



REPUBLIC OF KENYA

TWELFTH PARLIAMENT (FIFTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

(No. 51 of 2021)

**ON A REQUEST TO WITHDRAW THE ADVOCATES (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 43 OF 2021)**

Honourable Members,

You will recall that during the Afternoon Sitting of the House on Thursday, 25th November, 2021, the First Chairperson of Committees did report to this House that my office was in receipt of a letter from the Chairperson, Departmental Committee on Justice and Legal Affairs seeking leave of the Speaker to withdraw the **Advocates (Amendment) Bill (National Assembly Bill No. 43 of 2021)** pursuant to Standing Order 140. In her guidance to the House, the First Chairperson of Committees did remind the House that the said Bill had been published and introduced in the House under the sponsorship of the Departmental Committee on Justice and Legal Affairs, following its admission of the prayers sought by Mr. George Njenga Mwaniki and 12 others through Public Petition No. 20 of 2021 which sought *"amendment of the Advocates Act, Cap 16, to allow Admission of Law Practitioners from the Republics of Rwanda and Burundi to the Roll of Advocates in Kenya."*

Honourable Members, you may further recall that the First Chairperson did clarify to the House that the application of Standing Order 140 is subject to the discretion of the Speaker who must weigh the merit or otherwise of a request for leave to withdraw a Bill. Accordingly, she deferred commencement of Second Reading of the Bill in question to await the Speaker's determination of the request by the Chairperson of the Departmental Committee on Justice and Legal Affairs for leave to withdraw the Bill.

Hon. Members, I have reviewed the letter of the Chairperson, Departmental Committee on Justice and Legal Affairs and established that the Chairperson cited two grounds for withdrawal of the Bill. These are—

- (1) That the matter being addressed falls within the doctrine of reciprocity among the community of nations, in this case being the member States of the East African Community as captured in paragraph (ix) on page 19 of the Committee' Report, which emphasizes that "*... without mutual and equivalent harmonization, there should be no reciprocity*" with regard to the admission of persons from other East African states to the Roll of Advocates; and,
- (2) That the Office of the Attorney General and Department of Justice of the Republic of Kenya had, during its consideration of the Petition, submitted that it was in the process of formulating two Bills, namely, the Kenya School of Law (amendment) Bill and the Council for Legal Education (Amendment) Bill that would, among others, address the concerns of the Petitioners.

Hon. Members, before I guide the House with regard to the request at hand, I wish to report to the House that the Petitioners have, by way of a letter dated 26th November, 2021, appealed to my Office, objecting to the withdrawal of the Bill by the Chairperson of the Departmental Committee on Justice and Legal Affairs. For the benefit of the House, I have summarized the grounds on which the Petitioners' appeal is premised as follows –

- (1) That, the Committee's decision to legislate in the manner contained in the Bill signifies its acquiescence with their prayers and was arrived at after taking into account the views of the Attorney General, the Judiciary and the Council for Legal Education, among other key stakeholders in the legal profession;
- (2) That, sections 12 and 13 of the Advocates Act had already been passed in the Statute Law (Miscellaneous Amendments) Act, 2012 but were however declared unconstitutional by the Court of Appeal in *Civil Appeal No. 96 of 2014 (Law Society of Kenya vs. The Attorney General & 2 Others)* **ONLY** for want of public participation; and,
- (3) That, the matter at hand is **exclusively** within the authority of Parliament, being the arm of government with the exclusive power to legislate and that even in the instances when the Courts applied themselves to the matter and granted certain orders in the affirmative, they still referred the Petitioners to engage Parliament to legislate appropriately.

Consequently Hon. Members, withdrawal of the Bill from the House is prejudicial, as it would leave the Petitioners with no other recourse.

Hon. Members, in considering the request by the Chairperson of the Departmental Committee on Justice and Legal Affairs as against the plea by the Petitioners, the right to petition Parliament on any matter within its authority anchored in Article 119 of the Constitution is instructive. As stated before, the Advocates (Amendment) Bill (National Assembly Bill No. 43 of 2021) was introduced in this House following its exhaustive consideration of a Public Petition. The Bill was not voluntarily introduced by the Committee on its own motion. Part of the argument by the Petitioners was the fact that they had exhausted all options available to them and were left with this House as the competent body of last resort. It was, therefore, their legitimate expectation that the House would address their prayers conclusively.

Hon. Members, With respect to Public Participation, I do note that the Committee had invited the public to submit their views on the Bill between 11th and 23rd November 2021. It will be recalled that the courts have also affirmed the mandatory nature of public participation and emphasized the qualitateness of public participation that distinguishes it from a *mere consultation or a public relations exercise without a meaningful purpose*. As I have always stressed, public participation ought to be approached as a qualitative and not cosmetic exercise. Indeed, the High Court recently observed in **Constitutional Petition No. E001 OF 2021 eKLR**, with respect to public participation, that and I quote-

"All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful decision. The objective is both symbolical and practical. The persons concerned must be manifestly shown the respect due to their concerned citizens, and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws."

Hon. Members, the question that arises then is, who, between the Petitioners and the Committee, is competent to withdraw a matter for which the intervention of this House has been sought? You will agree with me that justice would demand that only a party seeking redress should be allowed to withdraw its request. In my view, allowing the Committee to abruptly discontinue the process of actualizing the Petitioners prayers, without any reference to them negates the spirit of Article 119 of the Constitution.

Notably, **Hon. Members,** I do observe that the recommendation of the Committee on Page 20 of its Report that Parliament amend the Advocates Act (CAP 16 Laws of Kenya) and its conscious decision to introduce the Bill in the House was made with the Committee having taken into account the submissions received from stakeholders, including the Hon. Attorney General.

Hon. Members, In seeking to withdraw the said Bill, the Committee alluded to the fact that the Attorney General and Department of Justice of the Republic of Kenya were formulating two Bills, namely, the Kenya School of Law (Amendment) Bill and the Council for Legal Education (Amendment) Bill, which would encompass the proposals contained in the Advocates (Amendment) Bill, 2021. Perhaps the Committee would have noted the express provisions Article 94(5) of the Constitution, which states as follows, and I quote –

"(94(5) No person or body, other than Parliament, has the power to make provisions having the force of law in Kenya except under authority conferred by this Constitution or by legislation."

Hon. Members, The Petitioners approached this House well aware that no other body has power to anchor into law the prayers sought in their Petition. Clearly, the two draft Bills referred to in the letter by the Chair of the Departmental Committee on Justice and Legal Affairs have not been introduced in this House either under Standing Order 114 by a Member or under Standing Order 114A by the Leader of Majority Party. Consequently, the draft Bills referred to are unknown to this House and cannot be used as a reason to deny the Petitioners the audience of the House. Indeed, the claim is outside the prayers of Petitioners!

Hon. Members, Majority of the work of a House is discharged through its various Committees which consider matters committed to them and recommend various actions for resolution by the House. At this point, the Committee is and remains an agent of the House and is not an end by itself in matters of legislation.

Hon. Members, the Committee, in the spirit of Article 119 of the Constitution is required to respond conclusively to a legislative request from aggrieved members of the public. It had, by publishing the Bill, adhered to the first part of its legislative mandate in accordance with the recommendations of its own Report. The second part of its mandate would entail spearheading the processing of the Bill in the House through its various stages as if it originated the idea behind the Bill.

However, it now seems that the Committee is either unable or unwilling to undertake this second part of its mandate.

Hon. Members, The Chairperson of the Departmental Committee on Justice and Legal Affairs has, through his letter, given formal indication that he is not desirous of prosecuting the Bill further. To my mind, exercising the discretion under Standing 140 to decline his request would place the petitioners in a rather precarious position. Would the Petitioners, for example, trust that the Bill will be moved in a manner that properly communicates their true intention?

Hon. Members, in view of the foregoing, I would urge the Chairperson of the Departmental Committee to reconsider his request to withdraw the Bill. The Chairperson, after taking into account the views of his Committee, should communicate the Committee's final decision on the matter to my Office before commencement of the next Session. Alternatively, the Speaker will allow any other Member willing to sponsor the Bill to have it re-published in his or her name.

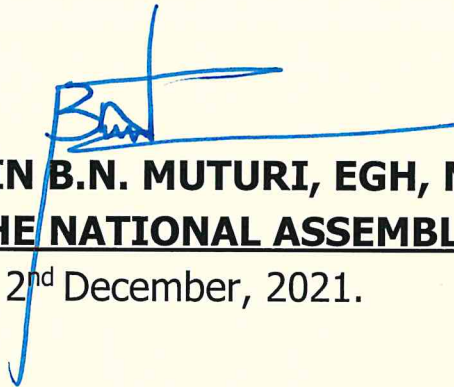
Honourable Members, With respect to Public Participation so far undertaken, I do note that the Committee had invited the public to submit their views on the Bill between 11th and 23rd November 2021. Any memoranda received with regard to the Bill shall remain valid for consideration in the preparation of a Report to this House, either on the original Bill sponsored by the Chairperson, if he elects to proceed with the Bill, or a Bill sponsored by a Member pursuant to this direction.

Hon. Members, in summary, I direct as follows –

- (1) **THAT,** The Chairperson of the Departmental Committee on Justice and Legal Affairs, after taking into account the views of his Committee, should communicate the Committee's final decision on the matter to my office on or before 24th January, 2022;
- (2) **THAT,** In order to adhere to the true intention of Article 119 of the Constitution as read together with the mandate of this House to deliberate on and resolve any issue of concern to the people, in default of the Chairperson sponsoring the Bill, any Member may express interest to sponsor the Bill on the Petitioners' behalf. Where a Member agrees to sponsor the Bill, it shall be republished at the earliest opportunity and introduced in the House for consideration; and,
- (3) **THAT,** Any memoranda received with regard to the Advocates (Amendment) Bill (National Assembly Bill No. 43 of 2021) shall remain valid for consideration in the preparation of a Report to this House, either on the original Bill sponsored by the Chairperson or a Bill sponsored by a Member pursuant to this direction.

The House is accordingly guided.

I thank you!



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

Thursday, 2nd December, 2021.

