



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, NOVEMBER 05, 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. **COMMUNICATION FROM THE CHAIR**

The Speaker conveyed the following Communication –

**ON EXTENSION OF TIME LIMIT FOR SUBMISSION AND PUBLISHING OF THE
CENTRAL BANK OF KENYA'S FINANCIAL STATEMENTS AND REPORT FOR
FINANCIAL YEAR 2018/2019**

“Honourable Members, I wish to inform you that my office is in receipt of a letter dated 24th October 2019 from the Cabinet Secretary of the National Treasury and Planning regarding the statutory requirement for the submission of financial statements by the Central Bank of Kenya (CBK). In his letter, the Cabinet Secretary wishes to bring the attention of the House to the following-

- (i) That the bank has concluded the audit process for the financial year 2018/2019 in all aspects except for the signing of the audit report as required under section 54 of the Central Bank of Kenya Act;
- (ii) That due to the vacancy in the office of the Auditor General, and in line with provisions of section 54 of the Central Bank of Kenya Act, the Bank is unable to submit certified financial statements for the financial year 2018/2019; and
- (iii) That consequently, the Bank is unable to publish the 2018/2019 annual report pursuant to the provisions of section 55 of the said Act.

Honourable Members, section 81 of the Public Finance Management Act (2012) requires the Accounting Officer of a National Government entity to, not later than three months after the end of each financial year, submit the financial statements to the Auditor-General amongst other constitutional offices, and publish and publicise the said financial statements.

In the case of CBK, the Cabinet Secretary for National Treasury is thereafter required to submit the financial statements to the National Assembly.

Honourable Members, as we are all aware, the position of the Auditor-General is currently vacant, with the term of the former Auditor-General having come to an end in August, 2019. Given the foregoing fact, the Cabinet Secretary is requesting the National Assembly to extend the time limit for submission of the report on the Bank's operations pursuant to the provisions of section 90 of the Public Finance Management Act, 2012, which states as follows –

90. Any House of Parliament may, by resolution, extend the time limit, other than a time limit set in the Constitution, for submitting a statement or other document required to be submitted to it under this Act.

Honourable Members, this is indeed a precedent setting request. I hereby refer the request to the Public Investments Committee for consideration. The Committee should expeditiously consider the matter and submit its Report to the House by 20th November 2019 to enable the House consider the request by the Cabinet Secretary for National Treasury and Planning for extension of the time limit for CBK to submit certified financial statements for the financial year 2018/2019 and publish the 2018/2019 annual report.

I thank you.”

5. PAPERS LAID

The following Papers were laid on the Table of the House–

- i) The consolidated National Government Investment Report for the Year 2018/2019 from the National Treasury and Planning;
- ii) Assessment of Uptake and Impact of Tax Amnesty in Kenya as at September 2019 from the Institute of Certified Public Accountants of Kenya;
- iii) Annual Report and Financial Statements for the year ended 2016/2017 from the Kenya Tourism Board;
- iv) The Reports of the Auditor-General on the Financial Statements in respect of the Ugenya Constituency for the year ended 30th June, 2018 and the certificates therein; and
- v) The Reports of the Auditor-General on the Financial Statements in respect of Simlaw Seeds Company Limited for the year ended 30th June, 2017 and the certificates therein.

(Leader of the Majority Party)

- vi) The Seventh Report of the Special Funds Accounts Committee on its consideration of the Audited Financial Statements for the Uwezo Fund for the Financial Year 2016/2017; and the Women Enterprise Fund for the Financial Year 2017/2018.

(Hon Kathuri Murungi, Chairperson, Special Funds Accounts Committee)

- vii) Report of the Departmental Committee on Environment and Natural Resources on its consideration of a Petition regarding Human – Wildlife Conflict in Kibwezi East Constituency.

(Hon. Kareke Mbiuki, Chairperson, Departmental Committee on Environment and Natural Resources)

6. **NOTICE OF MOTION****Adoption of the Report of the Special Funds Accounts Committee on the audited financial statements of the Uwezo Fund and Women Enterprise Fund**

THAT, this House adopts the Report of the Special Funds Accounts Committee on its consideration of the Audited Financial Statements for the Uwezo Fund for the Financial Year 2016/2017; and the Women Enterprise Fund for the Financial Year 2017/2018, *laid on the Table of the House on Tuesday November 5, 2019.*

(Hon Kathuri Murungi, Chairperson, Special Funds Accounts Committee)

7. **QUESTIONS**

The following Questions were asked –

- i). Question by Private Notice No.042/2019 by the Member for Konoin (Hon. Brighton Leonard Yegon) regarding disappearance and subsequent death of one Caleb Kiplangat, a student at the Technical University of Mombasa.
(To be replied by the Cabinet Secretary for Interior and Coordination of National Government before the Departmental Committee on Administration and National Security)
- ii). Question by Private Notice No.043/2019 by the Member for Buuri (Hon. Rindikiri Mugambi Murwithania) regarding the death of one Patrick Gitonga Henry at Isiolo Hospital.
(To be replied by the Cabinet Secretary for Interior and Coordination of National Government before the Departmental Committee on Administration and National Security)
- iii). Question No.468/2019 by the Member for Imenti South (Hon. Kathuri Murungi) regarding imposition of VAT on diabetes management devices.
(To be replied by the Cabinet Secretary for the National Treasury and Planning before the Departmental Committee on Finance and National Planning)
- iv). Question No.469/2019 by the Member for Laikipia County (Hon. Catherine Waruguru) regarding shortage of *Nevirapine* drug in hospitals countrywide.
(To be replied by the Cabinet Secretary for Health before the Departmental Committee on Health)

8. **STATEMENTS**

The Chairperson of the Budget and Appropriations Committee (Hon. Kimani Ichungwa) sought the leave of the Speaker to respond to the Statement sought by the Member for Homa Bay Town (Hon. Peter Kaluma) on budget cuts affecting the Judiciary on Thursday, 14th November 2019. The Honourable Speaker acceded to the request.

9. **COMMITTEE OF THE WHOLE HOUSE**

Before the House proceeded to Committee of the Whole House, the Speaker issued the following guidance by way of a Communication-

GUIDANCE ON CONSIDERATION OF THE PRESIDENT'S RESERVATIONS TO THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 51 OF 2019)

“Honourable Members, before the House resolves into Committee of the Whole House to Consider the President’s Reservations to the Finance Bill (National Assembly Bill No. 51 of 2019), I wish to guide the House on the procedure of considering the amendments thereto.

Honourable Members, as you are aware, consideration of the President’s Reservations to any Bill is guided by the provisions of the Constitution, the Standing Orders as well as the *Communication* I issued on 28th July 2015 which explained matters that are not provided for in the Standing Orders as well as other questions of procedure that kept recurring. In summary, the content of that considered *Communication*, which is now substantively codified in Standing Order 154, was as follows—

- (i) THAT, in submitting his reservations on a Bill to the House, the President is not prohibited from including his preferred text of the particular clause, section, subsection or paragraph of the Bill;
- (ii) THAT, just like amendments to Bills, the text proposed by the President on a Bill need NOT be subjected to the other stages subjected to a Bill upon publication, - that is, publication, First Reading, Second Reading and Third Reading;
- (iii) THAT, any Committee or member of the House is free to propose further amendments to the President’s recommendations;
- (iv) THAT, so long as such amendments have the effect of fully accommodating the Presidents reservations, the voting threshold for the passage of such amendment or, indeed the proposals made by the President, is a simple majority as contemplated by Article 122 (1) of the Constitution. Any other proposed amendment, that does not fully accommodate the reservations, or indeed an amendment whose effect is a total override of the Presidents reservations, including his proposed text, would attract the two-third voting threshold for it to pass;
- (v) THAT, pursuant to the provisions of Standing Order 1(2), the determination of whether a proposed amendment by a Member or a Committee to the President’s reservations would have the effect of “fully accommodating” those reservations shall be made by the Speaker on case by case basis; and,
- (vi) THAT, the absence of at least two-thirds majority at the time of putting the question does not in any way imply that the House is improperly constituted, since only a simple majority is required to pass the Bill a second Time in a manner fully accommodating the Presidents reservations.

Honourable Members, in the case of the Finance Bill, 2019 which is before the House under Order No. 8(i), H.E. the President in his reservations requests the House to delete Clause 45 of the Bill, which relates to capping of interest rates chargeable on loans advanced by Banks and other financial institutions. In essence, the proposed amendment seeks to amend the Banking Act (Cap. 488) by repealing section 33B so as to remove rates chargeable on loans.

Honourable Members, in considering the Presidents reservations, the Departmental Committee on Finance and National Planning recommends that the House agrees with the proposed deletion. The Committee has also proposed further amendments pursuant to the provisions of Standing Order 154(3) (*referral of Bills by President*). The effect of the amendments proposed by the Committee is to safeguard any loan agreements entered by borrowers under section 33B of the Banking Act which is proposed to be repealed.

Honourable Members, having considered the amendments proposed by the Committee, I have made the determination that the proposed amendments as published in today's Order Paper have the effect of fully accommodating the President's reservations. In this regard a simple majority will suffice to pass the Committee's proposed amendment to Clause 45 in the Committee of the whole House. A simple majority will also be required to pass the proposed deletion of Clause 45 of the Bill. On the other hand, a two-thirds voting threshold provided for under Article 115(4)(a) of the Constitution will apply to any vote to negate the proposed deletion of Clause 45 of the Bill as contained in the Presidents reservations.

The House is accordingly guided.

I thank you!"

IN THE COMMITTEE

The Second Chairperson in the Chair

(a) Consideration of the President's Reservations to the Finance Bill (National Assembly Bill No. 51 of 2019)

Clause 45 - amendment proposed -

THAT, the Bill be amended by deleting clause 45 and substituting therefor the following new clause-

Repeal of section 45. The Banking Act is amended by repealing section 33B.
33B of Cap. 488

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 45 - as amended agreed to

New Clause 45A proposed -

THAT, the Bill be amended by inserting the following new clause immediately after clause 45-

Amendment of section 56 of Cap. 488 of **45A**. The Banking Act is amended in section 56 by inserting the following new sub-section immediately after sub-section (3)-

(4) Notwithstanding the repeal of section 33B, any agreement or arrangement to borrow or lend which was made or entered into, or varied pursuant to the provisions of section 33B (now repealed), shall continue to be in force on such terms, including interest rates, and for the duration specified in the agreement or arrangement.

Provided that the interest rate chargeable under that agreement or arrangement may be varied downwards.

(Chairperson, Departmental Committee on Finance & National Planning)

Motion made and Question proposed –

THAT, the proposed New Clause 45A be now read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

THAT, the proposed New Clause 45A be part of the Bill

Debate arising;

Question put and agreed to;

Bill to be reported with amendments that fully accommodate the President's Reservations.

(b) the Public Finance Management (Amendment) Bill (National Assembly Bill No. 51 of 2017)

Deferred.

11. **HOUSE RESUMED** - the Speaker in the Chair

Consideration of the President's Reservations to the Finance Bill (National Assembly Bill No. 51 of 2019)

Bill reported with amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report

(The Leader of the Majority Party)

Rising on a point of Order, several Members claimed for a Division;

And there being the requisite number of Members rising in support of the claim;

And acceding to the claim, the Speaker directed that the Division bell be rung for ten minutes to ascertain whether there was the requisite number of two-thirds of all Members to enable the House to proceed to an electronic vote pursuant to Standing Orders 72(2) and 154(5) and Article 115 of the Constitution;

And upon the expiry of ten minutes, and the doors having been locked and the bar drawn;

Thereupon, the House proceeded to a count of Members present;

And the Speaker having ordered that all Members present in the Chamber to remove and then insert their voting cards into the electronic system in order for the electronic system to record the number of Members present in the Chamber;

And Members present but without their cards or whose cards were defective having been recorded manually by the Clerks-at-the-Table;

And both the number of Members recorded electronically and number of Members recorded manually having been tallied;

There being a total of 161 Members ascertained to be present as follows:

- (a) 136 recorded electronically; and,
- (b) 25 recorded manually.

And the House having not attained the two-thirds (233) of all Members of the House required to proceed to an electronic vote in support of amendments that do not fully accommodate the President's Reservations to the Finance Bill, 2019 or reject the President's recommendations pursuant to the provisions of Article 115(4)(a) of the Constitution;

Question on agreement with the report of the Committee of the whole House put and agreed to;

President's Reservations - agreed to.

12. **MOTION - RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON DEFENCE CO-OPERATION**

Motion made -

THAT, this House **adopts** the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation, *laid on the Table of the House on Wednesday, October 16, 2019*, and pursuant to section 8 of the Treaty Making and Ratification Act, 2012 **approves** the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.

(Chairperson, Departmental Committee on Defence & Foreign Relations)

QUORUM OF THE HOUSE

Pursuant to Standing Order 35(1), the Member for Muhoroni (Hon. Onyango Oyoo) drew the attention of the Speaker to the fact that there was no quorum in the House;

And the Speaker having confirmed that there was no quorum, ordered that the quorum bell be rung;

And there being **no** quorum after expiry of ten minutes;

And the time being thirty minutes past Four o'clock, the Speaker interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. **HOUSE ROSE** - at thirty minutes past Four o'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, November 6, 2019 at 9.30 a.m.

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