



**REPUBLIC OF KENYA**  
**TWELFTH PARLIAMENT – (FOURTH SESSION)**

**THE SENATE**

**VOTES AND PROCEEDINGS**

**SPECIAL SITTING**

**FRIDAY, MAY 22, 2020 AT 2:30 PM**

1. The Senate assembled at thirty minutes past Two O'clock.
2. The proceedings were opened with Prayer said by the Speaker.
3. **COMMUNICATION FROM THE CHAIR – CONSIDERATION OF A MOTION FOR REMOVAL OF SEN. (PROF.) KITHURE KINDIKI, EGH, MP FROM THE OFFICE OF THE DEPUTY SPEAKER OF THE SENATE**

You will recall that during the Afternoon Sitting of the Senate held on Tuesday, 19<sup>th</sup> May, 2020, the Senate Majority Whip, Sen. Irungu Kang'ata, MP, gave a Notice of Motion for the removal of Sen. (Prof.) Kithure Kindiki, MP, from the Office of the Deputy Speaker of the Senate.

Subsequently, by a letter, dated 19<sup>th</sup> May, 2020, the Senate Majority Leader, requested the Speaker to convene a Special Sitting of the Senate pursuant to Standing Order 30 (1) to consider the Motion filed by the Senate Majority Whip for the removal of Sen. (Prof.) Kithure Kindiki, MP, from the Office of the Deputy Speaker of the Senate. The request by the Senate Majority Leader, was supported by the requisite number of Senators (15 Senators) as required by Standing Order 30 (1).

Honourable Senators,

Following consideration of the request by the Senate Majority Leader, I was satisfied that the request met the requirements of Standing Order 30 (2). Accordingly, and pursuant to Standing Order 30 (3), I issued a Gazette Notice No. 3649 of 20<sup>th</sup> May, 2020, in respect of this Special Sitting, which was circulated to all Honourable Senators.

As required by Standing Order 30 (5), the Gazette Notice specified the business to be transacted at this sitting, being the consideration of a Motion for the removal of Sen. (Prof.) Kithure Kindiki, MP, from the Office of the Deputy Speaker of the Senate, as indicated in today's Order Paper. Pursuant to the said Standing Order, the business listed in the Order Paper shall be the only business before the Senate, after which the Senate shall adjourn, to Tuesday, 26<sup>th</sup> May, 2020 at 10.00 am, as per the Calendar.

Honourable Senators,

Having set the context of today's Special Sitting, I wish to inform the House that a Motion on the removal of a Speaker or Deputy Speaker is a Constitutional matter that is both rare and extremely unique especially when it finds its way into the floor of the House as parliamentary business. Speakership in the Senate and in similar jurisdictions in the Commonwealth embodies the power, dignity and honour of the House. The main features attached to the Office of the Speaker are authority and impartiality. Members aggrieved by the conduct of the Speaker or Deputy Speaker can only discuss his or her conduct by way of a specific substantive Motion or a Motion on the removal from office, such as the one which is before the Senate today.

Honourable Senators,

As you all know, the essential ingredient of the Speakership is founded on the status of the Speaker as the servant of the House. It is on this basis that Motions of removal or censure of the Speaker are very rare. Indeed, the Motion, such as the one before us today, is the first of its kind in the history of the Senate of Kenya.

Honourable Senators,

Article 106 (2) of the Constitution of Kenya states as follows-

*The office of Speaker or Deputy Speaker shall become vacant –*

- a) *when a new House of Parliament first meets after an election;*
- b) *if the office holder, as a member of the relevant House vacates office under Article 103;*
- c) ***if the relevant House so resolves by resolution supported by at least two-thirds of its members; or***
- d) *if the office holder resigns from office in a letter addressed to the relevant House.*

Honourable Senators,

The Motion before the House this afternoon is a **Special Motion** and shall be prosecuted in the manner prescribed in standing order No. 69 read together with the provisions of Part 12 (Motions) and Part 17 (Rules of Debate) of the Standing Orders.

Standing Order 69 (2) provides that “*unless the Constitution, any written law or these Standing Orders specify a lesser or further period, a Special Motion shall be (a) disposed of by the Speaker in accordance with Standing Order No. 55 (Notices of Motions) within seven days of receipt by the Speaker of notice by a Senator; and (b) disposed of by the Senate within fourteen calendar days upon notice being given under Standing Order No. 55 (Notices of Motions) and if not, such Motion shall be deemed to have been withdrawn and shall not be moved again in the same Session, except with the consent of the Speaker*”.

Honourable Senators,

In light of the COVID-19 pandemic situation in the country and in line with the health and social distancing protocols as contained in the Guidelines that I issued on 31<sup>st</sup> March and 17<sup>th</sup> April, 2020 and following a resolution by the Senate Business Committee on 20<sup>th</sup> May, 2020, arrangements have been made to ensure that all Senators have an opportunity to access the Chamber and participate in this debate, while in the precincts of the Main Parliament Buildings.

To achieve this, and in consultation with the Senate Business Committee, I wish to inform that-

- i). A maximum of 28 Senators have been allowed to sit inside the Chamber on a first-come-first-sit basis, with seats reserved for the Senate Leadership;
- ii). The New Wing Lounge of the Parliament restaurant has been designated as part of the Senate Chamber to accommodate the other Senators who have missed seats in the main Chamber;
- iii). Appropriate measures have been put in place to facilitate all Senators in the lounge area in the New Wing to follow proceedings, taking into account the necessary social distancing guidelines.
- iv). A Senator seated in the Lounge area in the New Wing wishing to make a contribution in the debate will be required to record his or her name with the Clerks.
- v). The list of Senators wishing to contribute to the debate will be handed to the Speaker who may call out the Senators to speak.
- vi). A Senator whose name has been called out to contribute to the debate shall walk into the Chamber, bow at the Bar and proceed to make his or her contribution from the Dispatch Table. Upon conclusion, the Senator will withdraw from the main Chamber and resume his or her seat in the Lounge area in the New Wing.

Honourable Senators,

After conclusion of debate on the Motion, a vote will be taken. However, as mentioned above, this is a Special Motion with a constitutional threshold as stipulated in Article 106 (2) (c). I wish therefore to direct as follows-

- i). At conclusion of debate, a division bell shall be rung for 10 minutes;
- ii). Clerk shall then determine the number of Senators present in the Chamber (including the extended Chamber);
- iii). If the number of Senators present is 45 or more (being two-thirds of all Senators), I shall proceed to put the question and direct that a roll-call vote be undertaken;
- iv). However, if the number of Senators present is less than 45 Senators, I will decline to put the question and declare the Motion to have been lost.

Honourable Senators,

If we ascertain the requisite threshold for voting has been achieved, the following procedure will be deployed-

- i). The Speaker shall request for the submission of the tellers for the “Ayes” and the “Nays”, who shall remain seated at their seats;
- ii). The Speaker shall put the question and direct the Clerk to call out the names of Senators in the Chamber (including the extended chamber). When called out, each Senator shall declare assent or dissent to the question in the following manner: “**I vote yes**”, “**I vote no**” or “**I abstain**” pursuant to standing order 83(5).
- iii). When called out, the Senators in the extended chamber will walk into the main Chamber and cast their vote from the Dispatch Table, in the manner set out in standing order 83(5) and thereafter withdraw from the Chamber to their respective seats in the Lounge.
- iv). After the Clerk has read the last name in the Division list, the tellers shall present the result of the roll-call vote to the Clerk who shall hand them to the Speaker to announce the result of the Division.

Honourable Senators,

To contextualize Article 106 (2)(c) of the Constitution of Kenya, if the Senate so resolves to remove Sen. (Prof.) Kithure Kindiki as the Deputy Speaker of the Senate, such resolution must be supported by the votes of at **least two-thirds of all Senators, this being at least 45 Senators.**

Honourable Senators,

I wish to appeal to all Senators to observe decorum and courtesy during the debate. The expected standards of debate must be strictly observed to ensure that we listen to one another without unnecessary interruptions. It will be out of order to use offensive or insulting language in respect of the Deputy Speaker, who is our colleague, or other Senators or other persons or to make claims without substantiation as required under standing order 100.

Honourable Senators,

A cardinal principle of our Constitution and legal system is that a person against whom assertions have been made shall be given an opportunity to defend himself or herself, to rebut allegations against him or her. In the context of such Motions as the one about to be debated, the Deputy Speaker, Sen. Kithure Kindiki, MP will be given a chance at the end of the debate to accordingly make his contribution to the Motion, if he so wishes.

Honourable Senators,

As I conclude, I would like to say the following: It should not matter, indeed it must not matter, which side of the political aisle you are sitting on but no doubt, every of the actions, deliberations and decisions or determinations are reached on the floor of this house will form the basis of rulings in the future and that future must of necessity be informed by the circumstances of the present. This present, as currently established does not provide adequate mechanisms for undertakings such as we are going through today including making provision for due process in line with known policy, legislative and constitutional architecture. I call on the House to consider the introduction of these mechanics into our standing orders so as to guide future processes.

The House is now guided accordingly.

I thank you.

4. **MOTION – REMOVAL OF SENATOR (PROF.) KITHURE KINDIKI, EGH, MP, FROM THE OFFICE OF THE DEPUTY SPEAKER OF THE SENATE**

Motion made and Question proposed-

**THAT**, the Senate resolves that Senator (Prof.) Kithure Kindiki, EGH, MP, be removed from the Office of the Deputy Speaker of the Senate.

*(The Senate Majority Whip)*

Debate arising;

And there being no other Senator wishing to contribute;

Mover replied;

Before putting the Question, the Speaker informed the House that the Motion is pursuant to Article 106(2)(c) of the Constitution, and that all Senators have a vote;

The Speaker directed that roll call vote be taken pursuant to Standing Order 83 (1) and that the Division Bell be rung for ten minutes;

After the expiry of ten minutes, the Speaker directed that the doors be locked and the bars drawn;

The names of the Tellers were announced;

1. Sen. Beatrice Kwamboka - Ayes
2. Sen. Isaac Mwaura - Noes

The Speaker put the Question and directed the Clerk to call out the names of Senators in alphabetical order;

The results of the Division were as follows:-

AYES – 54

NOES – 7

ABSTENTIONS – 0

**AYES**

1. Adan, Dullo Fatuma
2. Ali, Abdullahi Ibrahim
3. Boy, Issa Juma
4. Chebeni, Mercy
5. Gona, Christine Zawadi
6. Haji, Farhiya Ali
7. Haji, Mohamed Yusuf
8. Halake, Abshiro Soka
9. Hargura, Godana
10. Iman, Falhada Dekow
11. Imana, Malachy Charles Ekal
12. Inimah, Getrude Musuruve
13. Kabaka, Boniface Mutinda
14. Kajwang' Moses Otieno
15. Kamar, Margaret Jepkoech
16. Kang'ata, Irungu
17. Kasanga, Sylvia Mueni
18. Khaniri, George
19. Kibiru, Charles Reubenson
20. Kilonzo, Mutula Junior
21. Kimani, Wamatangi
22. Kirinyaga, Ephraim Mwangi Maina
23. Lelegwe, Ltumbesi
24. Loitiptip, Anuar
25. Madzayo, Stewart Mwachiru
26. Mahamud, Mohamed Maalim

27. Makori, Beatrice Kwamboka
28. Malalah, Cleophas Wakhungu
29. Masitsa, Naomi Shiyonga
30. Mbito, Michael Maling'a
31. Mbogo, George Ochilo Ayacko
32. Milgo, Alice Chepkorir
33. Mogeni, Erick Okong'o
34. Moi, Gideon Kipsielei Towett
35. Mpaayei, Phillip Salau
36. Mwangi, Paul Githiomi
37. Mwaruma, Johnes Mwashushe
38. Mwaura, Isaack
39. Mwinyihaji, Mohamed Faki
40. Nyamunga, Rose Ogendo
41. Olekina, Ledama
42. Omanga, Millicent
43. Ongeri, Samson Kegengo
44. Orengo, James
45. Outa, Frederick Otieno
46. Pareno, Judith Ramaita
47. Poghisio, Samuel Losuron
48. Prengei, Victor
49. Sakaja, Johnson Arthur
50. Seneta, Mary Yiane
51. Wako, Sitswila Amos
52. Wambua, Enoch Kiio
53. Waqo, Naomi Jilo
54. Zani, Agnes Philomena

**NOES**

1. Cherarkey, Samson Kiprotich
2. Cheruiyot, Aaron Kipkirui
3. Kihika, Susan Wakarura
4. Kindiki, Kithure
5. Langat, Christopher Andrew
6. Murkomen, Onesimus Kipchumba
7. Nderitu, John Kinyua

**RESOLVED ACCORDINGLY**

**THAT**, the Senate resolves that Senator (Prof.) Kithure Kindiki, EGH, MP, be removed from the Office of the Deputy Speaker of the Senate.

There being no other business, the Speaker adjourned the Senate at thirty-three minutes past Six O'clock, without Question put, pursuant to the Standing Orders.

5. **SENATE ROSE** – at Thirty-three Minutes past Six O'clock.

**M E M O R A N D U M**

*The Speaker will take the Chair on*

*Tuesday, May 26, 2020 at 10.00 a.m.*

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