



REPUBLIC OF KENYA

TWELFTH PARLIAMENT (FIFTH SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE SENATE

_____ (No. 08 of 2021) _____

ON THE PASSAGE OF THE COFFEE BILL (SENATE BILL NO. 22 OF 2020); THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 30 OF 2020); THE POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILL NO. 33 OF 2020); THE COMMUNITY HEALTH SERVICES BILL (SENATE BILL NO. 34 OF 2020); AND THE NATIONAL FLAG, EMBLEMS AND NAMES BILL (SENATE BILL NO. 36 OF 2020).

Honourable Members,

Pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received a Message from the Senate regarding its passage of the following five Bills: -

- (i) The National Flag, Emblems and Names Bill (Senate Bill No. 36 of 2020);
- (ii) The Wildlife Conservation and Management (Amendment) Bill (Senate Bill No. 30 of 2020);
- (iii) The Community Health Services Bill (Senate Bill No. 34 of 2020);
- (iv) The Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020); and
- (v) The Coffee Bill (Senate Bill No. 22 of 2020);

Honourable Members, the **first Message** relates to the passage of the National Flag, Emblems and Names Bill (Senate Bill No. 36 of 2020) and indicates that the Bill seeks *"to amend the National Flag, Emblems and Names Act, to ensure that the National Flag is safeguarded."*

The **second Message** is in respect of the passage of the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No. 30 of 2020) which seeks *"to amend the Wildlife Conservation and Management Act to make further provision for the allocation of adequate facilities to County Wildlife Conservation and Compensation Committees established under the Act and to provide for a timeline for compensation for human death, human injury or crop and property damage caused by wildlife."*

The **third Message** relates to the passage of the **Community Health Services Bill (Senate Bill No. 34 of 2020)** which seeks *"to provide for a framework for the delivery of community health services; to promote access to primary health care services at the community level and reduce health disparities between counties; to provide for the training and capacity building of the community health workforce; and for connected purposes."*

Honourable Members, the **fourth Message** relates to the passage of the **Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020)**. The Bill seeks *"to amend the Parliamentary Powers and Privileges Act to provide a structured mechanism through which Parliament is able to receive reports from public officers on the resolutions passed by Parliament"*

The **fifth Message** is in respect of the passage of **the Coffee Bill (Senate Bill No. 22 of 2020)** seeking *"to provide for the regulation, development and promotion of the coffee industry, and for connected purposes."*

Honourable Members, the Senate having considered and passed the five Bills now seeks the concurrence of the National Assembly.

Honourable Members, Standing Orders require the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of its Message. It is for that reason that the House Business scheduled the five Bills for a *First Reading* in today's Order Paper. After First Reading, the Bills will stand committed to respective Committees as follows-

- (i) The National Flag, Emblems and Names Bill (Senate Bill No. 36 of 2020) will stand committed to the Departmental Committee on Administration and National Security;
- (ii) The Kenya Wildlife Conservation and Management (Amendment) Bill (Senate Bill No. 30 of 2020) will stand committed to the Departmental Committee on Environment and Natural Resources;
- (iii) The Community Health Services Bill (Senate Bill No. 34 of 2020) will stand committed to the Departmental Committee on Health;
- (iv) The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020) will stand committed to the Committee of Powers and Privileges, pursuant to Standing Order 127(6); and
- (v) The Coffee Bill (Senate Bill No. 22 of 2020) will stand committed to the Departmental Committee on Agriculture and Livestock.

In considering the Bills, the said Committees will be expected to among other things, apply themselves to the provisions of Articles 109(5) and 114 of the Constitution relating to origination and definition of a "*Money Bill*" and make appropriate recommendation(s) to the House as indeed required by the Constitution.

Honourable Members, may I, at this point, remind the House of the existence of a Bill similar to the National Flag, Emblems and Names Bill (Senate Bill No. 36 of 2020) which is currently before the House and which originated in the Senate and has been undergoing consideration in the National Assembly, pending consideration in Committee of the whole House.

Honourable Members, in my view, the genesis of having two Senate Bills which are similar is due to the misinterpretation by the Senate of the High Court decision in Petition No. 284 of 2019 which as you may be aware, had earlier ordered the cessation of consideration of all Bills that were pending before either House, and for which joint resolution by the Speakers of both Houses as to whether the Bills concern county governments, had not been demonstrated to allow for such Bills to be subjected to the resolution process as contemplated under Article 110(3) of the Constitution.

Honourable Members, you will however observe from the High Court judgment that the Court **did not in any way direct or order for republication of any Bill**. Certainly, the misinterpretation of the High Court decision will frustrate the legislative business of Parliament, its Committees and individual Members. Further, it shall strain the comity between the two Houses and in the end, impede the legislative authority of the Institution of Parliament as provided for in Articles 94, 95 and 96 of the Constitution.

Honourable Members, to illustrate this, several Bills of this House have suffered from this erroneous interpretation and their consideration has been halted by the Senate. These Bills include the Kenya National Library Service Bill, 2020, the Parliamentary Pensions (Amendment) (No.3) Bill, 2019, the Public Service (Values and Principles) (Amendment) Bill, 2019, and the National Youth Council (Amendment) Bill, 2019.

Honourable Members, it is not my wish to frustrate the business of this House and to this end, I intend to engage my counterpart to consider the best way forward on the Bills so that we can move forward the legislative business of Parliament as directed by the Court of Appeal which vacated the High Court Judgment and ordered ***that both Speakers do hold consultations as may be necessary in the public interest so as to move forward with the respective business and mandates of each House.***

Honourable Members, it is on this basis that the two Speakers made a resolution that **all the Senate Bills pending at different stages in the National Assembly and all the National Assembly Bills pending at different stages in the Senate are Bills concerning county governments in terms of Article 110(1) of the Constitution and would proceed in accordance with the provisions of Article 109(4) of the Constitution.** This resolution was arrived at in **order to move forward the legislative business of this House and that of the Senate.** Certainly, in my view, the National Flag, Emblems and Names Bill (Senate Bill No.8 of 2017) being one of the Senate Bills pending before this House ought to proceed accordingly as per the resolution of the two Speakers.

Honourable Members, however in light of the foregoing and the Senate having forwarded a republished Bill which is similar to the National Flag, Emblems and Names Bill (Senate Bill No.8 of 2017) that is already before this House, the Departmental Committee on Administration and National Security is required to recommend to this House which version of the two Bills that are now active in the House should be prioritized.

Honourable Members, Similarly, there is already a Coffee Bill (National Assembly Bill No. 17 of 2021) before the House sponsored by the Leader of Majority Party, which was read a First Time on 8th June 2021 and which is clearly a Money-Bill given that its enactment shall occasion additional expenditure of public funds.

Honourable Members, Further, regarding the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020), the Committee of Powers and Privileges may wish to take advantage of the Senate Bill to address the existing concerns regarding Chairing of the Committee, particularly the fact that the Committee is currently chaired by the Speaker who is also required to preside over deliberations on the Reports of the Powers and Privileges Committee in the House. In addition, the Committee may also consider proposing amendments to the Act to legislate on some aspects that have been pending before the Committee, among other things—

(a) need to align the Act with the decision of the High Court in Constitutional Petition No. 472 of 2017 which declared sections 7 and 11 of the Parliamentary Powers and Privileges Act No.29 of 2017 unconstitutional;

(b) reviewing the composition of the Committee to include ranking members of the House;

- (c)providing for establishment of a position of vice-chairperson of the Committee; and,
- (d)defining the status of the Reports of the Committee of Powers and Privileges recommending any of the disciplinary action under section 17(3) of Parliamentary Powers and Privileges Act, 2017.

However, the decision as to whether such amendments should be incorporated in the Senate Bill as further amendments or be contained in a separate Bill lies with the Committee.

Honourable Members, having said that allow me to conclude by observing that the reports of the respective Committees shall guide the House with respect to the next stages and prioritization of the said Bills. I therefore request the Committees to prioritize the Five Senate Bills Messages in their respective agenda.

I thank you!



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

Thursday, September 30, 2021

