



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

_____ (No. 45 of 2021) _____

PETITION FOR THE REMOVAL FROM OFFICE OF THE ATTORNEY-GENERAL

Honourable Members,

I wish to convey to the House that my office is in receipt of two letters dated 13th September and 22nd October, 2021 from one, Mr. Khelef Khalifa, seeking removal of the Attorney General, the Hon. Justice Paul Kihara Kariuki. In a letter dated 13th September, 2021 titled "*Public Petition for the Removal of the Hon. Paul Kihara, Attorney-General*", Mr. Khalifa petitions this House to initiate the process of removing the current Attorney-General of the Republic of Kenya, the Hon. (Rtd.) Justice Paul Kihara Kariuki from office on account of his alleged conduct relating to the re-run of the 2017 Presidential election. In summary, his grounds for the removal include the claims of empanelling a three-judge bench of the Court of Appeal that overturned a High court decision and allowed the 2017 presidential election re-run, the manner of selection of the bench that heard the matter and allegedly disregarding the rule of law and administration of justice.

Honourable Members, You will recall that the 11th Parliament had an occasion to consider a Petition for the removal from office of the Attorney-General. At the time, the Law Society of Kenya had petitioned the House to consider initiating the process of the removal of the then Attorney-General, Hon. (Prof.) Githu Muigai from office. The Report of the Departmental Committee on Justice and Legal Affairs, to which the Petition was committed, is instructive. With regard to the findings of the Committee, the Report tabled before the House on Tuesday, 19th August, 2014 states, and I quote—

- (i) The Office of the Attorney General is not listed either as a Constitutional Commission or an Independent Office under Article 248(2) and (3) of the Constitution;***
- (ii) The procedure for removal contemplated under Article 251 of the Constitution cannot be used for removal of the Attorney General;***
- (iii) While the Attorney General is a member of the Cabinet under Article 152 (2) of the Constitution, he is not a Cabinet Secretary and therefore the process of removal of a Cabinet Secretary cannot apply in this case;***
- (iv) Whereas Article 132 of the Constitution gives the President power to dismiss the Attorney General in accordance with Article 156, the same Article 156 does not have provisions on removal;***

- (v) ***The Office of the Attorney General Act has made provision for the grounds for removal but does not set out the procedure for removal; and***
- (vi) ***The power and discretion to remove the Attorney General is vested in the President vide Article 132 (2) (b) of the Constitution.***

Consequently, the Committee proceeded to recommend that “***The Office of the Attorney General Act, 2012 should be amended to provide for express provisions on the procedure for removal of the Attorney General from office by way of an all-inclusive process.***” Thereafter, a Bill was published in the name of the Committee to actualize these findings in law. However, by the end of the 11th Parliament, the Bill had not been concluded. It therefore lapsed.

Hon. Members, In light of the previous inconclusive process undertaken on a Petition to remove the Attorney-General, the Clerk of the National Assembly wrote to Mr. Khalifa on 6th October, 2021 advising him of the inability of the House to process his request. The letter highlighted the lack of express provisions in the Constitution, ordinary legislation and the National Assembly Standing Orders on the manner in which the process of removing the Attorney-General from office may be initiated and how a binding recommendation for such removal may be made by any person or body.

Hon. Members, In his letter dated, 22nd October, 2021, Mr. Khalifa does not agree that the body mandated by the Constitution to enact, amend and repeal laws can argue that it is unable to act on his request due to an existing gap in the law. Hon. Members, you will recall that as per the provisions of Article 109(4) of the Constitution, **ONLY** a Member or a Committee of this House has the power to introduce legislation for consideration and debate. The Departmental Committee on Justice and Legal Affairs may wish to consider reviewing the Act to provide for the procedure for removal of the Attorney General.

In the meantime, the Clerk of the National Assembly is hereby directed to inform the Petitioner on the progress on this matter and further inform him that, to the extent that there is a lacuna in law on the removal of the Attorney General, the matter is not within the authority of the National Assembly.



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

Tuesday, 23rd November, 2021