



**REPUBLIC OF KENYA**  
**TWELFTH PARLIAMENT – FIFTH SESSION**  
**THE NATIONAL ASSEMBLY**  
**VOTES AND PROCEEDINGS**

**THURSDAY, OCTOBER 21, 2021**

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

4. **COMMUNICATION FROM THE CHAIR**

The Deputy Speaker issued the following Communications -

- (i) **On the constitutionality of and sufficiency of public participation during consideration of the Health Laws (Amendment) Bill (National Assembly Bill No. 2 of 2021) by the Departmental Committee on Health**

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**“Honourable Members,** You will recall that, during the afternoon Sitting of the House on Tuesday, 5<sup>th</sup> October, 2021, the Member for Garissa Township, the Hon. Aden Duale, EGH, MP, rose on a Point of Order seeking deferment of the Second Reading of the Health Laws (Amendment) Bill (National Assembly Bill No. 2 of 2021), which intends to amend various health sector related statutes so as to improve efficiency and for better service delivery. The Hon. Duale indulged the Speaker to defer Second Reading of the Bill until the matter of the adequacy of public participation undertaken by the relevant Departmental Committee on the Bill; and the constitutionality of certain provisions contained in the Bill are determined. He claimed that, barring the determination by the Speaker of the two cited fundamental issues concerning the Bill in question, would make the House to proceed with a legislative exercise that was likely to be successfully challenged in court for being unconstitutional especially for want of adequate public participation.

**Honourable Members,** the concerns by the Hon. Duale elicited a lot of interest. The Members who weighed in on the matter raised by the Member for Garissa Township were the Leader of the Majority Party, the Majority Whip, the Hon. (Dr.) Eseli Simiyu, the Hon. T.J. Kajwang, the Hon. John Mose, the Hon. (Dr.) Otiende Amollo, the Hon. Peter Kaluma, the Hon. (Dr.) Robert Pukose, the Hon. Stephen Mule, the Hon. (Dr.) James Nyikal, the Hon. John Kiarie, the Hon. Jared Okello, and the Hon. Gideon Koske, among others. In their arguments, the members claimed that the proposed amendments, if carried, would substantially alter the composition

of various statutory and regulatory boards and councils in the health sector and should therefore have been contained in separate Bills seeking to amend the relevant Statutes, rather than being brought through an *omnibus* Bill as is the case now. It was further claimed that the Bill was ill-intended, particularly because it sought to domicile control of the regulatory or statutory boards and councils in the Executive by excluding stakeholders and professional bodies from membership. This, it was claimed, is contrary to the provisions of Article 10 of the Constitution which places public participation at the core of our national values and principles of governance.

**Honourable Members**, you will agree with me that the matters raised by the Hon. Duale and other Members are weighty and would have merited the direction of the Speaker before any further action is taken on the Bill. However, I did guide, in the interim, that debate on Second Reading of the Bill proceeds in the event that the Order under which the Bill was listed in the Order Paper for that day was to be reached. My decision was based on the principle that, as your Speaker, my role is largely facilitative and not obstructive. Hence, I should, as much as possible, allow the House to proceed to transact its business unimpeded, even when reservations have been raised, as long as a decision is not taken until a determination of any substantive question raised by a Member is made.

**Honourable Members**, so as to guide the House appropriately, I have keenly reviewed the issues canvassed and isolated the following three (3) key questions as requiring my guidance –

- (1) **Whether the proposed amendments contained in the Bill, either in part or in its entirety, are unconstitutional;**
- (2) **Whether the proposed amendments contained in the Health Laws (Amendment) Bill transfigures the said Bill from an ordinary Bill to a Statute Law (Miscellaneous Amendment) Bill, or not; and,**
- (3) **Whether the Departmental Committee on Health undertook the requisite and adequate public participation within the meaning and threshold of Article 118 of the Constitution and Standing Order 127(3) and whether there is a proper record of the exercise in the Report of the Committee.**

**Honourable Members**, so as to put the questions raised into perspective and for the benefit of those who are yet to interact with the Bill, permit me to first note that the Health Laws (Amendment) Bill, 2021 seeks to amend seventeen (17) statutes, namely—

- (1) The Pharmacy and Poisons Act (Cap. 244);
- (2) The Mental Health Act (Cap. 248);
- (3) The Medical Practitioners and Dentists Act (Cap. 253);
- (4) The Nurses Act (Cap. 257);
- (5) The Kenya Medical Training College Act (Cap. 261);
- (6) The National Hospital Insurance Fund Act No. 9 of 1998;
- (7) The Medical Laboratory Technicians and Technologists Act No. 10 of 1999;
- (8) The Tobacco Control Act No 4 of 2007;
- (9) The Nutritionists and Dieticians Act No. 18 of 2007;
- (10) The Cancer Prevention and Control Act No. 15 of 2012;
- (11) The Public Health Officers (Training, Registration and Licensing) Act No. 12 of 2013;
- (12) The Kenya Medical Supplies Authority Act No. 20 of 2013;
- (13) The Counsellors and Psychologists Act No. 14 of 2014;
- (14) The Physiotherapists Act No. 20 of 2014;
- (15) The Health Records and Information Managers Act No. 15 of 2016;

- (16) The Clinical Officers (Training, registration and Licensing) Act No. 20 of 2017;  
and  
(17) The Health Act No. 1 of 2017.

**Honourable Members**, from a cursory reading of the *Memorandum of Objects and Reasons* of the Bill, the overarching import of the proposed amendments in the Bill is to alter the composition and the process of appointing chairpersons and/or members of various statutory or regulatory boards and councils in the health sector generally. I am inclined to believe that the Member for Garissa Township was moved by the worry that the proposed amendments had drastic ramifications on the architecture of the affected regulatory boards and councils in the health sector.

**Honourable Members**, allow me therefore now to address myself to the three issues that I distilled as requiring my determination, and I will commence with the issue of constitutionality whose determination may have a terminal effect on the consideration of the Bill.

From my understanding of the issues raised by the Member for Garissa Township, I am being invited to find that, to the extent that the Health Laws (Amendment) Bill, 2021 proposes to limit involvement of professional bodies and various sector stakeholders in statutory and regulatory boards in the health sector and domicile their appointment within the ambit of the Executive, the amendments are unconstitutional and therefore untenable as they negate the realization of the national values and principles of governance espoused by Article 10 of the Constitution.

**Honourable Members**, there is no contestation that Article 3 of the Constitution obligates me to respect, uphold and defend the Constitution. I would ordinarily therefore be required to forestall any affront to the Constitution by whichever manner, including legislation before this House if indeed the concerns raised by the Member for Garissa Township are valid. Having said that, let me emphasize that **the path of determining constitutionality or otherwise of matters under consideration by this House ought to be navigated with caution, lest the House be unnecessarily gagged from exercising its constitutional mandate**. As you are aware, I have previously hesitated to determine questions of constitutionality raised in this House. Even when I ruled on 19<sup>th</sup> September, 2019 that Clauses 50 and 51 be severed from the Finance Bill, 2019 for failure by the Cabinet Secretary to disclose in the accompanying memoranda that the two clauses would limit the right to privacy as required in Article 24 of the Constitution, I was categorical that the determination was **only related to the procedural defects in the manner in which the proposed amendments had been presented**. I also clarified that, at that stage, the question as to whether the two clauses would offend the Constitution if they were to comply with the standard of disclosure set in the Constitution and introduced as a separate Bill did not arise.

**Honourable Members**, I do not wish to deviate from my previous decisions on questions of constitutionality. As a matter of fact, the Speaker's respect for, upholding and defence of the Constitution is subject to the express provisions of Article 165 of the Constitution. For clarity, the said Article provides as follows, and I quote –

**165(3) Subject to clause (5), the High Court shall have –**

**(d) Jurisdiction to hear any question respecting the interpretation of this Constitution, including determination of –**

**(i) The question whether any law is inconsistent with or in contravention of this constitution;**

Clearly, **Honourable Members**, the question of construing and interpreting the Constitution, including the authority to make a definitive determination as to the constitutionality or otherwise of any law rests within the exclusive province of the High Court. I am inclined to believe that the framers of our Constitution had good reasons for couching Article 165 of the Constitution to only make reference to law and not Bills. We all appreciate that a Bill in itself is not law until it successfully goes through the stages of law making, including the Committee of the Whole House, where it may be amended. It is my view that declaring a Bill unconstitutional while still undergoing consideration in the House is premature, given that the House still has room to correct any potentially unconstitutional provisions- perceived or real, by way of amendments at the Committee of the Whole House stage.

**Honourable Members**, I note that the Constitution grants the Members of this House an expansive legislative mandate, which should be jealously safeguarded. In this regard, I ought not to make decisions that would hinder or inhibit the House from executing its mandate. Instead, I am duty-bound to facilitate the continuity of legislative business of this House even in the face of concerns like the one expressed by the Member for Garissa Township, provided that the matter is still within the province of the House and the House still has legislative power to rectify the concerns through amendment and voting. My views are buttressed by the provisions of section 72 of *Mason's Manual of Legislative Procedure*, (2010 Edition), which states as follows, and I quote-

1. *"The propriety and wisdom of a statute are questions exclusively for the legislature. The wisdom, justice and expediency of an act of the legislature is not subject to review by the Courts.*
2. *Before a statute can be declared unconstitutional, it must clearly and unavoidably appear to be beyond the power of the legislature. It is for the courts to decide whether there has been compliance with constitutional provisions and whether a bill of the legislature has become law."*

**Honourable Members**, I am persuaded that the House still has power to apply itself on the matters canvassed by the Hon. Duale by amending the Bill appropriately during the Committee of the Whole House or making a conscientious decision on the Bill in one way or the other. Further, it is not enough to simply claim that "a Bill is unconstitutional" without particularizing with specificity the basis of the claim. **No Member stated with specificity any provision in the Bill which offends a particular provision of the Constitution.** I am therefore hesitant to forestall consideration of the Health Laws (Amendment) Bill, 2021 on grounds of general unconstitutionality, as that may be construed on one hand as an attempt by the Speaker to unduly fetter the authority of the House and usurping the constitutional mandate of the High Court on the other hand. I believe, Honourable Members that this settles the second question.

**Honourable Members**, the **Second issue** also relates to whether the amendments proposed in the Health Laws (Amendment) Bill, 2021 are of a substantive nature requiring the publication of separate Bills for each affected statute instead of their publication in an omnibus format as presented to the House. The Courts and indeed myself have had previous occasion to address the question of the nature and scope of *omnibus* Bills. What is clear is that the courts have left the determination of the form of Bill to the province of Parliament. The courts are also on record as having found difficulties in establishing provisions of a Bill that would constitute

miscellaneous *vis-à-vis* substantive provisions so as to make a determination as to whether such provisions sit well in a stand alone Bill or an omnibus Bill.

**Honourable Members**, this is not the first time that the House is considering a a Bill presented in an omnibus format. As you may be aware, it is the practice of this House to publish and consider bills making amendments to various statutes in an omnibus format. Miscellaneous or various amendments to several disparate statutes have been published on an annual basis in a Statute Law (Miscellaneous Amendment) Bill. Where the amendments proposed relate to a defined sector or theme such as finance or health, omnibus Bills such as the Finance Bill or the Tax Laws (Amendment) Bill have been presented to this House. Indeed, and for the record, this House has considered and passed Bills similar in form to the Health Laws (Amendment) Bill, 2021. They include, the Finance Bills, the Tax Laws (Amendment) Bills, 2020, the Land Laws (Amendment) Bill, 2020, the Business Laws (Amendment) Bill, 2019, the Land Value Index Laws (Amendment) Bill, 2018, the Health Laws (Amendment) Bill, 2018, just to mention but a few.

As a matter of fact, **Honourable Members**, the Bill under contestation was published in accordance with the practice and procedures of this House and processed in accordance with Standing Orders 114 and 114A.

You may also recall that I have previously ruled on questions as to whether proposed amendments contained in an *omnibus* Bill ought to be published as separate Bills. I remain of the considered view that any concerns over the substance of a Bill can only be addressed through the conduct of adequate public participation and exhaustive consideration of the proposals by the House. I have previously committed affected statutes in an omnibus Bill to their relevant Departmental Committees to facilitate public participation for this very reason. The test for the House is not the form of the Bill, but the manner in which it considers and interrogates the substance of the Bill before making any resolution. **It is my finding that the Health Laws (Amendment) Bill, 2021 is in order as to the format and style of the House and may be proceeded with. This settles the second question.**

**Honourable Members**, the **Third and final issue** is the question as to whether the Departmental Committee on Health did conduct adequate public participation within the meaning and threshold envisaged under Article 118 of the Constitution and Standing Order 127(3).

From the outset, **Honourable Members**, you are aware that I have previously guided this House that, since the promulgation of the Constitution of Kenya 2010, public participation in legislative business is no longer optional. Article 118 of the Constitution is couched in mandatory terms and obligates Parliament, in this case the National Assembly, to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. In my previous Rulings on questions of public participation, I have repeatedly underscored that public participation ought to be undertaken in a qualitative manner and not a quantitative or cosmetic ritual of **ticking the box** to satisfy the requirements of Article 118 of the Constitution and Standing Order 127.

**Honourable Members**, as you may recall, I have previously referred a Bill back to the relevant Committee and ordered fresh public participation where I was not satisfied that the threshold of public participation within the meaning of Article 118 was met. This was the case when I directed the Departmental Committee on Transport, Public Works and Housing to undertake fresh public participation on the National Aviation Management Bill, 2020, (National Assembly Bill No.18 of 2020). Indeed, the courts have also affirmed the mandatory nature of public

participation and emphasized on its qualitative aspects to distinguish it from a ***mere consultation or a public relations exercise without a meaningful purpose***. In this regard, I need not revisit and belabour the meaning, scope and threshold of public participation.

**Honourable Members**, in arguing that the Departmental Committee on Health did not conduct adequate public participation within the meaning and threshold envisaged in Article 118 of the Constitution and Standing Order 127(3), the Hon. Aden Duale claimed that, and I quote –

*“... despite several bodies in the health sector, including the Kenya Union of Clinical Officers (KUCO) and the Kenya Clinical Officers Association (KCOA) - the bodies that regulate medical doctors, pharmacists and nurses, among others, in this country - submitting memoranda to be considered by the Committee, they can confirm to this House that the Committee in its Report completely disregarded their submissions. In disregard of Article 118 of the Constitution, **the Committee never considered one single memorandum, neither did it give some of those institutions and bodies an opportunity to appear before it to prosecute.**”*  
**[Emphasis]**

**Honourable Members**, I have perused the Report of the Committee on its consideration of the Health Laws (Amendment) Bill, 2021 and noted that, pursuant to Article 118 of the Constitution and Standing Order 127(3), the Committee rolled out the process of public participation by placing an advertisement in the print media on 11<sup>th</sup> March 2021, requesting for comments and memoranda from the public on the Bill within a period of seven (7) days.

**Honourable Members**, page 25 the Report of the Committee indicates that the Committee received a *Joint Memorandum* and individual memoranda from the following parties—

**(a) Parties to the Joint Memorandum**

- (1) Ministry of Health
- (2) Pharmaceutical Society of Kenya
- (3) Kenya Medical Association
- (4) The National Nurses Association of Kenya
- (5) Kenya Dental Association
- (6) Kenya Pharmaceutical Association
- (7) Kenya Clinical Officers Association
- (8) The Association of Kenya Medical Laboratory Scientific Officers
- (9) The Association of Medical Engineering of Kenya
- (10) The Kenya Association of Radiologists
- (11) The Public Health Society of Kenya
- (12) Environmental Public Health Association of Kenya

**(b) Individual Memoranda**

- (1) The Peoples Health Movement- Kenya
- (2) Christian Medical & Dental Association of Kenya
- (3) Kenya Progressive Nurses Association
- (4) Kenya Medical Association
- (5) Kenya Nutritionists and Dieticians Institute
- (6) Association of Medical Records Officers- Kenya
- (7) Health Records and Information Management Society
- (8) Health Systems Management Association
- (9) Society of Radiography in Kenya
- (10) Dr. Kahura Mundia

- (11) Dr. Magare Gikenyi
- (12) Ikacho Lokwee
- (13) Willis Okoth
- (14) Abraham Kimeli Kiplagat
- (15) William Komen
- (16) Rodgers Kwalera
- (17) Henry Cheruiyot
- (18) Faith Adhiambo
- (19) Japheth Ngeno
- (20) Milcah Koech
- (21) Rose Jepchirchir Bargoiyet
- (22) Nelly Jepngetich Tarus
- (23) Alice Jeruto Kimutai
- (24) Faith Cheruiyot
- (25) Mark Kiplimo Chepsiror
- (26) Kenneth Kibet Koech
- (27) Jane Mochache
- (28) Thomas Orwenyo.

**Honourable Members**, it is worth noting that in the letter dated 20<sup>th</sup> May 2021 submitting the Joint Memorandum to the Clerk, the Cabinet Secretary for Health is on record that that the Ministry had reviewed the Health Laws (Amendment) Bill, 2021 in consultations with stakeholders in the Health Sector.

He added that the Ministry had reached a consensus with a majority of the stakeholders on regulatory councils/boards as contained in the Joint Memorandum.

**Honourable Members**, over and above the public advertisement placed in the print media inviting submission of memoranda, the Committee, by way of a letter dated 20<sup>th</sup> April, 2021, invited key stakeholders in the health sector for a virtual stakeholder engagement on 22<sup>nd</sup> April, 2021. Having perused both the Report and the Minutes annexed to the Report, I can confirm that, far from the claims made by the Hon. Duale, the *Kenya Clinical Officers Association* was party to the *Joint Memoranda* submitted by the Ministry of Health on behalf of the parties to it. Further, Minutes of the meeting of the Committee held on 22<sup>nd</sup> April 2021 also confirm that the said association was present and did participate in the proceedings. With regard to the *Kenya Union of Clinical Officers*, Minutes of the foregoing meeting show that the Union was present at the meeting. While the Union is not listed in the Report as having submitted a separate memorandum, I am inclined to believe that by virtue of having been on record to have attended the hearings on 22<sup>nd</sup> April, 2021, it had the opportunity to canvas its views on the Bill.

I am also reliably informed that the Ministry of Health wrote to the Clerk of the National Assembly seeking to '*clarify and articulate the proposed amendments*'. The Committee and the Ministry held consultative meetings, physically on 17<sup>th</sup> August, 2021 and virtually on 31<sup>st</sup> August, 2021 before adopting the Report. From the foregoing, it is apparent that the Committee engaged most stakeholders in the health sector and afforded them the opportunity to make their submissions on the Bill. **What weight, if any, they gave to the submissions they received from the stakeholders, is what remains to be seen.**

**Honourable Members**, the qualitative aspect of public participation as espoused in Article 118 of the Constitution requires the House to receive views from the public, to consider such views and also to demonstrate such consideration in its final output. Indeed, the High

Court recently observed in **Constitutional Petition No. E001 OF 2021 eKLR**, 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 manner. 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.”***

Members are specifically enjoined by Article 10 of the Constitution to ensure the participation of the people when enacting any legislation. This obligates a Committee of the House to which a Bill is committed to undertake and demonstrate the discharge of two distinct tasks in its report to the House on a Bill. The Committee must first **INVITE** the public to participate in its consideration of the Bill. Such invitation introduces the public to the general content of the Bill and directs them on where to obtain a copy to allow them to review and comment on the Bill either in person or through written memoranda. The substance of the Bill under consideration and the urgency at hand shall guide the Committee in prescribing the period within which submissions are to be made. Second, the Committee must **CONSIDER** any representations it receives from the public on a Bill. The Committee must deliberate on the submissions received, record its view(s) on the submissions and indicate its decision or reasons (where possible) for either agreeing or disagreeing with the representations. This, ideally, is what would inform the recommendations it makes to the House.

**Hon. Members**, from a perusal of the Report tabled before the House, it is evident that though the Committee laudably applied itself to the tasks it was given by the House, it fell slightly short of the standards required. The Committee did **invite** the public to participate in its consideration of the Bill. The Committee gave **notice** for the public to submit memoranda and thereafter invited the key stakeholders it had identified to a virtual meeting and other meetings. The Committee did receive submissions from key stakeholders affected by the proposals in the Bill as well as other interested members of the public. Reading through the Part III of the Report, Members will note that the Committee took great lengths to record the submissions received from the public and concluded its Report by recommending amendments to various provisions of the Bill. **The only major gap that is apparent from the body of the Report is a commentary or a record noting how the Committee considered the submissions it received, its views on those submissions and reasons for either agreeing or disagreeing with the submissions.** Unless this omission is remedied, the assumption by members of the public and non-Members of the Committee shall remain **that the public participation conducted by the Committee was a mere perfunctory exercise without any bearing on the final outcome of the Bill.**

**Hon. Members**, the obligation to facilitate public participation in legislative processes can only be fully discharged if the public who take their time to either submit memoranda or make oral submissions receive adequate feedback from this House on such submissions. I do agree that not all submissions may be relevant. A submission may be outlandish. It may even not relate to the subject matter under consideration. It may propose expansion of a Bill in a manner that is prohibited under our Standing Orders. It may be untenable for the fact that it impacts current or future budgets in a manner that cannot be supported in the short or medium term.



Nevertheless, Parliament, as a House of record, must ensure that all such submissions are received, recorded and afforded clear and proper feedback. The feedback must address the question of whether the submissions will affect the legislative process and give reasons on the position taken by a Committee. It is the duty of each Committee to meticulously sieve the cocktail of submissions it receives and note the manner in which that exercise informs the recommendations that it makes to the House.

**Hon. Members**, this House makes laws that directly affect the people, hence the participatory approach to law-making required by the Constitution. We cannot expect the public to look favourably at laws made by the House when their input is disregarded without them being given the courtesy of a proper reason. **The Report of the Departmental Committee on Health on its Consideration of the Health Laws (Amendment) Bill, 2021 does not expressly indicate the manner in which it considered the submissions it received from the public or provide any reasons either in agreement or disagreement with the submissions. Consequently, it is my view that the conduct of public participation on the Bill is incomplete and wanting to that extent.**

**Hon. Members**, Before I conclude, you will recall that during debate on the matter that gave rise to this guidance, there arose the issue of whether a Minority report may be appended to a Committee Report on a Bill. This was alluded to by the Hon. Simiyu Esseli. I would not expect the Member for Tongaren, who is serving his third term in this House, to be misled on this matter. For the avoidance of doubt, Standing Order 199(5) provides, and I quote—

*“A report having been adopted by a majority of Members, a minority or dissenting report may be appended to the report by any Member(s) of the Committee.”*

The Hon. Member therefore remains squarely within his rights as a Member of the Departmental Committee on Health to propose, cause drafting and have a Minority report included in the Report of the Committee for attention of the House.

**Honourable Members**, in summary, my considered *guidance* is as follows –

- (1) **THAT**, The role of the Speaker in respecting, defending and upholding the Constitution is limited to the procedural aspects of the exercise of the mandate granted to the House by Article 95 the Constitution. The form, substance and manner in which the Health Laws (Amendment) Bill, 2021 was introduced in the House accord with the provisions of the Constitution and the Standing Orders of the House. The House remains at liberty to effect any changes it deems fit to the Bill in the exercise of its legislative mandate. The Constitution, however, reserves the powers to determine the constitutionality or otherwise of a resolution made by the House to the High Court;
- (2) **THAT**, The Health Laws (Amendment) Bill, 2021 which seeks to amend various health related statutes and is presented in an *omnibus* format **is in order as to the form and style of the House**;
- (3) **THAT**, In order to discharge the requirement to facilitate public participation under Article 118 of the Constitution and Standing Order No. 127, a Committee of the House to which a Bill is committed **MUST undertake and demonstrate** the discharge of two distinct tasks in its report to the House as follows—

- (a) The Committee must **INVITE** the public to participate in its consideration of the Bill and prescribe an adequate period of time within which submissions are to be made. The period may be determined with reference to the substance of the Bill and the urgency of the matter under consideration; and
- (b) The Committee must **CONSIDER** any representations it receives from the public on a Bill by deliberating on each submission received, recording its view(s) on the submissions and providing reasons for either agreeing or disagreeing with the representations in its Report.
- (4) **THAT**, To the extent that the Report of the Departmental Committee on Health Laws (Amendment) Bill, 2021 does not expressly indicate the manner in which it considered the submissions it received from the public or provide any reasons either in agreement or disagreement with the submissions, the conduct of public participation on the Bill does not meet the threshold required by Article 118 of the Constitution and Standing Order No. 127;
- (5) **THAT**, The Report by the Departmental Committee on Health on its Consideration of the Health Laws (Amendment) Bill, 2021 is hereby referred back to the Committee for regularization along the terms of this guidance. The Committee is at liberty to seek further engagement with the public on the Bill if need be; and,
- (6) **THAT**, The Committee should also address and attempt to resolve the concerns raised by part of its membership in the House with respect to the approach, value and **actualization** of the output of the stakeholder engagement exercise.

Having given this *guidance* and conscious that this Bill is one that concerns County Governments in terms of Articles 110 and 112 of the Constitution, the House will now await the Committee to resubmit its report to the House after complying with this *guidance* before resuming with its consideration at Second Reading. However, the final decision on the Bill and the form in which it will be passed ultimately lies with the House.

The House is accordingly guided. **I thank you!”**

(ii) **Regarding a visiting Delegation from the Parliament of Zimbabwe**

**“Honourable Members,**

I wish to introduce to you a delegation of Members of Parliament and Staff from the Parliament of Zimbabwe seated at the Speaker’s Row. The delegation comprises of the following Members drawn from the Committee on Local Government, Public Works, National Housing and Social Amenities: -

1. The Hon. Miriam Chikukwa, MP – Chairperson/Leader of Delegation;
2. The Hon. Marko Raidza, MP – Committee Member;
3. The Hon. Omega Sibanda, MP – Committee Member;
4. The Hon. James Chidakwa, MP – Committee Member; and
5. The Hon. Allan Markham, MP – Committee Member.

The delegation is accompanied by –

1. Ms. Sithabisiwe Macheza – Committee Clerk;

2. Ms. Esline Ganda – Minister Counsellor from the Embassy; and
3. Ms. Edith Muteema – Counsellor from the Embassy.

**Honourable Members**, the delegation is in the country on a benchmarking visit to our Parliament, specifically to share experiences and learn good practices with their counterpart Committee.

On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements during their stay in the Country. **I thank you!**"

## 5. PETITIONS

- (i) The Deputy Speaker conveyed the following Petition –

### **Regarding the mistreatment of Kenyan domestic workers in Saudi Arabia, the United Arab Emirates and other Persian countries**

**“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 from Mr. Fredrick Gaya of National Identification No. 22729580, on behalf of residents of Kojwach Location, Rachuonyo Sub-County in Homa Bay County, who are directly and indirectly aggrieved with the servitude subjected to Kenyan domestic workers in Saudi Arabia, the United Arab Emirates and other Persian Gulf countries.

**Honourable Members**, the Petitioners state that in pursuit for earning livelihoods, many young Kenyan women who have been unable to find employment at home have moved to Saudi Arabia and other Gulf States as domestic workers, mostly through recruitment agencies. The Petitioner states that, unfortunately, there has been an increase in the number of heart-breaking accounts of Kenyan domestic workers in various Gulf States being subjected to servitude and mistreatment of grave nature, with some of them being tortured to death. The Petitioners have been moved by several cases of alleged mistreatment and killing of Kenyan domestic workers in the Gulf States, particularly the case of Ms. Caroline Aluoch Akiri, who died in Saudi Arabia in May 2021 in what the deceased’s family believed died from torture by the employer.

They have also mentioned the cases of Ms. Waruguru Beatrice, Ms. Lucy Wambui, Ms. Maximilla, Ms. Murunga Faith Shimila, Ms. Wanja, Ms. Nancy Nyagoha Idah and Ms. Esther Wanjiku Thuku, among others, some of whom have reportedly been assaulted, went missing or were killed. The Petitioners are distressed that most employers in the Gulf subject Kenyan domestic workers to torturous working conditions and deny them access to quality health services, access to clean water, food, proper housing and reasonable standards of sanitation.

**Honourable Members**, the Petitioners aver that Article 21(1) of the Constitution places on the Government of Kenya the obligation to observe, respect, promote, and fulfill the rights and fundamental freedoms in the Bill of Rights. They are persuaded that this State responsibility is not exclusive to Kenyans at home, but also apply to those in the diaspora, as long as they hold Kenyan citizenship. They are therefore disturbed that despite the foregoing express provisions of the Constitution, the Ministry of Foreign Affairs and Kenyan Embassies in the Gulf States have been reluctant whenever families of domestic workers suffering in the Gulf

sought assistance to locate and repatriate victims of torture, including transportation of bodies of those who sadly succumbed to death.

**Honourable Members**, it is on this backdrop that the Petitioners are seeking urgent intervention of this House to –

- (1) Cause the Ministry of Labour, in consultation with the Ministry of Foreign Affairs, to provide the number and details of Kenyan citizens engaged in domestic labour in Saudi Arabia, the United Arab Emirates and other Persian Gulf countries from 2013 to 2021 ;
- (2) Cause the Ministry of Labour, in consultation with the Ministry of Foreign Affairs, to provide a record of the number of deaths of Kenyan domestic workers in the said countries, causes of death, including those associated with mistreatment by employers;
- (3) Intervene to cause the Government, through the Ministry of Foreign Affairs, to urgently audit the conditions of Kenyan domestic workers in Saudi Arabia and other Gulf States and repatriate those who are being involuntarily held in servitude without the option of accessing their travel documents to return home or seek alternative decent employment;
- (4) Cause the Ministry of Labour to provide a list of recruitment companies or agencies that are involved in exporting Kenyan domestic labour to the Gulf States, status of their registration and conditions, including commitments on protection of employees from potential abuse by employers;
- (5) Intervene to compel the Government to formulate and implement policies that are deterrent to the inhuman working conditions bedeviling Kenyan domestic workers in the Gulf in order to secure their right to life, right to dignity, right to reasonable working conditions and freedom from slavery, servitude and forced labour, among other rights and fundamental freedoms.

**Honourable Members**, having determined that the matters raised by the Petitioner 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 Labour and Social Welfare. The Committee is required to consider the petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2). **I thank you!”**

- (ii) The Member for Kibra (Hon. Bernard Okoth) conveyed a Petition regarding the safeguarding the home ownership rights of residents of Woodley Estate in Nairobi.
  - *Petition referred to the Departmental Committee on Lands pursuant to Standing Order 227(1)*
- (iii) The Member for Maara (Hon. Kareke Mbiku) conveyed a Petition regarding the compensation of land owners for land acquired for the construction of *St. Marys-Kinooro access to Igoji Teachers Training College, Gianchuku-Mbogoro Road Project* in Maara Constituency.
  - *Petition referred to the Departmental Committee on Transport, Public works & Housing pursuant to Standing Order 227(1)*

## **6. REORGANISATION OF BUSINESS PURSUANT TO STANDING ORDER 40**

Pursuant to Standing Order 40(2), the Deputy Speaker re-ordered the sequence of proceedings to allow for the conclusion of **Orders No. 8** (*Motion – Ratification of the Bilateral Air Services Agreements between the Republic of Kenya and the Republic of South Africa; and between the Republic of Kenya and the Republic of Botswana*) and **Order No. 9** (*Motion – Ratification of the*

*Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Russian Federation)* before proceeding to Order No. 5 (PAPERS).

**7. MOTION – RATIFICATION OF THE BILATERAL AIR SERVICES AGREEMENTS BETWEEN THE REPUBLIC OF KENYA AND THE REPUBLIC OF SOUTH AFRICA; AND BETWEEN THE REPUBLIC OF KENYA AND THE REPUBLIC OF BOTSWANA**

Motion made and question proposed -

**THAT**, this House **adopts** the Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Russian Federation, *laid on the Table of the House on Thursday, September 30, 2021*, and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, **approves** the *Ratification of the Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Russian Federation*.

*(The Chairperson, Departmental Committee on Transport, Public Works & Housing)*

Debate on the Motion having been concluded on Tuesday, October 19, 2021 (Afternoon Sitting)

Question put and agreed to.

**8. MOTION – RATIFICATION OF THE BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION**

Motion made and question proposed -

**THAT**, this House **adopts** the Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Russian Federation, *laid on the Table of the House on Thursday, September 30, 2021*, and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, **approves** the *Ratification of the Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Russian Federation*.

*(The Chairperson, Departmental Committee on Transport, Public Works & Housing)*

Debate on the Motion having been concluded on Tuesday, October 19, 2021 (Afternoon Sitting)

Question put and agreed to.

**9. PAPERS**

The following Papers were laid on the Table of the House –

- a) National Government Constituencies Development Fund Board report for the first quarter of 2021/2022 Financial Year;
- b) 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;

- (i) Jomo Kenyatta University of Agriculture and Technology Enterprises Limited;
  - (ii) Kabete National Polytechnic;
  - (iii) PC Kinyanjui Technical Institute;
  - (iv) Nairobi Technical Institute; and
  - (v) Kenya Academy of Sports Talanta - FC.
- c)** 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) Kenya Medical Training College;
  - (ii) Thika Technical Training Institute;
  - (iii) Keroka Technical Training Institute;
  - (iv) Nyeri National Polytechnic;
  - (v) Laikipia County Executive Car and Mortgage Scheme Fund;
  - (vi) Kenyatta National Hospital; and
  - (vii) Pest Control Products Board.
- d)** 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: -
1. Lari;
  2. Nyeri Town;
  3. Nyatike;
  4. Mt. Elgon;
  5. Balambala;
  6. Lagdera;
  7. Suba North;
  8. Gatundu North;
  9. Kuria East;
  10. North Mugirango;
  11. Gatanga Constituency;
  12. Bobasi;
  13. Laikipia West;
  14. Gatundu South;
  15. Lamu West;
  16. Wajir West;
  17. Uriri;
  18. Suna East;
  19. Kitutu Chache;
  20. Kiambaa;
  21. Mathioya;
  22. Suna West;
  23. Kitutu Masaba;
  24. Kabuchai;
  25. Kiminini;
  26. Banisa;
  27. Eldas;
  28. Lamu East;
  29. Kitui East;
  30. Kitui Central;
  31. Kibwezi East;
  32. Kibwezi West;
  33. Kangundo;
  34. Mwingi North;
  35. Kanduyi;
  36. Teso North;

37. Butere;
38. Mumias West;
39. Kaloleni;
40. Wajir North;
41. Mandera South;
42. Gichugu;
43. Laisamis;
44. Kirinyaga Central;
45. Central Imenti;
46. Mandera North;
47. Shinyalu;
48. Funyula; and
49. Matungu.

- e) Reports of the Auditor-General and Financial Statements of Laikipia County Executive Car and Mortgage Scheme Fund for the years ended 30<sup>th</sup> June, 2015, 30<sup>th</sup> June, 2016, 30<sup>th</sup> June, 2017 and 30<sup>th</sup> June, 2018 and the certificates therein.

*(The Leader of the Majority Party)*

- f) Report of the Select Committee on National Government Constituencies Development Fund on its consideration of the National Government Constituencies Development Fund (Amendment) Bill (National Assembly Bill No. 4 of 2021)

*(Chairperson, National Government Constituencies Development Fund)*

## **10. NOTICES OF MOTION**

The following Notice of Motion were given:

**THAT**, aware that the history of any institution is key to evaluating its development; **FURTHER AWARE** that documenting history provides a knowledge bank for future generations; **NOTING** that the history of the Parliament of Kenya is largely unrecorded, scattered and piecemeal; **FURTHER NOTING** that most comparable jurisdictions have elaborate records of their history which are periodically updated to capture new developments; **COGNISANT** of the fact that the Parliament of Kenya marks its 114<sup>th</sup> anniversary this year having been established as the Legislative Council (*LegCo*) in August 1907; **FURTHER COGNISANT** that the legislature has been transforming in the last century both in mandate and composition starting as a fused unicameral legislature, to a bicameral one at independence to a unicameral legislature before again reverting to a bicameral Parliament after the promulgation of the Constitution of Kenya 2010; **RECOGNISING** the many works of arts, including statues, frescoes, murals and pictures connected with the history of the Parliament of Kenya, including the contributions of great men and women, families, architects and politicians throughout the 114 years of the history of the institution, and its transformation and growth throughout the period; **NOW THEREFORE**, in order to ensure the preservation of the history of the institution for future generations, **this House resolves –**

1. **THAT**, at an appropriate stage, House appoints a Committee comprising of not more than nine (9) Members to oversee the preservation of these histories for posterity, with special focus on the National Assembly;
2. **THAT**, the copyrights of the *History of Parliament of Kenya* projects be reserved for the benefit of Parliament and the people of Kenya; and,

3. **THAT**, the Clerk of the National Assembly puts in place and executes appropriate mechanisms to actualize this Resolution.

*(The Leader of the Majority Party)*

## **11. QUESTIONS**

- (a) The following Questions were asked –

### **QUESTIONS BY PRIVATE NOTICE**

- (i) **QPN.008/2021** by the Member for Kitui Rural (Hon. Mwalika Mboni) regarding any schools in need of relief food in Kitui Rural Constituency and measures that the Ministry of Education is taking to include schools in the constituency in the Government's school feeding programme.

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

- (ii) **QPN.009/2021** by the Member for Fafi (Hon. Abdikhaim Osman) regarding the killing of over 40 herds of cattle by the Kenya Defence Forces officers based at *Ras Kiamboni KDF Military Camp*, Fafi Constituency on Sunday, 17<sup>th</sup> October 2021.

*(To be replied to by the Cabinet Secretary for Defence before the Departmental Committee on Defence & Foreign Relations)*

- (iii) **QPN.010/2021** by the Member for Kibra (Hon. Bernard Okoth) regarding the the circumstances surrounding the abduction and subsequent killing of the late *Cynthia Makokha*, a young form 4 student from *Kibra Girls Soccer Academy* in Kibra Constituency who was abducted, violated, killed and her body dumped into a river in *Shianda village, Mumias East sub-county, Kakamega County* while visiting her family during the recent October schools holiday.

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

### **ORDINARY QUESTIONS**

- (iv) **Ordinary Question No. 364/2021** by the Member for Matuga (Hon. Kassim Tandaza) regarding the implementation of the Competency Based Curriculum (CBC) in all schools.

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

- (v) **Ordinary Question No. 378/2021** by the Member for Kilome (Hon. Thuddeus Nzambia on behalf of the Member for Nyaribari Masaba Hon. Ezekiel Machogu) regarding the progress of the construction of *Sosera-Ramasa Road* in Nyaribari Masaba Constituency which commenced in 2019.

*(To be replied to by the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development & Public Works before the Departmental Committee on Transport, Public Works & Housing)*



- (vi) **Ordinary Question No. 383/2021** by the Member for Msambweni (Hon. Feisal Bader) regarding the details on the amount of royalties collected by the Government since the enactment of the Mining Act, 2016 and the mechanisms put in place to ensure that fees and other royalties collected by the Government from *M/s. Base Titanium Limited* benefit the people of Kwale County.

*(To be replied to by the Cabinet Secretary for Petroleum and Mining before the Departmental Committee on Environment & Natural Resources)*

- (vii) **Ordinary Question No. 430/2021** by the Member for Bomet Central (Hon. Ronald Tonui) regarding the funding of the recently introduced refresher course and Teachers' Progression Development (TPD) training module by the Teachers Service Commission (TSC).

*(Question for Written Reply by the Teachers Service Commission)*

- (viii) **Ordinary Question No. 436/2021** by the Member for Teso South (Hon. Geoffrey Omuse) regarding the poor and sub-standard works done during the tarmacking of *Busia-Malaba Road* which has already developed potholes along the entire stretch, less than one year since its completion.

*(To be replied to by the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development & Public Works before the Departmental Committee on Transport, Public Works & Housing)*

- (ix) **Ordinary Question No. 438/2021** by the Member for Matungu (Hon. Oscar Nabulindo) regarding steps the Ministry of Interior & Coordination of National Government is taking to ensure that *MPESA* agents, businesses and individuals do not continue to lose their hard-earned money to criminals who defraud them using high-tech gadgets that are rampant across the country and particularly in Matungu Constituency and the neighbouring constituencies where majority of *MPESA* operators and businesspersons have since closed down as a result of the vice.

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

- (x) **Ordinary Question No. 439/2021** by the Member for Kamukunji (Hon. Yusuf Hassan) regarding the status of investigations into the disappearance of *Mr. Hassan Osman Dahir of ID No. 27294534*, aged 36, a resident of Kamukunji Constituency, who went missing on 13<sup>th</sup> June 2021 in the evening on his way from *Abubakar Sadiq Mosque* situated at *7<sup>th</sup> Street, in Eastleigh, Nairobi* and a missing person report made at *Pangani Police Station vide OB No. OB55/15/06/2021*.

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

- (xi) **Ordinary Question No. 442/2021** by the Member for Kitui West (Hon. Edith Nyenze) regarding the reasons for the merging of national examination centres with less than 30 candidates in both primary and secondary schools.

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

- (xii) **Ordinary Question No. 443/2021** by the Member for Sigowet/Soin (Hon. Kipsengeret Koros) regarding the Government position following the recent International Court of Justice's (ICJ) decision regarding maritime delimitation dispute between the *Republic of Kenya and the Federal Republic of Somalia*, which majorly favoured Somalia by awarding her two-thirds of the disputed maritime zone.

*(To be replied to by the Cabinet Secretary for Defence before the Departmental Committee on Defence & Foreign Relations)*

- (xiii) **Ordinary Question No. 444/2021** by the Member for Kilome (Hon. Eng. Thuddeus Nzambia) regarding the status of the construction of *Sultan Hamud - Kasikeu - Kyambeke road* in Kilome Constituency under the *Low Volume Seal Tarmacking Programme*, which has since stalled with only 6 kilometres and a bridge remaining to completion.

*(To be replied to by the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development & Public Works before the Departmental Committee on Transport, Public Works & Housing)*

- (xiv) **Ordinary Question No. 445/2021** by the Member for Mvita (Hon. Abdullswamad Nassir) regarding the total amount of money collected by the Government through the Railway Levy Development Fund since its inception and the activities that the said money has been used for.

*(To be replied to by the Cabinet Secretary for The National Treasury & Planning before the Departmental Committee on Finance & National Planning)*

(b) The following Question was deferred –

- (i) **Ordinary Question No. 428/2021** by the Member for Mumias East (Hon. Benjamin Washiali) regarding the high cost of transporting goods through the Standard Gauge Railway (SGR) from the port of Mombasa to the Inland Container Depot in *Embakasi, Nairobi County*.

(c) The following Question was withdrawn by the Member–

- (i) **Ordinary Question No. 431/2021** by the Member for Homa Bay Town (Hon. Peter Kaluma) to the Independent Electoral and Boundaries Commission (IEBC) regarding the non-gazettment as registration centres of certain twelve (12) polling stations located in far-flung areas in Homa Bay County.

## **12. REQUEST FOR STATEMENT PURSUANT TO STANDING ORDER 44(2)(c)**

a) The following Statements were requested–

- (i) The Member for Kamukunji (Hon Yussuf Hassan) requested for a Statement from the Chairperson of the Departmental Committee on Administration & National Security regarding the recurring fire outbreaks in Gikomba Market, Nairobi County;
- (ii) On behalf of the Member for Saboti Constituency (Hon. Caleb Amisi), the Member for Bondo (Hon. (Dr.) Gideon Ochanda) requested for a Statement from the Chairperson

of the Departmental Committee on Administration & National Security regarding delays in the issuance of national identity cards;

- (iii) The Member for Molo (Hon. Kuria Kimani) requested for a Statement from the Chairperson of the Departmental Committee on Education & Research regarding KCSE certificates held illegally in various secondary schools in the country; and,
- (iv) The Member for Bondo (Hon. (Dr.) Gideon Ochanda) requested for a Statement from the Chairperson of the Departmental Committee on Lands regarding allocation of 6,763Ha of the Yala Swamp Land in Siaya County to M/S. Lake Agro Limited by the National Land Commission.

### **13. RESPONSE TO STATEMENTS PURSUANT TO STANDING ORDER 44(2)(c)**

The following responses to Statements were given –

- (i) The Chairperson of the Departmental Committee on Environment & Natural Resources responded to a Statement sought by the Member for Igembe Central (Hon. Kubai Iringo) regarding the release of terminal benefits of former KWS Service Ranger;
- (ii) The Chairperson of the Departmental Committee on Environment & Natural Resources responded to a Statement sought by the Member for Jomvu (Hon. Bady Twalib) regarding the ongoing water crisis in Jomvu Constituency;

*(Change of Chairperson from Deputy Speaker to First Chairperson of Committee)*

- (iii) The Chairperson of the Departmental Committee on Labour and Social Welfare responded to a Statement sought by the Member for Mvita (Hon. Abdullswamad Nassir) regarding the Collective Bargaining Agreement (CBA) for KPA employees and reinstatement of 247 ex-employees of KPA; and,
- (iv) The Chairperson of the Departmental Committee on Administration and National Security responded to a Statement sought by the Member for Kikuyu (Hon. Kimani Ichungwah) regarding the recent deportation of a Turkish National from the Country by the Government.

### **14. STATEMENT PURSUANT TO STANDING ORDER 44(2)(a)**

Pursuant to the provisions of Standing Order 44(2) (a), the Majority Whip issued a Statement regarding the Business of the House for the week commencing Tuesday, November 09, 2021.

### **15. GUIDE ON SUGAR BILL**

#### **GUIDE ON CONSIDERATION OF THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 68 OF 2019)**

**“Honourable Members,**

Order No. 10 having being called out by the Clerk, I wish to guide the House on the stage at which this Motion is at the moment and the procedure to be followed. You will recall that The Sugar Bill (National Assembly Bill No. 68 of 2019) was considered at the Committee Whole House on Wednesday, 6<sup>th</sup> October and 13<sup>th</sup> October, 2021. However, upon conclusion of the Committee Whole House on Wednesday, 13<sup>th</sup> October, 2021, and reporting, several Members sought to recommit various clauses of the Bill and re-committal motions were made in accordance with the provisions of Standing Order 136A (*Re-committal procedure*). At the end, the House **resolved** to recommit **Clauses 18 and 26 and New Clauses 5B, 15A, 15B and 16C upon a motion moved by the Member for Kanduyi (The Hon. Wafula Wamunyinyi, MP). The motion for re-committal of Clause New Clause 9A as moved by nominated Member (The Hon. David Ole Sankok, MP) was however negated by the House.**

**Further, Honourable Members,** there was indication on that day that other Members were desiring to recommit more clauses of the Bill. However, before the motions for recommitting these other clauses could be made, the House rose for lack of Quorum pursuant to the provisions of Standing Order 35(2)(a) *regarding adjournment of the House for lack of quorum.*

**Honourable Members,** the manner of seeking re-committal is as provided for under Standing Order 136A. I will therefore propose the question on the Motion under Order No. 10, again so as to accord any Member seeking to re-commit further clauses an opportunity to move amendment of the motion for agreement with the Committee of the whole House in accordance with the Standing Orders. Thereafter, if the proposed amendment is agreed to, the House will dissolve into Committee of the Whole House to dispense with all the re-committed clauses sequentially.

**Honourable Members,** I will therefore proceed to propose the Question again, which is-

**“THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Sugar Bill (National Assembly Bill No. 68 of 2019), subject to re-committal of Clauses 18, 26, New Clauses 5B, 15A, 15B and 16C”**

**Are there any further re-committals, Hon. Members, or do I proceed to put the Question so that the House proceeds to Order No. 11?”**

Question put and agreed to.

## **16. RECOMMITAL**

- a) THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Sugar Bill (National Assembly Bill No. 68 of 2019), subject to re-committal of Clauses 5(4).

*(The Chairperson of the Departmental Committee on Agriculture and Livestock)*

Question put and agreed to.

- b) THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Sugar Bill (National Assembly Bill No. 68 of 2019), subject to re-committal of Clauses 9A.

*(The Majority Whip – Hon. Emmanuel Wangwe)*

Question put and agreed to.

- c) THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Sugar Bill (National Assembly Bill No. 68 of 2019), subject to re-committal of Clauses New Clauses 15A.

*(Member for Laikipia County – Hon. Catherine Waruguru)*

Question put and agreed to.

- d) THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Sugar Bill (National Assembly Bill No. 68 of 2019), subject to re-committal of Clauses New Clauses 15A.

*(Member for Kanduyi – Hon. Wafula Wamunyinyi)*

Question put and agreed to.

- e) THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Sugar Bill (National Assembly Bill No. 68 of 2019), subject to re-committal of Clauses New Clauses 24F.

*(Member for Yatta – Hon. Charles Kilonzo)*

Question put and agreed to.

## **17. COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

### **IN THE COMMITTEE**

The Second Chairperson in the Chair

### **The Sugar Bill (National Assembly Bill No. 68 of 2019)**

Clause 5 - amendment proposed -

**THAT**, clause 5 of the Bill be amended—

(a) by inserting the following new sub clauses immediately after sub clause (3)—

“(4) The members under subsection (1) (b), (c) and (e) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

*(Chairperson, Departmental Committee on Agriculture and Livestock)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 5 as amended Agreed to

Clause 18 - amendment proposed -

**THAT**, clause 18 be amended—

- (a) by deleting sub clause (1) and substituting therefor the following new sub clause—  
“(1) The Cabinet Secretary may, in consultation with the Board, by order in the Gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.”
- (b) by inserting the following new sub clauses immediately after sub clause (6)—  
“(7) The Sugar Development Levy collected under subsection (2) shall be apportioned as follows—  
(a) fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers;  
(b) twenty per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;  
(c) twenty per centum shall be remitted directly to the Institute;  
(d) forty five per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.  
“(8) the funds provided for under subsection (7)(a) shall be used to provide for sustainable, affordable credit and advances to farmers for all or any of the following purposes—  
(a) farm improvement;  
(b) farm inputs;  
(c) farming operations; and  
(d) price stabilization.

*(Member for Kanduyi – Hon. Wafula Wamunyinyi)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 18 as amended Agreed to

Clause 26 - amendment proposed -

**THAT**, the Bill be amended by deleting clause 26 and substituting therefor the following new clause—

Quality, safety and health control measures.                      **26.** (1) All sugar millers and importers shall ensure that all sugar produced locally or imported into the country meets—

- (a) safety and quality standards as set by the body for the time being responsible for setting standards;  
(b) safety and health standards for food handlers as set by the body for the time being responsible for public

- health; and
- (c) environmental issues as set by the body for the time being responsible for environment.
- (2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, upon conviction—
- (a) to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding seven years, or to both; and
- (b) the court may where a person is convicted for an offence make a further order that the persons licence be withdrawn.

*(Member for Kanduyi – Hon. Wafula Wamunyinyi)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Clause 26 as amended Agreed to

New Clause 5B - amendment proposed-

**THAT**, the Bill be amended by inserting the following new clauses immediately after New Clause 5A —

Vacation of office. **5B.** A person shall cease to be a member of the Board of if the person—

- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing addressed to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of exceeding six months without the option of a fine;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

*(Member for Kanduyi – Hon. Wafula Wamunyinyi)*

Motion made and Question proposed –

**THAT**, New Clause 5B be read a Second Time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

**THAT**, New Clause 5B be part of the Bill;

Question put and agreed to;

New Clause 5B – agreed to

New Clause 9A – amendment proposed-

**THAT**, the Bill be amended by deleting New Clause 9A in entirety —

*(Majority Whip – Hon. Emmanuel Wangwe)*

Motion made and Question proposed –

**THAT**, New Clause 9A be read a Second Time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

**THAT**, New Clause 9A be part of the Bill;

Question put and agreed to;

New Clause 9A – agreed to

New Clause 15A – amendment proposed-

**THAT**, the Bill be amended by inserting the following new clauses immediately after clause 15—

Sugar **15A.** (1) A person who imports sugar into Kenya shall, prior to Import. importation —

- (a) provide evidence that the sugar they intend to import is not available in the local market;
- (b) provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and
- (c) obtain pre-import approval from the Board.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a



term not exceeding five years or to a fine not exceeding ten million shillings or to both.

*(Member for Laikipia County – Hon. Catherine Waruguru)*

Motion made and Question proposed –

**THAT**, New Clause 15A be read a Second Time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

**THAT**, New Clause 15A be part of the Bill;

Question put and agreed to;

New Clause 15A – agreed to

New Clause 15B – amendment proposed-

**THAT**, the Bill be amended by inserting the following new clauses immediately after clause 15A—

Industrial sugar. **15B.** (1) A licenced sugar miller shall be licenced by the board to carry out the business of processing industrial sugar.

(2) The Board shall regulate the processing of industrial sugar.

*(Member for Kanduyi – Hon. Wafula Wamunyinyi)*

Motion made and Question proposed –

**THAT**, New Clause 15B be read a Second Time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

**THAT**, New Clause 15B be part of the Bill;

Question put and agreed to;

New Clause 15B – agreed to

New Clause 16C - amendment proposed-

**THAT**, the Bill be amended by inserting the following new Part immediately after New Part III 16B—

- Management of the Institute.
- 16C. The Management of the Institute shall vest in a Board which shall consist of—
- (a) a chairperson appointed by the Cabinet Secretary who shall have a background in agricultural research or related field;
  - (b) three persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;
  - (c) two persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;
  - (d) the Principal Secretary for the time being responsible for the National Treasury or a representative appointed in writing;
  - (e) the chief executive officer of the Board;
  - (f) the chief executive officer of the Kenya Agricultural Livestock and Research Organisation; and
  - (g) the Director General who shall be an ex officio member.

*(Member for Kanduyi – Hon. Wafula Wamunyinyi)*

Motion made and Question proposed –

**THAT**, New Clause 16C be read a Second Time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

**THAT**, New Clause 16C be part of the Bill;

Question put and agreed to;

New Clause 16C - agreed to

New Clause 24F - amendment proposed-

**THAT**, the Bill be amended by inserting the following new clause immediately after New Clause 24E —

Vacancy. 24F. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy cause the appointment

*(Member for Yatta - Hon. Charles Kilonzo)*

Motion made and Question proposed –

**THAT**, New Clause 24F be read a Second Time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed –

**THAT**, New Clause 24F be part of the Bill;

Question put and agreed to;

New Clause 24F - agreed to

### **Reporting**

Motion made and Question proposed –

**THAT**, the Committee of the Whole House do report its consideration of The Sugar Bill (National Assembly Bill No. 68 of 2019) and its approval thereof **with** amendments.

*(Member for Kanduyi – Hon. Wafula Wamunyinyi)*

Question put and **agreed to.**

Bill to be reported with amendments.

**18. HOUSE RESUMED** - the First Chairperson in the Chair

### **The Sugar Bill (National Assembly Bill No. 68 of 2019)**

Bill reported with amendments;

Motion made and Question proposed –

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

*(Member for Kanduyi – Hon. Wafula Wamunyinyi)*

There being no debate arising;

Question and Third Reading deferred to another day;

And the time being three minutes to Seven O'clock, the First Chairperson adjourned the House without Question put pursuant to the Standing Orders.

**19. HOUSE ROSE** - at three minutes to Seven O'clock.

**M E M O R A N D U M**

The Speaker will take the Chair on  
Tuesday, November 09, 2021 at 2.30 p.m.

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