



REPUBLIC OF KENYA

**TWELFTH PARLIAMENT- (SECOND SESSION)
THE NATIONAL ASSEMBLY**

COMMUNICATION FROM THE CHAIR

(No. 038 of 2018)

**GUIDANCE ON METHODOLOGY OF
APPROVING NOMINEES FOR APPOINTMENT TO PUBLIC OFFICES**

Honourable Members, you will recall that on Wednesday, 22nd August 2018, during debate on the Special Motion for Approval of Nominees for Appointment as Chairperson and Members of the Independent Policing Oversight Authority (IPOA), the Member for Rarieda Constituency (Hon. Otiende Amollo) rose on a Point of Order under Standing Order 45 seeking clarification as to whether the approval of the eight (8) nominees would be undertaken collectively or individually. In his submission, Hon. Amollo stated that it would be wrong for Members to oppose an entire Motion on account of one or two nominees that they may not approve of, or similarly support an entire Motion despite having an issue with some of the nominees.

Honourable Members, you may further recall that several Members made their contribution on the matter, including the Leader of the Minority Party, the Hon. John Mbadi who premised that any given nominee is appointed to a public office as an individual and not as a collective appointee. He further observed that the fact that one nominee qualifies for appointment does not necessarily make other nominees qualify for the same appointment. On their part, however, the Member for Kibwezi West Constituency (Hon. Patrick Musimba) and the Member for Samburu County (Hon. Maison Leshoomo) were of the view that all nominees vetted and approved by Committees of the House ought to be approved together and not separately.

Honourable Members, in view of the clarification sought by the Honourable Member for Rarieda Constituency, the Chair undertook to guide the House on the matter before Question on the Special Motion is put.

Honourable Members, this August House has witnessed instances where Questions for approval of nominees to public offices have been put separately for each nominee, particularly in appointments involving Commissioners of Constitutional Commissions, Cabinet Secretaries, High Commissioners and Ambassadors, and so on.

You will recall, **Honourable Members**, that on 14th December 2017 during the initial consideration of nominees to the Parliamentary Service Commission, the Honourable Speaker guided the House that Members would vote for the proposed Commissioners separately, and not collectively. However, when the Motion was finally considered by the House on 22nd February 2018, the House resolved to dispense with the Motion as a whole.

I wish to remind you, **Honourable Members**, that;

- (i) Every Motion that comes before the House is brought so that the House can express itself in one way or another –in support or in opposition and thereafter, the House makes a decision/resolution. Such decision, however, should be a true and accurate reflection of the wishes of the House, or of the wishes of the majority present and voting in the House, and should thus not in any way be constrained or hamstrung by the methodology used to execute the Motion, be it a collective methodology or a singular/individual methodology; and
- (ii) Section 9 of the Public Appointments (Parliamentary Approval) Act, 2011 requires Parliament to either approve or reject nomination of a candidate and if Parliament does not make a decision on a nominee, the candidate shall be deemed to have been approved.

In consideration of the aforementioned, **Honourable Members**, I wish to guide the House as follows–

- (i) **THAT**, any given nominee is appointed to a public office as an individual and not as a collective appointee;
- (ii) **THAT**, any decision or resolution of the House ought to be a true and accurate reflection of the wishes of the House irrespective of the methodology used to execute any given Motion;
- (iii) **THAT**, the procedural and technical aspects of a Motion should not overshadow or take preeminence over the true will of Members of this August House;
- (iv) **THAT**, in line with the Commonwealth tenet propositioned by Speaker William Lenthall on 4th January 1642 when he declared that *“I have neither eyes to see, nor tongue to speak, in this place, but as the house is pleased to direct me, whose servant I am here”*, the Speaker does not impose upon Members the methodology through which to execute a Motion, but grants them leeway in determining the most appropriate approach;
- (v) **THAT**, Members of this Honourable House are at liberty, on a case to case basis, through a Procedural Motion, to determine the most appropriate methodology of executing Special Motions, that is, the option of collective approval of all nominees or singular/separate approval of each nominee with the sole objective of obtaining a true and accurate reflection of the will of Members of this Honourable House;
- (vi) **THAT**, the only limitation that Members have in consideration of Special Motions is that no additional name(s) may be proposed to be added to a Special Motion; but proposals to delete a particular name or names from a Special Motion are tenable/admissible but Members need to be cautious as to whether a deletion of a particular name is equivalent to rejection; and

(vii) On this particular Special Motion therefore, and arising from the concerns of Members, I will proceed to put the Question on each individual nominee separately.

The House is guided accordingly.

I Thank you!

THE HON. JUSTIN B. N. MUTURI, E.G.H., M.P.
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, 23rd August 2018