



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT – (FIRST SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATION FROM THE CHAIR

_____ (No. 024 of 2022) _____

**RESUMPTION OF VETTING OF NOMINEES FOR APPOINTMENT AS
PRINCIPAL SECRETARIES**

Honourable Members,

1. You will recall that on 15th November 2022, the Employment and Labour Relations Court in ***Constitution Petition No. E186 of 2022, Dr. Magare Gikenyi versus The President of the Republic of Kenya and 55 Others and in Constitution Petition No. E192 of 2022, Law Society of Kenya versus The National Assembly and 4 Others***, granted **EX-PARTE CONSERVATORY ORDERS** temporarily staying the vetting process in respect of nominees for appointment to the position of Principal Secretaries pending hearing and determination of the Petitioners' application for conservatory orders.
2. Consequently, on 16th November 2022 vide *Notification No. 02 of 2022*, I directed that the vetting process be suspended pending the outcome of the judicial process. This was informed by the appreciation of the provisions of Article 3(1) of the Constitution which places an obligation on myself and indeed the House, to respect and uphold the Constitution and in particular by abiding and upholding the rule of law.

3. Further, I directed our litigation Counsel to move the concerned courts to set aside the ex-parte orders based on various legal grounds and more particularly on lack of jurisdiction on the part of Courts to interfere with active parliamentary processes.
4. Accordingly, the National Assembly challenged the court's power to hear and determine the case on the ground that the **Petitions were in contravention of the constitutional principle of separation of powers, as they were inviting the court to determine a matter under the exclusive jurisdiction of the National Assembly under Article 155(3)(b) of the Constitution and the Public Appointments (Parliamentary Approval) Act, 2011.**

Honourable Members

5. In its Ruling delivered today, Tuesday, 29th November 2022, the court agreed with the National Assembly's submission that the doctrine of separation of powers as provided for in the Constitution ought to be respected and upheld at all times. Further, the court observed that the National Assembly has exclusive original jurisdiction to first carry out the approval process before the court can intervene. The court therefore, paved the way for the resumption of the vetting process noting that the petitions were baseless, frivolous, vexatious and premature. The court also noted that the legislature must be allowed to carry out its constitutional mandate without undue interference by any person or other arm of government.

6. From the onset, I wish to note the very progressive view taken by the court in this matter. Whereas it is the constitutional right of every person to approach the courts of law, state organs must be allowed sufficient leeway to carry out their mandate without undue interference by any person. Indeed, to a keen observer, the petitioners were moved more by a lack of proper information and legal guidance, and a push to stall a process for reasons other than national interest.

Honourable Members,

7. As observed by the court, comity among the organs of the State dictates that one organ shall not interfere in a matter under the active consideration of another organ. Indeed, our own Standing Order 89 on *Matters sub-judice* prohibit referral or consideration of any matter before a court of law. In the same vein, the courts are expected to exercise restraint and refrain from interfering with matters that are active before Parliament, a constitutional concept that the court has today once again upheld in its Ruling. As the National Assembly, we will endeavour to protect and uphold these constitutional principles in furtherance of the mandate bestowed on us.

Honourable Members,

8. Following this ruling by the court, I wish to guide the House, the concerned Committees and indeed the general public as follows –

(1) THAT, the suspension of the vetting of persons nominated to serve as Principal Secretaries is hereby lifted. The Committees are therefore expected to resume the vetting process immediately; and

(2) **THAT**, all Departmental Committees are to conclude the vetting proceedings and approval hearings as soon as possible to allow for the conclusion of process. In any case, noting that the House will be commencing the long recess on 2nd December 2022 in accordance with its calendar, it is expected that the Committees will hasten the process and report to the House by end of the morning sitting of Thursday, 1st December 2022, to pave way for consideration of the various approval motions by the House.

Wetang'ula

THE RT. HON. MOSES WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, 29th November 2022