



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (SECOND SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, AUGUST 23, 2018 AT 2.30 P.M

1. The House assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker

4. COMMUNICATION FROM THE CHAIR

The Speaker issued the following Communications –

(i) Regarding a visiting delegation from the Parliament of Mozambique

“Honourable Members, I wish to introduce to you a delegation from the Parliament of Mozambique. The delegation, seated at the Speaker’s Row, comprises of Members of the Mozambique Parliamentary Conservation Forum. They are-

1. The Hon. Armando Ramiro Artur - Head of delegation & Chair, Mozambique Parliamentary Conservation Forum; and
2. The Hon. Alfredo Magumisse - Co-Chair, Mozambique Parliamentary Conservation Forum

The delegation is accompanied by Ms. Susan Lylis, Vice-President, International Conservation Caucus Foundation (ICCF), Mr. Momade Mucanheia, ICCF Country Director-Mozambique, Ms. Agnes Keshine, ICCF Country Director-Kenya, and Ms. Jill Barasa, Programme Officer Africa.

Honourable Members, the delegation is in the country as part of an exchange programme with the Parliamentary Conservation Caucus-Kenya (PCC-K). 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) Regarding a visiting delegation from the United States of America
“Honourable Members,

I wish to introduce to you a delegation from the United States of America. The delegation, seated at the Speaker’s Row, comprises of Senator Dan Quick, Senator for the State of Nebraska, United States, accompanied by, among others, Mr. Dave Taylor, President-Grand Island Area Economic Development Corporation.

Honourable Members, the delegation is in the country following an invitation from the Member from Githunguri, the Hon. Gabriel Kago, MP in relation to coffee farming. 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!**"

(iii) 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;

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

- (i) 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!**

5. PAPERS LAID

The following papers were laid on the table of the House –

- (i) The Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2017 and the certificates therein: -
 - a) Egerton University Investment Company Limited;
 - b) Kenya Post Office Savings Bank;
 - c) Kenya National trading Corporation;
 - d) Revenue Accountability Statement of Kenya Revenue Authority;

- e) Postal Corporation of Kenya; and
 - f) National Social Security Fund.
- (ii) The Reports of the Auditor-General and Financial Statements in respect of the following Constituencies for the year ended 30th June, 2017 and the certificates therein:-
- a) Kipkelion West Constituency;
 - b) Ijara Constituency;
 - c) Dadaab Constituency;
 - d) Baringo Central Constituency;
 - e) Naivasha Constituency; and
 - f) Nakuru Town East Constituency.
- (Leader of the Majority Party)*
- (iii) Reports of the Committee on Delegated Legislation:-
- a) Report on the Consideration of the Excise Duty Act (Adjustment of Rates for Inflation) Schedule, 2018;
 - b) Report on the Consideration of the Air Passenger Service Charge Act (Apportionment) Order, 2018;
 - c) Report on the Consideration of the Public Finance Management (Tourism Promotion Fund) Regulations, 2018; and
 - d) Report on the Consideration of the Tax Procedures (Tax Agents) Regulations, 2018.
- (Chairperson, Committee on Delegated Legislation)*
- (iv) Reports of the Committee on Implementation on:-
- a) The 3rd Annual ICPAK Chapter Seminar in Johannesburg, South Africa, 8th – 12th May, 2018;
 - b) Training on Monitoring & Evaluation held on 24th – 28th April, 2018 at Tamarind Hotel in Mombasa County;
 - c) The Executive Seminar on Livestock Insurance Fund held from 16th to 18th April, 2018 in Mombasa; and
 - d) Submissions from stakeholders regarding implementation status of legislations, petitions and resolutions passed by the House.
 - e) The Training on Strengthening Oversight using Monitoring & Evaluation Tools held at the United Nation Institute on Training and Research (UNITAR) in Geneva, Switzerland from 19th to 21st June 2018;
 - f) Implementation status of the Scrap Metal Act, No. 1 of 2015;
 - g) Implementation status of-
 - i. *The Departmental Committee on Health Report on the allegations of sexual assault, breakdown of equipment, surgical mix-up and general operations of the Kenyatta National Hospital;*
 - ii. *Resolution on establishment of a National Health Referral Hospital in Mombasa County;*
 - iii. *Resolution on declaration of cancer as a national disaster and establishment of a Cancer Fund.*
 - h) Inspection visit regarding land issues in Taita Taveta County.
- (Chairperson, Committee on Implementation)*

6. NOTICES OF MOTION

The following Notices of Motion were given by the Chairperson, Committee on Delegated Legislation –

- (i) **THAT**, this House **adopts** the Report of the Committee on Delegated Legislation on **The Excise Duty Act (Adjustment of Rates for Inflation) Schedule, 2018** laid on the Table of the House on Thursday, 23rd August, 2018 and pursuant to the provisions of section 15 (1) of the Statutory Instruments Act and Standing Order 210 (4) (b) **annuls in entirety** the said Regulation.
- (ii) **THAT**, this House **adopts** the Report of the Committee on Delegated Legislation on **The Air Passenger Service Charge Act (Apportionment) Order, 2018** laid on the Table of the House on Thursday, 23rd August, 2018 and pursuant to the provisions of section 15 (1) of the Statutory Instruments Act and Standing Order 210 (4) (b) **annuls in entirety** the said Regulation.
- (iii) **THAT**, this House **adopts** the Report of the Committee on Delegated Legislation on **The Public Finance Management (Tourism Promotion Fund) Regulations, 2018** laid on the Table of the House on Thursday, 23rd August, 2018 and pursuant to the provisions of section 15 (1) of the Statutory Instruments Act and Standing Order 210 (4) (b) **annuls in entirety** the said Regulation.
- (iv) **THAT**, this House **adopts** the Report of the Committee on Delegated Legislation on **The Tax Procedures (Tax Agents) Regulations, 2018** laid on the Table of the House on Thursday, 23rd August, 2018 and pursuant to the provisions of section 15 (1) of the Statutory Instruments Act and Standing Order 210 (4) (b) **annuls in entirety** the said Regulation.

7. STATEMENTS –

The following Statements were issued –

1. Pursuant to Standing Order 43 - Hon. Dr. Makali Mulu - Statement regarding the just concluded CPA Africa Region Conference and Annual General Meeting held in Gaborone, Botswana from 13th to 22nd August, 2018 in which the Speaker of the National Assembly (Hon. Justin Muturi, EGH, MP) was elected Chairperson of the CPA Africa Region Executive Committee and the Clerk of the National Assembly (Mr. Michael Sialai, EBS) was elected Vice Chairperson of the Coordinating Committee the Society-of-Clerks-at-the-Table (SoCATT Africa).
2. Pursuant to the provision of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, August 28, 2018; and
3. Hon. Maoka Maore (Chairperson of the Committee on National Government Constituencies Development Fund) – Statement on the status of disbursement and management of NGCDF Funds.

8. SPECIAL MOTION – APPROVAL OF NOMINEES FOR APPOINTMENT AS THE CHAIRPERSON AND MEMBERS OF THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

Motion having been made and question proposed;

THAT, taking into consideration the findings of the Departmental Committee on Administration & National Security in the Report on the *Vetting of the Nominees for appointment as Chairperson and Members of the Independent Policing Oversight Authority* laid on the Table of the House on Wednesday, August 22, 2018, and

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pursuant to the provisions of Article 250(2)(b) of the Constitution and Section 11(6) of the Independent Policing Oversight Authority Act, this House **approves** the appointment of the following persons to the Independent Policing Oversight Authority:

(i) Ms. Anne Wacheke Makori - Chairperson

Question put and agreed to

(ii) Ms. Doreen Nkatha Muthaura - Member

Question put and agreed to

(iii) Ms. Fatuma Mohamud Mohamed - Member

Question put and agreed to

(iv) Dr. Walter Owen Owour Ogony - Member

Question put and agreed to

(v) Mr. Jonathan Ltipalei Lodompi - Member

Question put and agreed to

(vi) Hon. Waiganjo John Muriithi - Member

Question put and agreed to

(vii) Ms. Praxedes Chepkoech Tororey - Member

Question put and agreed to

(viii) Dr. Jimmy Mutuku Mwithi - Member

Question put and agreed to

8. **MOTION - REPORT ON AMENDMENTS TO THE STANDING ORDERS**

Motion made and question proposed;

THAT, this House adopts the Second Report of the Procedure and House Rules Committee on the consideration of the amendments to the Standing Orders, laid on the Table of the House on Thursday, July 05, 2018, and pursuant to the provisions of Standing Order 265(2), further resolves that the amendments agreed to in the Committee of the Whole House and approved by the House take effect from August 30, 2018.

(Member, Procedure & House Rules Committee – Hon. Moses Cheboi)

Debate arising;

Amendment Proposed –

THAT, the Motion be amended by inserting the following words immediately after the words “July 05, 2018”–

“subject to the insertion of the following new recommendation (b) on page 13 of the Report –

(b) THAT, the Procedure and House Rules Committee takes further steps to fully operationalize Question Time and tables its Report expeditiously.”

(Leader of the Majority Party)

Debate arising
 Question of the Amendment put and agreed to.
 Debate on Motion as amended resumed
 Mover replied
 Question put and agreed to.

9. COMMITTEE OF THE WHOLE HOUSE

IN THE COMMITTEE

The Second Chairperson of the Committees

Proposed amendments to the National Assembly Standing Orders

STANDING ORDER 40 – Amendment proposed

THAT, Standing Order 40(1) be amended by deleting sub-paragraph (vii) and substituting therefor the following new sub-paragraph—
 “(vii) Questions and Statements;”

(Hon. Moses Cheboi)

Question proposed;
 Debate arising;
 Question put and agreed to.
Amendment to Standing Order 40 approved.

STANDING ORDER 195 – Amendment proposed

THAT, the Standing Order 195 be amended by—

- (a) renumbering the existing provision as paragraph (1);
- (b) deleting the words “and participate in” appearing immediately after the word “attend”;
- (c) inserting the following new paragraphs immediately after paragraph (1)—

“(2) A Member who intends to participate in a meeting of a committee of the House of which he or she is not a member shall submit a written request to the Chairperson of the committee at least twenty-four hours before the meeting, or such other period the Chairperson may in exceptional circumstances allow.

(3)The request shall indicate any matter which the Member intends to raise at the meeting.

(4)Where the Chairperson allows a request for participation under paragraph (2), the Member may attend the meeting and raise any matters indicated in his or her request.

(5) The Chairperson shall, before allowing a non-member to participate in a matter before the committee, give priority to the Members of the Committee.

(6) The Chairperson may order a non-member of the committee to withdraw from a meeting for disorderly conduct.”

(Hon. Moses Cheboi)

Question proposed;
 Debate arising;

Question put and agreed to.
Amendment to Standing Order 195 approved.

NEW PART IXA - Amendment proposed

THAT, the Standing Orders be amended by inserting the following New Part immediately after Part IX—

PART IXA—QUESTIONS

(Hon. Moses Cheboi)

Question proposed;
Debate arising;
Question put and agreed to.
New Part IXA approved.

New Standing Order 42A - Amendment Proposed

THAT, the Standing Orders be amended by inserting the following New Part immediately after Part IX—

Notice of Question

42A. (1) Pursuant to Standing Order 216(5)(j), a Member proposing to ask a Question in the House shall give notice to the Clerk.

(2) The Member shall deliver a signed copy of the proposed Question to the Clerk for submission to the Speaker for approval.

(3) Where the Speaker approves a Question and determines the Cabinet Secretary responsible for the matters to which it relates, the Clerk shall, at an appropriate time, publish the Question in the Order paper.

(4) In scheduling a Question in the Order Paper, the Clerk shall consider the urgency of the Question as determined by the Speaker.

(5) A Member shall ask his or her Question on the day it is scheduled in the Order Paper and the Leader of Majority Party shall, at an appointed date, inform the House of the date and time when a Cabinet Secretary shall be required to appear before a Committee to reply to a Question, subject to paragraph (6).

(6) In determining the date and time when a Cabinet Secretary shall be required to appear before a Committee to reply to a Question, the Leader of the Majority Party shall—

- (a) consider the urgency of the Question as determined by the Speaker; and
- (b) consult with the Chairperson of the Committee.

(Hon. Moses Cheboi)

Question proposed;
Debate arising;
Amendment to amendment proposed –

THAT, the proposed New Standing Order 42A be amended in paragraphs (5)&(6) by inserting the following words **“in consultation with the Leader of the Minority Party”** after the words **“the Leader of the Majority Party”**

(Hon. Otiende Amollo)

Question of the amendment proposed;
Debate arising;
Question put and negatived.

Debate on the amendment resumed;

Rising in his place on a Point of Order pursuant to Standing Order 35, the Member for Rarieda (Hon. Otiende Amollo) claimed that there was no Quorum in the House;

And the Second Chairperson having ascertained the claim ordered that the Division Bell be rung for Ten Minutes;

And having raise the requisite Quorum;

Debate resumed;

Question put and agreed to.

New Standing Order 42A approved.

New Standing Order 42B - Amendment Proposed

THAT, the Standing Orders be amended by inserting the following New Part immediately after Part IX—

General rules on Questions

42B. (1) These rules apply to Questions raised in the House and Questions referred to Committees for reply.

(2) Except as the Speaker may otherwise allow, a Member may not ask a Question which—

- (a) is in effect a speech;
- (b) is lengthy;
- (c) is limited to give information;
- (d) is framed so as to suggest its own reply or to convey a particular point of view;
- (e) includes extracts from newspapers or quotations from speeches;
- (f) contains any argument, inference, opinion, imputation or ironical or offensive expression or epithet;
- (g) seeks an expression of opinion;
- (h) repeats in substance a matter already addressed by a Committee of the House or in the course of debate in the House during the same Session;
- (i) refers to more than one subject;
- (j) includes the name of a person or a statement not strictly necessary to render the Question intelligible;
- (k) contains an allegation which the Member is not prepared to substantiate;
- (l) implies an allegation of a personal nature or which reflects upon the conduct of a person whose conduct can only be challenged through substantive Motion or upon the conduct of any other person otherwise than in that person's official or public capacity;
- (m) relates to a matter which is *sub judice* or which by any written law is secret pursuant to Standing Order 89 (*Matters sub judice or secret*);
- (n) falls within the functions and powers of county governments as contemplated under Part II of the Fourth Schedule to the Constitution;
- (o) seeks a reply that is readily available in ordinary works of reference or official publications;
- (p) refers discourteously to a friendly country, a Head of State or Government or the representative in Kenya of a friendly country; or
- (q) refers to a matter under consideration by the House or a Committee.

- (3) A member shall take responsibility for accuracy of the facts upon which a Question is based.
- (4) A Member may, with leave of the Speaker, ask a supplementary question to a Question raised in the House before it is referred to a Committee for reply.
- (5) Where the Member scheduled to raise a Question in the House is absent without the Speaker’s approval, the Question shall be dropped and no further proceedings shall be allowed on the Question during the same session.
- (6) The Speaker may defer a Question to a different time or day from its scheduled time and day.

(Hon. Moses Cheboi)

Question proposed;
Debate arising;
Question put and agreed to.

New Standing Order 42B approved.

New Standing Order 42C - Amendment Proposed

THAT, the Standing Orders be amended by inserting the following New Part immediately after Part IX—

Manner of disposing Questions in a Committee

- 42C.** (1) A Cabinet Secretary shall provide physical and electronic copies of the reply to a Question at least a day before appearing before a Committee.
- (2) Subject to Standing Order 42A (*Notice of Question*), a Committee shall dispose of a Question in the sequence it appears in its Schedule of Questions or as its Chairperson may direct.
- (3) The Chairperson may allow a Member to ask a supplementary question which relates to a Question referred to a Committee.
- (4) Where a Chairperson allows Members to ask supplementary questions, the Chairperson shall give first priority to the Member who asked the Question referred to a Committee for reply.
- (5) Where the Member who raised a Question referred to the Committee is absent without the Chairperson’s authority, the Question shall be dropped and no further proceedings shall be allowed on the Question during the same session.
- (6) The Chairperson of a Committee may—
- (a) defer a Question to a different time or day from its scheduled time and day; or
 - (b) direct a Cabinet Secretary to provide additional information or a further reply to a Question or supplementary questions raised in the Committee.

(Hon. Moses Cheboi)

Question proposed;
Debate arising;
Question put and agreed to.

New Standing Order 42C approved.

New Standing Order 42D - Amendment Proposed

THAT, the Standing Orders be amended by inserting the following New Part immediately after Part IX—

Questions for written reply

- 42D.** Where a Member prefers a written reply to his or her Question—
- (a) the Speaker shall direct that a written reply be provided in respect of the Question; and

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(b) the Clerk shall forward the Question to the relevant Cabinet Secretary and, upon receipt, provide the written reply to the Member.

(Hon. Moses Cheboi)

Question proposed;

Debate arising;

Question put and agreed to.

New Standing Order 42D approved.

New Standing Order 42E - Amendment Proposed

THAT, the Standing Orders be amended by inserting the following New Part immediately after Part IX—

Timeline for reply

42E. (1) Subject to paragraph (2), a Cabinet Secretary shall reply to a Question within thirty days of referral of a Question to a Committee.

(2) Where the Speaker determines a Question to be urgent, a Cabinet Secretary shall reply to the Question within three days of referral of the Question to a Committee.

(Hon. Moses Cheboi)

Question proposed;

Debate arising;

Question put and agreed to.

New Standing Order 42E approved.

New Standing Order 42F - Amendment Proposed

THAT, the Standing Orders be amended by inserting the following New Part immediately after Part IX—

Report on Questions

42F. The Chairperson of a Committee shall submit a progress report to the House on Questions—

(a) referred to the Committee;

(b) replied to;

(c) which the Committee has directed a Cabinet Secretary to provide additional information or further reply; and

(d) pending before the Committee.

(Hon. Moses Cheboi)

Question proposed;

Debate arising;

Question put and agreed to.

New Standing Order 42F approved.

Standing Orders to be reported with amendments.

10. HOUSE RESUMED - the Second Chairperson in the Chair

Proposed Amendments to the National Assembly Standing Orders

Standing Orders reported with amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report

(Hon. Moses Cheboi)

Question put and agreed to;

Amendments to the Standing Orders approved.

11. THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2018)

Order for Second Reading read;

Motion made and question proposed;

THAT, the Finance Bill (National Assembly Bill No. 20 of 2018) be now read a Second time

(The Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

And the time being Seven O'clock the Speaker interrupted the proceedings and adjourned the House without Question put pursuant to the Standing orders.

12. HOUSE ROSE - at Seven O'clock.

M E M O R A N D U M

The Speaker will take the Chair tomorrow
Tuesday, August 28, 2018 at 2.30 p.m.