

REPUBLIC OF KENYA



TWELFTH PARLIAMENT- (SECOND SESSION)

**THE NATIONAL ASSEMBLY
COMMUNICATION FROM THE CHAIR**

(No 046 of 2018)

**ON RECONSIDERATION OF A HOUSE RESOLUTION BY THE
COMMITTEE ON IMPLEMENTATION**

Honourable Members,

I wish to bring to the attention of the House that my office has been petitioned by vide a letter dated 22nd August 2018 from the firm of Mogeni & Company Advocates on behalf of their client M/s. Kenafric Industries Limited in relation to a resolution by this House with regard to the Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on *'The Crisis Facing the Sugar Industry in Kenya'* adopted in the 11th Parliament. In their letter, M/s Mogeni and Company note that the Petitioners, M/s. Kenafric Limited was adversely mentioned in the Report which recommended the cancellation of their import licenses. The firm of Advocates further notes that during the hearings held by the Departmental Committee on Agriculture, Livestock and Cooperatives, their client was not afforded an opportunity to be heard despite their attempts to be so heard before the preparation and tabling of the Report of the Committee and that, consequent to the tabling and adoption of the Report, the Sugar Directorate of the Agriculture and Food Authority has since delayed the processing of their import permit.

Honourable Members, as you are aware, Standing Order 209 establishes the Committee on Implementation which it mandates to scrutinize the resolutions of the House and examine whether or not they have been implemented and the extent to which legislation passed by the House has been operationalized.

Indeed, and in the discharge of its mandate, the Committee on Implementation did invite the Sugar Directorate to update the House on the status of the implementation of the resolutions made in the last Parliament with regard to the crisis in the sugar sector. It is in the implementation of a resolution of this House that the Sugar Directorate has delayed the processing of import permits for companies adversely mentioned in the Report complained of.

Honourable Members, since the receipt of the letter, I have scrutinized the text of the Report tabled and adopted by the House and do confirm that the Minutes attached to the Report show that Kenafric Limited, who is the Petitioner in this matter, sought audience before the Committee, in writing, to respond to allegations made by the Kenya Sugar Board prior to the conclusion of the writing and tabling of the Report. The minutes record that, and I quote -

"ii. The Committee deliberated on the issue and resolved that it was not in [a] position to hear more witnesses since the report was long overdue;

iii. If the complainant feels aggrieved, it could seek recourse after the report is tabled in the House."

Owing to the delay in processing of their import permit, the Petitioner is presently in Court to seek legal redress arising from their alleged condemnation by the House without having been given an opportunity to present their case.

Honourable Members, the ongoing court case notwithstanding, I am of the considered view that turning a blind eye to the issues raised in the letter would not serve the best interests of the House. As a House of procedure guided by the Constitution and our Standing Orders, we cannot be seen as establishing a precedent of or condoning the condemning of persons without affording them an opportunity to be heard. The right to a fair hearing, as one of the twin principles of Natural Justice is entrenched in Article 50 of the Constitution which precludes individuals from being penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case.

In addition to this, Article 47 of the Constitution provides for the right to fair administrative action which is expeditious, efficient, lawful, reasonable, and procedurally fair. Indeed, this House enacted the Fair Administrative Action Act of 2015 to operationalize Article 47 in order to further guide the conduct of administrative actions and other proceedings adversely affecting the rights of individuals.

Affording persons the right to present their case is in line with guiding principles of parliamentary practice as noted in the updated version of the Benchmarks for Democratic Legislatures issued by the Commonwealth Parliamentary Association of which Members of this House are members. As a safeguard against the abuse of the freedom of speech granted to the Legislature, Benchmark 1.4.4 states, and I quote

"The Legislature shall have mechanisms for persons to respond to adverse references made to them in the course of the Legislature's proceedings."

Honourable Members, in conducting hearings, preparing and tabling its Report and recommendations, the Departmental Committee on Agriculture, Livestock and Cooperatives was under an obligation **to apply and be seen to have applied** a standard, methodical, open and fair process (*emphasis*). It is only in applying such a process that the decisions of this House may stand the test of whichever challenge is made outside Parliament. Any compromise of such a process exposes the House to ridicule and reduces the confidence of the public in the procedures of the House and its role as a forum for the deliberation and resolution of issues of concern to the people. The House cannot on one hand pass the Fair Administrative Action Act, 2015 and on the other blatantly flout the basic requirement of according adversely mentioned persons the fundamental right to be heard.

Honourable Members, noting the glaring omission highlighted by the Petitioner and indeed on admission of the Committee itself that the Petitioner was not afforded an opportunity to rebut the allegations, it therefore behoves this House to revisit its resolution made when adopting the Report by the Departmental Committee on Agriculture, Livestock and Cooperatives. This will necessarily entail affording the Petitioner, M/s. Kenafric Industries Limited a chance to present its case for consideration by the House.

As the concern raised does not constitute new evidence, there exists no justification to reopen and reconsider the entire subject matter of the Report. The appropriate Committee therefore to undertake this exercise is the Committee on Implementation currently seized of the implementation of the resolutions made from the Report to act as an appellate forum for the Petitioners to present their prayers. Indeed, such forum will examine the claims made by the Petitioners and also safeguard the authority of the House on matters for which it has inquired into and arrived at a resolution, before any other authority steps in.

Honourable Members, I am fully cognizant of the provisions of Standing Order 89 on matters *subjudice or* secret. It is, however, my considered opinion that reference to this matter by the Committee on Implementation shall not in any way prejudice the fair determination of the ongoing Court proceedings. Both the House and the aggrieved party would be best served by the urgent rectification of this glaring omission. For the avoidance of doubt as to the nature of the exercise to be undertaken by the Committee on Implementation, I direct that the Committee is to limit itself to-

- (i) only receiving submissions from the Petitioner, M/s, Kenafric Industries Limited on the resolution made by the House from the recommendation contained at paragraph 108 of page 50 of the Report;
- (ii) considering the submissions from the Petitioner; and,
- (iii) reporting its findings to the House within thirty (30) days.

I need not add that the Committee must observe the rules of natural justice in this exercise. In the meantime, the implementation of the resolution on this matter stands **suspended** until such a time as the House makes a further resolution informed by the report of the Committee on Implementation.

The House is so guided.

THE HON. JUSTIN B. MUTURI, E.G.H., MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, 30th August, 2018