



REPUBLIC OF KENYA

**HIRTEENTH PARLIAMENT- (FIRST SESSION)
THE NATIONAL ASSEMBLY**

COMMUNICATION FROM THE CHAIR

_____ *(No. 5 of 2022)* _____

ON

**LEADERSHIP OF THE NATIONAL ASSEMBLY IN THE
THIRTEENTH PARLIAMENT**

Honourable Members,

1. You will recall that during the afternoon sitting of Tuesday, 4th October 2022, I did inform the House that a question had arisen on the manner of constituting the House Business Committee, especially with regard to the membership reserved for the Leaders and Whips of the Majority Party and the Minority Party, respectively. In guiding the House on the business to be transacted before the establishment of the House Business Committee and the manner in which the business would be moved, I did indicate that a question had arisen as to who the *bona fide* Leader of the Majority Party in the House is. I proceeded to allow the House to address me on this matter and gave priority to the designated Party Leaders and Whips of the *Kenya Kwanza Coalition* and the *Azimio La Umoja One Kenya Coalition Political Party*.

Honourable Members,

2. In the debate that ensued, the Hon. Kimani Ichungwah tabled various coalition agreements entered into by the constituent parties of the *Kenya Kwanza Coalition* and deposited with the Registrar of Political Parties. The Hon. Silvanus Osoro also tabled letters relating to the matter, an excerpt of the minutes of the parliamentary group meeting and a list of attendees of the meeting during which the Party Leaders were elected.

3. Similarly, **Honourable Members,** the Hon. Opiyo Wandayi tabled a copy of a letter dated 7th September, 2022 from the Registrar of Political Parties addressed to the Clerk of the National Assembly conveying what the Registrar termed as constituent parties of the *Azimio La Umoja One Kenya Coalition Party*, the *Kenya Kwanza Alliance*, the name of one party which was not affiliated to any coalition and an indication of parties that had filed constitutional petitions and objections on their membership of the *Azimio Coalition*.

Honourable Members,

4. While contributing to the debate, the Hon. Junet Mohamed also tabled what he claimed to be the coalition agreement entered into between the constituent parties of the *Azimio La Umoja One Kenya Coalition Party*.

5. Several other Members also weighed in on the matter, including the Hon. Member for Garissa Town, the Hon. Aden Duale; nominated Member, the Hon. John Mbadi; the Member for Ugenya, the Hon. David Ochieng; the Member for Tiaty, the Hon. William Kamket; the Member for Kimilili, the Hon. Didmus Barasa; the Member for Kathiani, Hon. Robert Mbui; the Member for Ainabkoi, the Hon. Samuel Chepkong'a; the Member for Embakasi East, the Hon. Babu Owino; the Member for Kiharu, the Hon. Ndindi Nyoro; nominated Member, the Hon. Sabina Chege; the Member for Kibwezi West, the Hon. Mwengi Mutuse; the Member for Mandera North, the Hon. Bashir Abdullahi; the Member for Laikipia North, the Hon. Sarah Korere; the Member for Ganze, the Hon. Kenneth Kazungu Charo and the Member for Alego Usonga, the Hon. Samuel Atandi.

6. Other Hon. Members who spoke on the matter included the Member for Tinderet, the Hon. Julius Melly; the Member for Kilifi North, the Hon. Owen Baya; the Member for Kabondo Kasipul, the Hon. Eve Obara; the Member for Kangundo, the Hon. Fabian Muli; the Member for Dagoretti South, the Hon. John Kiarie; the Member for Embakasi South, the Hon. Julius Mawathe; the Member for Kiminini, the Hon. Bisau Kakai; the Member for Emuhaya, the Hon. Omboko Milemba; the Member for Tharaka, the Hon. George Murugara; and the Member for Dagoretti North, the Hon. Beatrice Elachi. At the conclusion of the debate, I did reserve my considered ruling for this afternoon.

Honourable Members,

7. At the onset, permit me to amplify a portion of the contribution made by the Hon. John Mbadi which is key to the resolution of this matter. The *Hansard* records the Hon. Mbadi as having said that there is **no contention over which Members constitute the leadership of both the Kenya Kwanza Coalition and the Azimio La Umoja One Kenya Coalition Party.** The only contention that exists, and which formed the basis of the debate which ensued, is over **which of the two is the Majority Party.**

Honourable Members,

8. Article 108 of the Constitution establishes the offices of Party Leaders in Parliament and outlines the order of precedence to be observed in the National Assembly. The Article provides as follows—

(1) There shall be a leader of the majority party and a leader of the minority party.

*(2) The leader of the majority party shall be the person who is the **leader in the National Assembly of the largest party or coalition of parties.***

*(3) The leader of the minority party shall be the person who is the **leader in the National Assembly of the second largest party or coalition of parties.***

(4) The following order of precedence shall be observed in the National Assembly—

(a) the Speaker of the National Assembly;

(b) the leader of the majority party; and

(c) the leader of the minority party.

Honourable Members,

9. What is clear from the Constitution is that the Leader of the Majority Party must lead **EITHER** a party or a coalition of parties in the National Assembly.

I invite the House to note my emphasis on the word "EITHER".

Honourable Members,

10. Article 92 of the Constitution mandates Parliament to enact legislation on various aspects of political parties. To this end, the Political Parties Act, 2011 was enacted. This law has been amended severally including as late as February this year.

Honourable Members,

11. You will note that section 2 of the Political Parties Act, 2011 defines a political party as "***an association of citizens with an identifiable ideology or programme that is constituted for the purpose of influencing public policy or nominating candidates to contest elections***". The term is further defined to include "***a coalition political party***". Under the same section, a coalition is defined as "***an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar.***"

12. On the other hand, **Honourable Members,** a coalition political party is defined as "***a coalition that is registered by the Registrar as a political party***". Interestingly, Section 10(1) of the Act allows two or more political parties to ***form a coalition or a coalition political party*** before or after an election on condition that they deposit a coalition agreement with the Registrar.

Honourable Members,

13. What I discern from these definitions and Section 10(1) of the Act is that Parliament, in its wisdom, legislated as follows—

- (1) that, two or more political parties may form a coalition or a coalition political party and deposit a written agreement with the Registrar;
- (2) further that, a coalition of two or more parties may register itself as a political party with the Registrar, under the Act.

14. You will agree with me that this legislation creates a unique and puzzling scenario where a coalition, which is a **conglomeration of parties**, can also be treated as a political party on its own right.

Honourable Members,

15. I note that in the letter that I received from the Member for Suna East, the Hon. Junet Mohamed on this matter, he submitted names of leaders representing the "*Azimio La Umoja One Kenya Coalition Party*". Curiously, in the same letter, the Hon. Member signed off as the Secretary General of "*Azimio La Umoja One Kenya Coalition*". **This begs the question of whether *Azimio La Umoja One Kenya is a Coalition, a Coalition Political Party, or both.***

Honourable Members,

16. In the debate over this matter, several Members argued that a coalition political party is a perfectly legal vehicle that was used in the just concluded elections to allow individual and corporate membership within a coalition. In my understanding of section 2 and section 10 of the Political Parties Act, Parliament permitted a coalition political party to elect to **assume the character of EITHER a party or a coalition.**

Honourable Members,

17. In the last General Election, it is evident that *Azimio La Umoja One Kenya* elected to behave as several political parties in certain categories of elections; and as one political party with regard to the election of the President. It is without doubt that, if it were to be considered as a political party, *Azimio La Umoja One Kenya Coalition Party* has no elected Member in this House today as no Member was elected under its banner. This is easily discernible from Gazette Notices No. 9950 and 9951 of 2022 both dated 23rd August, 2022; and Gazette Notice No. 10535 of 2022 dated 5th September, 2022 in which the Independent Electoral and Boundaries Commission (IEBC) declared the persons duly elected as Members of this House and their respective parties.

18. Further, **Honourable Members,** it is notable that, with respect to the Members nominated to this House, the *Azimio La Umoja One Kenya Coalition Political Party* elected to nominate Members under the names of its constituent parties. This can be seen from Gazette Notice No. 10537 of 2022 dated 7th September, 2022; and Gazette Notice No. 10710 of 2022 dated 9th September, 2022. The *Azimio La Umoja One Kenya Coalition Party* seems to have elected to enter this House in both elective and nominative positions through its individual constituent parties. It is a clear demonstration of the *Coalition Party's* respect for freedom of association under Article 36 of the Constitution, exercise of political rights under Article 38 of the Constitution and the freedom of speech and debate in the House under Article 117 of the Constitution.

Honourable Members,

19. Article 108 of the Constitution also allows a coalition to elect and designate their choice of the Leader of the Majority Party. The claim by the *Kenya Kwanza Coalition* is based under this limb. Similarly, the *Azimio La Umoja One Kenya Coalition Political Party* has staked its claim to the Leadership of the Majority Party in exercise of its second skin **as a coalition.**

20. What is clear from the Constitution is that the Leader of the Majority Party must lead **EITHER** a party or a coalition of parties in the National Assembly and **NOT BOTH**. Indeed, as I noted earlier in this Communication, in determining the matter confronting the House today, one must ask the question whether the entities claiming the Leadership of the Majority Party are Parties, **OR** a Coalitions. The provision of the Constitution seems not to envisage the position of the Leader of the Majority Party being claimed by an entity that is **BOTH** a Party and a Coalition of Parties.

21. It is apparent that, **Honourable Members**, while the *Azimio La Umoja One Kenya Coalition Political Party* elected to behave as a political party in certain categories of elections in the last General Election, it has now staked its claim to the Leadership of the Majority Party in this House using its second skin as a coalition. The issue that arises at this stage is whether this conduct is in conformity with the expectation of Article 108 of the Constitution, which requires an entity to elect one of the choices.

Honourable Members,

22. You will recall that before the *sine die* adjournment of the 12th Parliament, the Standing Orders were amended to insert a new Standing Order 2B. This provision requires the Clerk of the National Assembly to obtain a certified copy of any coalition agreement entered into between two or more political parties. This amendment was necessitated by a **dispute** that arose at the beginning of the 12th Parliament on the entitlement of the constituent parties of then National Super Alliance Coalition, commonly referred to as NASA Coalition, to a share in the membership of the Parliamentary Service Commission. It was not possible for the then Speaker to resolve the issue without access to and perusal of the then NASA Coalition's agreement deposited with the Registrar.

Honourable Members,

23. Apart from resolving any disputes related to the membership of the Parliamentary Service Commission, it would interest Members to note that, pursuant to Article 215(2) of the Constitution, part of the membership of the Commission on Revenue Allocation is also drawn from nominees of the Majority Party and Minority Party.

24. This is the basis upon which the Standing Order was introduced in the last Parliament so as to enable the Speaker to discern the undertakings made by the parties with regard to the positions available in the House, the sharing of nominees for appointment to Commissions such as the Parliamentary Service Commission and the Commission on Revenue Allocation, entitlement to positions in the East Africa Legislative Assembly and, where necessary, determining the relative majorities in the House. Journals of the House indicate that this provision was hardly intended to be used to resolve questions of which party or coalition of parties has sufficient numbers in this House so as to be entitled to elect the Leader of the Majority Party.

Honourable Members,

25. The Political Parties Act provides a general framework for the formation of coalitions but leaves the substantive provisions to the formulation of the respective parties to a coalition. Where the substantive provisions of a coalition agreement are unclear, ambiguous or are in contention, the interpretation of the intent of the parties is left to the general jurisdiction of the legal system.

26. Nevertheless, **Honourable Members**, perusal of an agreement entered into between the partners in a coalition would greatly assist resolve or forestall unnecessary dispute likely to impede the conduct of the business of the House. Indeed, upon obtaining a copy of the NASA coalition agreement, my immediate predecessor did urge that the provision of coalition agreements to the House should become standard practice. This is what informed the introduction of the new Standing Order 2B in our rules of procedure.

Honourable Members,

27. With regard to the coalition agreements affecting the affairs of the 13th Parliament, the Clerk did write to the Office of the Registrar of Political Parties on 2nd September, 2022. In her letter titled "**REQUESTS FOR INFORMATION & COPIES OF COALITION AGREEMENTS PURSUANT TO THE NATIONAL ASSEMBLY STANDING ORDER 2B**" the Clerk provided the Registrar with a list of parties with representation in the House at the time. The Clerk sought the following from the Registrar, and I quote, —

(i) guidance on which particular political parties (from the list above) are in Coalition arrangements. Please include the date of the registration of the Coalition(s);

(ii) *information on changes made to any of the Coalition agreements or partnerships that are in place and the dates of the changes, if any; and,*

(iii) ***certified copies of the Coalition arrangements entered into by any of the parties listed herein.***

Honourable Members,

28. In response, the Registrar noted that, as at 21st April, 2022 “*Azimio La Umoja One Kenya Coalition Party*”, comprised twenty-six (26) political parties, namely the Jubilee Party (JP), the Orange Democratic Movement (ODM), Wiper Democratic Movement (WDM), Kenya African National Union (KANU), National Rainbow Coalition (NARC), National Rainbow Coalition-Kenya (NARC-Kenya), Muungano Party (MP), Maendeleo Chap Chap Party (MCCP), Democratic Action Party Kenya (DAP-K), Devolution Empowerment Party (DEP), United Party of Independent Alliance (UPIA); United Democratic Movement (UDM), United Progressive Alliance (UPA), Pamoja African Alliance (PAA), Kenya Union Party (KUP), United Democratic Party (UDP), Movement for Democracy and Growth (MDG), Kenya Reform Party (KRP), Chama cha Uzalendo (CCU), National Liberal Party (NLP), People's Trust Party (PTP), Ubuntu People's Forum (UPF), Party of National Unity (PNU), Labour Party of Kenya (LPK), and the Party for Growth and Prosperity (PGP).

Honourable Members,

29. In the same letter, according to the Registrar, the "*Kenya Kwanza Alliance*" comprises fifteen (15) political parties with the United Democratic Alliance (UDA), Amani National Congress (ANC), Forum for Restoration of Democracy – Kenya (FORD-K), Chama Cha Kazi, Communist Party of Kenya (CPK), The Service Party (TSP), Tujibebe Wakenya Party, Farmers Party, Devolution Party of Kenya, Economic Freedom Party, and the Umoja na Maendeleo Party, as members of the coalition as at 3rd June 2022.

30. The letter further notes that the Democratic Party, the National Agenda Party of Kenya, the Grand Dream Development Party and Chama Cha Mashinani effectively became members of the coalition on 5th September, 2022. The Registrar also observes that the National Ordinary People Empowerment Union (NOPEU) is not a member of any coalition.

Honourable Members,

31. In the letter, the Registrar also conveys that Maendeleo Chap Chap Party (MCCP), Pamoja African Alliance (PAA), United Democratic Movement (UDM) and Movement for Democracy and Growth (MDG) have filed constitutional petitions and/or objections with regard to their membership of "*Azimio Coalition*".

Honourable Members,

32. It is notable that, despite the written request by the Clerk of the National Assembly, the Registrar did **NOT** convey certified copies of any pre-election or post-election coalition agreement entered into by the parties with representation in this House in the response dated 7th September, 2022.

33. May I at this juncture **Honourable Members** report to the House that surprisingly, the Registrar has today morning at 8.30 a.m. submitted to me through the office of the Clerk documents said to be the certified copies of coalition agreements for the *Kenya Kwanza Alliance Coalition* and the *Azimio La Umoja One Kenya Coalition Party*. Curiously, whereas the Registrar's letter to the Clerk of the National Assembly is **dated 3rd October 2022**, the accompanying agreements bear a certification of the following day, which is **4th October 2022**. The letter and the documents were delivered to the office of the Clerk **today, 6th October 2022**, more than **six weeks after the request** of the Clerk. Seemingly, this may be read by any reasonable person to be a rection to the proceedings of the House of Tuesday, 4th October 2022.

Honourable Members

34. Nevertheless, I have had occasion to peruse the documents accompanying the letter as against the documents tabled in the House on Tuesday this week. Despite attempting to advise the House on the status of the coalition agreements affecting the composition of the House as at 3rd **October, 2022**, the Registrar has, **AGAIN**, failed to mention the existence of any post-election coalition agreements. This is a glaring omission when viewed against the post-election coalition agreements tabled by the Member for Kikuyu Constituency. The post-election coalition agreements are critical to the Speaker for purposes of guaranteeing the constitutional rights and political freedoms of the Members of this House elected under UDM, PAA, MCCP and MDG.

Honourable Members,

35. This now brings me to the submissions made by the Hon. Opiyo Wandayi on the significance to be attached to the response of the Registrar of Political Parties, which he also tabled in the House on Tuesday this week and any subsequent communication from the Registrar. It will be recalled that, the distinguished Member for Ugunja submitted that *the Speaker has no other role apart from conveying information contained in the letter by the Registrar to the House.*

Honourable Members,

36. You will agree with me that, this view is untenable for two main reasons.

Firstly, section 10 of the Political Parties Act, 2011 is clear that coalitions are not cast in stone, but are an evolving arrangements which can occur both prior to and after an election. The Registrar has shied away from making a determination on the post-election status of the existing Coalitions in light of the submissions made by part of the Membership of this House and letters written to me by a number of Members, relating to post-election coalitions. The Speaker ought not be a conduit for this indecision in so far as it has the potential of curtailing the business of the House, which is an important constitutional arm of the National Government.

37. Secondly, you will also agree with me that the assertion by the Hon.

Member for Ugunja is flawed on account of the history I have given to the House relating to the rationale of introducing Standing Order 2B. It is indeed an established parliamentary practice that the Speaker is not a mere conveyor belt of information. The Speaker must apply his mind to any communication or document before it is presented to the House or admitted for use in the House. This is important in order to comply with the Standing Orders of this House and to protect the dignity of the House.

Honourable Members,

38. In the present instance, Standing Order 2B expressly requires the Clerk to obtain a certified copy of any coalition agreement to assist the Speaker to ascertain the relative majorities of the House and facilitate the transaction of the business of the House. Certification of the document and determination of its veracity and admissibility is of prime importance. You will agree with me that there would be chaos in this House if I was to make rulings on the basis of an unauthenticated, unverifiable and inadmissible document that affects the rights of Members.

Honourable Members

39. I do note that unless the Political Parties Act is amended or the House exercises its power to call for evidence under Article 125 of the Constitution, there currently exists no express statutory obligation on the Registrar to furnish the House with the coalition agreements as contemplated under Standing Order 2B. As a matter of fact, the 12th Parliament noted this particular gap and proposed amendments to the Political Parties Act whose introduction I approved in my communication issued during the afternoon sitting of Tuesday, 4th October, 2022.

Honourable Members

- 40.** Attempts were made by Members during the afternoon sitting of Tuesday 4th October, 2022 to table coalition agreements in support of the claims by the *Kenya Kwanza Coalition* and the *Azimio La Umoja One Kenya Coalition Party*. You will recall that I ruled the documents tabled by the Hon. Junet Mohamed as inadmissible owing to inconsistencies that were apparent on the face of the document.
- 41.** The inconsistencies were glaring, especially in light of the allegations made by the Hon. David Ochieng' denouncing association of both himself and his party with the Coalition Political Party. Apart from being a Member of this House, the Hon. David Ochieng is also the party leader of the Movement for Democracy and Growth (MDG), an alleged party to the document tabled by the Hon. Junet Mohamed. In light of the objections raised by the Hon. David Ochieng', the document became a centre of particular focus with respect to its legality, validity and admissibility.
- 42.** The attempt by the Registrar of Political Parties to convey what is said to be a certified copy of the document tabled by the Hon. Junet Mohamed today, 6th October, 2022 has not made things better, as the document from the Registrar, just like the document tabled by the Hon. Junet Mohamed has the same glaring gaps and inconsistencies that make it inadmissible.

Honourable Members,

43. The question of admissibility of papers laid in this House has been addressed severally by my predecessors. In the most recent case, the Hon. Justin Muturi distilled previous guidance on the admissibility of documents into nine brief rules in a communication issued on Tuesday 10th May, 2022 while ruling on the Tabling of Papers by the then Member for Wajir County, the Hon. Fatuma Gedi. The then Speaker ruled that, in assessing the admissibility and/or authenticity or otherwise of a document tabled in the House, the Speaker ought to examine whether the document—

- (1) relates to the matter for which it has been tabled;
- (2) is signed, and if it is a government document, **by the authorized person or persons;**
- (3) bears the emblem or logo of the institution/person from which it originated or coat of arms in the case of documents from Government agencies;
- (4) clearly indicates the author and person to whom it is addressed;
- (5) **discloses the origin or source of the document;**
- (6) **bears certification where a document other than the original is being tabled;**
- (7) if electronic, has been obtained from a source that does not permit alteration of contents;

- (8) is related to a claim made before the House or a Committee and its content has a nexus with the claim; and
- (9) is stamped and clearly indicates the person signing off the stamp.

Honourable Members,

44. A perusal of the document tabled by the Hon. Junet Mohamed and the version conveyed by the Registrar of Political Parties reveals glaring inconsistencies in both documents. With regard to signatures, there is no uniformity in the manner in which the various pages of the documents have been signed off, or initialed. Some pages in the documents, contain fewer signatures than others while Page 3 of both documents, in particular, contain signatures that are hardly visible. The pagination of the two documents is also inconsistent. Pages 1 to 22 bear page numbers; several pages with signatures bear no page numbers; and a paginated page appears randomly between unpaginated pages. I am inclined these are superimpositions.

Honourable Members,

May I at this point bring to the attention of the House that several Members said to belong to the *Azimio La Umoja One Kenya Coalition Party* have formally written to my office to denounce their association with the party.

45. In a letter dated 9th September, 2022 and received by my office on 22nd September, 2022, the Member for Ugenya Constituency, the Hon. David Ochieng' wrote to convey the decision of his party, the Movement for Democracy and Growth, to terminate its membership of the *Azimio La Umoja One Kenya Coalition Party*. In the letter, the Hon. Ochieng' also noted that his party is now a member of the *Kenya Kwanza Coalition*.

Honourable Members,

46. In letters received by my office on 21st and 22nd September, 2022, the Hon. Kenneth Charo, the Hon. Gonzi Rai and the Hon. Anthony Kenga, who were all elected to Parliament on the Pamoja Africa Alliance (PAA) party ticket formally distanced themselves and their party from any association with "*the Azimio Coalition*". The three categorically noted that their party should only be associated with the *Kenya Kwanza Coalition* with which it has entered into its only existing coalition agreement.

47. Additionally, **Honourable Members,** in a letter dated 16th September, 2022 and received by my office on 19th September, 2022, all the seven Members of Parliament elected to the National Assembly under the United Democratic Movement (UDM), namely the Hon. Maj (Rtd). Bashir Abdullahi, the Hon. Hassan Kulow, the Hon. Haro Abdul Ebrahim, the Hon. Mangale Chiforomodo, the Hon. Yusuf Adan Haji, the Hon. Joseph Lekuton, the Hon. Umulkheir Kassim and the Hon. Sulekha Harun, distanced themselves and their party from any alleged coalition agreement with the "*Azimio Coalition*".

Honourable Members

48. Instead, they note, in their letter, that they are party to a **post-election** coalition agreement with the "*Kenya Kwanza Coalition*". It is their contention that their affiliation with the *Kenya Kwanza Coalition* has seemingly been ignored by the Registrar of Political Parties.

49. Honourable Members, It will be recalled that, during the debate on this matter on Tuesday this week , the Hon. David Ochieng'; the Hon. Kassait Kamket; the Hon. Mwengi Mutuse; the Hon. Bashir Abdullahi and the Hon. Kenneth Charo also did raise serious concerns as to the membership of the Movement for Democracy and Growth (MDG); the Kenya African National Union (KANU); the Maendeleo Chap Chap Party (MCCP); the United Democratic Movement (UDM); and the Pamoja African Alliance (PAA) in the Azimio La Umoja One Kenya Coalition Party.

Honourable Members,

50. At this stage, the question that comes to my mind as your Speaker is, **what am I meant to do with these contentions?**

51. Allegations were also made by a number of Members on alleged **coercion and duress** while entering into agreements with one of the coalitions. This, if true, is a serious affront to the democratic rights and freedoms that we enjoy as citizens of this country. As seasoned lawmaker and a lawyer, I note that the political freedoms granted to Kenyans by the Bill of Rights must be taken very seriously in the affairs of political parties. If I were to rely on the coalition agreements tabled before this House, I would find great fault in any provisions seeking to limit the political rights of Members of this House.

Honourable Members,

52. Our Constitution is very Rights-centric. In any ruling I make as your Speaker, I must be guided by the provisions of Article 3; Article 10 and Article 21 of the Constitution. These provisions require me to uphold, respect and defend the Constitution whenever applying myself on any questions brought before me. I am also under an obligation to jealously protect the rights and freedoms guaranteed by the Constitution.

53. You will note **Honourable Members,** that even when making laws, all of you are enjoined under Article 24 of the Constitution to ensure that any limits you place on a right or freedom are **expressly** stated and that the limitation is reasonable and justifiable in an open and democratic society.

54. Having looked at the drafting style of the Political Parties Act, vis-à-vis the requirements of Article 24(2) of the Constitution, It is evident that the Political Parties Act does not manifest or declare any intention to limit the rights guaranteed under Article 36 of the Constitution on the freedom of association and Article 38 of the Constitution on political rights.

Honourable Members,

55. Political rights are not absolute. They may be limited in a manner that is consistent with the provisions of Article 24 of the Constitution. Indeed, the Political Parties Act does not engage in the substantive limitation of rights but only deals with the procedural exercise of those rights in terms of timelines.

Honourable Members,

56. Indeed, the architecture of the Act is that timelines are only prescribed with respect to activities that fall before the election date which seem to be related to the management of the election calendar. There are no timelines prescribed for activities after the election date. From the provisions of the Act, it appears that a person is at liberty to join and leave political parties as long as they notify the Registrar of their actions.

57. Honourable Members, I am not sure whether a provision of a coalition agreement regulating the period within which a Member may exit a coalition would pass the test of being compliant with the Political Parties Act, in the first instance, or the Constitution, in the second instance. Fortunately, that is not for me to decide. I trust the courts, in exercise of their powers under Article 165 of the Constitution, would deal with such a matter conclusively.

Honourable Members,

58. Noting that some of the matters raised were said to be pending either in the Political Parties Dispute Tribunal or the court, I shall refrain from pronouncing myself on such matters.

Honourable Members,

59. Let me now turn to the nexus between the letter from the Registrar of Political Parties and the several Gazette Notices published by the IEBC with respect to your election or nomination as Members of this House.

60. Based on Gazette Notices No. 9950 and 9951 of 2022 both dated 23rd August, 2022; Gazette Notice No. 10535 of 2022 dated 5th September, 2022; Gazette Notice No. 10537 of 2022 dated 7th September, 2022; and Gazette Notice No. 10710 of 2022 dated 9th September, 2022 the current composition of the National Assembly by individual political parties is as follows—

PARTY	MEMBERS
United Democratic Alliance (UDA)	145
Orange Democratic Movement (ODM)	86
Jubilee Party (JP)	28
Wiper Democratic Movement (WDM)	26
United Democratic Movement (UDM)	8
Amani National Congress (ANC)	8
FORD-Kenya (FORD-K)	6
Kenya African National Union (KANU)	6
Democratic Alliance Party of Kenya (DAP-K)	5
Pamoja African Alliance (PAA)	3
Kenya Union Party (KUP)	3
United Party of Independent Alliance (UPIA)	2
Maendeleo Chap Chap Party (MCCP)	2
The Service Party (TSP)	2
United Progressive Alliance (UPA)	1
National Alliance Party of Kenya (NAP-K)	1
National Ordinary People Empowerment Union (NOPEU)	1
Grand Dream Development Party (GDDP)	1
Democratic Party (DP)	1
Movement for Democracy and Growth (MDG)	1
Chama Cha Mashinani (CCM)	1

Honourable Members

- 61.** Reference to the letter by the Registrar of Political Parties would give the cumulative number of the Members of the constituent parties of what the Registrar refers to as the "*Azimio La Umoja One Kenya Coalition Party*" as **171 Members** against **165 Members** of the constituent parties of what the Registrar refers to as the "*Kenya Kwanza Alliance*".
- 62.** However, it is notable that a total of **14 Members** are drawn from four parties, that is UDM, MDG, MCCC and PAA who, according to the letter of the Registrar have filed constitutional petitions and objections against their membership in *Azimio*. This implies that the letter from the Registrar may not be used to compute the membership of the Majority and Minority Parties by dint of the admission contained in it on the existing constitutional petitions and objections.

Honourable Members

- 63.** It will also be recalled that the Members of UDM, MDG, MCCC and PAA have claimed they signed pre-election and post-election coalition agreements with the *Kenya Kwanza Alliance Coalition*. Cumulatively, the membership of the four parties in this House is 14 Members. If these Members were to be added to the 165 Members of the initial constituent parties of the *Kenya Kwanza Coalition*, the Coalition would comprise a total of **179 Members**.

64. Consequently, the *Azimio Coalition* would then comprise a total of **157 Members**.

65. However, **Honourable Members**, the pending constitutional cases and objections by Members of UDM, MDG, MCCC and PAA noted by the Registrar of Political Parties, in addition to the letters sent by the Members and the contentions recorded during Tuesday's sitting have a profound bearing on the matter at hand in so far as the same relates to the business of the House.

66. At this stage, **Honourable Members**, the House has a choice to either halt its proceedings and await the determination of matters that are before the Political Parties Dispute Tribunal and the courts **OR** to permit the Speaker to make a decision that facilitates this House to continue discharging its constitutional functions. In any event, Members are aware that the *Sub Judice* Rule is a rule that the House imposes on itself. It can never be contemplated that the House can curtail the performance of its own mandate.

Honourable Members

It should not be lost to the House that the question of the leadership of the Majority and Minority Party is one that affects the continuity of the business of the House.

67. This includes, among others, the formation of not only the House Business Committee, but also other key committees of the House whose membership must be appointed within a prescribed timeline of **seven days** and others that are extremely critical to the functioning of this House and the National Government.

68. The Committees that ought to be constituted within seven (7) days include the following—

- (a) The House Business Committee which determines, prioritizes and approves the business to be considered by this House under Standing Order 171;
- (b) The Committee on Selection which is responsible for nominating Members to serve in Committees under Standing Order 172;

- (c) The Committee on Appointments which is responsible for vetting of persons nominated to serve as Cabinet Secretaries under Article 152(2) of the Constitution;
- (d) The Budget and Appropriations Committee which is responsible for consideration of the Budget Estimates; and
- (e) The National Government Constituencies Development Fund Committee which is responsible for overseeing the policy and legislative framework matters relating to the NG-CDF. This is especially important noting the need for a forum to deliberate some current matters that you all are aware of.

Honourable Members,

69. The disclosure by the Registrar relating to the petitions and objections, the letters by the Members of the four parties, the oral objections raised in this House, and the need to promote the continuity of the business of the House while respecting the due process of the courts of law, presents this House with a complex situation that requires balanced consideration of the intent and philosophy behind the provisions of Article 108 and Article 124 of the Constitution.

Honourable Members,

70. In determining this delicate balance between the provision that establishes the leadership positions of the House and the provision which empowers this House to make its own rules of procedure, due regard must be given to Article 3 of the Constitution which requires all persons to protect, defend and uphold the Constitution and Article 10 of the Constitution which requires one to apply the national values and principles of governance when interpreting the Constitution.

Honourable Members,

71. I note that the four parties that I mentioned cumulatively comprise 14 Members. The Members elected to this House under the four parties have exercised their freedom of association under Article 36 of the Constitution. They have already migrated to the *Kenya Kwanza Alliance* both in writing and in action. The parties are already enjoying benefits accruing from their membership of the *Kenya Kwanza Coalition* based on the coalition agreements that they signed and deposited with the Registrar. Indeed, as noted earlier, the 14 members have written to me distancing them and their parties from the *Azimio Coalition* and have called upon the Speaker to recognize their coalition agreement with *Kenya Kwanza* with respect to the business of this House. I also did note the verbal representation made by some of the 14 members during the debate on this matter on Tuesday, 4th October 2022.

Honourable Members,

72. I started by noting the sentiments by the Hon. John Mbadi on the fact that the Members comprising the leadership of the *Kenya Kwanza Coalition* and the *Azimio La Umoja One Kenya Coalition Party* **was not in contention**. Indeed, no objection was raised during the debate on the issue either proposing an alternate lineup or the alluding to the existence of any other coalition comprising any parties with representation in this House. Having addressed the question of who between the *Kenya Kwanza Coalition* and the *Azimio La Umoja One Kenya Coalition* is entitled to appoint the Leader of the Majority Party, allow me to discharge my responsibilities under Standing Order 19A(4) and 20(4) with respect to the Leadership of the House in the 13th Parliament.

Honourable Members

73. Allow me now to address the House on the fate of the letters received from the Hon. Jeremiah Kioni, the Secretary General of the Jubilee Party which I mentioned in my Communication on Tuesday, 4th October, 2022.

Honourable Members

74. The Jubilee Party, and indeed, any other parliamentary party is at liberty to designate its party leaders and whips by dint of the provisions of Standing Order 20A which provides for the recognition of parliamentary parties. Specifically, the Standing Order provides that a parliamentary party has the right to designate a leader and whip of the party in the House for purposes of the transaction of the business of the House.

Honourable Members

75. However, in parliamentary practice, the House frowns upon any purported communication emanating from 'strangers' especially if the matter relates to the internal organization of sections within the House. This is intended to ensure that the House only deals with persons that it can interact with, and hold to account should need arise. For clarity, Standing Order 20A (3) provides, and I quote –

"(3) The names of the Members designated as party whips shall be communicated to the Speaker in writing by—

(a) the Leader of the Majority Party on behalf of the Majority Party;

(b) the Leader of the Minority Party on behalf of the Minority Party; or

(c) the leader of a parliamentary party in the National Assembly in case of a parliamentary party that is not part of a coalition forming the Majority Party or the Minority Party.”

Honourable Members,

76. In order to facilitate the transaction of the business of the House the Leader of the Majority Party and the Leader of the Minority Party are required to forward to me the names of Members who shall sit in the five (5) critical committees that I mentioned earlier.

Honourable Members,

77. Standing 171(1)(f) provides that, apart from the House leadership, the **House Business Committee** consists of nine (9) other Members nominated by the parliamentary parties, reflecting the relative majorities and taking into consideration the interests of parties other than parliamentary parties and independents.

78. Further **Honourable Members,** Standing Order 172(1)(c) provides that, besides the House leadership, the **Committee on Selection** consists of not less than eleven (11) and not more than twenty-one (21) Members nominated by the parliamentary parties, reflecting the relative majorities and taking into consideration the interests of parties other than parliamentary parties and independents.

Honourable Members,

79. Standing Order 204(1) provides that, apart from the leadership of the House, **Committee on Appointments** consists of not more than fifteen (15) other Members nominated by the House Business Committee on the basis of proportional party membership taking into consideration the numerical strength of the parties and interests of independents.

Honourable Members,

80. Upon formation of the Committee on Selection, I will be asking the Party Leadership to nominate Members for appointment to the rest of the committees, with particular priority to the Budget and Appropriations Committee and the National Government Constituency Development Fund Committee.

81. It is imperative that in nominating the Members to the committees, Majority and Minority Leaders **SHOULD**, as much as possible, take into consideration the gender representation, the need for regional balance and the interests of parties other than parliamentary parties and indeed, Independents.

Honourable Members,

82. As to the completeness of the membership of the aforementioned committees, you will note that I have reserved some slots for Independent Members in each of the three Committees whose nomination ratios I have specified. This is to ensure adherence to the Standing Orders which require the recognition of the various shades of opinion represented in the House. As my predecessor noted during the 12th Parliament, "***the Speaker should protect the Independent Members and small parties in the nomination to and discharge from Committees.***"

Honourable Members,

83. In **summary** therefore, Honourable Members, my considered determination on the matter raised is as follows-

Allegations of coercion

1) THAT, the consideration of the various allegations of coercion and duress at the time of entering into coalition agreements and any appropriate remedy for the same lies outside the authority of the Speaker.

The place of Members of UDM, PAA, MCCC & MDG

2) THAT, In my considered opinion, **it would be imprudent to treat the 14 Members elected to the House under the United Democratic Movement (UDM), Pamoja African Alliance (PAA), Maendeleo Chap Chap Party (MCCC) and the Movement for Democracy and Growth (MDG) as part of a coalition that they have expressly distanced both themselves and their parties from. I am therefore persuaded that the 14 members and their parties are part of the *Kenya Kwanza Coalition*.** This, in my view, would be fair and in accord with previous rulings by my predecessors on related matters.

3) THAT, With the 14 Members, the membership of the *Kenya Kwanza Coalition* stands at **179 Members** while the membership of the *Azimio La Umoja One Kenya Coalition Party* stands at **157 Members.** This, by implication, indicates that the *Kenya Kwanza Coalition* is the Majority Party and the *Azimio La Umoja One Kenya Coalition Party* is the Minority Party in this House.

Entities entitled to appoint the Leader of the Majority Party

4) THAT, the *Kenya Kwanza Coalition* is entitled to appoint the Leader of the Majority Party while the *Azimio La Umoja One Kenya Coalition Party* is entitled to appoint the Leader of the Minority Party;

Leadership of the Majority Party

5) THAT, with regard to the Majority Party—

- (a)** The Member for Kikuyu Constituency, the Hon. Kimani Ichung'wah is the Leader of the Majority Party;
- (b)** The Member for Kilifi North, the Hon. Owen Baya is the Deputy Leader of the Majority Party;
- (c)** The Member for South Mugirango, the Hon. Silvanus Osoro is the Majority Party Whip; and
- (d)** The Member for Marsabit County, the Hon. Naomi Jillo Waqo is the Deputy Majority Whip.

Leadership of the Minority Party

6) THAT, with regard to the Minority Party—

- (a) The Member for Ugunja, the Hon. Opiyo Wandayi is the Leader of the Minority Party;
- (b) The Member for Kathiani, the Hon. Robert Mbui is the Deputy Leader of the Minority Party;
- (c) The Member for Suna East, the Hon. Junet Mohamed is the Minority Party Whip; and
- (d) Nominated Member, the Hon. Sabina Chege is the Deputy Minority Whip.

The letters from the Secretary General of Jubilee Party

7) THAT, our rules of procedure have placed a certain expectation on the manner of transmission of information relating to the leadership in the House. Only Members of this House can communicate with the Speaker on House leadership matters. In this regard, the letters from the Secretary General of Jubilee Party conveying the Party's leadership to the Speaker fall short of the expectations of the House and will therefore not be considered any further.

Composition of the House Business Committee,

8) THAT, with respect to the composition of the House Business Committee, the Leader of the Majority Party, the Hon. Kimani Ichungwah, MP and the Leader of the Minority Party the Hon. Opiyo Wandayi, MP are to submit not more than four (4) Members each to my office latest by 10.00 a.m on Tuesday, 11th October, 2022.

Composition of the Committee on Selection

9) THAT, with respect to the composition of the Committee on Selection, the Leader of the Majority Party, and the Leader of the Minority Party are to submit ten (10) Members and nine (9) Members, respectively to my office latest by 10.00 a.m on Tuesday, 11th October, 2022.

Composition of the Committee on Appointments

10) THAT, with respect to the composition of the Committee on Appointments, the Leader of the Majority Party, the Hon. Kimani Ichungwah, MP and the Leader of the Minority Party the Hon. Opiyo Wandayi, MP are to submit not more than seven (7) Members each to my office latest by 10.00 a.m on Tuesday, 11th October, 2022.

Actions by the Clerk

11) THAT, upon receipt of the names of Members of the House Business Committee, the Clerk is hereby directed to cause the list to be published in the Order Paper for Tuesday, 11th October 2022. The Clerk is also directed to ensure that the names of the Members to serve in the Committee on Selection and the Committee on Appointments are presented to the House Business Committee when the Committee sits on Tuesday, 11th October 2022.

Regularization of designation of the Minority Party Whips

12) THAT, while it will be construed in the interim, that the Minority Party had designated its leadership, the Leader of the Minority Party, the Hon. Opiyo Wandayi, MP is hereby required to regularize the designation of the Whip and the Deputy Whip of the Minority Party in accordance with the requirements of 20A(3) .

Obligation of parties in nomination of members to Committees

- 13) **THAT**, with respect any Member belonging to a party other than a parliamentary party, as your Speaker, I will endeavour to exercise the power afforded to me by Standing Order 174(2B). I will not hesitate to decline approval of any list of committee membership that does not take into account the interests of Independent Members and parties other than parliamentary parties.

Seating in the Chamber

- 14) **THAT**, Pursuant to Standing Order 259, the marked seats in the front row of the Chamber to my right and to my left are reserved for the persons occupying the offices of the Leadership of the Majority Party and the Leadership of the Minority Party, respectively.

Facilitation to the Leadership

15) THAT, in accordance with Article 108 of the Constitution, the Parliamentary Service Act, 2019, and Standing Order 19, the Clerk of the National Assembly is hereby directed take the necessary measures to facilitate the Leadership of the House that has been appointed to move into their respective offices and access all other entitlements relating to their offices as has been approved by the Salaries and Remuneration Commission and the Parliamentary Service Commission.

84. In conclusion, Honourable Members, today's guidance has been informed by my solemn duty to facilitate the continuity of the business of this House. The House would be at a standstill without a clear guidance on the leadership question.

The House is accordingly guided.

I thank you!



**THE HON. MOSES WETANGULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY**

Thursday, 6th October, 2022