Board;

(g) the Director of Geological Surveys; and

(h) two persons with professional qualifications and experience in the mining industry who shall be appointed by the Cabinet Secretary.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived;**

Clause 33 -Senate amendment

THAT, clause 33 of the Bill be amended by deleting sub-clauses (7) and (8)

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 33 - as amended agreed to.

Clause 34 -Senate amendment

THAT, clause 34 of the Bill be amended in sub-clause (4) by deleting paragraph (a).

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived;**

Clause 37 -Senate amendment

THAT, clause 37 of the Bill be amended in sub-clause (1) by deleting the words “A prospecting and” appearing at the beginning of the sub-clause.

(Hon. ChachuGanya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived;**

Clause 38 -Senate amendment

THAT, clause 38 be amended in sub-clause (1) by deleting the word “un-alienated” appearing at the end of paragraph (b) and substituting therefor the word “unregistered”

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 38 - as amended agreed to.

Clause 40 -Senate amendment

THAT, clause 40 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(1) The Cabinet Secretary may submit a request under section 107 of the Land Act for the compulsory acquisition of land or rights or interests in land, to vest the land or area in question, or rights or interests in such land or area, in the Government or on behalf of the Government, where the consent required under sections 36, 37 or 38 is—

(a) unreasonably withheld; or

(b) the Cabinet Secretary considers that withholding of consent is contrary to the national interest.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived**;

Clause 41 - Senate amendment

THAT, clause 41 be amended in sub-clause (2) by deleting the words “which recognise the uniqueness of procurement and tendering process of minerals” appearing at the end of the sub-clause.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to.

Clause 41 - as amended agreed to.

Clause 46 -Senate Amendment

THAT, clause 46 of the Bill be amended in sub-clause (3) by deleting the words “number of expatriates per capital investment” appearing immediately after the words “shall serve”.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 46 - as amended agreed to.

Clause 47 -Senate Amendment

THAT, clause 47 of the Bill be amended in sub-clause (1) by inserting the words “members of the community and” immediately after the words “in employment to”.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 47 - as amended agreed to.

Clause 49 -Senate amendment

THAT, clause 49 of the Bill be amended in sub-clause (2) by deleting the word “four” appearing immediately after the words “exchange within” and substituting therefor the word “three”.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived**

Clause 50 -Senate amendment

THAT, clause 50 of the Bill be amended in paragraph (b) by inserting the words “members of the community and” immediately after the words “offered by”.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to.

Clause 50 - as amended agreed to.

Clause 51 -Senate amendment

THAT, clause 51 of the Bill be amended –

(a) by deleting sub-clause (2) and substituting therefor with the following new sub-clause –

(2) The Cabinet Secretary shall not unreasonably withhold consent to assign, transfer, mortgage or trade a mineral right and shall inform an applicant of the decision within thirty days of receipt of an application to assign, transfer, mortgage or trade a mineral right.

(b) By inserting the following new subsection immediately after subsection (8)–

(8A) The Cabinet Secretary shall, in consultation with the Mineral Rights Board, prescribe a criteria for the conditions required to be met by an applicant for an assignment, mortgage or trade in a mineral right.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived**;

Clause 53 - Senate amendment

THAT, clause 53 of the Bill be amended –

(a) in sub-clause (1) by inserting the words “and the Kenya Revenue Authority” immediately after the words “the Cabinet Secretary”; and

(b) inserting the following new sub-clause immediately after sub-clause (1) –

(1A) The Cabinet Secretary shall submit to the National Assembly and the Senate, an analysis of the audited annual financial statement submitted under subsection (1).

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 53 - as amended agreed to.

Clause 67 -Senate amendment

THAT, clause 67 of the Bill be amended in sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph –

(e) inform and consult on an ongoing basis with the national and county government authorities and communities about the reconnaissance operations that require physical entry onto the land within their jurisdiction;

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 67 - as amended agreed to.

Clause 77 -Senate amendment

THAT, clause 77 of the Bill be amended in sub-clause (2) by deleting the words “by the Cabinet Secretary” appearing at the end of the sub-clause and substituting therefor the words “Regulations made under this Act”.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 77 - as amended agreed to.

Clause 106 - Senate amendment

THAT, clause 106 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) –

(j) such other information as the Cabinet Secretary may consider necessary.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 106 - as amended agreed to.

Clause 117 -Senate amendment

THAT, clause 117 of the Bill be amended in sub-clause (5) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 117 - as amended agreed to.

Clause 120 -Senate amendment

THAT, clause 120 of the Bill be amended in sub-clause (2) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 120 - as amended agreed to.

Clause 149 - Senate amendment

THAT, clause 149 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub clauses: –

(3) All immovable assets of the holder under the mining licence shall vest in the County Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the County Government.

(3A) Where the County Government is unable to pay for the assets under subsection (3), the assets shall vest in the National Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the National Government.

(Hon. Chachu Ganya)

Question of the amendment proposed;

Debate arising;

Question put and **negatived;**

17. **HOUSE RESUMED** - the Third Chairperson in the Chair

Senate amendments to the Mining Bill (National Assembly Bill No.9 of 2014)

Bill reported with amendments;

Motion made and Question proposed:-

THAT, the House do agree with the Committee of the whole House in the said report

(Hon. Chachu Ganya)

Debate arising;

Motion made and Question proposed –

THAT, the House do agree with the Committee of the whole House subject to re-committal of Clause 33

(Hon. Chachu Ganya)

Debate arising;

Question put and agreed to;

18. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The Second Chairperson in the Chair

Senate amendments to the Mining Bill (National Assembly Bill No.9 of 2014)

Re-committal of Clause 33

Clause 33 - Senate amendment

THAT, clause 33 of the Bill be amended by deleting sub-clause (7) and (8)

(Hon. Chachu Ganya)

Debate arising;

Question put and **negatived;**

Re-committal to be reported;

19. **HOUSE RESUMED** - the Third Chairperson in the Chair

Re-committal reported;

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report

(Hon. Chachu Ganya)

Question put and agreed to.

20. **THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2015)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2015) be now read a Second Time

(The Deputy Leader of the Majority Party)

Debate arising;

And the time being thirty minutes past Six O'clock, the Fourth Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

21. **HOUSE ROSE** - at thirty minutes past Six O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Tuesday, October 27, 2015 at 2.30 p.m.

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