



REPUBLIC OF KENYA

**TWELFTH PARLIAMENT - (FOURTH SESSION)
THE NATIONAL ASSEMBLY**

COMMUNICATIONS FROM THE CHAIR

(No. 39 of 2020)

ON

**NOTICE OF MOTION FOR THE REMOVAL OF THE CABINET
SECRETARY FOR TRANSPORT, INFRASTRUCTURE, URBAN
DEVELOPMENT AND PUBLIC WORKS**

Hon. Members,

I wish to notify the House that, pursuant to the provisions of Standing Order 66(1), on the 17th of June, 2020, the Clerk of the National Assembly did receive a Notice of Motion from the Member for Nyalı Constituency, the Hon. Mohamed Ali Mohamed, MP, notifying his intention to move a **Special Motion for the removal of the Cabinet Secretary for Transport, Infrastructure, Urban Development and Public Works, Mr. James Macharia, EGH**, in accordance with the provisions Article 152(6) of the Constitution and Standing Orders 64(1A) and 66. The proposed Motion seeks the resolution of the House to require His Excellency the President to dismiss the said Cabinet Secretary from Office on two grounds, that is-

- (i) Gross violation of Articles 10(1)(c) and 2(a) and 73 of the Constitution; and,
- (ii) Gross misconduct contrary to Article 125 of the Constitution.

Hon. Members, from the onset allow me to observe that I have previously guided this House on the processing of special motions for removal of State officers including on the thresholds that must be met and adhered to. Consequently, I will not attempt to restate my guidance.

Further, as you are all aware, every Member has a right under Article 152(6) of the Constitution and Standing Order 66 to move the House to remove a Cabinet Secretary. The Standing Orders require that, before giving Notice of such a Motion under Standing Order 66 in the House, the Member must, however, deliver to the Clerk a copy of the proposed Motion in writing, stating the grounds and particulars in terms of the said Article, upon which the proposed Motion is made. The Notice ought to be signed by the Member and also signed in support by at least, one quarter of all the Members of the Assembly which are eighty-eight (88) Members of this House.

Hon. Members, Standing Order 47(3) and indeed, my previous Communications on this matter require that, upon receipt of the proposed Motion, the Speaker is to make a determination on its admissibility and dispose of the Motion within three days. The criteria for admissibility is provided for under Standing Orders 64(1A) and 66 and the precedence contained in my previous *Communications* on Motions and procedure for removal of persons from constitutional offices. In furtherance to the provisions of Article 259(5) and (6) of the Constitution, regarding the counting of time, today's Sitting presents the earliest opportunity for me to make the decision on the proposed Motion known to the House, since the three days ended yesterday.

Hon. Members, In this regard, I wish to observe as follows –

1. It is evident that the Motion proposed by the Hon. Member for Nyali Constituency has fulfilled the precondition of requisite support under Article 152(6) of the Constitution and Standing Order 66(1), having been supported by ninety(90) Members who have appended their respective signatures alongside the Motion; and,

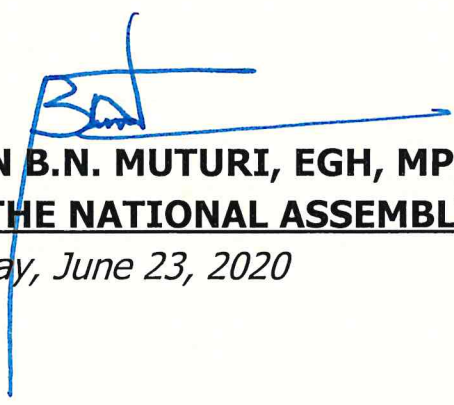
2. Whereas the Hon. Member has **specified the particulars** under each ground and also **cited** Articles 10,73 and 125 of the Constitution as the provisions that the Cabinet Secretary has allegedly violated, the proposed Motion fails on one important requirement. Standing Order 64(1A) requires that a proposed Motion be *accompanied by necessary evidence including annexures or sworn testimonies in respect of the allegations*. Indeed, the only way that the Speaker is able to make a determination as to whether the particulars provided under each ground may contain a gross violation of the Constitution or gross misconduct is by examining the evidence so provided in support of the allegations before approving the Motion. The Notice of Motion by the Member for Nyali Constituency lacks any annexures or sworn testimonies or any other evidence thereto. In the circumstances, I am unable to confirm whether the allegations contained in the Notice meet the thresholds or indeed whether there is any nexus between the allegations and the role of the Cabinet Secretary as required by the Standing Orders.

Hon. Members, to admit a proposed Motion that is not supported by any evidence of how, for instance, the Cabinet Secretary has grossly violated the Constitution by failing to conduct public participation in implementing policy decisions at the Ministry or allegedly failed to deliver on key infrastructure as alleged by the Hon. Member for Nyali, or even the alleged loss of Kshs. 5.2 Billion at the Ministry of Health, would not only be a violation of the Standing Orders but would amount to enjoining this House on a wild-goose chase.

Hon. Members, in view of the foregoing and pursuant to the provisions of Standing Orders 47(3)(a) and (e), it is therefore my determination that the proposed Motion by the Honourable Member for Nyali Constituency is **inadmissible** having failed to comply with the provisions of Standing Order 64(1A)(c). Consequently, the Clerk is hereby directed to formally communicate this decision to the Honourable Member.

Hon. Members, it is also important to mention that I have received requests from a number of Members claiming to withdraw their signatures from the Motion. The Honourable Members include the Hon. John Paul Mwirigi, MP, the Hon. (Dr.) Makali Mulu, MP, the Hon. Charles Nguna, MP, the Hon. Mboni Mwalika, MP, the Hon. Nimrod Mbai, MP, the Hon. Edith Nyenze, MP, the Hon. (Dr.) Irene Kasalu, MP, the Hon. (Eng.) Thaddeus Kithua Nzambia, MP, the Hon. Joshua Kimilu, MP, the Hon. Moses Kirima, MP and the Hon. Nasri Ibrahim, MP. May I restate the provisions of Standing Order 66(4) which provide that, any signature appended to a Motion of this kind, **cannot be withdrawn**. It is expected that a Member of Parliament acclimatizes himself or herself with the contents of a Motion or a Notice thereof, before appending a signature. It may be remembered that the foundation of Standing Order 66(4), which is meant to provide a transparent process for actualizing the provisions of Articles 144(1), 145(1) and 152(6) of the Constitution was contained in my Communication of October 23rd 2015 during the Eleventh Parliament. The Members and the House are therefore accordingly guided.

I thank you !

A handwritten signature in blue ink, appearing to be 'Justin B.N. Muturi', is written over the typed name and extends across the top of the page.

HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, June 23, 2020

