



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FOURTH SESSION)

THE SENATE

VOTES AND PROCEEDINGS

TUESDAY, MARCH 03, 2020 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair: -

(i) **On the scope of an adjournment Motion pursuant to Standing Order 34**

“Honourable Senators,

As you will recall, on Thursday, 27th February, 2020, Senator James Orengo, the Senate Minority Leader, rose on a Point of Order seeking the clarification of the Speaker on the directions issued on Wednesday, 26th February, 2020, relating to an adjournment Motion on the transfer of functions from one level of government to another.

Honourable Senators,

By way of background, you will recall that on Tuesday, 25th February, 2020, vide Gazette Notice No. 1609, dated the same day, the Nairobi City County Government ceded some of its functions to the National Government through a Deed of Transfer of Functions entered into between the National Government on the one hand, and the Nairobi City County Governor on the other.

Thereafter, by a letter Ref. No. SEN/ML/2020/3 and dated 26th February, 2020, the Senate Majority Leader, Senator Kipchumba Murkomen, notified the Speaker of his intention to move a Motion for the adjournment of the Senate, pursuant to standing order 34, on a definite matter of urgent national importance, namely, the transfer of functions from the Nairobi City County Government to the National Government. At the sitting of the Senate held on Wednesday, 26th February, 2020, pursuant to standing

order (34)(1), the Senate Majority Leader rose to seek leave to move the adjournment Motion. The request was supported by the requisite number of Senators under standing order 34 (5). The Chair then appointed 3.30 p.m. as the time for the Moving of the Motion, at which time, the Motion was moved, seconded, proposed and debate then ensued.

Honourable Senators,

Upon conclusion of debate on the Motion, the Chair observed that the Mover of the Motion, the seconder and Senators who had contributed to the Motion had raised various issues on the constitutionality, legality and procedure relating to the transfer of the functions of the Nairobi City County Government to the National Government.

Consequently, directions were issued from the Chair that the Standing Committee on Devolution and Intergovernmental Relations, jointly with the Standing Committee on Justice, Legal Affairs and Human Rights -

- 1) Convenes hearings on the matter and receives submissions from various constitutional and statutory office holders;
- 2) Submits an interim report to the House within 21 days on the constitutional, legal and procedural issues arising, highlighting legal, statutory or constitutional gaps;
- 3) Conducts public participation on the matter after the submission of the interim report; and
- 4) Submits a comprehensive report to the Senate within 60 days, with proposed legislative amendments to improve the existing legal framework on the transfer of functions between the two levels of government and to give clarity on the same.

Honourable Senators,

It was on this basis that on Thursday, 27th February, 2020, the Senate Minority Leader rose on a Point of Order seeking clarification on, among others, the directions that referred the matter to the two Standing Committees. The Senate Minority Leader, while observing that these directions had been made in the exercise of the discretionary powers of the Chair under standing order 1, stated that in the practice of the Senate, a Motion of adjournment under standing order 34 does not usually result in such directions. He further stated that the Motion before the Senate was "*that the Senate do now adjourn*", and that therefore, any resolution or direction made on the adjournment Motion would go beyond the scope of an adjournment Motion which was to adjourn the House for purposes of discussing a definite matter of urgent national importance. Senator Samuel Poghio and Senator Ledama Olekina also rose in support of the Point of Order by the Senate Minority Leader.

Having listened to the request by the Senate Minority Leader and the contributions of the two Senators, I undertook to give a ruling today, Tuesday, 3rd March, 2020. I further directed that in the meantime, the Committees do not proceed in the manner directed on Wednesday, 26th February, 2020.

Honourable Senators,

The question that requires my determination is whether any action or directions can ensue from an adjournment Motion.

Honourable Senators,

Standing order 34(1) provides that “a *Senator may at any time rise in his or her place and seek leave, for reasons stated, to move the adjournment of the Senate for the purpose of discussing a definite matter of urgent national importance*”. Paragraph (2), further requires a Senator who wishes to seek leave to move the adjournment of the Senate to hand to the Speaker a written notification of the matter after which the Speaker, being satisfied that the matter is definite, urgent and of national importance, may approve the request.

Paragraph (3) of the standing order states that the Motion to be moved shall be “*that the Senate do now adjourn to discuss a definite matter of urgent national importance, namely...*”. Standing order 34(4) further states that the Motion “*shall be seconded and proposed but no question shall be put at the end of the debate*”.

Honourable Senators,

Motions for the adjournment of the Senate pursuant to standing order 34 have been used severally in the Senate. As examples, the Senate has at various times, used this mechanism to discuss the taxation burden on Kenyans, the security situation in Mt. Elgon Constituency, Bungoma County and the disaster in West Pokot County that had been occasioned by a landslide that claimed over fifty lives.

Adjournment Motions are not unique to the Kenyan Senate or indeed the Parliament of Kenya. They are legislative instruments that are a common feature in most Commonwealth legislatures including, Canada, India, Australia, New Zealand, Zambia and South Africa.

Honourable Senators,

The provisions of the Standing Orders and practices and procedures of comparative jurisdictions in the Commonwealth reveal the following as

some of the common principles that govern the use of adjournment Motions on urgent matters of national importance –

- 1) An adjournment Motion may be sought for the purpose of discussing a definite or specific matter of urgent national or public importance;
- 2) Notice of an adjournment Motion proposed to be moved on a particular day, is to be given to the Speaker at an appointed hour prior to the sitting of that day;
- 3) In determining whether an adjournment Motion should be allowed, the Speaker shall have regard to various matters including –
 - (a) not more than one such Motion shall be moved at the same sitting;
 - (b) not more than one matter shall be discussed on the same adjournment Motion;
 - (c) that the Motion should be restricted to a specific matter of recent occurrence;
 - (d) that the Motion should not raise a question of privilege;
 - (e) that the Motion should not revive discussion on a matter that has been discussed in the same Session;
 - (f) that the Motion should not anticipate a matter which has previously been appointed for consideration; and
 - (g) that the Motion shall not raise any question which according to the Standing Orders, should be debated on a distinct Motion for which Notice has been given in writing;
- 4) Where the Speaker gives consent for an adjournment Motion to be sought, the Speaker shall call the Member to rise in his/her place and ask for leave to move the adjournment of the House which shall require the support of a designated number of Members;
- 5) If the request receives the requisite support, a time shall be appointed for moving of the Motion and at that appointed time, debate on the Motion shall proceed;
- 6) When the debate is concluded, the Speaker is required to forthwith adjourn the House and in effect close debate on the adjournment Motion. Different mechanisms exist for this purpose. In the Parliament of Canada, the Speaker is required, when satisfied that the debate has been concluded, to “*declare the Motion carried and forthwith adjourn the House until the next sitting day*”. In the case of India’s lower House of Parliament, the Lok Sabha, the Speaker may, “*if he is satisfied that there has been adequate debate, put the question...*”. In the Parliament of New Zealand, “*at the conclusion of the debate, the Motion lapses without any question being put*”. These provisions are similar to those provided for in our Standing Orders.

Honourable Senators,

You will observe that the adjournment Motion as a legislative instrument, varies in terms of its effect and outcome when compared to other legislative instruments provided for in our Standing Orders. For example, in the case of Motions provided for under Parts Twelve and Thirteen of the Standing Orders, once debate on such Motions is concluded, a Question is put for the decision of the Senate. This constitutes the Resolution of the Senate on the Motion. In the case of Bills as provided for under Parts Twenty and Twenty-One of the Standing Orders, the eventual outcome after the legislative process is the enactment of legislation.

Statements as provided for under Part Eleven of the Standing Orders, may, depending on the standing order under which they are made or sought, result in an inquiry to be undertaken by the relevant Committee. Petitions which are a significant method by which the public may bring matters of concern to the Senate, will usually result in an inquiry conducted by the relevant Committee following which a report on the Petition, which constitutes the response to the Petitioner, is tabled in the Senate.

Unlike these legislative instruments, the nature of an adjournment Motion is that while it provides opportunity for immediate discussion of a definite matter of urgent national importance, without reference to the usual notice periods required, it does not result in a resolution or decision of the Senate. Its nature is such that no action is required of the Senate at the conclusion of its debate. Indeed, this is the design of this legislative instrument.

Honourable Senators,

Standing order 1(1) provides that "*in all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker*". Standing order 1(1) therefore provides for discretion on the part of the Chair where there is a lacuna in the Standing Orders. Where such lacuna exists, standing order 1(2) requires that the discretion shall be applied with reference to the Constitution, statute law and the usages, forms, precedents, customs, procedures and traditions of our Parliament and other jurisdictions where applicable.

In the case of an adjournment Motion, standing order 34(3) provides that the Motion to be moved is "*that the Senate do now adjourn to discuss a definite matter of urgent national importance...*". Standing order 34(4) further provides that an adjournment Motion shall be "*seconded and proposed but no question shall be put at the end of the debate*". There is therefore express provision to the effect that at the conclusion of debate on an adjournment Motion, there is no resolution or further action required of the Senate. This would apply notwithstanding the weight or the gravity of the matter that has been raised

under an adjournment Motion. It constrains the Senate to do no more even where a specific action or outcome would be desirable on account of the matter before the Senate. It therefore behoves a Senator who desires a specific outcome to consider the use of the appropriate legislative instrument or tool other than an adjournment Motion. A motion of Adjournment cannot give rise to a decision by the Senate as contemplated under Article 123 of the Constitution.

Honourable Senators,

In the circumstances, taking into account the provisions of standing order 1 and standing order 34 of the Senate Standing Orders and further taking into account relevant procedures of comparative legislatures and having consulted within the Presidium, I hereby find that no resolution or directions can ensue upon the conclusion of debate on an adjournment Motion on a definite matter of urgent national importance. Accordingly, the directions issued on Wednesday, 26th February, 2020 on the matter of the transfer of functions of the Nairobi City County Government to the National Government are hereby vacated.

I thank you.”

(ii) Visiting Members of Staff from Taita Taveta County Assembly

“Honourable Senators,

I would like to acknowledge the presence, in the Speaker’s Gallery this afternoon, of visiting members of staff from Taita Taveta County Assembly.

They are:

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|-------------------------|--------------------|
| 1. Ms. Mwambere Phelis | - Hansard Editor |
| 2. Mr. Wilfred Msengeti | - Audio Officer |
| 3. Mr. Kennedy Oyugi | - Hansard Reporter |
| 4. Mr. Cosmas Mesighana | - ICT Officer |
| 5. Mr. Godwin Machila | - ICT Officer |

On behalf of the Senate and on my own behalf, I welcome them to the Senate and I wish them well for the remainder of their stay.

I thank you”.

(iii) Youth from Dagoreti North Constituency, Nairobi County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of Youth from Dagoreti North Constituency, Nairobi County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit

I thank you.”

(iv) **Meeting of the Standing Committee on Justice, Legal Affairs and Human Rights**

“Honourable Senators,

As you may recall, on Thursday, 20th February, 2020, the Senator for Nairobi City County issued a Statement under Standing Order No.47(1) on the alleged extrajudicial killings of young Kenyans in Nairobi City County. Several other Senators also spoke on the matter. The Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights informed the Senate that the Committee was undertaking an inquiry into the matter and would table an interim report thereon within two weeks.

Honourable Senators,

The Committee has now scheduled a sitting to consider the matter tomorrow, Wednesday, 4th March, 2020, at the County Hall, Mini Chamber, from 11.00 a.m. Among the stakeholders scheduled to make submissions before the Committee are-

- (a) The Independent Policing Oversight Authority (IPOA);
- (b) The Directorate of Criminal Investigations (DCI);
- (c) The Director of Public Prosecutions (DPP);
- (d) The Kenya National Commission on Human Rights (KNCHR);
- (e) Amnesty International Kenya;
- (f) HAKI Africa;
- (g) Social Justice Centres Working Group (SJCWG);
- (h) Defender Coalition; and,
- (i) International Justice Mission (IJM).

The Committee extends an invitation to all Honourable Senators to attend this important meeting.

I thank you.”

4. **STATEMENTS**

(i) **Statement Pursuant to Standing Order 48(1)**

- a) Nominated Senator (Sen. (Dr.) Getrude Musuruve, MP) sought a Statement from the Standing Committee on Labor and Social Welfare concerning the establishment of Youth Development Centers in the 47 counties.
- b) Nominated Senator (Sen. Abshiro Soka Halake, MP) sought a Statement from the Standing Committee on Devolution and Intergovernmental

Relations regarding the incessant fire outbreaks in several county offices, destroying offices and crucial documents.

- c) Nominated Senator (Sen. Falhada Iman, MP) sought a Statement from the Standing Committee on National Security, Defense and Foreign Relations regarding the security status in the country.

(ii) **Statement Pursuant to Standing Order 51(1) (a)**

The Chairperson, Standing Committee on Agriculture, Livestock and Fisheries issued a Statement on the locust invasion in parts of the country.

5. **THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL (NATIONAL ASSEMBLY BILLS NO. 13 OF 2018)**

(The Senate Majority Leader)

(Second Reading)

(Resumption of debate interrupted on Wednesday, 4th December, 2019)

(Division)

Order deferred.

6. **THE SACCO SOCIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 1 OF 2018)**

(The Senate Majority Leader)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 18th February, 2020)

(Division)

Order deferred.

7. **THE FISHERIES MANAGEMENT AND DEVELOPMENT (AMENDMENT) BILL (SENATE BILLS NO. 22 OF 2019)**

(Sen. Moses Kajwang', MP)

(Second Reading)

(Resumption of debate interrupted on Wednesday, 19th February, 2020)

(Division)

Order deferred.

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

(The Senate Majority Leader)

(Second Reading)

(Resumption of debate interrupted on Thursday, 20th February, 2020)

(Division)

Order deferred.

9. **COMMITTEE OF THE WHOLE CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILLS NO. 3 OF 2018)**

(The Senate Majority Leader)

(Resumption of debate interrupted on Tuesday, 25th February, 2020)

(Division)

Order deferred.

10. **COMMITTEE OF THE WHOLE**
CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE
PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILLS NO.
22 OF 2018)

(The Senate Majority Leader)

(Resumption of debate interrupted on Tuesday, 25th February, 2020)
(Division)

Order deferred.

11. **COMMITTEE OF THE WHOLE**
CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE
EARLY CHILDHOOD EDUCATION BILL (SENATE BILLS NO. 26 OF 2018)

(The Senate Majority Leader)

(Resumption of debate interrupted on Tuesday, 25th February, 2020)
(Division)

Order deferred.

12. **THE LIFESTYLE AUDIT (NO. 2) BILL (SENATE BILLS NO. 21 OF 2019)**

Order for Second Reading read;

Motion made and Question proposed: -

THAT, the Lifestyle Audit (No. 2) Bill (Senate Bills No. 21 of 2019) be now read a Second time.

(Sen. (CPA) Farhiya Ali Haji, MP)

Debate arising;

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Judith Pareno, MP) adjourned the Senate without Question put, pursuant to the Standing Orders.

13. **SENATE ROSE** - at thirty minutes past six O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, March 04, 2020 at 2:30 p.m.

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