



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, SEPTEMBER 12, 2019

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

4. **MESSAGES**

The Speaker conveyed the following Messages from the Senate:-

PASSAGE OF THE LOCAL CONTENT BILL (SENATE BILL NO. 10 OF 2018) AND THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILL NO. 32 OF 2018)

Honourable Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received Messages from the Senate regarding its decision on the following Bills:-

- (i) The Local Content Bill (Senate Bill No. 10 of 2018); and
- (ii) The Mental Health (Amendment) Bill (Senate Bill No. 32 of 2018).

Honourable Members, the first Message relates to passage of the Local Content Bill (Senate Bill No. 10 of 2018) which seeks "to provide for a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil, petroleum resources; to increase the local value capture along the value chain in the exploration of gas, oil, petroleum and mineral resources"

The second Message is in respect of the passage of the the Mental Health (Amendment) Bill (Senate Bill No. 32 of 2018) seeking "to amend the Mental Health Act; to realign the membership of the Kenya Mental Health Board; to impose an obligation on each level of government and to address the issue of accessibility to mental health services including care, treatment and rehabilitation of persons with mental illness".

Honourable Members, the Messages read in part "that the Senate considered and passed the said Bills with amendments on Wednesday, 24th July, 2019 and now seeks the concurrence of the National Assembly." Standing Order 143(1) (a) requires the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of a

Message from the Senate. Accordingly, I direct that the Bills be read a First Time during the next sitting.

Honourable Members, Paragraph (2) of Standing Order 143 provides that –

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution”.

The opinion envisioned under Standing Order 143(2) is a pronouncement, by the Speaker, as to whether a Bill originating in the Senate is a ‘Money Bill’ in terms of Article 114 of the Constitution.

In this regard, I direct that, after First Reading, the two Bills be referred to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion contemplated under Standing Order 143(2). Thereafter, I shall guide the House accordingly on how to proceed with the consideration of the Bills.

I thank you! “

5. **PETITIONS**

The following Petitions were presented by:-

- a) The Member for Tigania East (Hon. Josphat Kabeabea) regarding alleged unlawful occupation of ancestral land in Tigania East Constituency by the Kenya Defence Forces;
- b) The Member for Uasin Gishu County (Hon. Gladys Shollei) regarding withdrawal of harmful chemical pesticides from the Kenyan market.
- Petitions referred to the relevant Departmental Committees pursuant to Standing Order 227.

6. **PAPERS LAID**

The following Papers were laid on the Table of the House:-

- 1) 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) Business Registration Service;
 - b) Kaimosi Friends University College;
 - c) Sacco Societies Regulatory Authority;
 - d) National Hospital Insurance Fund;
 - e) Kenya School of Government;
 - f) Institute of Human Resource Management;
 - g) Communication Authority of Kenya; and
 - h) National Cereals and Produce Board.
- 2) Quarterly Economic and Budgetary Review Report (Fourth Quarter) for the Financial year 2018/2019 from the National Treasury and Planning.

(Majority Whip)

- 3) Report of the Constitutional Implementation Oversight Committee on its consideration of the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No. 52 of 2019).

(Chairperson, Constitutional Implementation Oversight Committee)

- 4) Report of the Select Committee on National Government Constituencies Development Fund on its consideration of the National Government Constituencies Development Fund (Amendment) Bill, 2019.

(Chairperson, Select Committee on National Government Constituencies Development Fund)

7. **QUESTIONS**

- The following Questions were asked –

- (i) Question No.383/2019 by the Member for Busia County (Hon. Florence Mutua) regarding the implementation of the Sendai Framework for Disaster Risk Reduction adopted by the Third United Nations World Conference in March 2015.

(To be replied by the Cabinet Secretary for Health before the Departmental Committee on Health)

- (ii) Question No.391/2019 by the Member for Mbeere North (Hon. Muriuki Njagagua) regarding the stalled tarmacking of the Kiritiri-Siakago Road.

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

- (iii) Question No.392/2019 by the Member for Mwingi West (Hon. Charles N. Nguna) regarding criteria used by the Teachers Service Commission for the recruitment and promotion of teachers.

(Question for Written Reply by the Teachers Service Commission)

- (iv) Question No.393/2019 by the Member for Matayos (Hon. Geoffrey M. Odanga) regarding issuance of tax exemption certificates to Persons Living with Disabilities.

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

- The following Question was deferred –

- (i) Question No.394/2019 by the Member for Igembe South (Hon. John Paul Mwirigi) regarding elevation and gazettelement of Igembe Campus of Chuka University to university status.

8. **STATEMENTS**

The following Statements were made:-

- a) Pursuant to Standing Order 44(2)(c), the Member for Endebess (Hon. (Dr.) Robert Pukose) sought a Statement from the Chairperson of the Departmental Committee on Administration and National Security on forceful eviction of residents of Molem area

and the killing of a nursery school child by police in Endebess Constituency on Wednesday, September 11, 2019.

- *The Leader of the Majority Party undertook to liaise with the Departmental Committee on Administration and National Security to facilitate response to the Statement in the coming week.*

- b) Pursuant to the provision of Standing Order 44(2)(a), the Leader of Majority Party issued a statement regarding the business of the House for the Week commencing Tuesday, September 17, 2019.

9. **PROCEDURAL MOTION - EXTENSION OF THE PERIOD FOR CONSIDERATION OF A SPECIFIED PUBLIC PETITION**

Motion made and Question proposed:

THAT, notwithstanding the provisions of Standing Order 227(2)(Committal of petitions), this House **resolves** to extend the period for consideration of the public petition before the Departmental Committee on Justice and Legal Affairs regarding *Funding of the Lesbians, Gays, Bisexual, Transgender, Queer, Intersex (LGBTQI) agenda by foreign organizations in Kenya* by a further period of ninety (90) days with effect from August 20, 2019.

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Debate arising;

Question put and negatived.

10. **MOTION – REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE SENATE AMENDMENTS TO THE COPYRIGHT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2017)**

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 Senate amendments to the Copyright (Amendment) Bill (National Assembly Bill No. 33 of 2017).

(Leader of the Majority Party -11.09.2019)

Debate on the Motion having concluded on Wednesday, 11th September 2019;

Question put and agreed to.

11. **MOTION – REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE SENATE AMENDMENTS TO THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2018)**

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 Senate amendments to the County Governments Retirement Scheme Bill (National Assembly Bill No. 10 of 2018).

(Leader of the Majority Party -11.09.2019)

Debate on the Motion having concluded on Wednesday, 11th September 2019;

Question put and agreed to.

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

Motion made and Question proposed:-

THAT, the Public Finance Management (Amendment) Bill (National Assembly Bill No. 63 of 2019) be read a Second Time.

(Chairperson, Budget and Appropriations Committee -11.09.2019)

Debate on the Motion having concluded on Wednesday, 11th September 2019;

Question put and agreed to;

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

13. **MOTION - REPORT ON THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS, 2019 AND THREE OTHER RELATED SETS OF REGULATIONS**

Motion made and Question proposed:-

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (*Biashara Kenya Fund*) Regulations, 2019 (Legal Notice No. 78 of 2019); the Public Finance Management (*Uwezo Fund*)(Revocation) Regulations, 2019 (Legal Notice No. 79 of 2019); the Public Finance Management (Women Enterprise Fund)(Revocation) Regulations, 2019 (Legal Notice No. 80 of 2019); and the Public Finance Management (Youth Enterprise Development Fund)(Revocation) Regulations, 2019 (Legal Notice No. 81 of 2019), *laid on the Table of the House on Tuesday, July 30, 2019*, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4)(b) **annuls in entirety-**

- (a) the Public Finance Management (*Biashara Kenya Fund*) Regulations, 2019 (Legal Notice No. 78 of 2019);
- (b) the Public Finance Management (*Uwezo Fund*)(Revocation) Regulations, 2019 (Legal Notice No. 79 of 2019);
- (c) the Public Finance Management (Women Enterprise Fund)(Revocation) Regulations, 2019 (Legal Notice No. 80 of 2019); and,
- (d) the Public Finance Management (Youth Enterprise Development Fund)(Revocation) Regulations, 2019 (Legal Notice No. 81 of 2019).

(Chairperson, Committee on Delegated Legislation -11.09.2019)

Debate on the Motion having concluded on Wednesday, 11th September 2019;

Question put and agreed to.

14. **MOTION - MEDIATED VERSION OF THE DIVISION OF REVENUE (NO. 2) BILL (NATIONAL ASSEMBLY BILL NO. 59 OF 2019)**

Motion made and Question proposed –

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Division of Revenue (No.2) Bill (National Assembly Bill No. 59 of 2019) *laid on the Table of the House*

on Wednesday, September 11, 2019, and **approves** the Mediated Version of the Division of Revenue (No.2) Bill (National Assembly Bill No. 59 of 2019).

(Chairperson, Mediation Committee on the Division of Revenue (No.2) Bill, 2019)

Paper Laid

- The *Hansard* record of proceedings of the meeting of the Mediation Committee on the Division of Revenue (No.2) Bill (National Assembly Bill No. 59 of 2019) held on Wednesday, 11th September 2019 at 11.00am in the Mini Chamber, County Hall.

(Chairperson of Mediation Committee on the Division of Revenue (No.2) Bill and of the Budget and Appropriations Committee)

Debate arising;

Rising in his place on a Point of Order under Standing Order 95, the Member for Endebess (Hon. (Dr.) Robert Pukose) claimed to move *'that the Mover be now called upon to Reply'*; And the Speaker acceding to the claim;

Question *'that the Mover be now called upon to reply'* put and agreed to.

Thereupon the Mover replied;

Before putting the Question, the Honourable Speaker issued the following guidance -

On Variance in the Report of the Mediation Committee on the Mediated Version of the Division of Revenue (No.2) Bill, 2019 tabled in both Houses of Parliament

"Honourable Members, As you are aware, the Report of the Mediation Committee on the Division of Revenue (No.2) Bill (National Assembly Bill No. 59 of 2019) was tabled yesterday, September 11, 2019, during the afternoon sitting by the Chairperson of the Mediation Committee, the Hon. Kimani Ichung'wa, who also serves as the Chairperson of the Budget and Appropriations Committee of this House.

Thereafter, **Honourable Members,** while moving the motion for adoption the Report and approval of the Mediated Version of the Division of Revenue Bill, earlier in the afternoon today, the Chairperson of the Mediation Committee brought to the attention of the House that, his Senate counterparts in the Mediation Committee had tabled, on the same day, Wednesday 11th September 2019, the same Report containing a Bill that had a slight variance to the version of the Bill agreed by the Mediation Committee.

Honourable Members, the said variance concerns Clause 1 of the Division of Revenue (No. 2) Bill, 2019 as agreed to by the Mediation Committee. The Chairperson and part of the Members of the Mediation Committee, drawn from this House, have this afternoon averred that the version of the Bill agreed to and proposed by the Committee contains Clause 1, which reads as follows—

Clause 1. This Act may be cited as the Division of Revenue Act, 2019 and shall be deemed to have come into force on the 1st July 2019.

According to the Chairperson, the said variance emanates from the fact that the Version of the Bill that was tabled in the Senate ostensibly provides that the commencement date shall be upon publication of the Act in the Gazette, after assent.

Honourable Members, following the concerns raised by the Chairperson of the Mediation Committee, I undertook to verify the matter from the official records available. In this

regard, I have since confirmed what transpired in the Mediation Committee from the Hansard report of the proceedings of the said Committee in the meeting that adopted the agreed version of the Division of Revenue Bill that they were tasked to propose to the Houses. Indeed, I have since confirmed also that, as per the Hansard record of the said meeting of Committee held in the morning of 11th September 2019, Clause 1 providing for commencement was indeed amended.

Honourable Members, a few procedural questions do arise from the foregoing, the first of which is whether or not the Report of the Mediation Committee was altered. I have indeed confirmed that the Annexure to the Report of the Mediation Committee was slightly altered with respect to Clause 1, to a version of the Bill, outside that which was proposed by the Mediation Committee. I have also confirmed, from the record of the "Papers laid" that, the Chairperson of the Mediation Committee quashed the alteration and, by way of handwritten text, reverted to the text as adopted by the said Committee. This is authenticated by his signature which he appended against the correction, **before tabling** the report of the Mediation Committee in the House yesterday afternoon.

Honourable Members, in the absence of a clear record in the Minutes and Report of the Mediation Committee with regard to the text of Clause 1 of the Bill, as your Speaker, the question before me at the moment is two-fold -

(i) what avenue remains at the Speaker's disposal to ascertain the correct text of the said Clause?

(ii) what is the correct text of the said Clause and what remedy is available at this penultimate stage?

Honourable Members, as you are without doubt aware, the Hansard Report, as defined by Erskine May and as applied in Commonwealth jurisdictions, is the **official** record of the proceedings of the House in either its plenary or in its Committee sittings, Mediation Committees included. As such, the Hansard is a vital component of parliamentary record, and is a sacrosanct document whose sanctity and inviolability ought to be continuously guarded and upheld at all times.

Secondly, **Honourable Members**, does the version of the Division of Revenue Bill, 2019 before this House reflect what was agreed to by the Mediation Committee and proposed to the Houses of Parliament in furtherance to the provisions of Article 113(2) of the Constitution? Based on the Hansard record of the meeting of the Mediation Committee, and which is available for perusal and verification by any Member or person as laid by the Chairperson of the Committee when moving the motion this afternoon, it is clear that the Bill before us today is the correct version that was agreed upon by the Mediation Committee.

Honourable Members, It is also my considered view that, the pertinent issue before me this afternoon is not about which version of Clause 1 stands out as legally superior, but rather, which version of Clause 1 was agreed to by the Mediation Committee that the Speaker of the Senate and I appointed pursuant to the provisions of Article 113(1) of the Constitution.

Therefore, **Honourable Members**, before I put the Question for adoption of the Report of the Mediation Committee on the Division of Revenue (No.2) Bill (National Assembly Bill No. 59 of 2019) and for approval of the said Bill, I wish to confirm that the text of Clause 1

according to the correct and authenticated Annexure to the Report as well as pages 7 and 8, of the Hansard Report reads as follows-

Clause 1. This Act may be cited as the Division of Revenue Act, 2019 and shall be deemed to have come into force on the 1st July 2019.

I have no doubt therefore that this is the correct text as agreed to by the Mediation Committee. Indeed, the correct text of the said clause is accurately captured in the version of the Division of Revenue Bill, 2019 published by the Clerk **NOTICE I** in today's Order Paper. **Therefore that is the copy and true impression of the version of the Bill agreed to by the Mediation committee and proposed to the Houses of Parliament.**

Finally, **Honourable Members**, we have a duty to protect the accuracy of our records and guarantee dependability of those employed to facilitate the work of this institution. In this regard, I call upon all officers facilitating the various Committees of the House, including Mediation Committees, to always endeavour to guide Members accurately from commencement to conclusion of all stages of Committee deliberations and resolutions to guarantee seamless coordination of law-making, representation and oversight responsibilities of Honourable Members.

The House is accordingly guided. I thank you.”

Question on the Motion put and agreed to.

15. **THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILL NO. 22 OF 2018)**
(Chairperson, Departmental Committee on Justice & Legal Affairs)
Order for Second Reading read;
Order deferred.
16. **THE EARLY CHILDHOOD EDUCATION BILL (SENATE BILL NO.26 OF 2018)**
(Chairperson, Departmental Committee on Education and Research)
Order for Second Reading read;
Order deferred.
17. **THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL (NATIONAL ASSEMBLY BILL NO. 24 OF 2018)**
(Leader of the Majority Party)
Order for Second Reading read;
Order deferred.
18. **MOTION- REPORT ON A FACT FINDING MISSION ON THE WELFARE OF MIGRANT KENYAN WORKERS IN THE KINGDOM OF SAUDI ARABIA**
(Chairperson, Departmental Committee on Labour & Social Welfare)
Order deferred.

There being no other business standing upon the Order Paper; And the time being nine minutes past five o'clock, the Speaker adjourned the House without Question put pursuant to the Standing Orders.

19. HOUSE ROSE - at nine minutes past five o'clock

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MEMORANDUM

The Speaker will take the Chair on
Tuesday, September 17, 2019 at 2.30 p.m.

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