



**REPUBLIC OF KENYA**

**THE SENATE**

**ELEVENTH PARLIAMENT – THIRD SESSION**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, OCTOBER 28, 2015 AT 2.30 P.M.**

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

The Speaker conveyed the following communications from the Chair-

**a) Visiting County Assembly members and staff from Vihiga County Assembly**

“Honorable Senators,

I would like to acknowledge the presence, in the Speaker’s Gallery this afternoon, of visiting members and staff from the Vihiga County Assembly Committee on Justice and Legal Affairs.

The County Assembly members and staff are here on a two-day benchmarking visit with the Committee on Justice and Legal Affairs.

I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

They are:

- |                               |                    |
|-------------------------------|--------------------|
| 1. Hon. Khalid Khamisi Balala | - Chair            |
| 2. Hon. Venna Kaisha          | - Vice Chair       |
| 3. Hon. Andrew Ahuga          | - Member           |
| 4. Hon. Rhoda Omufumu         | - Member           |
| 5. Hon. Reuben Ombima         | - Member           |
| 6. Hon. Elizabeth Muhonja     | - Member           |
| 7. Hon. Pamella Amunga        | - Member           |
| 8. Ms. Shera Didi             | - Legal Counsel    |
| 9. Mr. George Kibisu          | - Sergeant-at-Arms |
| 10. Mr. James Ngeresa         | - Committee Clerk  |

On behalf of the Senate and on my own behalf, I welcome them to the Senate and I wish them well for the remainder of their stay.

I thank you.”

**b) Visiting County Assembly members and staff from Kilifi County Assembly**

“Honorable Senators,

I would like to acknowledge the presence, in the Speaker’s Gallery this afternoon, of visiting members and staff from the Kilifi County Assembly Committee on Justice and Legal Affairs.

The County Assembly members and staff are here on a two-day benchmarking visit with the Committee on Justice and Legal Affairs.

I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

They are:

- |                                   |                        |
|-----------------------------------|------------------------|
| 1. Hon. Valentine M. Matsaki      | - Chairperson          |
| 2. Hon. Barka A. Mohammed         | - Vice Chairperson     |
| 3. Hon. Stephen Bahati Mlanda     | - Member               |
| 4. Hon. Esther Dzidza             | - Member               |
| 5. Hon. Adamson Mwathethe Kadenge | - Member               |
| 6. Hon. Grace Mbodza Chihanga     | - Member               |
| 7. Hon. Nixon Mramba              | - Member               |
| 8. Hon. Cosmas F. Kenga           | - Member               |
| 9. Mr. Rashid Mbeto               | - Senior Legal Counsel |
| 10. Ms. Lillian Ngala             | - Clerk Assistant I    |
| 11. Mr. Eric Libendi              | - Committee Clerk      |
| 12. Ms. Mercy Kuria               | - Research Officer     |
| 13. Ms. Elizabeth Tatu            | - Hansard Reporter     |
| 14. Mr. Elijah Koi                | - Commissionaire       |

On behalf of the Senate and on my own behalf, I welcome them to the Senate and I wish them well for the remainder of their stay.

I thank you.”

**c) The Procedure for the disposal of the Presidential Memoranda on the Public Audit Bill (National Assembly Bill No. 38 of 2014) and the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014)**

“Honourable Senators, on 1<sup>st</sup> October, 2015, I issued a Communication detailing the procedure to be followed on the disposal of the Presidential Memoranda on the Public Audit Bill, 2014 and the Public Procurement and Asset Disposal Bill, 2014.

In the Communication, I noted that the Joint Committee had failed to agree on the President's reservations and consequently ruled that the two Memoranda be scheduled for consideration on the week starting 6<sup>th</sup> October, 2015.

After my Communication, several Senators including Senators Hassan Omar Hassan, Moses Wetang'ula, James Orengo and Boni Khalwale canvassed the matter and urged the Speaker to stay the consideration of the Memoranda to allow consideration of the following issues –

- i) Whether the President, who is not a Member of Parliament (unlike in the repealed Constitution) can participate in law making, by exercising veto power?
- ii) Whether the reservations in the Presidential Memoranda can include introduction of new sections that were not contemplated in the Bill as passed in the first place?
- iii) Whether the new clauses introduced in the Memorandum need to go through the usual legislative processes of First, Second and Third Readings.

I undertook to give further guidance on the matter before the Senate could consider the Presidential Memoranda.

Honourable Senators, I have considered the issues raised and I wish to give the following guidance-

- i) On whether the President can participate in law making: I wish to state that Article 115 of the Constitution gives the President a legislative mandate of Assent and Referral of Bills. Thus the veto power is rightfully exercised by the President. This has always been the case even in the former constitution.

This answers to the matter raised making reference to the former Constitution in force immediately before the coming into force of the current Constitution. Section 46 (4) of the Repealed Constitution stated as follows-

*(4) Where the President refuses to assent to a Bill he shall, within fourteen days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly including his recommendation for amendments.*

- ii) On whether the President can introduce new clauses in the Memoranda: I wish to state that Article 115 (1) (b) provides that the President shall *"refer the Bill back to Parliament for reconsideration by*

*Parliament, noting any reservations that the President has concerning the Bill".* This means that the President can only object to what is already in the Bill and in proposing how to deal with the reservations, he may propose amendments to the specific clauses, including such other consequential amendments in form of New Clauses. Therefore, New Clauses in place of those in the Bill can be proposed so long as they are within the scope of the Bill.

- iii) On whether the New Clauses have to follow all the legislative stages: I wish to state that at the stage of reservations, a Bill will have been passed by Parliament. By considering the Memorandum, Parliament is not re-opening debate on a Bill but restricting itself to the 'reservations'. In my view, the new clauses need not go through the entire legislative process of First, Second and Third Reading.

Arising from this and upon further reflection and given the fact that the Joint Committee appointed to consider the Memoranda failed to submit a report, I now direct that the Memoranda on the two Bills be placed in the Order Paper for Thursday, 29<sup>th</sup> October, 2015 for consideration in Committee of the Whole.

As has been the practice, at the Committee Stage, each proposal by the President will be considered and voted on independently. It is important to note that Senators may amend the President's proposals but will require the support of at least two-thirds of the delegations in line with Article 115(4)(b) of the Constitution.

I thank you."

#### **4. STATEMENTS PURSUANT TO STANDING ORDER 45 (2) (b)**

- i) The Chairperson of the Standing Committee on National Security and Foreign Relations issued a statement on the detention of Mr. Don Bosco Gichana in Tanzania.

In the statement, the Chairperson informed the Senate that Mr. Gichana was arrested in Arusha on 30<sup>th</sup> March, 2013, on accusation of money laundering and thereafter arraigned at the Kisitu Resident Magistrate's Court on 10<sup>th</sup> April, 2013, before being transferred to Keko Prison in Dar es Salaam where he is still held, pending determination of his case.

The Chairperson further informed the Senate that the Ministry of Foreign Affairs and International Trade had, on several occasions, raised the matter with their Tanzanian counterparts, and that, more recently, the issue had been discussed with the outgoing President of Tanzania during his visit to Kenya in October, 2015.

The Chairperson assured the Senate that the present case, together with other cases of Kenyans detained in Tanzania, would be discussed during the upcoming 3<sup>rd</sup> Kenya-Tanzania Joint Commission for Cooperation meeting, following which the Chairperson would provide the House with a further statement on the matter.

- ii) The Vice-Chairperson of the Standing Committee on Health issued a statement on the suspension of radiotherapy treatment at Kenyatta National Hospital (KNH).

In the statement, the Vice-Chairperson informed the Senate that the suspension of radiotherapy services at KNH on 16<sup>th</sup> March, 2015 was due to equipment breakdown, following which repairs were completed on 19<sup>th</sup> March, 2015, with normal services resuming on 23<sup>rd</sup> March, 2015.

The Vice-Chairperson further informed the Senate that radiotherapy services in the country were limited, due to budgetary constraints and manpower shortage, and that the Government was taking measures to address the same.

- iii) The Chairperson of the Standing Committee on National Security and Foreign Relations issued a statement on the killing of Mr. Joshua Mungai, a First Year student at Maseno University.

In the statement, the Chairperson informed the Senate that the deceased died on 12<sup>th</sup> October, 2015, at Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu, after he was injured during protests by students of Maseno University over the disqualification of one of the candidates vying for the Chairmanship position in the students' union elections at the university.

The Chairperson further informed the Senate that investigations were ongoing to determine the circumstances in which the deceased was injured, leading to his unfortunate demise.

5. **THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILL NO. 37 OF 2014)**

(Chairperson, Standing Committee on Legal Affairs and Human Rights)

Order for Second Reading read- (Division);

Order deferred.

6. **COMMITTEE OF THE WHOLE**

**The Public Appointments (County Assembly Approval Bill (Senate Bill No. 20 of 2014)**

(Chairperson, Standing Committee on Labour and Social Welfare)

*(Resumption of debate interrupted on Wednesday, 7<sup>th</sup> October, 2015)*

Order deferred.

7. **COMMITTEE OF THE WHOLE**

**The County Early Childhood Education Bill, (Senate Bill No. 32 of 2014)**

(Chairperson, Standing Committee on Education)

*(Resumption of debate interrupted on Wednesday, 7<sup>th</sup> October, 2015)*

Order deferred.

8. **COMMITTEE OF THE WHOLE**

**The Universities (Amendment) Bill (Senate Bill No. 31 of 2014)**

(Sen. Halima Abdille)

Order Deferred.

9. **THE COUNTY GOVERNMENTS DISASTER MANAGEMENT BILL, (SENATE BILL NO. 40 OF 2014)**

Motion made and question proposed;

**THAT**, the County Governments Disaster Management Bill, (Senate Bill No. 40 of 2014) be now read a Second time.

*(Chairperson, Committee on National Security and Foreign Relations)*

Debate arising;

Rising on a point of order, the Chairperson of Committee on National Security and Foreign Relations and Senator for Garissa County claimed to move- **“That, the debate be now adjourned”** pursuant to Standing Order 99 (1).

And the Deputy Speaker acceding to the request;

Question put and **agreed to.**

**RESOLVED ACCORDINGLY**

**THAT**, the debate be now adjourned.

10. **THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 8 OF 2015)**

(Sen. Hassan Omar)

Order for Second Reading read;

Order Deferred.

11. **MOTION- TO NOTE THE REPORT OF THE INTER-PARLIAMENTARY UNION EXPERT MISSION TO KENYA ON THE FRAMEWORK TO IMPLEMENT THE CONSTITUTIONAL PROVISION OF THE TWO-THIRDS GENDER RULE**

**THAT, AWARE** that the Parliament of Kenya is an active member of the Inter-Parliamentary Union (IPU) which is the international organization of national Parliaments;

**FURTHER AWARE** that the IPU provides support to Parliaments in areas such as law and policy-making, as well as representation;

**NOTING WITH APPRECIATION** that, upon a request by the Speaker of the Senate, the IPU sent an expert delegation to Kenya from 12<sup>th</sup> to 16<sup>th</sup> July, 2015 to offer advice on the way forward in implementing the constitutional requirement on the two thirds gender rule;

**NOW THEREFOR** the Senate notes the report of the Inter-Parliamentary Union Expert Mission to Kenya on the framework to implement the constitutional provision of the two-thirds gender rule laid on the Table of the Senate on Thursday, 8<sup>th</sup> October, 2015 and extends its appreciation to the IPU for support on the matter.

*(Sen. Elizabeth Ongoro)*

Order Deferred;

There being no other business, and the time being six O'clock, the Deputy Speaker adjourned the business of the Senate without Question put pursuant to the Standing Orders.

12. **SENATE ROSE** - at six O'clock.

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

*The Speaker will take the Chair on  
Thursday, October 29, 2015 at 2.30 p.m.*

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