



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, FEBRUARY 27, 2018

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**

The Speaker conveyed the following Communications –

(i) **ON A VISITING DELEGATION FROM THE PARLIAMENT OF UGANDA**

Honourable Members, I wish to introduce to you a delegation of Members and staff from the Parliament of Uganda seated at the Speaker's Row. The delegation comprises of the following: -

- | | | |
|--------------------------------------|---|---------------------------|
| 1. The Hon. Patrick Oshabe Nsamba | - | Leader of the delegation |
| 2. The Hon. Norah Nyendwoha Bigiriwa | - | Member |
| 3. The Hon. Anna Ebaju Adeke | - | Member |
| 4. The Hon. Herbert Ariko | - | Member |
| 5. The Hon. Maurice Henry Kibaiya | - | Member |
| 6. Mr. John Tamale | - | Legal Counsel |
| 7. Mr. Max Komakech | - | Clerk Assistant/Secretary |

to

the delegation

Honourable Members, the delegation is in the Country on a study visit of our Parliament to interact with our Committees and various State agencies to discuss legislative mechanisms for ensuring that locals benefit in procurement of goods and services in the public sector. On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements during their stay in the Country. I thank you!

(ii) **ON A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE JUDICIAL SERVICE COMMISSION**

“Honourable Members,

I wish to inform the House that my office is in receipt of a Petition from one Adrian Kamotho Njenga seeking the removal of Hon. Justice David Maraga, Hon. (Lady) Justice Philomena Mwilu, Hon. Justice Mohamed Warsame, Hon. Justice Aggrey Muchelule, Prof. Tom Ojienda, Hon. Emily Ominde and Hon. Mercy Deche as members of the Judicial Service Commission (JSC) pursuant to Article 251 of the Constitution. In support of the Petition, the Petitioner outlines a number of particulars including, among others –

- (i) violation of Article 3 (Defence of this Constitution) 10 (National Values and
- (ii) principles of governance), 27 (Equality and freedom from discrimination), 35 (Access to information), 73 (Responsibilities of leadership), 168 (Removal from office), Article 172 (Functions of the Judicial Service Commission) and 232 (Values and principles of public service) of the Constitution;
- (iii) discrimination and victimization in the treatment of complaints and disciplinary proceedings against judicial officers; and
- (iv) failure to recommend persons for appointment as Judges of the Court of Appeal.

Honourable Members, the Petitioner calls upon the National Assembly to exercise its mandate under Article 94, 95 and 251 of the Constitution to ensure that the Judicial Service Commission does not degenerate into further mediocrity on account of unconstitutional conduct by its members by holding the seven (7) Commissioners accountable for derogation from binding constitutional standards. He prays that the House —

- (i) finds the seven (7) Commissioners, jointly and severally,—
 - (a) to have contravened the Constitution and the law;
 - (b) to have committed acts of gross misconduct in the performance of functions or otherwise;
 - (c) incompetent;
- (ii) finds that the Petition discloses overwhelming grounds for removal of the seven (7) Commissioners as enunciated at Article 251 (1) of the Constitution; and

(iii) be pleased to send the petition to His Excellency the President, for the appointment of a tribunal to investigate the matter expeditiously, report on the facts and make a binding recommendation to the President.

Honourable Members, as you are aware, Petitions to this House are governed by the provisions of Article 119 of the Constitution where any member of the public can petition Parliament to consider any matter within its authority, including the enactment, amendment or repeal of legislation. Further, Hon. Members, this House has enacted the Petition to Parliament (Procedure) Act, 2012 which outlines the modalities of petitioning the House. The procedure set out in the Act is mirrored in the Standing Orders of the House at Standing Order 223 for Ordinary Petitions and Standing Order 230 for petitions seeking the removal of a Member of a Constitutional Commission or holder of an Independent Office.

Honourable Members, before I venture into the general admissibility of the Petition in terms of the Standing Orders, I shall first deal with a material issue which the Petition raises by seeking the removal of the Chief Justice as a Commissioner in the Judicial

Service Commission. As Members are aware, once a person is appointed as Chief Justice under Article 166 of the Constitution, that person is automatically designated as the President of the Supreme Court and Chairperson of the JSC under Articles 163(1)(a) and 171(2)(a), respectively. With this in mind, a clear reading of the Constitution reveals that the office of the Chief Justice and that of Chairperson of the JSC are joined at the hip and may only be held by one person. Therefore, a person desirous of removing the Chairperson of the JSC from office must necessarily seek for his or her removal as the Chief Justice. In this regard, a person must petition the JSC for the removal of the Chief Justice via the express procedure provided under Article 168 of the Constitution. Indeed, and by analogy, Article 127(2)(a) of the Constitution automatically designates the person elected as Speaker of the National Assembly to be the Chairperson of the Parliamentary Service Commission (PSC). Therefore, a person seeking the removal of the Chairperson of the PSC from office must necessarily seek for the removal from office of the Speaker under Article 106(2)(c) of the Constitution.

Honourable Members, the inclusion of the Chief Justice as a subject of the Petition by the said Adrian Kamotho Njenga therefore is, in itself, misplaced and fatal to the Petition. The petitioner by purporting to move the National Assembly to consider removal of the Chairperson of the Judicial Service Commission by using Article 251 of the Constitution is a long shot, pedestrian and engaging in a fishing expedition. As a result, the House will not be in a position to address itself to the rest of the contents of the Petition in light of that material irregularity alone. It therefore follows that this Petition falls on its own sword. I shall, however, proceed to address the rest of the contents of the Petition that similarly raise issues of concern in order to restate the procedural requirements governing petitions for the removal of constitutional office holders.

Honourable Members, the Petition as filed seeks the removal of cited seven (7) Members of the JSC jointly and severally on three of the six grounds specified under Article 251(1) of the Constitution, these are, and I quote, —

- (i) serious violation of this constitution or any other law, including a contravention of Chapter Six;
- (ii) gross misconduct, whether in the performance of the member's or the office holder's functions or otherwise; and
- (iii) incompetence.

Honourable Members, the Petitioner outlines several particulars in support of the grounds without particularity as to which ground they support and which specific Member of the the JSC they relate to. I have previously guided the House on this issue in a Communication issued on 22nd October, 2015 on the *Processing of Special Motions under Articles 145, 150(2), 152(6) and 251 of the Constitution*. In that Communication, I ruled **that the grounds outlined for the removal of a Constitutional office-holder should specifically relate to the individual office-holder with sufficient particularity and annextures or sworn testimonies in support**. This House, at the close of the 11th Parliament, amended its Standing Orders to accord with that Communication by including this requirement for particularity at Standing Order 230. Standing Order 230 provides, and I quote—

(1) In addition to complying with the requirements of paragraphs (a), (b), (c), (d), (h), (i), (j), (l) and (m) of Standing Order 223 (Form of Petition), a petition to the House for removal of a member of a Commission or holder of an Independent Office under Article 251 of the Constitution —

(a) shall—

- (i) indicate the grounds under Article 251(1) of the Constitution which the member of the commission or holder of an Independent Office is in breach;*
- (ii) where the grounds in subparagraph (i) above relate to violation of the Constitution or any other law, state with a degree of precision the provisions of the Constitution or any other written law that have been alleged to be violated;*
- (iii) indicate the nexus between the member or office holder concerned and the alleged grounds on which removal is sought; and*

(b) may contain affidavits or other documents annexed to it.

Honourable Members, a close reading of Article 251 of the Constitution and Standing Order 230 reveals that a Petition to this House pursuant to Article 251 of the Constitution must relate to an individual. The grounds advanced against the individual must be stated with particularity and be adequately supported in Order to guide the Speaker and the House in admitting the Petition or subsequently recommending the formation of a Tribunal as stipulated under the Article. The Petition filed by the said Adrian Kamotho Njenga is couched in corporate terms and therefore fails the admissibility test on that count.

Honourable Members, in the particulars provided in support of the omnibus grounds for removal of the cited Members of the JSC, the Petitioner alleges discrimination and victimization by the Commission in the treatment of complaints and disciplinary proceedings against named judicial officers. It is my considered opinion that disciplinary proceedings commenced against judges are in the nature of administrative actions governed by Article 47 of the Constitution on fair administrative action and the provisions of the Fair Administrative Action Act, 2015. You will agree with me that this House is not an appellate forum for ventilating appeals arising out of administrative proceedings of the JSC.

I wish to caution members of the public that Parliament is not a place to settle constitutional grievances without first adhering to the very same Constitution that they seek to rely on consequently, a judge or complainant aggrieved by any administrative action taken or not taken by the JSC has an adequate remedy in judicial review before the Courts.

Honourable Members, as a matter of procedure, the Petition to Parliament (Procedure) Act, 2012 obliges the Clerk to verify the admissibility of a Petition to the House and advise the Speaker on whether the Petition should be tabled in the House. Where a Petition is found to be inadmissible, the Clerk responds to the Petitioner, drawing his or her attention to the nature of inadmissibility. I have taken this unprecedented step of issuing a Communication to the House on a Petition before its tabling in light of the subject which relates to a Commission that oversees one of the three arms of government and the amount of public interest that the Petition has generated.

I accordingly do direct—

- (i) That, the Petition by the said Adrian Kamotho Njenga is inadmissible as it seeks the removal from office of the Chairperson of the Judicial Service Commission in a manner not contemplated by the Constitution; a prayer that is fatal to the entire petition;
- (ii) That, the Petition by the said Adrian Kamotho Njenga is inadmissible as, in addition—
 - a. it does not state with a degree of precision the provisions of the Constitution or any other written law that each Member of the JSC is alleged to have violated; and
 - b. it does not indicate the nexus between the individual Commissioners and the alleged grounds for which their removal is sought apart from corporate decisions made in the exercise of their Constitutional functions; and

- c. the particulars indicated in support of the grounds relate to administrative actions taken or failed to be taken by the JSC, which are amenable to Judicial Review;

(iii) That, the Clerk prepares and conveys an appropriate response to the Petitioner.

Please be guided accordingly.

Thank you”.

5. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Report, including a Summary Report, of the Auditor-General and Financial Statements of the National Government for the financial year 2015/2016;
- (ii) The Insolvency (Amendment) Regulations, 2018 and the Explanatory Memorandum (*pursuant to section 730 of the Insolvency Act, 2015*);
- (iii) The Companies (General) (Amendment) Regulations, 2018 and the Explanatory Memorandum (*pursuant to section 1022 of the Companies Act, 2015*);
- (iv) The Traffic (Amendment) No.3) Rules, 2017 and the Explanatory Memorandum (*pursuant to section 119 of the Traffic Act*); and,
- (v) EAC Protocol on Information Communications and Technology (ICT) pending ratification by the Kenya National Assembly.

(The Leader of the Majority Party)

- (vi) Report of the Departmental Committee on Agriculture and Livestock on the approval for appointment of Principal Secretary for State Department for Agricultural Research;

(Chairperson, Departmental Committee on Agriculture and Livestock)

- (vii) Report of the Departmental Committee on Finance and National Planning on the approval for appointment of Principal Secretaries for State Department for Devolution and Planning;

Departmental Committee on Finance and National Planning)

- (viii) Report of the Departmental Committee on Defence and Foreign Relations on the approval for appointment of Principal Secretary for State Department for Foreign Affairs;

(Chairperson, Departmental Committee on Defence & Foreign Relations)

- (ix) Report of the Departmental Committee on Defence and Foreign Relations on the approval for appointment of various Ambassadors/Commissioners;

(Chairperson, Departmental Committee on Defence & Foreign Relations)

- (x) Report of the Departmental Committee on Labour and Social Welfare on the approval for appointment of Principal Secretary for State Department for Gender;

(Chairperson, Departmental Committee on Labour and Social Welfare)

- (xi) Report of the Departmental Committee on Health on the approval for appointment of Principal Secretary for State Department for Health;

(Vice Chairperson, Departmental Committee on Health)

- (xii) Report of the Departmental Committee on Transport, Public Works and Housing on the approval for appointment of Principal Secretary for State Department for Housing and Urban Development;

(Chairperson, Departmental Committee on Transport, Public Works and Housing)

- (xiii) Report of the Departmental Committee on Administration and National Security on the approval for appointment of Principal Secretary for State Department for Immigration, Border Control and Registration of Persons;

(Chairperson, Departmental Committee on Administration and National Security)

- (xiv) Report of the Departmental Committee on Education and Research on the approval for appointment of Principal Secretary for State Department for Vocational and Technical Training;

(Chairperson, Departmental Committee on Education and Research)

- (xv) Report of the Departmental Committee on Environment and Natural Resources on the approval for appointment of Principal Secretary for State Department for Water and Sanitation;

(Member, Departmental Committee on Environment and Natural Resources)

- (xvi) Report of the Budget and Appropriations Committee on adoption of the Budget Policy Statement;

(Chairperson, Budget and Appropriations Committee)

- (xvii) Report of the Justice and Legal Affairs Committee on vetting of Nominees to the Judicial Service Commission (JSC).

(Chairperson, Departmental Committee on Justice and Legal Affairs)

6. NOTICES OF MOTION

The following Notices were given –

- (i) **THAT**, this House adopts the Report of the Departmental Committee on Agriculture and Livestock on the Vetting of Nominee for Appointment as Principal Secretary laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Prof. Hamadi Iddi Boga** as the Principal Secretary, State Department Agricultural Research.

(Chairperson, Departmental Committee on Agriculture and Livestock)

- (ii) **THAT**, this House adopts the Report of the Departmental Committee on Administration and National Security on the Vetting of Persons for Appointment as Principal Secretaries, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Maj. Gen. (Rtd) Dr. Gordon Odemo Kihalangwa** as the Principal Secretary, State Department Immigration, Border Control and Registrations of Persons.

(Chairperson, Departmental Committee on Administration and National Security)

(iii) **THAT**, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Vetting of Nominees for appointment as Ambassadors/High Commissioners, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 132(2)(e) of the Constitution and Standing Order 216(5)(f), **approves** the appointment of the following persons-

- | | | |
|---------------------------------|---|---|
| 1. Prof. Judy Wakhungu | - | Ambassador to France |
| 2. Dr. Cleopa Mailu | - | Permanent Representative to UNGeneva |
| 3. Hon. Dan Kazungu | - | High Commissioner to the United Republic of Tanzania |
| 4. Mrs. Phyllis Kandie | - | Ambassador to Belgium, Luxemburg and the European Union |
| 5. Mr. Willy Bett Kipkorir | - | High Commissioner to India |
| 6. Prof. Jacob Kaimenyi | - | Permanent Representative to UNESCO |
| 7. Dr. Hassan Wario Arero | - | Ambassador to Austria |
| 8. Mr. Lawrence Ntoye Lenayapa- | - | Ambassador to Netherlands |

(Chairperson, Departmental Committee on Defence & Foreign Affairs)

(iv) **THAT**, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on the Vetting of Nominee for Appointment as Principal Secretary, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Ms. Safina Kwekwe Tsungu** as the Principal Secretary, State Department for Gender, Ministry of Public Service, Youth and Gender.

(Chairperson, Departmental Committee on Labour and Social Welfare)

(v) **THAT**, this House adopts the Report of the Departmental Committee on Finance and National Planning on the Vetting of Nominees for Appointment as Principal Secretaries, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Dr. Julius Muia and Mr. Nelson Marwa** as Principal Secretaries, State Department for Planning, the National Treasury and Planning and State Department for Devolution, Ministry of Devolution and ASAL respectively

(Chairperson, Departmental Committee on Finance and National Planning)

(v) **THAT**, this House adopts the Report of the Departmental Committee on Environment And Natural Resources on the Vetting of Nominee for Appointment as

Principal Secretary, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Mr. Joseph Wairagu Irungu** as Principal Secretary, State Department for Water and Sanitation.

(Member, Departmental Committee on Environment and Natural Resources)

(vi) **THAT**, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Vetting of Nominees for Appointment as Principal Secretary, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Amb. Macharia Kamau** as Principal Secretary, State Department for Foreign Affairs

(Chairperson, Departmental Committee on Defence and Foreign Relations)

(vii) **THAT**, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Vetting of Nominee for Appointment as Principal Secretary, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Mr. Charles Hinga Mwaura** as Principal Secretary, State Department for Housing and Urban Development.

(Departmental Committee on Transport, Public Works and Housing)

(viii) **THAT**, this House adopts the Report of the Departmental Committee on Education and Research on the Vetting of Nominee for Appointment as Principal Secretary, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Dr. Kevit Desai** as Principal Secretary, State Department for Vocational and Technical Training, Ministry of Education, Science and Technology

(Chairperson, Departmental Committee on Education and Research)

(ix) **THAT**, this House adopts the Report of the Departmental Committee on Health on the Vetting of a Nominee for appointment as Principal Secretary, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of **Mr. Peter Kiplagat Tum** as the Principal Secretary, State Department for Health.

(Vice Chairperson, Departmental Committee on Health)

(x) **THAT**, this House adopts the Report of the Budget and Appropriations Committee on the Budget Policy Statement and the Debt Management Strategy for 2018/2019 and the medium term laid on the Table of the House, today, Tuesday, February 27, 2018

(Chairperson, Budget and Appropriations Committee)

(xi) **THAT**, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of Nominees for Appointment as Members of the Judicial Service Commission, laid on the Table of the House on Tuesday, February 27, 2018, and pursuant to the provisions of Article 172(2) of the Constitution, **approves** the appointment of **Mr. Patrick Gichohi, Prof. Olive Mugenda and Mr. Felix Koskei** as Members of the Judicial Service Commission.

(Chairperson, Departmental Committee on Justice and Legal Affairs)

6. **THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2018)**

(The Leader of the Majority Party)

Order for First Reading read;

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

7. **THE CONSTITUTION OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2018)**

(The Leader of the Majority Party)

Order for First Reading read;

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

8. **THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILL NO.47 OF 2017)**

Motion made and Question proposed –

THAT, the Kenya Roads Bill (National Assembly Bill No.47 of 2017) be now read a Second Time

(The Leader of the Majority Party – 21.02.2018)

Debate interrupted on Thursday, February 22, 2018 resumed;

(Change of Chair from the Speaker to the Third Chairperson)

Mover Replied

Putting of Question Deferred

And the time being Seven O'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders

8. **HOUSE ROSE** - at Seven O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, February 28, 2018 at 9.30 a.m.

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