



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, JULY 03, 2019

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

The Member for Naivasha (Hon. Jayne Kihara) presented a petition regarding compensation of the Naivasha-Maraigushu land owners by the Kenya Electricity Transmission Company (KENTRACO);

Petition referred to the relevant Departmental Committees pursuant to Standing Order 227(2).

5. **QUESTIONS**

The following Questions were asked –

- (i) **Question No.307/2019** by the Member for Mathare (Hon. Anthony Tom Oluoch, MP) regarding duplication of roads classification particulars affecting several roads falling within Mathare Constituency;

(To be replied by the Cabinet Secretary for Transport, Infrastructure, Housing, and Urban Development before the Departmental Committee on Transport, Public Works and Housing)

- (ii) **Question No. 308/2019** by the Member for West Mugirango (Hon. Vincent Kemosi Mogaka, MP) regarding details of the local and foreign shareholders of the firm known as *Africa Star Railway Operation Company*;

(To be replied by the Cabinet Secretary for Transport, Infrastructure, Housing, and Urban Development before the Departmental Committee on Transport, Public Works and Housing)

- (iii) **Question No. 309/2019** by the Member for Kanduyi (Hon. Wafula Wamunyinyi, MP) regarding irregular allocation of public land set aside for a Police Station and Administrative Offices in *Marakaru/Tuuti* Ward in Kanduyi Constituency;

(To be replied by the Cabinet Secretary for Lands and Physical Planning before the Departmental Committee on Lands)

- (iv) **Question No. 311/2019** by the Nominated Member (Hon. Gideon Keter, MP) regarding the domination of foreign inspection agents at the Pre-Export Verification of Conformity (PVOC) programme;

(To be replied by the Cabinet Secretary for Industry, Trade and Cooperatives before the Departmental Committee on Trade, Industry and Cooperatives)

The following Question was deferred –

- (v) **Question No. 310/2019** by the Member for Kesses (Hon. (Dr.) Swarup Mishra, MP) regarding the steps taken to reduce the number of agencies operating at the ports.

6. **PROCEDURAL MOTION- EXEMPTION OF BUSINESS FROM THE PROVISIONS OF STANDING ORDER 40(3)**

Motion made and Question proposed –

THAT, this House orders that the business appearing as Order No. 12 in the Order Paper be exempted from the provisions of Standing Order 40(3) being a Wednesday Morning, a day allocated for Business not sponsored by the Majority or Minority Party or Business sponsored by a Committee.

(The Leader of the Majority Party)

There being no debate arising;

Question put and agreed to;

7. **THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2019)**

Order for Second Reading read;

THAT, the Law of Contract (Amendment) Bill (National Assembly Bill No.1 of 2019) be now read a Second Time

(Hon. Francis Waititu – 26.06.2019)

Debate on the Second Reading having been concluded on Wednesday, June 26, 2019 (Morning sitting);

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the whole House.

8. **THE KENYA UWEZO FUND BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2019)**

(Hon. David K. Bowen, MP)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1).

9. **THE EQUALISATION FUND BILL (NATIONAL ASSEMBLY BILL NO. 43 OF 2019)**

(Hon. William Kassait Kamket, MP)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1).

10. **SPECIAL MOTION- THE MANDATE OF THE NATIONAL ASSEMBLY WITHIN THE BICAMERAL SETUP OF PARLIAMENT**

Motion made and Question proposed –

AWARE that Article 93 of the Constitution of Kenya establishes two Houses of Parliament, each with a distinct mandate as outlined under Articles 95 and 96 of the Constitution, respectively;

WHEREAS Article 95 of the Constitution specifically mandates the National Assembly to-

- (a) *represent the people of the constituencies and special interests in the National Assembly;*
- (b) *deliberate on and resolve issues of concern to the people;*
- (c) *enact legislation in accordance with Part 4 of Chapter Eight of the Constitution;*
- (d) *determine the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter Twelve of the Constitution, and appropriate funds for expenditure by the national government and other national State organs;*
- (e) *exercise oversight over national revenue and its expenditure;*
- (f) *review the conduct in office of the President, the Deputy President and other State officers and initiate the process of removing them from office; and,*
- (g) *exercise oversight of State organs;*

AND WHEREAS Article 109(2) of the Constitution provides that any Bill may originate in the National Assembly **and Article 109(3) of the Constitution provides that a Bill not concerning county governments is considered only in the National Assembly, and passed in accordance with Article 122 of the Constitution and the Standing Orders of the National Assembly;**

AND WHEREAS the National Assembly of the 12th Parliament has, pursuant to the powers conferred by the said Article 109(3) of the Constitution, passed several laws that do not concern county governments as contemplated by the Constitution;

AND WHEREAS Article 110(1) of the Constitution defines a Bill concerning county governments as:-

- (a) *a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;*
- (b) *a Bill relating to the election of members of a county assembly or a county executive; and*
- (c) *a Bill referred to in Chapter Twelve affecting the finances of county governments;*

AND WHEREAS Article 109(4) provides that a Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses;

AND WHEREAS Article 110(3) of the Constitution provides that before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any **question** as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

COGNIZANT THAT, the matter of whether the question as to whether a Bill concerns counties would routinely arise has been addressed by the High Court of Kenya in the matter of Nation Media Group Limited & 6 others v Attorney General & 9 others (Judicial Review Misc. Appl. No. 30 of 2014), where the Court held that the requirement contained in Article 110(3), comes into play **when there is a question or doubt** as to whether or not a Bill concerns counties. The absence of consultation and resolution between the two Speakers of the Houses on whether or not a Bill concerned counties is not in itself unconstitutional or a violation of the Standing Orders when the demarcation of functions between the National and County Governments are clear;

COGNIZANT THAT, the power of the Speakers of the Houses of Parliament under Article 110(3) is limited to resolution of a question as to whether a Bill concerns county governments or not;

AWARE that in furtherance to Article 110(3) of the Constitution, the House, through Standing Order 121, has mandated the Speaker to determine, in the first instance whether a Bill concerns county governments as and whenever a question arises and to establish an appropriate framework for jointly resolving the question with the Speaker of the Senate;

FURTHER AWARE that the Speaker has and continues to actively engage the Speaker of the Senate on the establishment of an appropriate framework for jointly resolving any question as to whether a Bill concerns county governments as and when the question arises;

COGNIZANT THAT in accordance with Article 109(5), a money Bill may be introduced **only** in the National Assembly in accordance with Article 114;

AND FURTHER WHEREAS Article 114 (2) of the Constitution provides that if, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of a **money Bill**, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the National Assembly after taking into account the views of the Cabinet Secretary responsible for finance;

AND FURTHER WHEREAS Article 121 of the Constitution provides that the quorum of Parliament shall be fifty members, in the case of the National Assembly, or fifteen Members, in the case of the Senate;

AND FURTHER WHEREAS Article 122(1) of the Constitution provides that except as otherwise provided in the Constitution, any question proposed for decision in either House of Parliament is to be determined by a majority of the members in that House, present and voting;

CONCERNED that contrary to the express requirements of Articles 121, 122 and 123 of the Constitution with regard to the quorum required for the convening of a session, voting on any question proposed for decision by a House of Parliament and decisions of the Senate, the Senate has and continues to convene part of its sessions and vote on matters not affecting counties without the requisite quorum and thresholds being met and thus prejudicing the legality of National Assembly business that is subject to the bicameral process, and indeed Senate decisions;

AND WHEREAS Article 108 of the Constitution establishes the offices of a Leader of the majority party and a leader of the minority party, being the person who is the leader in the National Assembly of the largest party or coalition of parties and the person who is the leader in the National Assembly of the second largest party or coalition of parties;

AND WHEREAS the said Article 108(4) of the Constitution exclusively accords certain order of precedence to be observed in the National Assembly, being the Speaker of the National Assembly, the leader of the majority party; and the leader of the minority party; hence the one in the Senate is unknown to the Constitution and any law;

CONCERNED that despite the provisions of Article 108 of the Constitution, the Senate has irregularly established and caused the Parliamentary Service Commission to facilitate and continues to so irregularly facilitate the offices of the Leader of the Majority Party and the Leader of the Minority Party, offices that are unknown to the Constitution and any the laws of Kenya;

AND WHEREAS Article 132 of the Constitution generally mandates the National Assembly to receive names of persons nominated for appointment to public office by the President, vet their suitability or otherwise and to approve or reject their appointment;

CONCERNED that despite the express provisions of the Constitution, the Senate continues to participate in the approval of the appointment of persons to State Offices, through a duplicate process, resulting in a procedure unknown to bicameral parliaments anywhere in the world, since in bicameralism vetting of persons for appointment to state and public offices is exclusively vested in one House;

CONCERNED THAT, despite the express provisions of Article 95(5)(b) of the Constitution, the Senate has established parallel Committees duplicating the mandate of the Committees in the National Assembly and County Assemblies and has, on diverse occasions, sought to exercise oversight of state organs in a manner that does not accord with the functions of county governments outlined under Part 2 of the Fourth Schedule to the Constitution;

FURTHER CONCERNED that in complete disregard of the provisions of Articles 109 and 114 of the Constitution mandating the origination of a money Bill **only** in the National Assembly, the Senate has on various occasions introduced and considered Bills with a money bill effect;

COGNIZANT that pursuant to Article 3 of the Constitution, every person has an obligation to respect, uphold and defend the Constitution and that Article 94 of the Constitution requires Parliament to protect the Constitution;

FURTHER COGNIZANT that Article 110(3) of the Constitution requires the Speakers of the Houses of Parliament to resolve any question as to whether a Bill is a Bill concerning county governments as and when such a question arises;

FURTHER COGNIZANT that Article 229(6) of the Constitution requires the use of public funds in a lawful and effective manner;

FURTHER AWARE that the continued engagement of the Senate in matters outside its express mandate, its irregular duplication of the mandate of the National Assembly and County Assemblies and its establishment and facilitation of irregular and unconstitutional offices constitutes imprudent use of public funds;

RECOGNIZING THAT, the Speaker of the National Assembly has always implemented the provisions of Article 110(3) and Standing Order 121 with regard to resolving a question as to whether a Bill concerns county governments or not;

NOW THEREFORE THIS HOUSE-

1. **REITERATES AND REAFFIRMS** its commitment to respect, uphold and defend the Constitution in terms of Article 3 of the Constitution;
2. **FURTHER REITERATES AND REAFFIRMS** the exclusive role of the Speaker of the National Assembly and the relevant Committee of the House in the consideration of any motion that makes provision for a matter listed in the definition of a money Bill under Article 114 of the Constitution;

3. **FURTHER REITERATES AND REAFFIRMS** its oversight role over national revenue and its expenditure, including the lawful and effective use of public funds by all state organs;
4. **URGES** the Speaker to continue engaging the Speaker of the Senate on establishing an appropriate framework for jointly resolving any question as to whether a Bill concerns county governments as and when such a question arises;
5. **REAFFIRMS THAT**, pursuant to the provisions of Article 95(4) and (5) of the Constitution, the mandate of oversight of State Organs exclusively vests in the National Assembly and the duplication of this role is unconstitutional;
6. **RESOLVES-**
 - (a) **THAT**, the House continues upholding the provisions of Article 109(3) in the passage of Bills that do not concern county government;
 - (b) **THAT**, the House continues upholding the provisions of Articles 109(5) & 114 of the Constitution and Standing Order 143 in considering Bills originating from the Senate;
 - (c) **THAT**, in the first instance, the Houses of Parliament always explore **alternative** mechanisms of resolving any dispute that may arise between the Houses from time to time as is the practice in comparative jurisdictions;
 - (d) **THAT** in the event of failure of the alternative dispute resolution mechanisms, the National Assembly institutes legal proceedings to seek interpretation of the Constitution with respect to the foregoing concerns and also with respect to the scope of its mandate vis-à-vis that of the Senate including-
 - (i) whether it is lawful for the Senate to continue duplicating in entirety the National Assembly's legislative, representative and oversight mandates and its' organizational and institutional structures with the resultant pressure on public resources; and
 - (ii) the enforcement of Articles 108 (*Party Leaders*), 121(*Quorum*) and 122 (*Voting in Parliament*) of the Constitution with regard to the operation of the Senate.
 - (e) **THAT** the in the meantime, the House Business Committee, upon this Resolution, inquires into the foregoing concerns and presents a report to this House as soon as is practicable.

(The Leader of the Majority Party & the Leader of the Minority Party)

Debate arising;

(Change of Chair from the Deputy Speaker to the Second Chairperson)

(Change of Chair from the Second to the Fourth Chairperson)

And the time being One o'clock, the Fourth Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

11. **HOUSE ROSE** - at One O'clock

M E M O R A N D U M

The Speaker will take the Chair today,
Wednesday, July 3, at 2.30 p.m.

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