



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, AUGUST 8, 2019

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Deputy Speaker
4. **COMMUNICATION FROM THE CHAIR**

The following Communication was issued:-

On Determination of the Constitutionality of a Division of Revenue Bill Originated by the Senate

Honourable Members, As you would recall, during the afternoon sitting on Thursday, 1st August, 2019, upon the reading of the Order for Second Reading of the Division of Revenue Bill (Senate Bill No. 13 of 2019), the mover of the motion, Hon. Kimani Ichung'wa, MP, Chairperson of the Budget and Appropriations Committee commenced by stating that, "*even as I beg to move thus, I will be requesting you (Speaker) and the House to give us direction on certain pertinent Constitutional matters*". As the Speaker, my attention, and as I rightly supposed, that of the House, was captured by the explicit reluctance in the opening statement made by the mover of the motion.

Indeed, the Chairperson proceeded to pose a question as to whether the Division of Revenue Bill (Senate Bill No. 13 of 2019) was constitutionally before the House, having emanated from the Senate. He also sought the guidance of the Speaker on whether the action of the Senate was an affront on the exclusive province of the National Assembly under Article 95(4)(a) of the Constitution, which provides that the National Assembly "*determines the allocation of national*

revenue between the levels of government, as provided in Part 4 of Chapter Twelve”.

Honourable Members, before the Chairperson of the Budget and Appropriations Committee could conclude moving the motion for Second Reading of the Bill, the Leader of the Majority Party, Hon. Aden Duale, EGH, MP, rising on a Point of Order, sought the Speaker’s guidance on the same and a finding that the Second Reading of the Division of Revenue Bill (Senate Bill No. 13 of 2019) should not be proceeded with on grounds of constitutionality as it ought not to originate in the Senate, hence it was improperly before the House.

The following Members also ventilated on the matter: the Member for Kitui Central, (the Hon. Dr. Makali Mulu, MP); the Member for Kipipiri, (the Hon. Amos Kimunya, EGH, MP); the Minority Party Whip, (the Hon. Junet Nuh, CBS, MP); the Chairperson of the Departmental Committee on Finance and National Planning, (the Hon. Joseph Limo, MP); the Deputy Minority Party Whip, (the Hon. (Dr.) Chrisanthus Wamalwa, CBS, MP); and the Chairperson of the Public Investments Committee, (the Hon. Abdulswamad Nassir, MP).

Honourable Members, the ensuing debate raised weighty issues touching on the provisions of Chapter Twelve of the Constitution on Public Finance and Standing Order 233 of the National Assembly Standing Orders on Consideration of the Division of Revenue Bill. Accordingly, and pursuant to Standing Order 83(3), I undertook to render a considered ruling on the matter.

Honourable Members, before I proceed, permit me to first deal with two preliminary issues. The first issue is the point at which a Member may raise any question of constitutionality or otherwise of a Bill already before the House. The second issue is the competence of the Speaker to determine and decide on any question of constitutionality or otherwise of a Bill without reference to the House.

On the first issue, **Honourable Members,** it is public notoriety that, ordinarily, a question of constitutionality or otherwise of any Bill before the House should be resolved before it is introduced for consideration by the House. Indeed, the Standing Orders do not contain an explicit provision upon which a Member may rise on a Point of Order, to raise a question of this nature during consideration of a Bill. As a matter of fact, in a bicameral set-up like Kenya, save for matters falling within the province of Article 114(2) of the Constitution, it is inconceivable for the Speaker of a House, by a decision made within the walls of the Speaker’s Chambers, to curtail a Bill from the other House from being introduced in the receiving House on the basis of it being unconstitutional.

Even in the absence of clear provisions in the Standing Orders, Standing Order 1 grants latitude to the Speaker to decide any procedural question on matters not expressly provided for by the Standing Orders or other Orders of the House, basing on, among other considerations, *precedents*.

Honourable Members, a precedent was already set by my predecessors, and indeed myself, which precedent has been applied on various occasions when the Speaker has been invited to guide the House on questions of constitutionality of a Bill under consideration. For avoidance of doubt, I will enumerate a few instances. First, on 28th April 2009, my predecessor, the Hon. Kenneth Marende, EGH, MP, when confronted with a similar question of whether he should adjudicate a question of constitutionality of a matter that he, as the Speaker, had previously approved, he made the following determination, and I quote -

“... the view that since the Speaker had not raised issue about the legality of the situation, he is prevented from adjudicating on it when it is raised by any Hon. Member, is therefore, not tenable. ... I rule that any Member can, at any time, raise a question on the constitutionality of any action or set of circumstances in this House and it is always open to the Chair to entertain and rule on the merits of such a question.”

Honourable Members, I have not deviated from this precedent set by my predecessor. You may recall that in the Eleventh Parliament, I was called upon to rule on the admissibility of the National Police Service (Amendment) Bill, 2013 and the National Police Service Commission (Amendment) Bill, 2013. On 25th September 2013, upholding the precedent set by my predecessors, I did rule that -

“...my predecessors have previously ruled on numerous other occasions in the past, but, notwithstanding the approval of any business by the Chair under the Standing Orders, the issue of constitutionality can be raised by any Member at any stage of consideration of any business by the House.”

I further ruled on 17th February 2016 in the matter of a question of constitutionality and ‘Money Bill implication of the Military Veterans Bill (National Assembly Bill No. 34 of 2013) that *“the question of constitutionality of a Bill can be entertained at any stage before the passage of a Bill.”* It is therefore clear that, any question of constitutionality or otherwise of a Bill already before the House cannot be curtailed as long as a Bill is still under consideration. This settles the first preliminary issue.

Honourable Members, on the second preliminary issue on the competence of the Speaker to decide any question of constitutionality of a Bill under consideration without reference to the House, the answer is in the affirmative. Suffice it to say, that it is the duty of the Speaker to defend and protect the Constitution and should the Speaker be invited to apply his/her mind on a question of constitutionality or otherwise of a Bill or a Motion already seized by House, the Chair would not hesitate to do so.

Indeed, on 25th September 2013, during consideration of the National Police Service (Amendment) Bill, 2013 and the National Police Service Commission (Amendment) Bill, 2013, I did find that -

“... a question of constitutionality of a proposal before the House cannot be subjected to a vote, but to the conscious decision of the Speaker.”

Honourable Members, having cleared the preliminary matters, I will now proceed to apply my conscious consideration and decision to the three questions relating to the constitutionality of the Division of Revenue Bill (Senate Bill No. 13 of 2019), which I have summarized as follows-

- (i) whether the Senate can originate a Division of Revenue Bill;
- (ii) if my finding is that the Senate can originate a Division of Revenue Bill, would that also imply that **any** Member of this House is also at liberty to introduce a County Allocation of Revenue Bill or even an Appropriations Bill; and,
- (iii) what options are available to unlock any stalemate between Houses of Parliament with respect to a Division of Revenue Bill, if Mediation fails?

With regard to the first question on whether the Senate can originate a Division of Revenue Bill, I will revisit the roles of the respective Houses of Parliament as provided in the Constitution. Article 93 of the Constitution establishes the Parliament of Kenya as constitutive of both the National Assembly and the Senate. *This Article also provides that both Houses shall perform their respective functions in accordance with the Constitution.* Article 95 of the Constitution provides for the roles of the National Assembly.

Specifically, clause (4)(a) of this Article expressly provides that the National Assembly determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter 12 of the Constitution. On the other hand, Article 96 provides for the role of the Senate, where clause (3) expressly stipulates that the Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.

Honourable Members, a question that would then arise as to what constitutes the term “determination of the allocation of revenue”, as provided in Articles 95(4)(a) and 96(3). These Articles must be interpreted conjointly with Article 218. A prudent interpretation of the Constitution therefore means that the National Assembly performs its function of determining the allocation of national revenue between the levels of government by introducing a Division of Revenue Bill. Similarly, the Senate performs its function of determining the allocation of revenue among counties by introducing a County Allocation of Revenue Bill.

Indeed, Article 110(2) categorizes the County Allocation of Revenue Bill as a special Bill concerning county governments, which is considered in accordance with Article 111. Under Article 111, the National Assembly requires a two-thirds majority to change or reject a County Allocation of Revenue Bill passed by the Senate. In originating the County Allocation of Revenue Bill, the Senate will be living up to its constitutional mandate as enshrined in Article 96(1) of the Constitution, which provides that the Senate represents the counties, and serves to protect the interests of the counties and their governments.

Honourable Members, you will agree with me that no single provision in the Constitution can be read or interpreted in isolation. Indeed, Article 259 provides that the Constitution must be interpreted in a manner that, among others,

promotes its purposes, values and principles; advances the rule of law; and permits the development of the law. In as much as Article 218(1) calls for the introduction in Parliament of a Division of Revenue Bill and the County Allocation of Revenue Bill, this Article cannot be read in isolation. If this isolated reading of the Constitution was to be adopted, it would then mean that the Senate would be permitted to violate the provisions of Article 95(4)(a) of the Constitution by introducing a legislation to determine the allocation of national revenue between the levels of government; or the National Assembly would be permitted to violate the provisions of Article 96(3) by introducing legislation to determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government.

Honourable Members, it therefore goes without saying that the interpretation of the Constitution must be done in a holistic manner. Parliament must lend credence to the doctrine of interpretation that the law is always speaking. The framers of the Constitution did not envisage a situation where the various Articles of the Constitution would be construed in the form of a staccato speech, consisting of several disjointed provisions. Rather, the manner of speech contemplated by the Constitution is that of a logical sequence, with a smooth ebb and flow.

Having said that, it is inconceivable that a House of Parliament would attempt to apply the provisions of Article 218 of the Constitution in wanton disregard of the provisions of Articles 93(2), 95(4), 96(3) and 217 of the same Constitution. Parliament must be at the forefront in demonstrating respect for the rule of law. As the institution in which legislative authority is vested, Parliament has a higher threshold with regard to the obligation to respect, uphold and defend the Constitution.

Honourable Members, the architecture of the Constitution with regard to Public Finance Management, gives specific roles to the two Houses of Parliament. The thread that runs straight through Chapter 12 of the Constitution on Public Finance is the centrality of the National Assembly in the budget process, appropriation of public funds for the expenditure of the national government and national State organs and revenue raising measures by the national government.

Article 221 of the Constitution exclusively vests in the National Assembly the role of considering and approving the budget estimates of the revenue and expenditure of the national government and the estimates of expenditure submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary. Drawing from the approved estimates, the National Assembly is further exclusively mandated to introduce an Appropriation Bill to appropriate the approved estimates for disbursement from the Consolidated Fund.

In addition, to finance the approved budget estimates and the expenditure for which public funds are appropriated, this House also exclusively legislates proposals by the National Treasury to raise the revenue required to finance both levels of government. Article 209 of the Constitution empowers the national government to exclusively impose income tax, value added tax, customs duties

and other duties on import and export goods and excise tax as well as any other tax or duty except property rates and entertainment taxes which are a preserve of the county governments. Every year a Finance Bill is introduced, considered and passed exclusively by this House with regard to the government's proposed revenue-raising measures.

Honourable Members, in settling on the equitable share of the national revenue to be allocated to the counties, this House is required under Article 203 of the Constitution to allocate at least fifteen percent of all national revenue collected by the National government, based on the most recent audited accounts approved by the National Assembly. Again, Hon. Members, Article 203 outlines another critical function vested solely in the National Assembly, which is approving audits of the expenditure of all revenue received and spent by the national government.

A clear reading of Article 218 of the Constitution together with Article 95(4)(a) and 96(3) points to a number of inescapable conclusions. First, Hon. Members, the framers of the Constitution were very deliberate in their assignment of the roles and functions of the two Houses of Parliament with regard to public finance both at the national and county levels of government. The Constitution clearly establishes one House as representing the people, overseeing the budget process for the national government and national state organs, appropriating monies for the national government and national state organs, overseeing the process of revenue-raising through legislation, determining the allocation of the revenue collected between the two levels of government and auditing the collection and expenditure of revenue by the national government and national State organs.

Conversely, **Honourable members,** the Constitution mandates the other House of Parliament to represent and protect the interests of the counties, as geographic regions, and their county governments, participate in the making of certain laws as guided by Part 2 of the Fourth Schedule to the Constitution, determine the allocation of national revenue among counties and exercise oversight over that revenue.

With this background in mind, interrogating the provisions of Article 218(1) of the Constitution so as to know the House in which the Annual Division of Revenue Bill and County Allocation of Revenue Bill are to be originated ought not be a question to belabour.

Honourable Members, in implementing Chapter 12 of the Constitution, this House enacted the Public Finance Management Act, 2012. The provisions of the Act outline, in detail, procedures relating to the budget process. Section 38 of the Act expound on the exclusive role of National Assembly in initiating and determining division of revenue between national and county governments. Under section 38 of the Act, the Cabinet Secretary for the National Treasury is required to submit budget documents to the National Assembly. The National Assembly then considers the budget estimates in line with section 39 of the Act. In addition, section 40 of the Act requires the Cabinet Secretary for the National Treasury to submit the budget policy highlights and the Finance Bill to the National Assembly for consideration.

Honourable Members, as I had stated earlier, Article 259(1)(a) of our Constitution obligates a person interpreting the Constitution to do so in a manner that “promotes its purposes, values and principles”. With this edict in mind, I personally would not ascribe to the argument that a Constitution can exclude one House of Parliament from the budgeting, collection, sharing between the levels of government and auditing of national revenue and still allow such a House to originate a Bill that takes into account majority of those processes. Several questions would arise with regard to the basis of all the Senate proposals in a Division of Revenue Bill, key among which would be the basis on which the figures contained in such a proposal have been arrived at. As part of its general oversight function under Article 95(5)(b) of the Constitution, this House, through the Budget and Appropriations Committee, is exclusively and constantly in communication with the National Treasury over the finances of the country. The Senate does not bear the burden of passing taxation legislation to raise the revenue required to support any allocations made by the Division of Revenue Bill. The question that arises then is, which revenue collection forecasts would the Senate rely on to reach the figures proposed? Further, a Division of Revenue Bill contains additional grants to be financed by the revenue share of the national government. On which authority is an additional grant contained in a Division of Revenue Bill originated by the Senate made? Consequently, Hon. Members, a clear reading of the Constitution only supports the Division of Revenue Bill being originated by the National Assembly as it has a ready answer to all those questions.

On the same breath, I would not expect any Member of this House to imagine that he or she can introduce a Division of Revenue Bill, an Appropriation Bill or even a Finance Bill in form of **an individual Member Bill** (previously referred to as “Private Member Bills”)

Honourable Members, similarly, as your Speaker, I would not approve for publication any proposal made by a Member of this House to introduce a County Allocation of Revenue Bill. The same logic applies. Article 96 and 217 of the Constitution mandate the Senate to determine the basis for allocating among the counties, the counties' share of national revenue that is annually allocated to the county level of government. In addition, the Senate is mandated to audit the use of the funds allocated to the counties. To change or reject a resolution of the Senate on the basis for allocating funds to the counties, or, indeed, the County Allocation of Revenue Bill, the National Assembly is required to muster a two-thirds majority. That special “legislative protection” accorded to a County Allocation of Revenue Bill implies that, there is no constitutional basis for the origination of the County Allocation of Revenue Bill in the National Assembly and further that, it was not meant to go through the vagaries of a Mediation process that is subjected to other ordinary Bills, with a possibility of failure. In my considered opinion, the Constitution went to great lengths to segregate the two Bills to the two Houses in line with their exclusive roles and functions.

Honourable Members, since inception of the bicameral Parliament in March 2013, both Houses of Parliament have respected their exclusive mandates with regards to origination of the Division of Revenue Bill and the County Allocation

of Revenue Bill. The National Assembly has originated the Division of Revenue Bill in each of the six years. Even where the Division of Revenue Bill has been lost at Mediation, it has been re-published by and re-introduced in the National Assembly.

The decision by the Senate to publish its own version of the Division of Revenue Bill is therefore unprecedented in the practice of our bicameral Parliament. No excuse therefore justifies this inconceivable departure by the Senate from the established practice.

Honourable Members, our Parliament operates within, and is also guided by usages, forms, precedents, customs, procedures, traditions and practices from comparable jurisdictions within the community of nations. An analysis of the practice in comparative jurisdictions indicates that, any legislation with regard to the sharing of revenue between two or more levels of government, is originated in the House of Parliament charged with the responsibility of approving revenue raising measures. Over and above, some of the jurisdictions present insights on available avenues for extricating the Houses of Parliament from any limitless disagreement or 'ping pong' on Bills.

Section 73(2)(b) of the Constitution of the Republic of South Africa provides that, any Bill may be introduced in the National Assembly but a Bill under section 214 of the said Constitution, containing provisions on the equitable shares and allocation of revenue among the national, provincial and local spheres of government, may only be introduced by the Cabinet Member responsible for national financial matters and only in the National Assembly. The National Assembly of South Africa is the House tasked with approving the budget and any revenue raising measures proposed by the national government.

Indeed, section 9 of South Africa's Money Bills Amendment Procedure and Related Matters Act, 2009 provides that –

“(1) After the adoption of the fiscal framework the Division of Revenue Bill must be referred to the committee on appropriations of the National Assembly for consideration and report.

(2) After the Bill is referred to the National Council of Provinces, the Bill must be referred to the Committee on appropriations of the Council for consideration and report.

Honourable Members, there are two key pickings from the above-quoted provision from the Parliament of South Africa. First, there is an inviolable link between revenue Bills and the budget fiscal framework, which, in the case of Kenya is the Budget Policy Statement. It is therefore instructive that the formulation and introduction of a revenue Bill must be derived from and based on the fiscal framework.

Secondly, and most importantly, a revenue Bill is strictly introduced in the committee on appropriations of the National Assembly. The justification for introducing the revenue bill in the National Assembly of South Africa through the committee on appropriations is based on the indisputable fact that it is the

committee and indeed House which scrutinised and approved the fiscal framework, which is the bedrock for a revenue Bill.

Honourable Members, even with the lack of clarity in Article 218 of the Constitution, drawing from the above-cited pickings from South Africa, I would expect that there would be no contestation on which House of Parliament of Kenya reserves the original jurisdiction to originate the Division of Revenue Bill. Indeed, being the House in which the country's fiscal framework is considered, the National Assembly is the House that should originate the Division of Revenue Bill.

With respect to the Diet of Japan, section 60 of their Constitution provides that-
*"The budget must first be submitted to the House of Representatives. Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, **the decision of the House of Representatives shall be the decision of the Diet (Parliament).**"*

Honourable Members, I am inclined to believe that, in the context of Kenya, the Division of Revenue Bill is the legislation upon which the Houses of Parliament conclude vertical budget akin to what is provided for in section 60 of the Constitution of Japan. I am further inclined to believe that, the wisdom for granting the House of Representatives power to veto a different decision by the House of Councillors is premised on the understanding that the House of Representatives best placed to translate the aspirations of the people in the budget process.

Further, **Honourable Members**, a look at similar matters in the commonwealth of Australia presents an insightful perspective for extricating the Country from possible stalemate on such a Bill. Section 57 of the Constitution of Australia prescribes the procedure for resolving any irreconcilable disagreement between the two Houses. That procedure essentially involves the dissolution of both Houses of Parliament by the Governor-General, in what is commonly known as a 'double dissolution' in the event that the disagreement persists. This is followed by fresh elections for both the House of Representatives and the Senate.

Upon constitution of a new House of Representatives and the Senate, the Bill which led to the dissolution is re-considered and should the disagreement recur, the Governor-General may convene a joint sitting of the two Houses to consider and vote on the Bill. It is important to note that the Governor-General grants a Double Dissolution if he/she is satisfied that there is really a deadlock and regard has been put to the importance of the Bill in question and the workability of Parliament (*House of Representatives Practice, Australia, Fifth Edition, Page 454-455*).

Regarding decision-making at a joint sitting, the said section 57 provides that:
"The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent."

From the foregoing, it is a constitutional principle in section 57 of the Australian Constitution that, in all cases of disagreement between the House of representatives and the Senate, it is the position of the House of Representatives that shall prevail.

Honourable Members, like Kenya's devolved governance structure, the architecture of the Federal Government of Germany has various tiers of government. Moreover, the budget process in Parliament of Germany closely mirrors that of Parliament of Kenya in that it has Division of Revenue Bill and a mediation process. In terms of mediation, it is important to point out that, whenever the *Bundestag*, the equivalent of the National Assembly, approves a compromise proposal of a Bill developed by the Mediation Committee, the *Bundesrat*, may raise an objection to that proposal only with absolute majority or even double qualified majority.

It is important to note that, even in cases where the *Bundesrat* musters an absolute majority to object to a compromise proposal on a Bill approved by the *Bundestag*, if the *Bundestag* rejects the objection with a similar threshold, the Bill is passed and can become law (*The German Bundestag Functions and Procedures: 17th electoral term, page 121-122*). As such, the procedure allows for unlocking a deadlock that may arise from a mediation process by granting veto power to the *Bundestag*.

Honourable Members, as you may have noticed, the practice in Japan, Australia and Germany, does not contemplate a limitless ping-pong in the bicameral consideration of such important money-bills, particularly critical bills relating to the budget process. The matter must come to rest, and the manner of resting it is through veto vested in the House of Parliament that represents the people. In our case, that House is the National Assembly. This scenario addresses the third question.

Honourable Members, while these practices are not explicitly provided for in the Constitution of Kenya, it ought not be lost that a Constitution is a living document and its growth is catalysed when certain provisions therein are tested, as is the case now. It is perhaps the opportune time to re-examine specific provisions of our Constitution relating to financial procedures, especially the Division of Revenue Bill and a likely stalemate on the Bill.

A reading of Article 113 of the Constitution reveals its terminal nature on a Bill whose passage requires both Houses and what has been referred to in the Australia as 'deadlock clause'. Indeed, this provision exposes legislation to a potentially limitless mediation cycle that sounds a death knell to any Bill whose bicameral consideration results in a disagreement between the Houses on certain provisions therein. Whereas this would not be seriously injurious on ordinary Bills whose enactment may be delayed, up to and including being re-introduced in a succeeding Parliament, it is perilous to subject a critical Bill like the Division of Revenue Bill to a limitless cycle of disagreement between the Houses of Parliament. This constitutional anomaly needs to be addressed, particularly so with regards to a Division of Revenue Bill.

Honourable members, an avenue for concluding the legislative process of the County Allocation of Revenue Bill, which is a special Bill pursuant to Article 110(2)(a)(ii) of the Constitution, has been provided in that the National Assembly may only amend or veto it by a resolution supported by at least two thirds of the Members of the National Assembly. If the National Assembly is unable to muster this threshold, then the County Allocation of Revenue Bill as passed by the Senate becomes law.

Whereas the drafters of the Constitution ensured that the County Allocation of Revenue Bill is not deadlocked by a mediation process, the Constitution has not granted similar constitutional safeguard on how to unlock the Division of Revenue Bill from the shackles of a Mediation Process that has resulted in the defeat of the Bill.

It can therefore be reasonably argued that the drafters of the Constitution, in providing under Article 95(4)(a) of the Constitution that the National Assembly **determines the allocation of national revenue between the levels of government** without a proviso of overriding Senate's decision on it, they contemplated that the Division of Revenue Bill as passed by the National Assembly is the law.

As I conclude, **Honourable Members**, with respect to the county governments, the Constitution provides avenues through which the current delay in the enactment of the Division of Revenue Bill can be mitigated. Firstly, outside the Division of Revenue Act, county governments have recourse to the revenue generated by themselves and deposited in their respective County Revenue Funds pursuant to Article 207(1) of the Constitution.

Secondly, county governments have recourse to re-appropriate and utilize revenue of the previous years, which is retained in the County Revenue Fund at the close of the preceding financial year.

Thirdly, and more importantly, Article 203(2) of the Constitution guarantees county governments an equitable allocation of a minimum of fifteen percent of all national revenue based on the most recent audited accounts of national revenue received as approved by the National Assembly. This amount ought to be readily available to County Governments as it is already charged, allocated and granted by the Constitution. It ought not to be subjected to the bicameral

legislative process between the two Houses of Parliament with the possibility of protracted disagreement, mediation and even defeat within the framework of Article 113(4) of the Constitution. As this is a direct charge by the Constitution, Article 206(2) (c) empowers the Controller of Budget to authorize the withdrawal of this amount from the Consolidated Fund.

I urge the Houses to consider making appropriate amendments to the Public Finance Management Act in order to provide a comprehensive mechanism to enable county governments to access preliminary funding from the three options at their disposal. This will ensure that county governments sustain their operations in the event of any future protracted enactment of the Division of Revenue Bill.

Honourable Members, as your Speaker, I am enjoined to uphold and protect the Constitution and the Standing Orders of the House. This calls for ensuring that any proposed legislation for consideration by the House accords with the requirements of the Constitution. I am persuaded that the Division of Revenue Bill (Senate Bill No. 13 of 2019) offends not only the spirit of the Constitution but also the customs and traditions of this House and other comparable parliamentary jurisdictions which Standing Order 1(2) obligates me to abide by, in making any decision in respect of a matter that is not expressly provided for in our Standing Orders.

Honourable Members, it is the duty of the Speaker to guide the House with respect to business before it. Having addressed the question of origination of a Division of Revenue Bill, **it is therefore my finding that the motion for Second Reading of the Division of Revenue Bill (Senate Bill No. 13 of 2019) was indeed improperly before the House.**

I make this direction in order to remove ambiguity and conflict arising out of the attempted parallel legislative process by this House and the Senate and also to expedite the timely conclusion of the Annual Division of Revenue Bill through one process as contemplated by the Constitution.

The House is accordingly guided. I thank you.”

5. MESSAGE FROM THE SENATE

The Speaker conveyed the following Message –

Passage of the Division of Revenue (No. 2) Bill (National Assembly Bill No. 59 of 2019)

“Honourable Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received a Message from the Senate regarding the passage of the Division of Revenue (No. 2) Bill (National Assembly Bill No. 59 of 2019).

Honourable Members, the Message reads in part, and I quote, “***...the Senate considered and passed the said Bill, on Wednesday, 7th August, 2019***

with amendments...” The Senate now seeks the concurrence of the National Assembly on the said Bill in accordance with the provisions of Article 110(4) of the Constitution.

Honourable Members, you will recall that the National Assembly passed the Bill, providing for a figure of **Kshs. 316.5 billion** to be allocated to the counties. However, the Senate has amended that amount upwards, allocating a figure of **Kshs.335.67 billion** to the counties.

Honourable Members, given the urgent need to pass this Bill, and pursuant to the provisions of Standing Order 41(6)(a) I have instructed the Clerk to prepare a Supplementary Order Paper to allow the House to consider the Senate amendments. In this regard, I urge the House to pay particular attention to Order numbers 13 and 14 in the Supplementary Order Paper.

Honourable Members, I am aware that the Budget and Appropriations Committee is already seized of the matter and will guide the House during the consideration of the Senate amendments to the Bill. I thank you!”

6. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Report of the Auditor-General and the Financial Statements in respect of the Jubilee Party for the year ended 30th June, 2018 and the certificates therein.
- (ii) Report of the National Gender and Quality Commission (NGEC) Strategic Plan 2019 - 2024.
- (iii) Board Report on Project Proposals Approvals, Disbursement Status and Restrictions imposed on Constituency account for the Fourth Quarter of 2018/2019 Financial Year (1st April, 2019 to 30th June, 2019) from the NG-CDF Board.
- (iv) Report of the Auditor- General and the Financial Statements of National Constituencies Development Fund Board for the Year ended 30th June, 2018 and the certificates therein.
- (v) The Reports of the Auditor-General and the Financial Statements in respect of the Kenya Post Office Savings Bank for the year ended 31st December, 2017 and the certificates therein.
- (vi) The Reports of the Auditor-General and the Financial Statements in respect of the following **Institutions** for the year ended 30th June, 2018 and the certificates therein: -
 - a) Intergovernmental Relations Technical Committee;
 - b) Street Families Rehabilitation Trust Fund;
 - c) National Crime Research Centre;
 - d) Kenya Film Classification Board;
 - e) Kenya Yearbook Editorial Board;
 - f) Keroka Technical Training Institute;
 - g) Kenya Wildlife Services;
 - h) Kenya Forest Service;
 - i) Anti-Counterfeit Agency;

- j) State Department for Public Service and Youth;
 - k) Kenya Electricity Transmission Company Limited;
 - l) Lake Victoria South Water Services Board;
 - m) Konza Technopolis Development Authority;
 - n) Lake Basin Development Authority;
 - o) Tourism Regulatory Authority;
 - p) Kenya Railways Corporation; and
 - q) National Transport and Safety Authority.
- (vii) The Reports of the Auditor-General and the Financial Statements in respect of the following **Constituencies** for the year ended 30th June, 2018 and the certificates therein: -
- a) Webuye West;
 - b) Nambale;
 - c) Embakasi East;
 - d) Ndia;
 - e) Lurambi;
 - f) Kwanza;
 - g) Budalangi;
 - h) Teso North;
 - i) Teso South;
 - j) Awendo;
 - k) Kuria East;
 - l) Kuria West;
 - m) Kiminini;
 - n) Saboti; and
 - o) Kimilili.

(Majority Party Whip)

- (viii) Reports of the Departmental Committee on Labour and Social Welfare on:-
- a) A Fact-Finding Mission on The Welfare of Migrant Kenyan Workers in The Kingdom of Saudia Arabia from February 27th to 3rd March, 2019;
 - b) The 3rd Session of The African Union Specialized Technical Committee on Social Development, Labour And Employment in Addis Ababa, Ethiopia from 1st to 5th April, 2019;
 - c) The 12th Session of the Conference of States Parties to The Convention on The Rights of Persons with Disabilities, UN Headquarters, New York from 10th to 13th June, 2019; and
 - d) The 108th Session of the International Labour Conference in Geneva, Switzerland from 12th to 21st June, 2019.

(The Chairperson, Departmental Committee on Labour and Social Welfare)

- (ix) Reports of the Select Committee on Regional Integration on the following:-
- a) The Report of the EALA Committee on Communication, Trade and Investment on the East African Community Customs management (Amendment) Bill, 2018 and the EALA Committee on General Purpose on Consideration of the East African Community Annual Report 2014/2015; and

- b) An Interactive Study visit to the East African Community Headquarters in Arusha, Tanzania from May 16th to 22nd May, 2019.

(The Chairperson, Committee on Regional Integration)

7. NOTICE OF MOTION

The following Notice was given –

THAT, this House **adopts** the Report of the Departmental Committee on Labour and Social Welfare on the Visit to Riyadh, Saudi Arabia on a Fact Finding Mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from February 27 to March 3, 2019, *laid on the Table of the House on Thursday, August 8, 2019.*

(The Chairperson, Departmental Committee on Labour and Social Welfare)

8. QUESTIONS

The following Questions were asked –

- (i) Question No. 369/2019 by the Member for Mwingi North (Hon. Paul Nzengu, MP) regarding a disjointed tarmac road between *Kamuwongo* Market and *Kandwia* Market in Mwingi North 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. 375/2019 by the Member for Nakuru County (Hon. Liza Chelule, MP) regarding the status and criteria used for identification and registration of Elderly persons in Nakuru County who qualify to benefit from the Elderly-Persons Cash-Transfer Programme;

(To be replied by the Cabinet Secretary for Labour and Social Protection before the Departmental Committee on Labour and Social Welfare)

- (iii) Question No. 376/2019 by the Member for Baringo Central (Hon. Joshua Chepyegon Kandie, MP) regarding the introduction of school feeding programmes in all primary and secondary day schools in Arid and Semi-Arid areas;

(To be replied by the Cabinet Secretary for Education before the Departmental Committee on Education and Research)

- (iv) Question No. 377/2019 by the Nominated Member (Hon. Prof. Jacqueline Oduol, MP) regarding the status of implementation of the Counter Trafficking in Persons Act and the National Plan of Action for Combating Human Trafficking;

(To be replied by the Cabinet Secretary for Labour and Social Protection before the Departmental Committee on Labour and Social Welfare)

- (v) Question No. 378/2019 by the Member for Embakasi Central (Hon. Benjamin G. Mwangi, MP) regarding the status of the construction of Kangundo Road in Nairobi City County by the National Government;

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

- (vi) Question No. 379/2019 by the Member for Mumias East (Hon. Benjamin J. Washiali, CBS, MP) regarding the exact quantities of the contaminated sugar being held by the Directorate of Criminal Investigations impounded from factories and other stores across the Country in 2018;

(To be replied by the Cabinet Secretary for Interior and Coordination of National Government before the Departmental Committee on Administration and National Security)

9. **STATEMENTS**

- (i) Pursuant to Standing Order 44(2)(c), the Chairperson of the Departmental Committee on Transport and Public Works and Housing issued a statement regarding transportation of Cargo by SGR;
- (ii) Pursuant to Standing Order 44(2)(c), the Hon. Francis Kuria Kimani, MP (Molo Constituency) sought a statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding Dismissal of 528 Employees of Timsales Ltd in Elburgon, Molo; and
- (iii) Pursuant to 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, September 10, 2019.

10. **PROCEDURAL MOTION - REDUCTION OF PUBLICATION PERIOD OF A SPECIFIED BILL**

Motion made and Question proposed-

THAT, pursuant to the provisions of Standing Order 120, this House resolves to reduce the publication period of the Public Finance Management (Amendment) Bill (National Assembly Bill No. 63 of 2019) from **14 days to 7 days**.

(The Leader of the Majority Party)

There being no debate arising;

Question put and agreed to.

11. **MOTION – REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE STATISTICS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 37 OF 2019)**

Motion made and Question proposed -

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Statistics (Amendment) Bill (National Assembly Bill No. 37 of 2019).

(The Leader of the Majority Party)

Debate on the Motion having been concluded on Wednesday, August 07, 2019 (Afternoon Sitting);

Question put and agreed to;

Motion made and Question proposed-

THAT, the Statistics (Amendment) Bill (National Assembly Bill No. 37 of 2019) be read a Third Time.

(The Leader of the Majority Party)

There being no debate arising;

Question put and agreed to;

Bill read a Third Time and **passed**.

12. **MOTION – VETTING OF A NOMINEE FOR APPOINTMENT AS THE CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE KENYA FISH MARKETING AUTHORITY**

Motion made and Question proposed-

THAT, taking into consideration the findings of the Departmental Committee on Agriculture & Livestock in its Report on the *Vetting of a Nominee for Appointment as the Chairperson of the Board of Directors of the Kenya Fish Marketing Authority, laid on the Table of the House on Wednesday, August 7, 2019*, and pursuant to section 201(1)(a) & (2) of the Fisheries Management and Development Act, 2016 and section 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House **approves** the appointment of **Hon. Ochieng' G. Mbeo** as the Chairperson to the Board of Directors of the Kenya Fish Marketing Authority.

(The Chairperson, Departmental Committee on Agriculture & Livestock)

Debate on the Motion having been concluded on Wednesday, August 07, 2019 (Afternoon Sitting);

Question put and agreed to.

13. **THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) (NO.3) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2019)**

Order for Second Reading read;

THAT, the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill (National Assembly Bill No. 35 of 2019) be now read a Second Time

(The Chairperson, Departmental Committee on Justice and Legal Affairs)

Debate on the Second Reading having been concluded on Wednesday, July 31, 2019 (Afternoon sitting);

Question put and agreed to;

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

14. **THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 63 OF 2019)**

(The Chairperson, Budget & Appropriations Committee)

Order for First Reading read;

Bill read a First Time and referred to the relevant Committee pursuant to Standing Order 127(6).

15. **MOTION – SENATE AMENDMENTS TO THE DIVISION OF REVENUE (NO. 2) BILL (NATIONAL ASSEMBLY BILL NO. 59 OF 2019)**

Motion made and Question proposed:-

THAT, the Senate Amendments to the Division of Revenue (No. 2) Bill (National Assembly Bill No. 59 of 2019) be now considered.

(The Vice Chairperson, Budget and Appropriations Committee)

Debate arising;

(Change of Chairperson from the Deputy Speaker to the Fourth Chairperson)

Rising in her place on a point of order under Standing Order 95, the Member for Kitui South (Hon. Rachel Nyamai) claimed to move that “the Mover be called upon to reply”

The Speaker acceding to the request;

Question put and agreed to;

Thereupon, Mover replied;

Question put and negatived.

Bill referred to a Mediation Committee.

16. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The Fourth Chairperson in the Chair

The National Drought Management Authority (Amendment) Bill (National Assembly Bill No. 26 of 2019)

Clauses 3 & 4 - agreed to

Clause 2 - agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported without amendments.

17. **HOUSE RESUMED** – The Fourth Chairperson on the Chair**The National Drought Management Authority (Amendment) Bill (National Assembly Bill No. 26 of 2019)**

Bill reported without amendments;

Motion made and Question proposed-

THAT, the House do agree with the Committee in the said report
(Leader of the Majority Party)

There being no debate arising;

Question deferred.

18. **THE SECTIONAL PROPERTIES BILL (NATIONAL ASSEMBLY BILL NO. 23 OF 2019)**

Order for Second Reading read;

THAT, the Sectional Properties Bill (National Assembly Bill No. 23 of 2019) be now read a second time.

(The Leader of the Majority Party)

(Change of Chairperson from Fourth Chairperson to First Chairperson)

Debate arising;

Debate concluded;

Mover replied;

Question deferred.

And the time being two minutes past Seven O'clock, the Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

19. HOUSE ROSE - at two minutes past Seven O'clock

MEMORANDUM

The Speaker will take the Chair after the Long Recess on
Tuesday, 10th September 2019 at 2.30 p.m.

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