

**Eleventh Parliament**

**(No141)**

**Fourth Session**

**(1191)**



**REPUBLIC OF KENYA**

**ELEVENTH PARLIAMENT – FOURTH SESSION**

**NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**SPECIAL SITTING**

**THURSDAY, DECEMBER 22, 2016 AT 9.30 A. M**

**ORDER OF BUSINESS**

1. The House assembled at thirty minutes past Nine O'clock.
2. The Proceedings were opened with Prayer.
3. **PRESIDING**– The Speaker

**4. COMMUNICATIONS FROM THE CHAIR**

The Speaker issued the following two (2) Communications:-

- (i) **ON THE MANNER OF RECOMMITTING CLAUSES OF A BILL, IN RESPECT OF THE RE-COMMITTAL OF THE ELECTION LAWS AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2015)**

**Honourable Members**, before we resume business on Order No. 8, I wish to address one issue, out of the many issues that were raised in the House on Tuesday this week during the morning sitting. That issue relates to the question of procedure for *re-*

*committal* of clauses of a Bill as raised by the Member for Laikipia East, the Hon. Anthony Kimaru and partly also sought by the Member for Ruaraka, the Hon. Tom Joseph Kajwang', MP.

**Honourable Members**, the Member for Laikipia East was of the view that a motion to recommit a clause ought to be moved in the Committee of the Whole House as opposed to the plenary after the Bill is reported. May I draw your attention to the provisions of Standing Order 136(3), which reads as follows and I quote-

(3) A Member who desires to delete or amend any provision contained in a Bill, or to introduce a new provision in the Bill under paragraph (2) may propose any amendment to add, at the end of a Motion under paragraph (1), the words "subject to the re-committal of the Bill (in respect of some specified part or of some proposed new clause or new schedule) to a Committee of the whole House," and if that Motion is agreed to with such an amendment, the Bill shall stand so re-committed and the House shall either forthwith or upon a day named by the House Business Committee in consultation with the Member in charge of the Bill dissolve itself into a Committee to consider the matters so re-committed.

**Honourable Members**, the reading of that provision of the Standing Order is clear that the *recommital* process commences upon resumption of the House and after the question for the motion for agreement with the report of the Committee of the Whole House is proposed. That is exactly what the Leader of the Majority did during the morning sitting. Indeed, the Committee of the Whole House on Thursday, 1<sup>st</sup> December, 2016 considered the said Bill but the motion on the agreement with the report of the Committee of the whole House was not made. It is However a matter of **good practice**, but **NOT** mandatory, that the intention to recommit a clause is notified to the Chairperson of the Committee of the Whole House. This therefore settles that question of procedure.

## **(ii) ON DISORDERLY CONDUCT**

**Honourable Members**, this Communication relates to the conduct of Members during proceedings of House. I have received formal complaints about the conduct of some Members during the afternoon sitting of Tuesday, December 20, 2016. It was reported that some Members sneaked into the Chamber offensive items including pepper sprays and whistles.

**Honourable Members**, the legislature is by practice and tradition, an institution of order and procedure. It is through these tenets, together with the rules that we set for ourselves, that we are able to carry out business of the institution. Let me remind you

that of all the three arms of government, much more is expected of the legislature in terms of leadership and finesse. It is therefore incumbent upon all of us to uphold this high expectation of the society.

**Honourable Members**, regarding the complaints received, I hereby refer the matter to the Powers and Privileges Committee. The House is accordingly guided.

**5. MOTION –REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE  
ELECTION LAWS (AMENDMENT) BILL (NATIONALASSEMBLY BILL NO. 3  
OF 2015)**

Motion made and Question proposed -

**THAT**, this House does agree with the Report of Committee of the Whole House on its consideration of the Election Laws (Amendment) Bill (National Assembly Bill No. 3 of 2015)

*(The Leader of the Majority Party)*  
*(Debate interrupted on Tuesday, December 20, 2016)*

**THAT**, the Motion be amended by inserting the words “**subject to re-committal of the Long Title and Clauses 4, 7, 11, 12, 14 and 32**”

*(The Leader of the Majority Party)*

Debate Arising;

Question Put and Agreed to.

Over 20 Members stood in their Places in Support of Claim for Division;

Pursuant to Standing Order 72(1)(b), the Honourable Speaker ordered for a Division and directed that the Division Bell be rung for ten (10) minutes in accordance with the provisions of Standing Order 73(1);

Members Voted;

Thereupon, the results of the Division were as follows-

- “Ayes” - 155 Members (109 voting by Electronic means and 46 voting manually ;
- “Nays” - 1 Member ( voting by Electronic means); and,
- “Abstentions” – Member (voting by Electronic means)

Therefore, the Question of the amendment Agreed to.

**6. COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE COMMITTEE**

The Deputy Speaker in the Chair

**The Election Laws (Amendment) (No.3) Bill (National Assembly No. Bill No. 63 of 2015)**

**Clause 7– amendment proposed -**

**THAT** clause 7 of the Bill be amended—

- (a) in paragraph (a) by deleting sub paragraph (ii) and substituting therefor the following new sub paragraph—

“(ii) in the case of a member of a county assembly, a degree from a university recognized in Kenya.”

- (b) in paragraph (b) by deleting subsection (1A) and substituting thereof the following new subsection—

“(1A) Notwithstanding subsection (1), this section shall come into force and shall apply to qualifications for candidates in the general elections to be held after the 2017 general elections.”

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

**Further amendment proposed**

**THAT**, clause 7 of the Bill be amended in paragraph (b) by inserting the following new subsection immediately after the proposed new subsection (1B)-

“(1C) Notwithstanding the provisions of this section, a person may be nominated as a candidate for an election under this Act if that person-

- (a) in the case of Member of Parliament, has previously been elected as a Member of Parliament; or

(b) in the case of member of a county assembly, has previously been elected as a member of a county assembly.”

*(Hon. Joseph Limo)*

Proposed amendment withdrawn

Clause 7 - as amended agreed to

**Clause 4–**

**New Clause 4A proposed–**

**THAT**, the Bill be amended by inserting the following new clause after clause 4—

Amendment of **4A.**Section 6A of the Elections section 6A of No. Act, 2011 is amended in subsection (1) by 24 of 2011. deleting the word “ninety” and substituting therefore the word “sixty.”

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Motion made and Question proposed –

THAT, the New Clause 4A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 4A be part of the Bill

Question put and agreed to;

**Clause 11–**

**New Clause 11A proposed–**

**THAT**, the Bill be amended by inserting the following new clause after clause 11—

Amendment of **11A.**Section 33 of the Elections section 33 of No. Act, 2011 is amended in subsection (1) by inserting the words 24 of 2011. “and symbol” immediately after the words “submitted to the Commission the name” appearing in paragraph (c).

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Motion made and Question proposed –

THAT, the New Clause 11A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 11A be part of the Bill

Question put and agreed to;

**New Clause 11B proposed–**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 11–

**11A.** Section 34 of the Elections Act, 2011 is amended by inserting the following new sub-section immediately after subsection (2)—

|  |  |
|--|--|
| Amendment of<br>section 34 of<br>No.24 of<br>2011. | (2A) The party list referred to under subsection (2) shall be of equal gender representation consisting of-<br>(a) four persons representing the youth;<br>(b) four persons representing persons with disabilities of different types and categories; and<br>(c) four persons representing ethnic minorities, marginalized groups and workers. |
|--|--|

*(Hon. Isaac Mwaura)*

Proposed amendment withdrawn

**Clause 12–**

**New Clause 12A proposed–**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 12–

|  |   |
|--|---|
| Amendment of<br>section 35 of No.<br>24 of 2011. | <b>12A.</b> Section 35 of the Elections Act, 2011 is amended by deleting the words “at least forty-five days before the date of” and substituting therefore the words “within fourteen days after”. |
|--|---|

*(Hon. Florence Mutua)*

Proposed dropped in the absence of the member

Clause 14—

New Clause 14A proposed—

**THAT** the Bill be amended by inserting the following new clause immediately after clause 14—

Amendment of **14A.**Section 44 of the Elections Act, 2011 is amended—  
section 44 of No.  
24 of 2011.

- (a) in subsection (4) by deleting the words “eight months” appearing in paragraph (a) and substituting therefore the words “one hundred and twenty days”;
- (b) in subsection (7) by deleting the words “eight months” appearing in paragraph (b) and substituting therefore the words “one hundred and twenty days”.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Motion made and Question proposed –

THAT, the New Clause 14A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 14A be part of the Bill

Question put and agreed to;

New Clause 14B proposed—

**THAT**, the Bill be amended by inserting the following new clause immediately after the proposed new clause 14A—

Amendment of No. 24 of 2011. **14B.** The Elections Act, 2011 is amended by inserting the following new section immediately after section 44—

Complementary mechanism for identification of voters.

**44A.** (1) Notwithstanding the provisions of section 44, the Commission shall put in place a complementary mechanism for identification of voters that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution.

(2) The Commission shall, by notice in the *Gazette*, notify the public of the mechanism established under subsection (1) at least forty-five days before a general election.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Sub-section (2) of the proposed new Clause withdrawn

Motion made and Question proposed –

THAT, the New Clause 14B be read a Second Time

Debate arising;

Amendment to amendment proposed

**THAT**, the proposed new Clause 14B be further amended in paragraph (1) of the proposed new section 44A by-

- (i) deleting the words “section 44” and substituting therefor the words “section 39 and 44”; and
- (ii) inserting the words “and transmission of election results” immediately after the words “identification of voters”

*(The Leader of Majority Party)*

Question of the amendment to amendment put and agreed to;

Motion made and Question proposed –



(No. 141)

**THURSDAY, DECEMBER 22, 2016**

(1199)

THAT, the New Clause 14B, as amended, be part of the Bill

Question put and agreed to;

**Clause 32–**

**New Clause 32A proposed–**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 32—

**32A.** The Elections Campaign Financing Act, 2013 is amended by inserting the following new section immediately after section 1—

|                                       |  |
|---------------------------------------|--|
| Suspension<br>of<br>operation of Act. | <b>1A.</b> The operation of this Act is suspended and the Act shall come into force immediately after the general elections to be held in the year 2017. |
|---------------------------------------|--|

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Motion made and Question proposed –

THAT, the New Clause 32A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 32A be part of the Bill

Question put and agreed to;

**New Clause 32B proposed–**

**THAT**, the Bill be amended by inserting the following new clause immediately after the proposed new clause 32A—

|  |  |
|--|--|
| Amendment<br>of section 6<br>of No. 42 of<br>2013. | <b>32B.</b> Section 6 of the Elections Campaign Financing Act, 2013 is amended in subsection (5) by deleting the word “eight” appearing in paragraph (a) and substituting therefor the word “two.” |
|--|--|

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

(No. 141)

**THURSDAY, DECEMBER 22, 2016**

(1200)

Motion made and Question proposed –

THAT, the New Clause 32B be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 32B be part of the Bill

Question put and agreed to;

Long Title – amendment proposed –

**THAT** the Long Title to the Bill be amended by inserting the words “give effect to Article 99 (1) (b) of the Constitution” immediately after the words “AN ACT of Parliament to.”

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Long Title - as amended agreed to

Bill, as amended to be Reported, again

7. **HOUSE RESUMED** – the Speaker in the Chair

**Report of the Committee of the Whole House;**

**The Election Laws (Amendment) (No.3) Bill (National Assembly No. Bill No. 63 of 2015)**

Bill reported with amendments;

Motion made and Question proposed –

**THAT**, this House do agree with the Report of the Committee

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Debate Arising;

(No. 141)

**THURSDAY, DECEMBER 22, 2016**

(1201)

Question put and agreed to;

Third Reading: **The Election Laws (Amendment) (No.3) Bill (National Assembly No. Bill No. 63 of 2015)**

Motion made and Question proposed –

**THAT**, The Election Laws (Amendment) (No.3) Bill (National Assembly No. Bill No. 63 of 2015) be now read a Third Time.

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Debate arising;

Question put and agreed to;

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

And the time being Twelve Minutes to Eleven O'clock, the Speaker interrupted the Proceedings and adjourned the House without Question put pursuant to the Standing Orders.

**8. HOUSE ROSE** - Twelve Minutes to Eleven O'clock

---

**M E M O R A N D U M**

The Speaker will take the Chair on  
Tuesday, 24<sup>th</sup> January 2017 at 2.30 PM

---X---