



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – FIFTH SESSION**

**THE NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, AUGUST 04, 2021 (AFTERNOON)**

1. The House assembled at thirty minutes past Two O'clock
2. The proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker
4. **ADMINISTRATION OF OATH**  
Oath was administered to –  
WANJIKU John Njuguna, Member-elect for Kiambaa Constituency.
5. **COMMUNICATION FROM THE CHAIR**  
The Speaker issued the following Communication –

**Consideration of the Parliamentary Pensions (Amendment) (No. 3) Bill  
(National Assembly Bill No. 57 of 2019) In Committee of the Whole House**

**“Honourable Members,** before the House proceeds to the Committee of the whole House to consider the Parliamentary Pensions (Amendment) (No. 3) Bill (National Assembly Bill No. 57 of 2019), I wish to guide the House and the Committee as follows –

1. You will recall that at the rise of the House during the afternoon sitting of Tuesday, 6<sup>th</sup> July 2021, the Committee of the Whole House had commenced reporting progress on its consideration of the Parliamentary Pensions (Amendment) (No. 3) Bill (National Assembly Bill No. 57 of 2019) pursuant to the provisions of Standing Order 134;
2. At the time, the Committee had considered the Bill up to New Clause 13A. In this regard, and in line with the provisions of Standing Order 132 providing

for *Sequence on a Bill in Committee*, what remained for consideration was **New Clause 18, Clause 3, Title and Clause 1**;

3. **Honourable Members**, As indicated in the Notice Paper, **the Member for Homa Bay Town**, the Hon. Peter Kaluma has indicated intention to move a re-committal of New Clause 13A. Further, **the Member for Kanduyi**, the Hon. Wafula Wamunyinyi proposes amendments to Clauses 8 & 9;
4. **Honourable Members**, You will also recall that before we proceeded on recess, I had directed that any Members proposing amendments to the Bill should appear before the Departmental Committee on Finance & National Planning in line with Standing Order 131. I am informed that no Member appeared before the Committee regarding the said matter. I have since received information to the effect that the Member for Homa Bay Town, the Hon. Peter Kaluma, no longer intends to move the House to reconsider the New Clause 13A. In this regard, the intended re-committal as indicated in the Notice Paper will not be proceeded with;
5. On the other hand, the Member for Kanduyi has proposed amendments to Clause 8 and Clause 9. In a nutshell, the amendments seek to remove the requirement for payments of interest on gratuity by a Member of Parliament who elects to buy-back into the pension scheme. Further, the amendments also propose that in calculating pension, the reckoning of service for a Member of Parliament be the aggregate period served regardless of any interruptions thereto;
6. **Honourable Members**, you will agree with me that the said amendments by the Member for Kanduyi have money Bill aspects as defined under Article 114 of the Constitution as they will have direct implication on the budget of the said pensions and confer a benefit which has monetary implications. In this regard, and in keeping with the provisions of Article 114(2) of the Constitution, which provides that on money motions “ **....the House may proceed only in accordance with the recommendation of the relevant Committee after taking into account the views of the Cabinet Secretary for finance**” I regret that I will NOT permit the proposed amendments to be considered by the House in the absence of a proper recommendation as envisaged in the Constitution;
7. **In this regard therefore, the amendments proposed by the Member for Kanduyi to the Parliamentary Pensions (Amendment) (No. 3) Bill, 2019 as contained in today’s Order Paper will not be proceeded with.**

**Honourable Members**, I now order the Committee of the whole House to proceed in accordance with my guidance. Thank you.”

6. **PETITION**

The Speaker conveyed the following Petition –

**Regarding the integrity of the process of marking and releasing of the Kenya Certificate of Primary Education (KCPE) Examinations**

**“Honourable Members,** Standing Order 225(2) (b) requires the Speaker to report to the House any petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, **Honourable Members,** I wish to report to the House that my office has received a petition signed by Ms. Mary Njoki of ID No. 0582470 and Mr. Isaac Njoroge of ID. No. 13406495, on behalf of their children, who are minors, namely; Mary Wanjiru Njoroge and Boniface Muriithi Maina, respectively. The petitioners, who sat for the Kenya Certificate of Primary Education (KCPE) Examinations in 2020, claim that an extensive analysis of results of the KCPE 2020 examination as released on 15<sup>th</sup> April, 2021 is indicative of a pattern of possible manipulation of results that skewed the general performance in favour of candidates from public schools to the detriment of candidates from private schools.

**Honourable Members,** the petitioners state that although learning during the academic year preceding the examinations was largely disrupted by the COVID-19 pandemic, private schools heavily invested in ICT and deployed alternative learning methods, including online classes, which ensured that candidates from private schools were better prepared for the KCPE examinations as compared to those in public schools, which lacked capacity to ensure seamless continuity of the learning process. The petitioners were therefore puzzled that contrary to logical expectation, the 2020 KCPE results were skewed to reflect better performance of public schools and a drastic drop in the performance by candidates from private schools.

**Honourable Members,** the petitioners have attached progress reports of the children to demonstrate that the marks they were awarded at KCPE reflected a drastic negative deviation from the average scores they and their colleagues in private schools had been posting in continuous assessment tests, including the assessment done by the Kenya National Examinations Council (KNEC) after resumption of learning, post-Covid-19, to ascertain the state of preparedness of candidates to sit for KCPE examinations. Indeed, they aver that, even the KNEC in its report on *‘Monitoring Learner Achievement at Class 7 Level Primary School Education’* admitted that pupils from private schools achieved higher mean scores in all subjects than their counterparts in public schools.

**Honourable Members,** the petitioners are concerned that the process of marking and release of KCPE examinations lacks transparency and is shrouded in mystery, due to the limitation imposed on the right to access information by section 42 of the Kenya National Examinations Council Act. Further, the petitioners are faulting Rule 19 of the Kenya National Examinations Council (*Marking of Examination Release of Results and Certification*) Rules, 2015, which prohibits access to an examination script by any candidate, institution, teacher or any other third party representing the interest of the candidate, once the script has been marked. While the petitioners are inclined to believe that they were not fairly scored in KCPE, they are frustrated that the foregoing provisions

make it impossible for them and other aggrieved candidates, institution or their representatives to verify, from the examination scripts, the authenticity of marks that a candidate scored.

**Honourable Members,** the petitioners therefore pray that the National Assembly, through the Departmental Committee on Education and Research –

- (1) inquires into allegations of possible external influence to the process of marking the KCPE examinations, which resulted in candidates from public schools being awarded higher scores than their counterparts in private schools, even when progressive assessment demonstrated that candidates from private schools were better prepared for the exams and had posted better results in pre-KCPE assessments;
- (2) reviews the legal framework governing marking and release of national examinations, particularly Rule 12 of the Kenya National Examinations Council (*Marking of Examination Release of Results and Certification*) Rules, 2015 and amends the Kenya National Examinations Council Act with a view to securing the process of external influence by stakeholders and the Ministry of Education and to permit the right to access to information by aggrieved candidates;
- (3) makes any other recommendations the Committee may deem fit in addressing the plight of the petitioners.

**Honourable Members,** having determined that the matters raised by the petitioners are well within the authority of this House, I order that, pursuant to the provisions of Standing Order 227(1), this Petition be committed to the Departmental Committee on Education and Research. The Committee is required to consider the Petition and report its findings to the House and the Petitioners in accordance with Standing Order 227(2). I thank you!"

## 7. **PAPERS LAID**

The following Papers were laid on the Table –

- a) The Report of the Auditor-General and Financial Statements of the Orange Democratic Movement (ODM) for the year ended 30<sup>th</sup> June, 2020 and the certificate therein.
- b) Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30<sup>th</sup> June, 2019 and the certificates therein: -
  - (i) National Employment Authority;
  - (ii) The Nairobi Centre for International Arbitration;
  - (iii) The National Council for Persons with Disabilities;
  - (iv) The National Council for Law Reporting;
  - (v) Child Welfare Society of Kenya;
  - (vi) Kenya Veterinary Board;
  - (vii) Kenya Dairy Board;
  - (viii) The Small Enterprises Finance Company Limited;
  - (ix) National Research Fund;

- (x) Orange Democratic Movement (ODM);
- (xi) National Transport and Safety Authority;
- (xii) Kenya Citizens and Foreign Nationals management Service; and
- (xiii) School Equipment Production Unit.

*(The Majority Whip)*

- c) Report of the Departmental Committee on Communication, Information and Innovation on its Consideration of the Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021).  
*(Chairperson, Departmental Committee on Communication, Information & Innovation)*
- d) The Reports of the Departmental Committee on environment and Natural Resources on its consideration of: -
  - (i) The Irrigation (Amendment) Bill (National Assembly Bill No. 13 of 2021); and
  - (ii) Sessional Paper No. 1 of 2021 on the National Water Policy.  
*(Chairperson, Departmental Committee on Environment & Natural Resources)*

8. **NOTICE OF MOTION**

The following Notice of Motion was given –

**THAT**, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on its consideration of Sessional Paper No. 1 of 2021 on the National Water Policy, *laid on the Table of House on Tuesday, August 04, 2021.*

*(Chairperson, Departmental Committee on Environment and Natural Resources)*

9. **QUESTIONS**

The following Questions were asked –

- a) Question 264/2021 by the Member for Lamu County (Hon. Ruweida Obo) regarding measures in place to address Gender Based Violence (GBV) cases in the country;

*(To be replied to by the Cabinet Secretary for Interior and Coordination of National Government before the Departmental Committee on Administration and National Security)*

- b) Question 278/2021 by the Member for Ndhiwa (Hon. Martin Owino) regarding electricity power connection in Ndhiwa Central constituency;

*(To be replied to by the Cabinet Secretary for Energy before the Departmental Committee on Energy)*

The following Question was deferred –

- c) Question 261/2021 by the Member for Wundanyi (Hon. Danson Mwashako) regarding masts and installations at the Vuria Hill in Wundanyi constituency;

10. **REQUEST FOR STATEMENTS PURSUANT TO STANDING ORDER 44(2)(c)**

- a) The Member for Runyenjes (Hon. Eric Muchangi, MP) requested for a Statement from the Chairperson Departmental Committee on Administration and National Security regarding the murder of two students from Runyenjes Constituency.
- b) The Member for Kilifi North (Hon. Owen Baya Yaa) requested for a Statement from the Chairperson Departmental Committee on Education and Research regarding payment of internal examination fees in primary schools
- c) The Member for Garissa Township (Hon. Aden Duale) requested for a Statement from the Chairperson Departmental Committee on Finance and National Planning regarding breach of the Statistics Act by the Kenya National Bureau of Statistics in the performance of its functions.
- d) The Member for Nandi Hills (Hon. Alfred Keter, MP) requested for a Statement from the Chairperson Departmental Committee on Education and Research regarding students 100% transition to Secondary School in the country and available infrastructure. The Committee Chairperson undertook to provide a Statement within two weeks.

11. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE COMMITTEE**

The First Chairperson in the Chair

**The Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No. 57 of 2019)**

*Resumption of consideration interrupted on Tuesday, July 06, 2021 (Afternoon Sitting)*

New Clause 18 - amendment proposed-

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 17-

Insertion of  
new section 23  
in Cap.196

18. The principal Act is amended by inserting the following new section immediately after section 22-

Regulations by  
the  
Commission.

23. (1) The Commission may make regulations for prescribing anything required by this Act to be prescribed and generally for the better carrying out of the purposed of this Act.

(2) Without prejudice to the generality of sub-section (1), regulations under this Act may provide for-

(a) the administration of pension, gratuity and other benefits to Members of Parliament;

(b) the establishment, regulation and supervision of the management of a post-retirement medical fund scheme for Members of Parliament.

*(Chairperson, Departmental Committee on Finance and National Planning)*

Motion made and Question proposed –

**THAT**, New Clause 18 be read a Second Time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

**THAT**, New Clause 18 be part of the Bill;

Question put and agreed to;

New Clause 18 – agreed to.

Clause 3 - amendment proposed-

**THAT**, the Bill be amended in clause 3 by inserting the following paragraph immediately after paragraph (d) –

(e) by inserting the following new definition-

“Commission” has the meaning assigned to it under the Parliamentary Service Act;

*(Chairperson, Departmental Committee on Finance and National Planning)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 3 as amended - agreed to

Title - agreed to.

Clause 1 - agreed to.

Bill to be reported with amendments.

12. **HOUSE RESUMED** - The Fourth Chairperson in the Chair

**The Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No. 57 of 2019)**

Bill reported with amendments;

Motion made and Question proposed –

**THAT**, the House do agree with the Committee in the said report

*(Chairperson, Departmental Committee on Finance and National Planning)*

Question deferred.

13. **THE WAQF BILL (NATIONAL ASSEMBLY BILL NO. 73 OF 2019)**

Motion made and question proposed –

**THAT**, the Waqf Bill (National Assembly Bill No. 73 of 2019) be read a Second time.



*(The Majority Whip -02.08.21)*

Debate interrupted on Tuesday, August 03, 2021 (Afternoon Sitting) resumed;

[Change of Chair from the Fourth Chairperson to the First Chairperson]

Rising in his place under Standing Order 95, the Member for Chepalungu (Hon. Kimutai Koske, MP) claimed to move that the mover be called upon to reply;

The Presiding Speaker acceded to the request;

Question that the mover be called upon to reply put and agreed to;

Mover replied;

Question deferred.

14. **THE JUDICIAL SERVICE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2020)**

Order for Second Reading read;

The Vice Chairperson of the Departmental Committee on Justice and Legal Affairs (Hon. T.J. Kajwang, MP) informed the House that the Committee had resolved to withdraw the Bill in view of the fact that the court had already declared Section 30 of the Judicial Service Act, which the Bill sought to amend, as unconstitutional. As such, any further progress on the Bill run the risk of futility by virtual of becoming null and void. The Presiding Speaker directed that the Bill be withdrawn from the Order Paper pending ultimate determination by the substantive Speaker.

15. **THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 21 OF 2021)**

Motion made and question proposed –

**THAT**, the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 21 of 2021) be read a Second time.

*(The Majority Whip)*

Debate arising;

Debate to resume;

And the time being Seven O'clock, the Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

16. **HOUSE ROSE** - at Seven O'clock

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**MEMORANDUM**

The Speaker will take the Chair on  
Thursday, August 05, 2021 at 2:30 p.m.

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