



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – FIFTH SESSION**

**THE NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**TUESDAY, NOVEMBER 16, 2021**

1. The House assembled at thirty minutes past two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker

4. **COMMUNICATION FROM THE CHAIR**

The Speaker conveyed the following Communication –

**REGARDING VISITING DELEGATIONS FROM THE PARLIAMENT OF ZIMBABWE AND THE NATIONAL ASSEMBLY OF THE GAMBIA**

**Honourable Members**, I wish to introduce to you two delegations from the Parliament of Zimbabwe and the National Assembly of the Gambia, seated at the Speaker's Row, who are in the Country on benchmarking visits. The first delegation from Zimbabwe, comprises five (5) Members of Parliament and two (2) staff. They are –

1. The Hon. Sipho Mokone, MP - **Chairperson;**
2. The Hon. Denford Masiya, MP;
3. The Hon. Albert Nguluvhe, MP;
4. The Hon. Josiah Sithole, MP;
5. The Hon. Shakespear Hamauswa, MP;
6. Ms. Maria Hlasera - Committee Clerk; and
7. Ms. Betty Mundwenyu - Committee Researcher.

The delegation, drawn from the membership of the Portfolio Committee on Information, Media and Broadcasting in their Parliament, is in the country to learn and share experiences on legislation and operationalization of community radio stations.

**Honourable Members**, the second delegation from the Gambia, is comprised of five (5) senior staff led by the Clerk of the National Assembly. They include –

1. Mr. Momodou A. Sise - Clerk of the National Assembly;
2. Mr. Daniel Cardos - Deputy Clerk, Legislative Business;
3. Mrs. Isatou Kassama - Director, Research and Library;
4. Mr. Gibairu Janneh - Director, Communications; and
5. Mr. Alhagie Dumbuya - Director, Hansard.

**Honourable Members**, the delegation is in the Country to learn the operations of the National Assembly of Kenya including the management of funds as an independent institution as well as the engagement mechanism between Parliament and the National Treasury, among other areas.

On my own behalf and that of the House, I wish to welcome the two delegations to the National Assembly and wish them fruitful engagements during their stay in the Country.

**I thank you!"**

## **5. PAPERS LAID**

The following Papers were laid on the Table –

- a) Legal Notice No. 222 relating to the Public Finance Management (National Roads Toll Fund) Regulations, 2021 and the Explanatory Memorandum from the National Treasury.
- b) Bi-Annual Report for the period January to June 2021 from the Commission on Administrative Justice.
- c) Kenya Bankers Association Total tax contribution Report for the years 2019 and 2020.
- d) The Statutory Six Months Preference and Reservation Report from the Public Procurement Regulatory Authority (PPRA).
- e) Report of the Auditor-General and Financial Statements on the Competition Authority of Kenya for the year ended 30<sup>th</sup> June, 2021 and the certificate therein.
- f) Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30<sup>th</sup> June, 2020 and the certificates therein: -
  - a) Kenya National Commission for UNESCO;
  - b) Cooperative University of Kenya;
  - c) Kenya Revenue Authority - Revenue Accountability Statements; and
  - d) Kenya Revenue Authority.
- g) 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) Maseno University; and
  - ii) Ndia Technical and Vocational College.
- h) Reports of the Auditor-General and Financial Statements in respect of the following Constituencies for the year ended 30<sup>th</sup> June, 2019 and the certificates therein: -
  - i. Narok East;
  - ii. Marakwet East;
  - iii. Hamisi
  - iv. Ugunja;
  - v. Ugenya; and
  - vi. Sabatia.

*(The Leader of the Majority Party)*

**6. QUESTIONS**

The following Questions were asked –

- (i) Question No.451/2021 by the Nominated Member (Hon. Dennitah Ghati, MP) regarding construction of the Nguruna Gender Based Violence and Women Centre in Nyabasi East Ward.

*(To be responded to by the Cabinet Secretary for Public Service, Gender, and Senior Citizens Affairs & Special Programmes before the Departmental Committee on Labour and Social Welfare)*

- (ii) Question No.459/2021 by the Member for Marsabit County (Hon. Safia Sheikh, MP) regarding equal children from pastoralist communities getting access to education similar to the quality available in the country.

*(To be responded to by the Cabinet Secretary for Education before the Departmental Committee on Education and Research)*

- (iii) Question No.464/2021 by the Member for Rongo Constituency (Hon. Paul Abuor, MP) regarding staff engagement status at Rongo University.

- (iv) *(To be responded to by the Cabinet Secretary for Education before the Departmental Committee on Education and Research)*

- (v) Question No.474/2021 by the Member for Lamu County (Hon. Ruweida Obo, MP) regarding mobile telephony quality in Lamu County.

*(To be responded to by the Cabinet Secretary for Information, Community and Technology, Innovation and Youth Affairs before the Departmental Committee on Communication, Information and Innovation)*

- (vi) Question No.475/2021 by the Member for Meru County (Hon. Kawira Mwangaza, MP) regarding employment empowerment of youth in Meru County.

*(To be responded to by the Cabinet Secretary for Public Service, Gender, Senior Citizen Affairs and Special Programmes)*

- (vii) Question No.479/2021 by the Member for Ol Jorok Constituency (Hon. Michael Muchira, MP) regarding metering of projects undertaken by the Rural Electrification and Renewable Energy Corporation.

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

- (viii) Question No.481/2021 by the Member for Bungoma County (Hon. Catherine Wambilianga, MP) regarding the unfortunate rape and murder of Ms. Eunice Nandako Nasimiyu.

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

- (ix) Question No.482/2021 by the Member for Kitui Rural Constituency (Hon. Mboni Mwalika, MP) regarding repair and rehabilitation of faulty power transformers in Kitui Rural Constituency.

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

The following Question was deferred –

- (i) Question No.483/2021 by the Member for Cherangany Constituency (Hon. Joshua Kutuny, MP) regarding purchase of maize from farmers under the Strategic Food Reserve.

**7. MOTION - REPORT ON IMPLEMENTATION STATUS ON AN INQUIRY INTO COMPLAINTS OF ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS KENYA LIMITED**

Motion made and Question proposed –

**THAT**, this House **adopts** the Report of the Select Committee on Implementation on its consideration of the Implementation Status of the Report of the Departmental Committee on Environment and Natural Resources on an inquiry into complaints of environmental pollution by London Distillers Kenya Limited, laid on the Table of the House on Thursday, September 30, 2021.

*(Chairperson, Committee on Implementation – 11.11.2021)*

Debate on the Motion having been concluded on Thursday, November 11, 2021;

Question put and agreed to.

**8. MOTION - REPORT OF THE COMMITTEE OF THE WHOLEHOUSE ON THE WAQF BILL (NATIONAL ASSEMBLY BILL NO. 73 OF 2019)**

Motion made and Question proposed –

**THAT**, this House do agree with the Report of the Committee of the whole House on its consideration of the Waqf Bill (National Assembly Bill No. 73 of 2019) and seeks leave to sit again today.

*(The Leader of the Majority Party)*

Question put and agreed to.

Thereupon the House resolved into Committee.

9. COMMITTEE OF THE WHOLE HOUSEIN THE COMMITTEE

The Fourth Chairperson in the Chair

The Waqf Bill (National Assembly Bill No. 73 of 2019)

Resumption from Clause 4(1)(e)

Clause 4 -Amendment proposed to Clause 4(1)(e) – 4(6)

**THAT**, the Bill be amended by deleting clause 4 and substituting therefor the following new clause—

Validity of 4. (1) A *waqf* shall be valid where —  
a *waqf*.

- ~~(a) the *waaqif* has attained eighteen years;~~
- ~~(b) the *waaqif* is of sound mind;~~
- ~~(c) it is made in accordance with Islamic law;~~
- ~~(d) it is made for religious purposes, save as provided under paragraph (e);~~
- (e) it is made for the benefit of the Muslim community and if secular in character, it is reserved for the benefit of the poor;
- (f) it is permanent in nature;
- (g) there is no condition attached to the donation of the *waqf* by the *waaqif*; and
- (h) the *waaqif* believes in the principles of the Islamic faith.

(2) A person shall only make a *waqf* in relation to property that the person owns.

(3) A widow shall not constitute any *waqf* of the property which she holds in lieu of her unpaid dower.

(4) Except for a testamentary *waqf*, a person may dedicate his or her entire property as a *waqf*.

(5) A person shall not dedicate more than one-third of his or her property to a *waqf* in case of a testamentary *waqf*.

(6) A *waqf* shall not be used for purposes prohibited by Islamic law, repairs or maintenance of the *waaqif's* secular property, providing for the rich or for objects which are uncertain.

*(Hon. Millie Odhiambo, MP)*

Amendment **withdrawn** on account of Hon. Millie Odhiambo's absence.

Clause 4 - Amended only as per amendments passed on 10.11.2021 [i.e. (4) (1)(a) to 4(1)(d) ]

Clause 5 - Agreed to

Clause 6 - -Amendment proposed to Clause 6

**THAT**, clause 6 of the Bill be amended –

- (a) in the opening paragraph –
  - (i) by deleting the word “Attorney-General” and substituting therefor the words “Public Trustee”;
  - (ii) by deleting the word “President” and substituting therefor the word “Attorney-General”;
- (b) by deleting paragraph (b);
- (c) by deleting paragraph (c);
- (d) in paragraph (e)-
  - (i) by deleting the word “four” and substituting therefor the word “six”;
  - (ii) by inserting the following new sub-paragraphs immediately after sub-paragraph (iv)-
    - “(v) finance and investment;
    - (vi) architecture;
    - (vii) administration”.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Clause 6 - As amended by the Chairperson agreed to

Clause 7 -Amendment proposed to Clause 7

- (a) in subclause (1) by deleting the word “President” and substituting therefor the word “Attorney-General”;
- (b) in subclause (2) –
  - (i) by deleting the word “President” and substituting therefor the word “Attorney-General” appearing in the opening paragraph;
  - (ii) by inserting the words “knowledgeable in sharia law” immediately after the word “leaders” appearing in the opening paragraph;
  - (iii) by inserting the following new paragraphs immediately after paragraph (a)-  
“(ab) a person having a conflict of interest whether directly in person or indirectly as a family member or a beneficiary or lessee of a waqf shall not be appointed as a member of the selection panel;
  - (ac) no state officer or public officer shall be appointed as a member of the selection panel”.
- (c) in subclause (3) (d) by deleting the word “President” and substituting therefor the word “Attorney-General”;
- (d) in subclause (4) by deleting the word “President” and substituting therefor the word “Attorney-General”;
- (e) by inserting the following new sub-clause immediately after sub-clause (5)-  
“(5A) The expenses and liabilities of the selection panel shall be borne by the Government”;
- (f) in sub-clause (6) by deleting the word “three” wherever it appears and substituting therefor the word “five”; and
- (g) in subclause (7) (c) by deleting the word “President” and substituting therefor the word “Attorney-General”.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Subsequently, proposed further amendments by Hon. Millie Odhiambo **defeated**;

Clause 7 - As amended by the Chairperson agreed to

Clause 8 - Amendment proposed to Clause 8

**THAT**, clause 8 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (g) –

“(ga) develop and facilitate adequate continuous training programmes to enhance the standard and effectiveness of trustees;

(gb) formulate, implement and oversee programmes to raise awareness on *Waqf* matters;

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Clause 8 - As amended by the Chairperson agreed to

Clause 9 - Amendment proposed to Clause 9

**THAT**, clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4)-

“(4A) The members of the Commission shall serve on a part-time basis”.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Subsequently, proposed further amendment by Hon. Millie Odhiambo **defeated**;

Clause 9 - As amended by the Chairperson agreed to

Clause 10 - Agreed to

Clause 11 - Amendment proposed to Clause 11

**THAT**, Clause 11 of the Bill be amended-



- (a) in sub-clause (2)(d) by inserting the words “or a reputable private institution” at the end of the paragraph;
- (b) by inserting the following new sub-clause immediately after sub-clause (3)-  
“(4) The Director-General shall be the Secretary to the Commission”.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Subsequently, proposed further amendment by Hon. Millie Odhiambo **defeated**;

Clause 11 - As amended by the Chairperson agreed to

Clauses 12, 13 and 14 - proposed amendments by Hon. Millie Odhiambo **dropped**.

Clauses 12, 13 and 14 - Agreed to

Clause 15 - Amendment proposed to Clause 15

**THAT**, Clause 15 of the Bill be amended –

- (a) in subclause (1) (b) (ii) by inserting the words “or a beneficiary or any person who has an interest in the *waqf*” immediately after the word “trustees”;
- (b) in subclause (3) by inserting the words “a beneficiary or any person who has an interest in the *waqf*” immediately after the words “trustees of a *waqf*”.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Subsequently, proposed further amendments by Hon. Millie Odhiambo and Hon. Abdulswamad Nassir **defeated**;

Clause 15 - As amended by the Chairperson agreed to

Clause 16 - Amendment proposed to Clause 16

**THAT**, Clause 16 of the Bill be amended in subclause (2) by deleting the words “twenty thousand” and substituting therefor the words “two million”.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Subsequently, proposed further amendment by Hon. Millie Odhiambo **defeated**;

Clause 16 - As amended by the Chairperson agreed to

Clause 17 - -Amendment proposed to Clause 17

**THAT**, Clause 17 of the Bill be amended –

(a) in subclause (1) by deleting the word “sell”;

(b) by inserting the following new subclause immediately after subclause (1) –

“(1A) A person who intends to sell immovable *Waqf* property shall make an application to the Environment and Land Court and the Environment and Land Court may allow the application or issue any other order it deems appropriate”.

(c) in subclause (2) by deleting the words “subsection (1)” and substituting therefor the words “this section”.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Subsequently, proposed further amendment by Hon. Millie Odhiambo **defeated**;

Clause 17 - As amended by the Chairperson agreed to

Clauses 18, 19 and 20 - Agreed to

Clause 21 - -Amendment proposed to Clause 21

**THAT**, Clause 21 of the Bill be deleted

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Subsequently, proposed further amendment by Hon. Millie Odhiambo **defeated**;

Clause 21 - **Deleted**

Clause 22 - Agreed to

Clause 23 - -Amendment proposed to Clause 23

**THAT**, Clause 23 of the Bill be amended by deleting the proviso.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Clause 23 - **Deleted**

Clauses 24, 25 and 26 - Agreed to

Clause 27 - proposed amendment by Hon. Millie Odhiambo **dropped**.

Clause 27 - Agreed to

Clause 28 - Agreed to

Clause 29 - proposed amendment by Hon. Millie Odhiambo **dropped**.

Clause 29 - Agreed to

Clauses 30 and 31 - Agreed to

New Clause 5A

-New Clause 5A proposed

**THAT** the Bill be amended by inserting the following new clause immediately after clause 5

Headquarters of the Commission. **5A.** (1) The headquarters of the Commission shall be in Mombasa County.

(2) The Commission may establish an office in any other county as it may deem necessary.

*(Hon. Abdulswamad Nassir, MP)*

Amendment **dropped** by Hon. Abdulswamad Nassir;

New Clause 5A - Not Introduced into the Bill

New Clause 12A

-New Clause 12A proposed

**THAT**, the Bill be amended by inserting the following new clauses in Part III immediately after clause 12 —

Appointment of a trustee. **12A.** (1) Every *waqf* shall have a trustee appointed by—

- (a) an executor of the *waqf* where the *waaqif* did not appoint a trustee; or
- (b) the Court where there is a dispute on trusteeship.

(2) A person, male or female of any religion shall be appointed as a trustee if he or she is an adult of sound mind and has capacity to perform the functions of the *waqf* as prescribed by the *waaqif*.

(3) Despite subsection (2), a person who is female shall not be qualified to be appointed as a trustee if the *waqf* requires the trustee to undertake religious duties.

(4) The court shall in appointing a trustee under subsection (1) ensure that it gives regard to the instructions of the *waaqif*, public interest and preference of the family members of *waaqif*.

*(Hon. Millie Odhiambo, MP)*

Amendment **dropped** by Hon. Millie Odhiambo;

New Clause 12A - Not Introduced into the Bill

New Clause 12B

-New Clause 12B proposed

Powers of a trustee. **12B.** (1) A trustee shall be in charge of the property of the *waaqif* and shall have the power to utilize the property as the trustee considers it fit for the purpose of the *waqf*.

(2) A trustee shall also take reasonable steps and act in good faith to ensure that the intended beneficiaries benefit from the *waqf* including instituting proceedings, where necessary, to protect the interest of a *waqf*.

(3) Except where the *waaqif* authorizes the trustee to dispose of property, the trustee shall have no right to sell any property which is a subject of a *waqf*.

(4) A trustee shall borrow money in relation to a *waqf* or sell a *waqf* where there are justifiable reasons to do so and only where the court has issued an order to borrow or otherwise dispose off the property under a *waqf*.

(5) Except with the leave of court, a trustee shall not lease any property under a *waqf* for agricultural purposes for more than three years and for non-agricultural purposes for more than one year.

(6) A trustee shall have a right to be remunerated as provided by a *waqf* and where a trustee considers the remuneration inadequate, the trustee may apply to court for redress.

*(Hon. Millie Odhiambo, MP)*

Amendment **dropped** by Hon. Millie Odhiambo;

New Clause 12B - Not Introduced into the Bill

New Clause 12C

-New Clause 12C proposed

Removal of a trustee. **12C.** (1) A trustee shall be removed from office only by a court on grounds of —

- (a) misappropriation of a *waaqif*'s property;
- (b) allowing the *waqf* property to fall into disrepair when the trustee has funds to maintain the property;



Right to access information. **27A.** (1) A beneficiary of a *waqf* shall, at all reasonable times, be entitled to information about the *waqf* including the inspection of accounts and shall upon payment of the prescribed fees be supplied with copies of any deeds or documents thereof.

(2) The information under subsection (1) does not include correspondence and any other confidential information.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

New Clause 27A - Agreed to and Introduced into the Bill

New Clause 27B - -New Clause 27B proposed

Disputes resolution. **27B.** Any matter or dispute relating to a *waqf* shall in the first instance be referred to a Kadhi's court.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

New Clause 27B - Agreed to and Introduced into the Bill

New Clause 27C - -New Clause 27C proposed

Exemption from taxation or penalties **27C.** Despite the provisions of any other written law, the income of the Commission shall not be subjected to income tax or any other tax or penalty.

*(Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question on the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

New Clause 27C - Agreed to and Introduced into the Bill

Clause 2 - Amendment proposed to Clause 2

**THAT**, clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical sequence—

“*zakat*” means payment made annually under Islamic law on certain kinds of property and used for charitable and religious purposes ~~as a second pillar~~ **as the third pillar** of Islam.

*(Hon. Aden Duale, MP)*

Question on the amendment proposed **in an amended form**;

Debate arising;

Question on the amendment **in an amended form** put and agreed to;

Subsequently, proposed further amendment by Hon. Millie Odhiambo **defeated**;

Clause 2 - As amended in an amended form by Hon. Aden Duale agreed to

Title - Agreed to

Clause 1 - Agreed to

**Bill to be Reported with Amendments**

**10. HOUSE RESUMED** - the Fourth Chairperson in the Chair

**The Waqf Bill (National Assembly Bill No. 73 of 2019)**

Bill reported with amendments;

Motion made and Question proposed –

**THAT**, the House do agree with the Committee in its Report.

*(Chairperson, Departmental Committee on Justice and Legal Affairs).*

Question deferred.

**11. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL NATIONAL ASSEMBLY BILL NO.1 OF 2020**



Order for Second reading read;

Motion made and Question proposed;

THAT, the Kenya National Commission on Human Rights (Amendment) Bill (National Assembly Bill No.1 of 2020) be now read a Second Time

*(Chairperson, Constitutional Implementation Oversight Committee – 11.11.2021)*

Debate interrupted on Thursday, November 11, 2021 resumed;

Debate concluded;

Mover replied;

Question deferred.

Rising in his place under Standing Order 95, the Nominated Member (Hon. David Sankok, MP) drew the attention of the Chair regarding lack of quorum in the House;

The Chair ordered that the Quorum Bell be rang for ten minutes in line with Standing Order 34;

And there being no Quorum attained at the expiration of the ten minutes, the Fourth Chairperson adjourned the House without Question put pursuant to the Standing Orders.

**12. HOUSE ROSE** - at twenty one minutes past Five O'clock.

**MEMORANDUM**

The Speaker will take the Chair on  
Wednesday, November 17, 2021 at 9.30am