

REPUBLIC OF KENYA



TWELFTH PARLIAMENT – (SECOND SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

(No. 49 of 2018)

**REGARDING THE SECOND READING OF THE CONSTITUTION OF
KENYA (AMENDMENT) BILL (NO. 2) NATIONAL ASSEMBLY BILL NO. 5
OF 2018 SPONSORED BY THE HON. CHRIS WAMALWA**

Honourable Members,

As you would recall, last week on Wednesday, October 03, 2018 the House concluded debate on the Second Reading of the Constitution of Kenya (Amendment) Bill (No. 2), National Assembly Bill No. 5 of 2018, moved by the Member for Kiminini, the Hon. Chrisantus Wamalwa. During the debate, the mover requested the Speaker to delay putting the question for Second Reading under Standing Order 53(3) until such time when not less than 233 Members, being two-thirds of all the Members of the National Assembly, will be available as required under Article 256(1)(d) of the Constitution.

Honourable Members, indeed, the provisions of Article 256(1) (d) of the Constitution provides that a Bill to amend the Constitution shall be passed by the House, if it is supported by not less than two-thirds of all the Members of that House at the Second and Third Readings. In the request, the Member seemed to vest the obligation of availing the Members required to vote, on the Speaker. Further, during the sitting, the Honourable Chrisantus Wamalwa claimed that the Speaker had already determined that the particular Bill does not require to be approved by a referendum in terms of Article 255 of the Constitution.

Honourable Members, As you are aware, the Bill by Honourable Wamalwa seeks to amend the Constitution to change the election date from second Tuesday in August in every fifth year to Monday in December of every fifth year. During debate on the Bill, some Members expressed concern that the Bill requires approval by a referendum as changing the election date from August to December would in effect also touch on the term of office of President in terms of extending the term of that office.

Honourable Members, Article 256 of the Constitution prescribes the procedure for considering Bills to amend the Constitution by parliamentary initiative. In particular, Article 256(5) of the Constitution provides that if a Bill to amend the Constitution proposes an amendment relating to a matter specified in Article 255(1) of the Constitution, the President shall, before assenting to the Bill, request the Independent Electoral and Boundaries Commission to conduct, within ninety days, a national referendum for approval of the Bill. In this regard, from a plain reading of Article 256(5) of the Constitution, it is clear that the responsibility of determining whether a Bill to amend the Constitution requires approval by referendum or not, does not lie with the Speaker of the National Assembly, or indeed this House. The role of the Houses of Parliament is to exercise their legislative authority in terms of passing a Bill to amend the Constitution and once passed in both Houses and forwarded to the President for assent, it is upon the Presidency, to determine whether such a Bill relates to matters under Article 255.

Honourable Members, therefore, contrary to the claim by the Member for Kiminini, neither the Speaker nor the Office of the Clerk have the powers to determine whether a Bill requires approval by a referendum or not, as this falls within the jurisdiction and powers of the President in terms of Article 256(5)(a) of the Constitution. To interpret the provisions otherwise would be contrary to the provisions of Article 256 of the Constitution, is analogous and tantamount to putting the hat of the President on the person of Speaker.

Honourable Members, in view of the above and following the request by the Hon. Chris Wamalwa to delay putting the question for Second Reading, I wish to guide as follows-

- 1. THAT,** the obligation to ensure that any Bill obtains the requisite voting threshold lies squarely with the mover of the Bill. Additionally, the Honourable Member needs to be conscious of the dictates of Standing Order 141 on lapsing of Bills that may be occasioned by inordinate delay in putting of the question for second reading. In this regard, I wish to notify the Member and the House that the question for Second Reading of that particular Bill shall be put on Wednesday, October 17, 2018 during the afternoon sitting;
- 2. THAT,** it is expected that the Member for Kiminini, who is also the Minority Party Deputy Whip, will lobby all Members to be present and to participate in electronic or roll-call voting on that day. Should 233 Members vote in support of the motion for Second Reading of the Bill, the House business Committee will thereafter schedule the Bill for consideration in Committee of the Whole House and Third Reading, which will be undertaken at later sittings; and,
- 3. THAT,** should the motion for second reading of the Bill fail to obtain the required numbers in support and the results of the vote satisfies the requirements of Standing Order 62(2), I will avail a further and last opportunity for the vote to take place at a later sitting. It is worth noting that, a last voting opportunity ought to take place within five sitting days from the day of the initial vote.

I Thank you!

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

Thursday, October 11, 2018

Page 3 of 3