



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – FOURTH SESSION

THE SENATE

VOTES AND PROCEEDINGS

TUESDAY, NOVEMBER 10, 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. **COMMUNICATION FROM THE CHAIR ON THE IMPLEMENTATION OF THE HIGH COURT JUDGEMENT IN CONSTITUTIONAL PETITION NO. 284 OF 2019**

The Speaker conveyed the following Communication from the Chair:-

“Honourable Senators,

The Senate passed a motion on 18th June, 2020 and resolved to among other things to institute legal proceedings to –

- (a) challenge the laws that have been enacted procedurally in the 12th Parliament;
- (b) seek an interpretation of the term “money Bill”; and
- (c) seek a final determination of the procedure to be followed in respect of all the Bills that are pending before Parliament so as to ensure compliance with Article 110(3) of the Constitution and for the future

Judgment was delivered on 29th October, 2020 in favour of the Senate. In the judgement, the High Court issued a number of declarations and issued orders that affect a number of Senate Bills pending before both Houses. The court among other things ordered that—

- (a) A Declaration be and is hereby issued that pursuant to Article 110 (3) of the Constitution, a Speaker of a House of Parliament must first seek the concurrence of the Speaker of the other House of Parliament, as to whether a bill is one that concerns counties, and if it is, whether it is a*

special or an ordinary bill, before the bill can be introduced for consideration in the originating House.

- (b) A Declaration be and is hereby issued that it is mandatory and a condition precedent for any bill that is published by either House to be subjected to a concurrence process to determine in terms of Article 110 (3) of the Constitution whether the Bill is special or an ordinary bill and that such determination is not dependent on “a question arising” as to whether the Bill is one that concerns Counties;*
- (c) A Declaration be and is hereby issued that the provisions of Article 110 (3) of the Constitution are couched in mandatory terms and is a condition precedent before any House of Parliament can consider a bill;*
- (d) A Declaration be and is hereby issued that pursuant to Article 110 (3) of the Constitution, one Speaker cannot unilaterally make a decision as to whether the Bill does or does not concern counties or whether a question as to whether the Bill is one that concerns counties does or does not arise;*
- (e) An order be and is hereby issued ordering the immediate cessation of consideration of all bills that are pending before either House, and for which joint concurrence by the Speakers of both Houses as to whether the bills concern counties, has not been demonstrated to allow for such Bills to be subjected to the mandatory joint concurrence process contemplated under Article 110 (3) of the Constitution;*

Hon. Senators,

The Court stated unequivocally that the concurrence process under Article 110(3) of the Constitution is mandatory and is a condition precedent before any House of Parliament can consider a Bill. In particular the court ordered the immediate cessation of consideration of all Bills that are pending before either House, and for which joint concurrence by the Speakers of both Houses as to whether the bills concern counties, has not been demonstrated to allow such Bills to be subjected to the mandatory joint concurrence process contemplated under Article 110(3) of the Constitution.

Implementation of the court order

Hon. Senators,

In order to implement the Court decision, I have analysed all Senate Bills pending before the Senate and National Assembly, and noted that we have several categories of Bills at various stages in the Senate and the National Assembly. The Bills include—

- (a) Those that concurrence of both Speakers was obtained,

- (b) Bills that I sought concurrence but there was no response from the National Assembly,
- (c) Bills that I sought concurrence but the National Assembly responded y not concurring; and
- (d) Bills that are still undergoing concurrence.

Bills where there was concurrence

There are those Bills for which the legislative process under 110(3) was followed and thus concurrence can be demonstrated. Bills under this category are not affected by the court order and should therefore be proceeded with for consideration in accordance with Articles 110-113 of the Constitution. The Bills under this category include—

- (a) The County Early Childhood Education Bill, Sen. Bills No. 26 of 2018 (undergoing mediation);
- (b) The Mung Beans Bill, Senate Bill No. 9 of 2020; and
- (c) The Cooperative Societies (Amendment) Bill, Senate Bills No. 11 of 2020.

These Bills shall be proceeded with in the manner provided for under Articles 110-113 of the Constitution.

Bills where there was no concurrence but the Senate Proceeded with and are still pending in the Senate

There are Bills for which there was no joint resolution in terms of Article 110(3) of the constitution and therefore no concurrence. These include —

- The Retirement Benefits (Deputy President and designated State Officers) (Amendment) Bill, Senate Bills No. 2 of 2018
- The Public Finance Management (Amendment) Bill, Senate Bills No. 3 of 2019.
- The National Museums and Heritage (Amendment) Bill, Senate Bills No. 7 of 2019
- The Establishment of Children's Homes Bill, Senate Bills No. 12 of 2019
- The Kenya Sign Language Bill, Senate Bill No. 15 of 2019
- The Startup Bill, Senate Bill No. 16 of 2020
- The Election Laws (Amendment) Bill, Sen. Bills No. 33 of 2018
- The County Hall of Fame Bill, Sen. Bills No. 39 of 2018
- The Street Vendors (Protection of Livelihood) Bill, Senate Bills No. 10 of 2019

- The County Licensing (Uniform Procedures) Bills, Senate Bills No. 17 of 2019
- The Fisheries and Development (Amendment) Bill, Senate Bills No. 21 of 2019
- The Lifestyle Audit (no. 2), Bill, Senate Bills No. 22 of 2019
- The Reproductive Health Care Bill, 2019 Senate Bills, No. 23 of 2019
- The Wildlife Conservation and Management (Amendment) Bill, Senate Bill No. 24 of 2019
- Law of Succession (Amendment) Bill, Senate Bill No. 1 of 2020
- Prompt Payment Bill, Senate Bill No. 3 of 2020
- The County Resources Development Bill, Senate Bill, No, 2 of 2020
- Parliamentary Powers and Privileges, Senate Bill No. 4 of 2020
- Community Health Services Bill, Senate Bill No. 5 of 2020
- Investment Promotion Bill, Senate Bill No. 8 of 2020
- Basic Education (Amendment) Bill Senate Bill No. 10 of 2020
- Kenya Citizen and Immigration Bill, Senate Bill No. 12 of 2020
- Copyright (Amendment) Bill, Senate Bill No. 13 of 2020
- County Vocational Education, Bill, Senate Bill No. 14 of 2020
- The Persons with Disabilities (Amendment) Bill, Senate Bill No. 15 of 2020
- University Amendment, Bill Senate Bill No. 18 of 2020
- Health (Amendment) Bill, Senate Bill No. 19 of 2020
- Political Parties Primaries Bill, Senate Bills No. 21 of 2020
- The Registration of Persons (Amendment) Bill, Senate Bills. No. 14 of 2019
- The Elections (Amendment) Bill, Senate Bills no. 18 of 2019
- The Alternative Dispute Resolution Bill, Senate Bill No. 19 of 2019; and
- Geologist Bill, Senate Bill No. 17 of 2020

In respect of these Bills, we propose that the Bills be republished and a joint resolution sought in accordance with Article 110(3) and be processed in compliance with the order of the Court.

Bills that there was no concurrence but processed by the Senate and transmitted to the NA

The final category of Bills are Bills considered and passed by the Senate but there was no concurrence. The Bills have since been transmitted to the National Assembly

for consideration and the National Assembly and were still pending in the National Assembly as at 29th October, 2020 when the order of the court was issued. These Bills are subject to the court order on cessation of their consideration. The Bills under this category are accounted for as follows—

- The County Wards Development Equalization Fund, Senate. Bills No. 34 of 2018, which was lost in the National Assembly and a message is pending in the Senate;
- The Public Participation Bill, Sen. Bill No. 4 of 2018;
- The County Statistics Bill Sen. Bills No. 9 of 2018;
- The Local Content Sen. Bills No. 10 of 2018;

- The Salaries and Remuneration Commission (Amendment) Bills, Sen. Bill No. 12 of 2019;
- The Care and Protection of older Members of Society Bill, Sen. Bills no.17 of 2018;
- The Statutory Instruments (Amendment) Bill, Sen. Bills No. 24 of 2018;
- The County Oversight and Accountability Bill, Senate Bills No. 28 of 2018;
- The Mental Health (Amendment) Bill, Sen. Bills No. 32 of 2018;
- The Public Finance Management (Amendment) Bill, Senate Bills No. 3 of 2019;
- The Public Finance Management (Amendment) Bill, Senate Bills No. 3 of 2019;
- University Amendment, Bill Senate Bill No. 18 of 2020;
- Health (Amendment) Bill, Senate Bill No. 19 of 2020;
- Political Parties Primaries Bill, Senate Bills No. 21 of 2020;
- The Prevention of Terrorism (Amendment) Bill, Sen. Bills No. 20 of 2018; and
- The Treaty Making and Ratification (Amendment) Bill, Sen. Bills No. 23 of 2018.

For this category of Bills for which concurrence under 110(3) cannot be demonstrated, I direct that the Bills be republished and processed in accordance with Article 110(3).

National Assembly Bills for which concurrence is sought

There are Bills from the National Assembly for which the Speaker of the National Assembly has sought my concurrence pursuant to Article 110(3) of the Constitution. The Bills include —

- The National Aviation Management Bill (National Assembly Bill No. 18 of 2020);

- The Public Procurement and Assets Disposal (Amendment) Bill (National Assembly Bill No. 20 of 2020);
- The Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 21 of 2020);
- The Public Finance Management (Amendment) (No, (2) Bill, (National Assembly) Bills no. 23 of 2020;
- Sexual Offences (Amendment) Bill, 2020 (National Assembly, Bill No. 24 of 2020);
- The Insurances Professionals Registration Bill, 2020 (National Assembly, Bill No. 25 of 2020);
- Pensions (Amendment) Bill, 2020 (National Assembly, Bill No. 26 of 2020);
- The Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Bill (National Assembly Bill No. 27 of 2020);
- Health (Amendment) Bill (National Assembly, Bill No. 28 of 2020); and
- Higher Education Loans Board (Amendment) Bill, (National Assembly Bill no. 29 of 2020)

Where the Speaker of the Senate has not concurred, it is proposed that the Hon. Speaker of the Senate proposes a mediation committee as proposed by the Supreme Court in Petition No. 3 of 2013 and by the High Court in the present Petition No. 284 of 2019.

Hon. Senators,

Any Bill for which your sponsored and was processed in the House, will be republished. We shall be asking you to step down any of your Bills for which there was no concurrence and have them republished. The Senate Business Committee has directed the office of the Clerk to process the said Bills for republication.

I thank you.”

4. **PETITION**

Pursuant to Standing Order 230(2), the Chairperson, Standing Committee on Labour and Social Welfare (Sen. Johnson Sakaja) tabled before the Senate a Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate by pensioners under the Kenya Railways Staff Retirement Benefits Scheme concerning the looming collapse of the scheme due to mismanagement, and psychological torture arising from non-payment of benefits.

5. **PAPERS LAID**

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

- i. Report of the Sessional Committee on Delegated Legislation on the Crops (Tea Industry) Regulations 2020, Legal Notice No. 97 of 2020.

(Chairperson, Sessional Committee on Delegated Legislation)

- ii. Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate by pensioners under the Kenya Railways Staff Retirement Benefits Scheme concerning the looming collapse of the scheme due to mismanagement, and psychological torture arising from non-payment of benefits

(Chairperson, Standing Committee on Labour and Social Welfare)

6. **NOTICE OF MOTION- ADOPTION OF THE REPORT OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION ON THE CROPS (TEA INDUSTRY) REGULATIONS, 2020 - LEGAL NOTICE NO. 97 OF 2020**

(Chairperson, Sessional Committee on Delegated Legislation)

THAT, the Senate adopts the Report of the Sessional Committee on Delegated Legislation on the Crops (Tea Industry) Regulations, 2020 – Legal Notice No. 97 of 2020, laid on the Table of the Senate on Tuesday, 10th November, 2020, and that pursuant to Section 18 of the Statutory Instruments Act and Standing Orders 221(4)(b) and 221(5)(b), annuls in its entirety, the Crops (Tea Industry) Regulations, 2020 - Legal Notice No. 97 of 2020.

7. **NOTICE OF MOTION- ALTERATION OF THE SENATE CALENDAR (REGULAR SESSIONS) FOR THE FOURTH SESSION, 2020 (PART V)**

(The Deputy Senate Majority Leader)

THAT, notwithstanding the Resolutions of the Senate made on 27th February, 2020 (approval of the Senate Calendar), on 15th September, 2020 and 8th October, 2020, (alteration of the Senate Calendar); pursuant to Standing Orders 29(4) and 31(3), the Senate resolves to further alter its Calendar (Regular Sessions) for the Fourth Session, 2020, in respect of Part V, to hold one Sitting on Tuesdays, beginning on Tuesday, 10th November, 2020, until Tuesday, 1st December, 2020, and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020, be altered accordingly.

8. **COMPLIANCE WITH THE OFFICIAL DRESS CODE OF THE SENATE**

Rising on a point of order, the Senator for Wajir County (Sen. (Dr.) Abdullahi Ali, MP) brought it to the attention of the Speaker that the Senator for Narok County (Sen. Ledama Olekina, MP) was dressed in a manner that contravened the Speakers Rules.

9. **COMMUNICATION FROM THE CHAIR ON THE APPROPRIATENESS OF SEN. LEDAMA OLEKINA'S DRESS**

“Hon. Senators,

Before we proceed, I promised to make a ruling on Sen. Olekina's dressing. As I make the ruling, I want to refer to two instruments that I have. One is my own rules, the Speaker's Rules and the other is the Constitution. If you look at Rule No.5 of the Speaker's Rules, it says- "Senators are required not to enter the chamber, lounge or dining room without being properly dressed. This means that a male Senator shall be dressed in a coat, collar, tie, long trousers, socks and shoes or service uniform, religious attire or such other decent dressing as maybe approved by the Speaker from time to time. An equivalent standard shall apply in respect of women Senators who may also wear Kitenge or such other African attire."

If you look at Article 11(1) of our Constitution, it states- "This Constitution recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation."

Hon. Senators, we all know that we represent counties, and certain counties have their own cultural dresses. For instance, the cultural dress for Narok and Kajiado counties has been recognized the world over. It is one that represents even Kenya as a country. So, it will be unconstitutional for me to order Sen. Olekina out because of what he is wearing. Having read the two, as the Speaker, I rule that he is decently dressed and he should remain in this House."

10. **STATEMENTS**

(i) Pursuant to Standing Order No. 47 (1)

- a)** The Senator for Vihiga County Sen. George Khaniri, MP made a statement pursuant to Standing Order 47(1) on a matter of national concern regarding the plight of tea farmers and the management of the tea sector in the country.

The Senator noted that conservative figures from the East African Tea Traders Association (EATTA) indicate that tea is the largest foreign exchange earner in Kenya contributing 20% or Ksh. 117 billion in 2019. Further, 56% of the tea auctioned in Mombasa is produced by small holder farmers estimated to be about 700,000 while the plantation sub sector produces the remaining 44%. He further informed the House that the tea sector provides direct and indirect employment to over five million Kenyans.

He said while the statistics looked impressive, farmers were not making much returns on their investment in tea farming with some farmers contemplating uprooting their tea for alternative use of the land.

The Senator informed the House that tea bonuses were decreasing , farmers don't have access to subsidized fertilizer in addition to mistreatment and frustrations from large tea processing companies.

He said the Government had failed the tea farmers of Kenya for a long time and called for change in order to salvage the industry. He called for the elimination of cartels in the tea industry.

The Senator noted that the County Assembly had invited three County Executives to appear before their respective committees in the Assembly.

- b)** The nominated Senator (Sen. Rose Nyamunga, MP) made a statement concerning cases of murders, abductions and mysterious disappearance of people in Kisumu County,

In her statement, the Senator informed the House that cases of murders, abductions and mysterious disappearance has risen to worrying levels. The Senator noted that many families have been left distraught and many children left without parents by these agents of impunity. Some of the people whose disappearance and eventual murder have been reported include that of Thomas Ochieng, who had an eatery in Kisumu who had left to meet a person that had called him on phone about two weeks ago, purposely to strike a business deal only to join the statistics of people who have mysteriously gone missing only to be found brutally murdered days later.

Further the Senator noted that in the past month, three cases of people who have gone missing only to be found murdered have been reported in the region. Other cases have been reported since the year began, including the brutal murder of 42 year old NGO worker in Riat. And as concerns grow over mysterious deaths, several families are also struggling to find their kin who have gone missing.

In concluding, the Senator invited the Standing Committee on National Security, Defence and Foreign relations to take up this matter and summon security team from the region to provide information and steps taken so far to stop such unwarranted abductions, disappearance and murders of people. The Deputy Speaker referred the statement to the Standing Committee on National Security, Defence and Foreign relations pursuant to Standing Order 47(3)

- c)** The nominated Senator (Sen. Naomi Shiyonga, MP) made a statement concerning verbal abuse of officials by the Cabinet Secretary for Education, Prof. George Magoha,

The Senator informed the House of a viral video in which the Cabinet Secretary for Education has been captured hurling insults at education officials in Uasin Gishu County. In the video, the Cabinet Secretary, who was on a visit to educational institutions in the county on Friday, November 6, 2020 to assess learning and delivery of desks in various schools is recorded interrogating the Uasin Gishu County Director of education Mr. Gitonga Mbaka, concerning alleged untidiness of a school the CS was visiting in the county.

Consequently, the conduct of the Cabinet Secretary is in total contravention of the national values and principles of governance, as espoused in the Constitution, which calls for, among other things, high standards of professional ethics, human dignity, inclusiveness, human rights and integrity.

In her final remarks the Senator urged the House to condemn the conduct of the Cabinet Secretary and asked the Cabinet Secretary to apologise to education officials in Uasin Gishu County and the entire public for his unbecoming behaviour.

(ii) Pursuant to Standing Order No. 48 (1)

- a) The nominated Senator (Sen. Millicent Omanga, MP) requested for a statement from the Standing Committee on Labour and Social Welfare regarding the resumption of sporting activities in the country.
- b) The nominated Senator (Sen. Millicent Omanga, MP) requested for a statement from the Standing Committee on Finance and Budget regarding the financial status of deposit-taking commercial banks.
- c) The nominated Senator (Sen. Petronilla Were Lokorio, MP) requested a statement from the Standing Committee on Information and Technology regarding alleged monopolistic practices by telecommunication company M/S Safaricom PLC.

11. **MOTION - ALTERATION OF THE SENATE CALENDER (REGULAR SESSIONS) FOR THE FOURTH SESSION, 2020 (PART V)**

Motion made and Question proposed-

THAT, notwithstanding the Resolutions of the Senate made on 27th February, 2020 (approval of the Senate Calendar), on 15th September, 2020 and 8th October, 2020, (alteration of the Senate Calendar); pursuant to Standing Orders 29(4) and 31(3), the Senate resolves to further alter its Calendar (Regular Sessions) for the Fourth Session, 2020, in respect of Part V, to hold one Sitting on Tuesdays, beginning on Tuesday, 10th November, 2020, until Tuesday, 1st December, 2020, and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020, be altered accordingly.

(The Senate Majority Whip)

Debate arising;

12. **QUORUM OF THE SENATE**

Raising a point of order, the Senator for Nandi County (Sen. Samson Cherarkei, MP) drew the attention of the Temporary Speaker (Sen. (Dr.)Isaac Mwaura, MP) to the fact that there was no quorum in the House;

And the Temporary Speaker having counted the Senators present and confirmed that there was no quorum, caused the Division Bell to be rung for five minutes;

And there being no quorum after the expiry of five minutes;

And the time being thirty minutes past six O'clock, the Temporary Speaker (Sen. (Dr.)Isaac Mwaura, MP) interrupted the proceedings and 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, November 11, 2020 at 2.30 p.m.*

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