

REPUBLIC OF KENYA



TWELFTH PARLIAMENT – (SECOND SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

(No. 53 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 are all aware, this afternoon the House will be taking a vote on the question for the Second Reading of the Constitution of Kenya (Amendment) Bill (No. 2), National Assembly Bill No. 5 of 2018, sponsored by the Member for Kiminini, the Hon. Chrisantus Wamalwa as required by the dictates of Article 256 of the Constitution. Article 256 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 Reading. At the onset, Honourable Members, allow me to explain the procedure of voting for the Bill which should not be confused with the recent vote taken by this House in relation to the President's Reservations on the Finance Bill, 2018.

Honourable Members, indeed the procedure of considering the President Reservations is clearly set out by Article 115 of the Constitution and the National Assembly Standing Order 154. **Honourable Members,** without going into so much detail the provisions of Article 115 of the Constitution require the House to have a majority of the Members present and voting as provided for in Article 122 of the Constitution where the House agrees with the Reservations of the President.

A majority of the members present and voting is the simple majority which is defined as being half of the members present, so long as there is quorum present. **In this case, in the least, the permissible number in support of a simple majority vote is twenty six Members, being half of the quorum of the House plus one Member**, assuming that only a number equal to quorum is present and voting. It is important to note that questions for decision by the House are put in the positive as I have explained before in a number of rulings. Our default voting procedure on questions for determination by simple majority is also by voice vote as required by Standing Order 69 which as you all know is a collection of voices of "Ayes" and "Nays". **At the first instance therefore voting on the President Reservations is by way of voice vote and two thirds of members need not be present, so long as there is quorum of fifty Members present in the House.** This is how this House voted on 20th September 2018 during the consideration of the President Reservations on the Finance Bill, 2018.

Honourable Members, as you further know where the Members of the House seek to negate the President Reservations, the provisions of Article 115 require 233 Members to vote against the President Reservations. As you all would recall, during the consideration of the President Reservations this played out well in this House, but it seemed that either a sizeable number of Members did not understand the procedure, or, having known the procedure, just chose ignore it. I have taken the liberty to explain this process so that you do not confuse it with the procedure we about to engage in at the Second Reading of this Bill at the next step and demand a voice vote today!

Honourable Members, as provided for in the Standing Orders which I need not reiterate voting on a division is done either by electronic voting or roll call voting and the procedures are well explained in Standing Orders 70 and 73 respectively. **Honourable Members** to jog you mind I am sure you recall

that during the consideration of the President's Reservations, some Members declined to take a vote either electronically or through roll call voting and hence the voice vote carried the day.

Consequently, Honourable Members, the process of voting for President Reservations is so distinct and different from the process of voting for Bills to amend the Constitution and the two should not even be compared. Since many Members are going to engage in electronic voting for the first time today, may I therefore explain the process of electronic voting. The Process has two steps, the first one being, confirmation of process of not less than 233 Members in the House and the second step is the actual voting, which will only take place if not less than 233 Members are present in the House after the ringing of the division bell.

Honourable Members, to ascertain the Members present, the following will happen-

1. I will cause the Division Bell to be rung for 10 minutes.
2. At the end of 10 minutes, the doors shall be locked and the bar drawn. *No member shall enter or leave the House after this stage.*
3. I will then request all Members present in the Chamber to log out of the system.
4. During this log out step, I will require Members without their cards to stand by the public servants benches to be recorded manually by Clerks-at-the-Table and continue staying there until the end of the voting process.
5. Members with their cards will have 60 seconds to log into the system.
6. Members without cards will be recorded manually.
7. The number of Members present shall be displayed on the screens, while the number of Members recorded manually will be tallied by the Clerks-at-the-Table.
8. Both the total Members present as displayed on the screens and Members recorded manually will be tallied.
9. If **not less than 233 Members** are in the House, the House shall proceed with the Voting. If less than 233 Members, voting shall not proceed.

Honourable Members, to vote electronically, the following will happen-

- 1.** I will request all Members to log out of the system.
- 2.** I will thereafter request Members to log into the system. In this case, Members will have 60 seconds to do so.
- 3.** Members without their cards standing by the public servants benches shall have their votes recorded manually by Clerks-at-the-Table by stating whether there are "in favour of" or "against" or "abstains" from the Question, and continue staying there until the end the voting process.
- 4.** I will thereafter put the Question for the Second Reading of the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No. 5 of 2018) sponsored by the Member for Kiminini, the Hon. Chrisantus Wamalwa.
- 5.** Members will have 60 seconds to vote.
- 6.** All Members shall cast their votes by pressing either the "Yes" "No" or "Abstain" buttons. No Member shall fail to vote either of the two options or record their abstention.
- 7.** As voting is going on, the results of the electronic vote are displayed will be displayed on the screens and shown with a "positive"(+) being "Yes", "a negative"(-) being "No" and a "Zero" being Abstention".
- 8.** Results of electronic votes as appearing on the screens and votes recorded manually shall be tallied.
- 9.** I shall forthwith announce the results and guide on the next course of action, depending with the result of the vote taken.

Please be advised accordingly!

THE HON. JUSTIN B.N. MUTURI, E.G.H, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Wednesday, October 17, 2018