



**REPUBLIC OF KENYA**

**ELEVENTH PARLIAMENT – SECOND SESSION**

**NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, JULY 23, 2014**

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **PRESIDING** – the Deputy Speaker
4. **COMMUNICATIONS FROM THE CHAIR**

The Deputy Speaker conveyed the following Communications -

(i) **Declaration of personal interest by Members**

Honourable Members,

You will recall that on Wednesday, June 26, 2014 the Chairperson of the Departmental Committee on Education, Research and Technology rose on a Point of Order seeking guidance from the Speaker regarding failure by the Member for Homabay, Hon. Peter Kaluma to declare interest in a matter for which he had sought a Statement from the Committee. Among the issues sought in the Statement were-

- (i) the sources and terms/conditions of funding for the building projects undertaken in the University;
- (ii) measures being taken to ensure that the office of the Vice Chancellor of the University is occupied by a duly appointed person; and,
- (iii) reason, other than discrimination, as to why some persons holding Doctor of Philosophy (PhDs) degrees and distinctions in their various fields of study remain engaged as assistant lectures contrary to traditions.

The Chairperson averred that Hon. Peter Kaluma had represented one Dr. Elena Korir in a suit against Kenyatta University, the subject matter of which is related to the Statement sought. The Chairperson further indicated that some of the witnesses presented to give evidence included the said Dr. Elena Korir among others and thus necessitating direction in view of the provision of Standing Order 90. She also claimed that the matter is likely to be active in court and therefore, *sub judice*.

From the onset, it should be noted that it is the responsibility of Members declare any interest that they may have on *any* matter before the House. Most parliamentary jurisdictions have long-standing rules and norms regarding the declaration of interest by Members. Erskine May, an authority in parliamentary practice and procedure in the book titled, *Parliamentary Practice (24<sup>th</sup> Edition)* notes that;

*'...in debate, a Member is required to declare 'any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have, or may be expecting to have.'*

In the UK House of Commons, Members are also expected to declare non-registrable interests which might be thought to influence them. Such interests have been held to include financial interest, financial interests of close family members, and any other circumstances which, though exempt from the requirement to register, might be thought to have a bearing on a Member's financial position. Members are also expected, by practice, to **declare non-financial interests**.

In the case of the European Parliament, Article 3 (1) of the Code of Conduct for Members of the European Parliament with respect to financial interests and conflict of interest states that;

*'...a conflict of interest exists where a Member of the European parliament has a personal interest that could improperly influence the performance of his or her duties as a member. Therefore, 'Members shall disclose, before speaking or voting in plenary or in one of Parliament's bodies, or if proposed as rapporteur, any actual or potential interest in relation to the matter under consideration, where such conflict is not evident from the information declared....'*

Honourable Members, our Standing Order 90 states that-

*"90(1) A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.*

*(2) Personal interest includes pecuniary interests, propriety interest, personal relationships and business relationships."*

Further, Article 75 (1) of the Constitution states that- 'A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids- *any conflict between personal interest and public official duties*. In addition, Article 122(3) requires that '*a member shall not vote on any question in which the member has pecuniary interest.*' The spirit of the Constitution thus expects of Members to at all times declare any personal interests that they may have on any matter before the House.

Honourable Members,

This Rule apply not only to debates in the House, but to almost all proceedings of the House or its Committees in which Members have an opportunity to speak such as debate in committees, presentation of a public petition and meetings of a select committee at which evidence is heard. In the House of Commons for example, the committee on Standards and Privileges regards it as a very serious breach of the rules if a Member fails to register or declare an interest which was relevant to a proceeding he had initiated. Precedence on this matter includes a resolution on 22 June, 1858, by the House of Commons, *"that it is contrary to the usage and derogatory to the dignity of this House that any Member*

*should bring forward, promote or advocate in the House any proceedings or measure in which he may have acted or been concerned for in consideration of any pecuniary fee or reward"*

Invariably, the main purpose of a declaration of interest is to ensure that fellow Members of the House and the public are made aware, at the appropriate time when a Member is participating in the proceedings of the House, of any past, present or expected future financial interest which might reasonably be thought to be relevant to those proceedings. This Rule is based from the one of the maxims of Equity that **"he who comes into equity, must come with clean hands"** and **"he who seeks equity, must do equity"**. The norm of the House has been that Members declare their interests in matters before the House in which case, they may choose to contribute or abstain from further contribution.

Honourable Members,

Having established the general practice on the declaration of interest by Members, the questions that confront us now are three-fold: One, what sanctions do we apply to a Member who fails to declare interest? Secondly, if we were to nullify his or her entire matter as placed before the House, is it the Member that we will be punishing, or his/her constituents? Lastly, is it possible to discern and separate the issues for which interest ought to have been declared and mete sanctions separately? Hon. Members, in an attempt to answer these questions, I am guided by our standing orders, the practices I have referred to and the tenets of equity. However, I am also reminded that equity regards substance rather than form. For that reason, formalities, no matter how important, ought not to frustrate justice.

Having said that, I now wish to respond to the issues raised by the Chairperson of the Departmental Committee on Education, Research and Technology as follows-

- i) THAT, the representation of one Dr. Elena Korir by the Member for Homa Bay as her advocate, though on a private capacity, should have been declared before or during the presentation of the matter to the committee and by extension the House. The client relationship that existed, and which had a correlation with the present contestations creates interest on the part of the Hon. Peter Kaluma. As a rule, the failure to declare interest amounts to abuse of privilege. However, out of the matters that the Member had raised in his statement, only item three (III), regarding the discrimination of staff, required the declaration of interest by the Member for Homa Bay. Since the Member failed the basic tenets of equity on that particular matter, I therefore direct that the Committee proceeds with the prosecution of the rest of the matters raised in the statement save for that item, which relates to the alleged discrimination of staff. The said item is dropped forthwith and should not be addressed by the Committee; and,
- ii) THAT, whereas the Chairperson alluded to a matter that she claimed was active in a court of law, the claim does not meet the threshold required for a matter to be declared *sub judice*. The chair failed to prove her claim. I therefore do not see anything that would require me to invoke the provisions of Standing Order 89.

Thank you."

- (ii) Responses to Statements by Members other than Chairpersons and Vice-Chairpersons of Committees

Hononourable Members,

As you may recall, on Wednesday, 16<sup>th</sup> July, 2014, the Member for Suba, Hon. John Mbadi and the Member for Kanduyi, Hon. Wafula Wamunyinyi, rose on Points of Orders, seeking the guidance of the Speaker in respect of the application of the provisions of Standing Order 44(2)(c) regarding responses to Statements. In particular, the Members sought guidance on whether it is in order for a Member of a Committee, other than the Chairperson or the Vice-Chairperson to make the response on behalf of the Committee, especially when such Member is a member of a Minority Coalition. Other Members who spoke to the matter include the Member for Kitui Central, Hon. Makali Muli, the Member for Samburu North, Hon. Alois Lentoimaga, the Member for Belgut, Hon. Eric Keter, the Member for Kajiado Central. Having listened to them, I have deduced the following three matters as requiring my determination-

- (i) who takes responsibility for the responses to Statements;
- (ii) do we have Government and opposition sides in the House; and,
- (iii) should any other Member other than the Chairperson or Vice Chairperson respond to a statement requested from a Committee Chairperson.

Honourable Members, just to remind the House, the subject of that particular statement was on the plight of our soldiers returning from Somalia. Allow me to begin by thanking the membership of this House for raising these very important matters. It is my view that, if we were to impartially answer these questions as individual Members, we probably would not seek the guidance of anybody on the responses to statements, let alone a ruling of the Speaker! If we were to be faithful to our Standing Orders and practices of this House, I have no doubt that the Speaker would rarely be asked to provide guidance on such matters as the interpretation of the Standing Orders. However, since I was asked to give guidance, I will not fail to rise to this occasion.

The First question relates to who owns the responses to Statements requested by the Members to Committee Chairs.

Standing Order 44 (1) (c) states that ***a member may request for a statement from the Committee Chairperson relating to matters under the mandate of the Committee and the Speaker may either appoint a day for the statement or direct that the statement be issued on the same day.*** The Chairperson does not work in isolation. The role of the Chairperson is clearly stipulated in Standing Order 180 which include, Presiding at meetings of the committee; Perform the functions and exercise the powers assigned to office of the Chairperson by the committee, resolutions of the Assembly or legislation; and Spokesperson of the Committee. It therefore follows that the Statements requested to the Chairpersons, not as individuals, but in their capacity as spokespersons of the Committees. The responsibility is therefore on the entire Committee. In accordance with that standing order ***"In the absence of the Chairperson or the Vice-Chairperson, a Member designated by the Chairperson shall take the Chair, and in absence of such designated Member, the Members shall elect one of them to take the Chair"***.

This spirit should thus apply in the responses to Statements, that in absence of both the Chair and the Vice-Chairperson, a Member designated by the Chairperson shall respond, and in absence of such designated Member, the Members shall elect one of them to respond. In the particular case before us, the Member for Kiminini, Hon. Chrisanthus Wamalwa, was tasked by the Departmental Committee on Defence and Foreign Relations during its sitting held of Tuesday, 15<sup>th</sup> July 2014 to respond to the Statement in question.

The Second question relates to whether we do have Government and opposition in the House. Indeed, we are in a Presidential System and therefore we do not have the Executive in the House. Thus, we do not have Government or Opposition in the House, rather what we have are Majority and Minority Parties or Coalition of parties. The same is represented in our Committee system.

Finally, as to whether a request or reply to a statement is dropped or deferred simply because the Chairperson or vice-chairperson are absent, we have since developed a practice to allow a statement request to be acknowledge by any Member of the Committee present, who would thereafter convey the request to the Committee. On responses, it is a fact that we have had several instances where Members of Committees other than the Chairperson or Vice Chairperson have responded to Statements on behalf of the Chairpersons. However, all Chairpersons of Committee and indeed all Members are encouraged to be present in the House at all times, not just during the Statement hour.

I thank you".

5. **PETITIONS**

The following Petitions were presented –

- (i) by the Deputy Speaker from the Luseno family on the alleged murder of one Gladys Ritho;

Petition referred to the relevant Departmental Committee pursuant to Standing Order 227(1).

- (ii) by the Member for Muranga County (Hon. Sabina Chege) on behalf of the family of the late Stephen Mbii Kieru on the compensation for his death as a result of a terrorist attack;

Petition referred to the relevant Departmental Committee pursuant to Standing Order 227(1).

6. **PAPERS LAID**

The following Papers were laid on the Table -

- i) Estimates of Recurrent Expenditure - Volumes I & II and Development Expenditure of the Government of Kenya for the year ending 30<sup>th</sup> June, 2015;
- ii) The Report of the Auditor-General on the Financial Statements of Youth Enterprise Development Fund Board for the year ended 30<sup>th</sup> June 2013, and the certificate of the Auditor-General therein;
- iii) The Report of the Auditor-General on the Financial Statements of National Water Conservation and Pipeline Corporation for the year ended 30<sup>th</sup> June 2010, and the certificate of the Auditor-General therein;
- iv) The Report of the Auditor-General on the Financial Statements of Sugar Development Fund for the year ended 30<sup>th</sup> June 2009, and the certificate of the Auditor-General therein;
- v) Financial Statements of the Sugar Development Fund for the years ended 30<sup>th</sup> June 2005 and 2006; and,

- vi) Financial Statements of the Kenya Sugar Board for the years ended 30<sup>th</sup> June 2004, 2006 and 2007

*(The Leader of the Majority Party)*

- vii) Report of the Departmental Committee on Lands on an Inspection Visit to the Netherlands

*(Chairperson, Departmental Committee on Lands)*

7. **STATEMENTS PURSUANT TO STANDING ORDER 44(2)(c)**

Pursuant to Standing Order 44(2)(c), the following Members sought statements –

- (i) the Member for Bondo (Hon. Gideon Ochanda) from the Chairperson, Departmental Committee on Finance, Planning and Trade, regarding the government support to auxiliary agencies, in particular the Kenya Red Cross;
- (ii) the Member for Saboti (Hon. David Wafula) from the Chairperson, Departmental Committee on Administration and National Security, regarding the housing and routine maintenance of offices for the Assistant Country Commissioners, Chiefs, Administration and Regular Police Officers in the Country;
- (iii) the Member for Igembe Central (Hon. Cyprian Iringo) from the Chairperson, Departmental Committee on Education, Research and Technology regarding categorization of hardship areas in the Education Sector;
- (iv) the Member for Nyeri County (Hon. Priscilla Nyokabi) from the Chairperson, Departmental Committee on Education, Research and Technology concerning the status of Tertiary Education Loans;
- (v) the Member for Keiyo North (Hon. (Dr). James Murgor) from the Chairperson, Departmental Committee on Education, Research and Technology regarding absence of Boards of Management in some secondary schools and tertiary institutions;
- (vi) the Member for Tana River County (Hon. Halima Ware) from the Chairperson, Departmental Committee on Administration and National Security regarding the killing of one Master Ibrahim Issack of Madogo Division;
- (vii) the Member for Mandera South (Hon. M.A. Huka) from the Chairperson, Departmental Committee on Transport, Public Works and Housing on the status of road section between Kitulo and Wargadud - B9 Road in Mandera County;
- (viii) the Member for Kiminini (Hon. Chris Wamalwa) from to the Chairperson, Departmental Committee on Labour and Social Welfare on the reported retirement of COTU and FKE representatives from the Board of NSSF by the Cabinet Secretary for Labour; and
- (ix) the Member for Mvita (Hon. Sherrif Nassir) from the Chairperson, Departmental Committee on Administration and National Security regarding the *Nyumba Kumi* security initiative.

8. THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO.33 OF 2013)

Question put and agreed to;

Bill read a Third Time and passed.

9. APPOINTMENT TO HOUSE COMMITTEE

Motion made and Question proposed –

THAT, notwithstanding the resolution of the House on October 08, 2013 regarding appointment of Members to respective Committees, this House further approves the appointment of the Hon. Zebedeo Opure to the Departmental Committee on Energy, Communication and Information

*(The Leader of the Majority Party)*

Debate arising;

Question put and agreed to.

10. APPROVAL OF THE REPORT OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014

Motion made and Question proposed –

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150(3), this House **approves** the Report of the Mediation Committee on the Division of Revenue Bill 2014, laid on the Table of the House on Tuesday, 22<sup>nd</sup> July, 2014.

*(Chairperson of the Mediation Committee – Hon. Mutava Musyimi)*

Debate arising;

Mover replied;

Question of the Motion deferred to another day.

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

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

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MEMORANDUM

The Speaker will take the Chair on  
Thursday, July 24, 2014 at 2.30 p.m.

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