



**REPUBLIC OF KENYA**

**THE SENATE**

**TWELFTH PARLIAMENT – FIFTH SESSION**

**VOTES AND PROCEEDINGS**

**TUESDAY, MAY 18, 2021 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 CIRCUMSTANCES LEADING TO THE DECLARATION OF A VACANCY UNDER ARTICLE 98 (1) OF THE CONSTITUTION**

The Speaker issued the following communication from the Chair-

“Honorable Senators,

As you may recall, on Tuesday 11<sup>th</sup> May, 2021 during the sitting of the Senate, I issued a communication on the declaration of a vacancy of a seat of a member of the Senate after expulsion from the party, in this case the seat held by Hon. Isaac Mwaura. Several points of order were raised by several Senators after which I undertook to give a detailed Communication on the circumstances that led to the issuance of a declaration of vacancy vide Gazette Notice No. 4597 dated 10<sup>th</sup> May, 2021.

Honorable Senators, on 10<sup>th</sup> May, 2021 by a letter dated 10<sup>th</sup> May, 2021, Ref: *JP/RA-S/21*, the Secretary-General of the Jubilee Party wrote to the Speaker of the Senate forwarding the judgment of the Political Parties Disputes Tribunal in Complaint No. E002 of 2021 *Hon. Isaac Mwaura Maigua vs Jubilee Party & Another* in which the Tribunal upheld that the expulsion of Hon. Isaac Mwaura Maigua was conducted in accordance with the law and dismissing the complaint by Hon. Isaac Mwaura Maigua against the same.

In the said letter, the Secretary-General also requested the Speaker of the Senate to among other things, issue a declaration of vacancy of the seat being held by Hon. Isaac Mwaura Maigua for purposes of implementing the decision. The Secretary-General of Jubilee Party made reference to two

previous communications made with regard to the question of the expulsion of Hon. Isaac Mwaura Maigua from the Jubilee Party.

On the same date, I also received a letter *Ref: RRP/FRP/027.Vol.III (31)* dated 10<sup>th</sup> May, 2021 from the Registrar of Political Parties and addressed to Secretary-General of the Jubilee Party confirming the removal of the name of Hon. Isaac Mwaura Maigua from the Jubilee Party membership list effective 29<sup>th</sup> March, 2021.

Based on this confirmation vide letter *Ref. RRP/FRP/027.VOL.III (31)* dated 10<sup>th</sup> May, 2021, I proceeded to issue a Gazette Notice No. 4597 dated 10<sup>th</sup> May, 2021 declaring a vacancy in the Senate for a seat of a member elected under Article 98(1)(d) of the Constitution and held by Hon. Isaac Mwaura Maigua effective 7<sup>th</sup> May, 2021. I further proceeded and communicated to the Senate this occurrence of vacancy at its sitting held on Tuesday, 11<sup>th</sup> May, 2021 at 2:30 p.m.

Honorable Senators, the events leading to the issuance of the declaration dates back to March, 2021. Thus, on 29<sup>th</sup> March, 2021, the Office of the Clerk of the Senate received a letter dated 26<sup>th</sup> March, 2021, from the Secretary-General of the Jubilee Party requesting for the declaration of a vacancy of the seat held by Hon. Isaac Mwaura Maigua and calling our attention to the ruling of the Political Parties Disputes Tribunal dismissing the application for stay of the decision for expulsion.

The order of the Political Parties Disputes Tribunal was regards to an application for conservatory orders based on a Notice of Motion dated 9<sup>th</sup> February, 2021 filed by Hon. Isaac Mwaura Maigua. In the Notice of Motion, Hon. Isaac Mwaura sought orders that *“pending hearing and determination of the complaint herein, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be and are hereby restrained from implementing the impugned decision of the 1<sup>st</sup> Respondent expelling the applicant from the Jubilee Party (the 1<sup>st</sup> Respondent)”*.

In considering the application for conservatory orders, the Tribunal noted that *‘both the complainant and the 1<sup>st</sup> Respondent had maintained a justiciable claim against each other for breach of various laws. Both parties have raised contentions which require consideration on merit and are not liable to be rejected summarily. The case could go either way subject to evidentiary material that can only be analyzed conclusively after a substantive hearing’*.

The Tribunal further noted that *“the claimant’s primary concern at this stage would be the preservation of the subject matter of the complaint. The court further noted that the 2<sup>nd</sup> Respondent at paragraph 10 of its Replying Affidavit and further during the hearing of the application, submitted to the authority of the Tribunal and the value of the rule of law, and stated that they would await the outcome of these proceedings before any further action. There is thus no demonstrated threat of conclusive implementation of the 1<sup>st</sup> Respondent’s decision during the pendency of these proceedings”*.

On the basis of the foregoing, the Tribunal dismissed the Notice of Motion and directed the parties to take directions on priority hearing of the substantive complaint on merit.

Honorable Senators, Hon. Isaac Mwaura Maigua being dissatisfied with the ruling and orders of the Tribunal, appealed to the High Court. In this respect therefore, the Speaker of the Senate was in receipt of an order of the High Court in Civil Appeal No. E167 of 2021 (*Hon. Isaac Mwaura Maigua vs Jubilee Party & Another*), in which the court, *inter alia*, ordered a stay of execution of the impugned orders of the Tribunal and further that “*pending the hearing and determination of the application inter parties, the 1<sup>st</sup> Respondent, 2<sup>nd</sup> Respondent, the Independent Electoral and Boundaries Commission (IEBC), and the Speaker of the Senate be barred from further implementing the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent*”.

Further, by a letter dated 29<sup>th</sup> March, 2021, Ref: RPP/FRP/027/Vol III(16), the Registrar of Political Parties indicated to the Clerk of the Senate that “*on the basis of the decision of the Jubilee party as contained in the documents and correspondence submitted to this office, and in line with section 14(5A) of the Political Parties Act, 2011, together with all other relevant laws, this office has removed the name of Hon. Isaac Mwaura Maigua from the Jubilee Party membership register pending the adoption and ratification of the same by the National Executive Committee (NEC) in accordance with Article 13.1.12 as read together with Article 13.4 of the Jubilee Party constitution*”.

The question that arose is whether the Speaker acted within the law by issuing the Gazette Notice declaring a vacancy upon the expulsion of a member of the Senate, in this case declaration of a seat held by Hon. Isaac Mwaura Maigua.

Honourable Senators, considering the sequence of events narrated above, and on the basis of the order of the High Court in Civil Appeal No. E167 of 2021 (*Hon. Isaac Mwaura Maigua vs Jubilee Party & Another*), I made a decision not to take any action with respect to the request to declare a vacancy in the seat held by Hon. Isaac Mwaura Maigua pending the determination of Civil Appeal No. E167 of 2021 (*Hon. Isaac Mwaura Maigua vs Jubilee Party & Another*) being the substantive hearing of the appeal of the ruling of the Tribunal on the conservatory orders sought by Hon. Isaac Mwaura Maigua pending the hearing and determination of the substantive suit before the Tribunal.

On 10<sup>th</sup> May, 2021, I received the judgment of the Political Parties Disputes Tribunal in Complaint No. E002 of 2021 *Hon. Isaac Mwaura Maigua vs Jubilee Party & Another* upholding that the expulsion was conducted in accordance with the law and dismissing the complaint by Hon. Isaac Mwaura Maigua against the same.

Consequently, in view of all these documentation and based on the law, I declared a vacancy in the Senate for a seat of a member elected under Article 98(1)(d) of the Constitution and held by Hon. Isaac Mwaura Maigua.

Article 103(1)(e)(i) of the Constitution provides that “*the office of a member of Parliament becomes vacant if, having been elected to Parliament as a member of a political party, the member resigns from that party or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2)*”.

Further, Regulation 56A of the Elections (General) Regulations, 2012 provides for the re-allocation of special seats from the Party list in the following terms -

*(1) Where a political party expels a member elected through a party list during the term of Parliament or County Assembly as the case may be, the party shall be required to submit—*

- (a) a resolution or decision of the party;*
- (b) a notification by the Registrar of Political Parties effecting the expulsion;*
- (c) a declaration of vacancy from the relevant Speaker; and*
- (d) a court order sanctioning the expulsion where applicable, to the Commission for re-allocation.*

Honorable Senators, from the foregoing you note that Regulation 56A (1)(c) provides that upon expulsion of a member elected through a party list, the party should submit among others a declaration of vacancy from the relevant Speaker. In my view, this provision places a mandatory legal requirement for a Speaker to issue a declaration of vacancy once it is established that a member has been expelled from the party.

Having considered the decision of the Political Parties Tribunal and the letter *Ref: RRP/FRP/027.Vol.III(31)* dated 10<sup>th</sup> May, 2021 from the Registrar of Political Parties, I was persuaded that the requirement of declaring a vacancy had been met and therefore I proceeded to declare the said vacancy vide Gazette Notice No 4597 dated 10<sup>th</sup> May 2021.

Honorable Senators, I wish to reiterate that by issuing the Gazette Notice, I followed the law and there was no court order barring me from declaring the vacancy.

I thank you.”

#### **4. MESSAGE FROM THE NATIONAL ASSEMBLY ON THE PASSAGE OF THE CROPS (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILLS NO. 25 OF 2019)**

The Speaker conveyed the following Message from the National Assembly-

“Honourable Senators,

Vide a Message dated Monday, 10<sup>th</sup> May, 2021, I received a Message from the National Assembly, pursuant to Standing Orders 41(1) and 142 of the National Assembly Standing Orders, on the passage of the Crops (Amendment) Bill (National Assembly Bills No. 25 of 2019).

Honourable Senators,

You will recall that following the High Court ruling on 29th October, 2020, on Constitutional Petition No. 284 of 2019, implementation of the judgment by the Senate commenced. Notably, the High Court ordered that all Bills for which the concurrence process contemplated under Article 110(3) of the Constitution could not be demonstrated be ceased and that the said concurrence process be adhered to before introduction of such Bills in either House of Parliament.

Honourable Senators,

The Crops (Amendment) Bill (National Assembly Bill No. 25 of 2019) is one such Bill, for which the concurrence process pursuant to Article 110(3) of the Constitution has not be demonstrated by the time the High Court gave its judgment. As such, the Bill ought to be aligned to Article 110(3) of the Constitution, following which the Bill will be read a First Time in the Senate.

In view of the foregoing, the Crops (Amendment) Bill (National Assembly Bill No. 25 of 2019), as received from the National Assembly vide the Message dated Monday, 10<sup>th</sup> May, 2021, will not be proceeded with in the Senate.

I thank you.”

## **5. PAPERS LAID**

The following papers were laid on the Table of the Senate -

- (i) Report of the Auditor General on the financial statements of County Assembly of Narok for the year ended 30<sup>th</sup> June, 2019
- (ii) Report of the Auditor General on the financial statements of Narok County Executive for the year ended 30<sup>th</sup> June, 2019

*(The Senate Majority Leader)*

## **6. STATEMENTS**

### **i) Pursuant to Standing Order 47 (1)**

- a) The Senator for Mombasa County (Sen. Mohamed Faki, MP) made a statement on the ongoing conflict between Palestine and Israel.

Thereupon, the Senator informed the Senate that the Israeli-Palestinian conflict dates back to the end of the nineteenth century and that in 1947, the United Nations through Resolution 181 divided the British mandate of Palestine into Arab and Jewish States.

Further, the Senator stated that since 10<sup>th</sup> May, 2021, during the last ten days of the Holy Month of Ramadan, more than 300 Palestinians,

who had gone to pray at the al-Aqsa Mosque in Jerusalem's Old City were injured in clashes with Israeli forces. Since then, tensions have erupted again in Gaza and resulted in more civilian deaths from Israeli and Hamas rocket strikes. The Senator stated that Israeli forces have been undertaking forced displacement in the Palestinian neighborhood of Sheikh Jarrah in East Jerusalem, home to Palestine refugees who had already been displaced.

Highlighting that this has remained one of the most protracted conflicts in the world, the Senator urged the Senate to use all diplomatic avenues available to bring this matter to the attention of the international community, with a view to bringing a ceasefire and de-escalation of the violence in Palestine.

- b) The Senator for Nandi County (Sen. Samson Cherarkey, MP) made a statement on Open Government Partnership as a tool for legislative oversight and promotion of accountable governance.

Thereupon, the Senator informed the Senate that the Open Government Partnership (OGP) is a global multilateral initiative that brings together 78 member countries, and 76 local governments to promote transparent, participatory, inclusive and accountable governance. Member states participate in the Partnership by way of submitting two year action plans with country commitments to achieve within the action plan period. Kenya became a member of OGP in 2011 and has so far implemented three (3) National Action Plans (NAPs); and is currently implementing its fourth NAP for the period 2020 to 2022. Kenya is also a member of the Global Steering Committee for the period 2020 to 2023.

Further, the Senator stated that, as a member of the Partnership and the Global Steering Committee, Kenya has been contributing to the partnership's collective effort to tackle major global challenges. In its 2020 -2022, Kenya committed to advance beneficial ownership transparency and civic space and to model best practice in strengthening its anti-corruption, civic space and digital space. Additionally, he stated that, today, Africa has a number of challenges unique in some respects, namely debt transparency and open and equitable vaccine access.

Furthermore, the Senator averred that, Kenya has recently embarked on the implementation of NAP IV, 2020 to 2022 in earnest, and hopes to continue being an OGP ambassador in the region and globally. To this end, the NAP IV activities are designed to institutionalize open government and build greater resilience of OGP to withstand future political transitions, economic shocks among other instabilities.

**ii) Pursuant to Standing Order 48 (1)**

- a) Nominated Senator, (Sen. Naomi Shiyonga, MP) sought a statement from the Standing Committee on Land, Environment and Natural

Resources concerning the rise of illegal hunting for bush meat, which poses a threat to dik-diks and giraffes in the Tsavo National Park.

- b) Nominated Senator, (Sen. Naomi Shiyonga, MP) sought a statement from the Standing Committee on National Security, Defence and Foreign Relations concerning the state of preparedness of the Nairobi City County Fire Brigade in suppressing fire disasters in the city.

iii) **Pursuant to Standing Order 53**

The Senator for Nandi County (Sen. Samson Cherarkey, MP) made a personal statement on his arrest, mistreatment and manhandling by police officers on Chwele-Bungoma Highway.

Thereupon, the Senator informed the House that, on 4<sup>th</sup> March, 2021, in the company of three other legislators, he was accosted, arrested and detained in Bungoma Police Station. The police officers mistreated and mishandled the legislators.

The Senator stated that the right to freedom is a fundamental right in the Constitution and that its deprivation should only be informed by concrete evidence ready for presentation before a court of law. Additionally, he stated that there was a loophole under Article 49 (f) (ii) of the Constitution being exploited by the Kenya Police to hold a person for over 24 hours.

In conclusion, the Senator urged the Senate to take up the matter and investigate the circumstances under which the four legislators were arrested.

**7. MOTION - DEBATE ON THE ADDRESS TO PARLIAMENT BY HER EXCELLENCY SAMIA SULUHU HASSAN, PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA – (DAY 2)**

Order read;

Motion made and Question proposed;

THAT, pursuant to Standing Order 24 (6), the Thanks of the Senate be recorded for the Address to Parliament, by Her Excellency Samia Suluhu Hassan, President of the United Republic of Tanzania, delivered on Wednesday, 5<sup>th</sup> May, 2021.

*(The Senate Majority Leader – 11.05.2021)*

Debate interrupted on Tuesday, 11<sup>th</sup> May (Afternoon Sitting) 2021, resumed;

Debate arising;

Raising a Point of Order, pursuant to Standing Order 105(1), Nominated Senator (Sen. (Arch.) Sylvia Kasanga, MP) claimed to move *“That the debate be now adjourned”*.

And the Speaker, acceding to the claim, forthwith put the Question;

THAT the debate be now adjourned.

Question put and agreed to.

**RESOLVED ACCORDINGLY**

THAT the debate be now adjourned.

**8. THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 28 OF 2020)**

Order read;

Motion made and Question proposed;

THAT, the Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020) be now read a Second time.

*(Sen. (Arch.) Sylvia Kasanga, MP)*

Debate arising;

And there being no other Senator wishing to contribute;

The Mover replied;

Raising a Point of Order, pursuant to Standing Order 61 (3), Sen. (Arch.) Sylvia Kasanga, MP requested that the putting of the Question be deferred to a later date.

And the Temporary Speaker (Sen. Judith Pareno, MP) acceding to the request, deferred putting of the Question to the next sitting.

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.

- 9. 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  
Tuesday, May 25, 2021 at 10:00 a.m.*



