

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 8th December, 2022

Special Sitting

*(Convened via Kenya Gazette Notice
No.15198 of 7th December, 2022)*

*The House met at the Senate Chamber,
Parliament Buildings, at 10.00 a.m.*

[The Speaker (Hon. Kingi) in the Chair]

PRAYER

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Do we have quorum?

(The Clerk-at-the-Table consulted the Speaker)

First Order.

COMMUNICATIONS FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE

The Speaker (Hon. Kingi): Hon. Senators, on the request of the Senate Majority Leader pursuant to Standing Order No. 33(1) and with the support of the requisite number of Senators, I appointed Thursday, 8th December, 2022, at 10.00 a.m., as a day for a Special Sitting of the Senate *vide* Gazette Notice No.15198, dated 7th December, 2022.

In the Gazette Notice, I indicated that the Business to be transacted at this Special Sitting shall be –

(i)The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No. 49 of 2022); and

(ii)The County Vocational Education and Training Bill, (Senate Bills No. 3 of 2022).

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Hon. Senators, as indicated at Order No. 8 in today's Order Paper, the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No. 49 of 2022) has been listed for the First Reading.

Standing Order No. 145(1) of the Senate states that-

“A Bill having been read a First Time shall stand committed to the relevant Standing Committee without question put.”

Standing Order No. 148(1) states that -

“Whenever a Bill is referred to a Standing Committee, the Chairperson of the Committee, the Vice-Chairperson or a Senator designated by the Committee to which the Bill is committed, shall present the Committee's report to the Senate within thirty calendar days of such committal.”

As such, therefore, upon First Reading of the Bill, the Bill stands committed to the Standing Committee on Justice, Legal Affairs and Human Rights. In terms of Standing Order No.145(5), the Committee is required to facilitate public participation and take into account the views and recommendations of the public when making its report to the Senate. I appeal to the Committee to fully utilize the current recess to process this Bill and file a report within the stipulated timelines.

Hon. Senators, finally, in accordance with Standing Order No.33(5), the Business specified in the Gazette Notice, and as outlined in the Order Paper, shall be the only business before the Senate during the Special Sitting, following which the Senate shall stand adjourned until Tuesday, 14th February, 2023, at 2.30 p.m., in accordance with the Senate Calendar.

I thank you.

Hon. Senators, before I read the two Messages, I have another Communication to make.

VISITING DELEGATION FROM UNIVERSITY
OF DENVER, USA

The Speaker (Hon. Kingi): Hon. Senators, I would like to acknowledge the presence of a delegation from Josef Korbel School of International Studies, University of Denver, Colorado, United States of America (USA) who are on an exchange programme at the University of Nairobi. The delegation is at the Senate to observe the Plenary proceedings.

I request each Member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

- (1) Prof. Singumbe Muyeba, Leader of the Delegation
- (2) Prof. Abigail Kabandula
- (3) Ms. Micael Parker
- (4) Ms. Natalie Impraim
- (5) Mr. Benjamin Willis Gavin
- (6) Ms. Ruth Byrens
- (7) Ms. Madison Wickett
- (8) Ms. Brenda Fay Semerenko
- (9) Mr. Austin Mild
- (10) Ms. Millicent Wairimu, and

(11) Mr. Christian Muyeba

Hon. Senators, on behalf of the Senate and on my own behalf, I welcome the delegation to the Senate and wish them well for the remainder of the visit.

I thank you.

I will allow the Senate Majority and Minority Leaders to take two minutes each to welcome the delegation before we proceed to the next order.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I join you in welcoming the guests that have joined us this morning to follow the proceedings during this Special Sitting. I wish them well in their excursion in the city and in Parliament as they seek to understand the Kenyan parliamentary processes.

I also wish them well in whatever else that they find fit to study during their visit in our Republic. Most welcome to them.

They come from a beautiful city. The last visit that I made to the USA, which was last year, with our Centre for Parliamentary Studies and Training (CPST) was at Denver, Colorado. They have the National Conference of State Legislatures (NCSL), which is a coordinating body for all the State Legislatures in the USA. We were there for about a week. I do not know if there is any other person from the Senate who was with us on that trip. We had a good time in the beautiful City of Denver.

I welcome them to Kenya and the Senate. They should enjoy their stay. This is supposed to be and will soon be the 'upper' House of both Houses of Parliament.

The Senate Minority Leader (Sen. Madzayo): Thank you, Mr. Speaker, Sir. I also join you in welcoming the guests who have come to visit us to see how we conduct our Business in the Senate. They are also probably here to enjoy their holidays in Kenya and to learn a bit. When they go back home, they will tell the rest of how we conduct our business here.

I believe their visit here will be beneficial to them. They will see how we conduct ourselves and how we ensure that whatever we do is in accordance with the parliamentary procedures.

Mr. Speaker, Sir, I further extend my thanks to them for visiting Kenya. I believe they have gotten an opportunity to visit the country to see the magical places that we have in this Republic.

(Applause)

The Speaker (Hon. Kingi): I will allow a minute to Sen. Olekina because he was in school there.

Sen. Olekina: Mr. Speaker, Sir, thank you for giving me this opportunity to welcome the visiting delegation from Colorado. I am an alumnus of Fort Lewis in Durango. I walked from Colorado to Arizona way back in 1998. I know the four corners region very well. I am happy that they have had an opportunity to come here.

Yesterday, I was searching my former college and I noted that I am one of the notable alumni. It is a great institution. Colorado is a great State.

I hope that you will visit the Maasai Mara Game Reserve while still in the country to see the wildlife that we have in Kenya. We have a wonderful country with wonderful game reserves. Our economy is also blooming.

We pride ourselves in being the largest economy in East and Central Africa. We have a good country. It is our prayer that we will keep it going. We only have a small amount compared to Colorado of about US\$210 billion GDP. However, we hope that we can grow our economy better.

I hope that Denver and Nairobi cities can become sister cities. I know that used to be the case many years ago.

I thank you for your time and I hope you will enjoy.

The Speaker (Hon. Kingi): Hon. Senators, I do have two Messages to deliver to you.

MESSAGES FROM THE NATIONAL ASSEMBLY

PASSAGE OF THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS (NO.2) BILL, (SENATE BILLS NO.4 OF 2022)

The Speaker (Hon. Kingi): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order 46(3) and (5), I received the following Message from the Speaker of the National Assembly regarding the passage by the National Assembly of the County Governments Additional Allocations (No. 2) Bill (Senate Bills No. 4 of 2022).

The Message which is dated Thursday, 1st December, 2022 was received on 2nd December, 2022, while the Senate was on recess and was transmitted to all Senators on Monday, 5th December, 2022.

Pursuant to the said Standing Order, I now report the Message-

“PURSUANT to the provisions of Article 110(4) of the Constitution and Standing Order No.41 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS, the Senate considered the County Governments Additional Allocations (No.2) Bill (Senate Bill No.4 of 2022) on 22nd November, 2022 and thereafter referred the Bill to the National Assembly for consideration pursuant to the provisions of Article 110(4) of the Constitution;

FURTHER WHEREAS, the National Assembly considered the said Bill on Wednesday, 30th November 2022, and passed it on Thursday, 1st December 2022 without amendments and in the form passed by the Senate;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, I have transmitted the Bill to His Excellency the President for Assent.

I thank you.

PASSAGE OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILLS NO.49 OF 2022)

The Speaker (Hon. Kingi): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order 46(3) and (5), I received the following Message from the

Speaker of the National Assembly regarding the passage by the National Assembly of the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No. 49 of 2022).

The Message which is dated Friday, 2nd December, 2022, was received on Monday, 5th December, 2022, while the Senate was on recess.

Pursuant to the said Standing Order, I now report the Message-

“PURSUANT to the provisions of Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 49 of 2022) was published vide Kenya Gazette Supplement No.174 of 2nd November 2022, as a Bill proposing to amend the Independent Electoral and Boundaries Commission Act, 2011 to change the composition of the Selection Panel that oversees the filling of vacant positions in the Independent Electoral and Boundaries Commission;

AND WHEREAS the National Assembly considered the Bill in all stages and passed it on Thursday, December 1, 2022 without amendments, in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order 142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, Standing Order 163 requires that a Bill originating in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.144.

As you may have observed, the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No.49 of 2022) has been listed in today’s Order paper to be read a First Time.

I thank you.

Next Order

BILLS

First Reading

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 49 OF 2022

The Speaker (Hon. Kingi): The Senate Majority Leader, you have you can proceed.

(The Clerk consulted the Speaker)

[The Speaker (Hon King)]

Next order.

*Second Reading*THE COUNTY VOCATIONAL EDUCATION
AND TRAINING BILL, (SENATE BILLS NO. 3 OF 2022)

The Speaker (Hon. Kingi): Hon. Sen. M. Kajwang', you can proceed.

Sen. M. Kajwang': Thank you, Mr. Speaker, Sir. Ordinarily, I would be begging to move. However, I beg to defer this Bill. This Bill has been the subject of consultation with the Senate Majority Leader and the Minority side and also in consultation with the Members of the Standing Committee on Education.

The County Vocational Education and Training Bill, (Senate Bills No. 3 of 2022) is currently being considered by the Senate Standing Committee on Education and I see the chairperson is present. In fact, I have information that today, they were supposed to consider the Bill. However, the meeting was postponed because of the Special Sitting.

Standing Order No.148 requires Committee to report on Bill that have been committed to them. Even though this Bill is extremely important and I wish to thank the Senate Majority Leader for scheduling it for this Special Sitting. However, it would do good to the nation if we allowed the expert input of the Senate Standing Committee on Education and other stakeholders that they have been consulting. We can enrich the Bill and when it come back to the House, we can pass it in a manner that will not lead to back and forth between the two Houses.

Mr. Speaker, Sir, I beg for your indulgence. I know that this Special Sitting is important. It consumes resources, but if we are going to process Bills, we would rather do them in the right way to avoid litigation and referrals from the National Assembly.

I believe that the Chairperson of the Senate Standing Committee on Education and the team that he leads will advise this House accordingly so that when we debate the Bill, the House will be well informed.

I beg to request that we defer it

The Speaker (Hon. Kingi): Yes, Senate Majority Leader, you have the Floor.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I have no opposition to what Sen. M. Kajwang' has proposed. Indeed, he has spoken to me about the nature of the deferral that he is proposing to the House. It is for good reason and I agree with him.

It always should be the case that when we are transacting business to have the input of the Committee; even after the publication scrutiny, before the Committee Stage.

You remember the debate that we had here when we passed the Additional Allocation of Revenue Bill last week before we broke for recess, many Members felt that they needed to know what are the considered issues that arose during the consideration of the Bill by the Committee.

If for that reason, Sen. M. Kajwang' feels that the House will benefit better from through perusal of this Bill by the Committee on Education then I agree to it.

Further to that, I would wish to state that we have many Bills that are pending before various Committees. During the publication scrutiny, it is increasingly looking bad when you compare our Order Paper and that of the National Assembly (NA). Ours continues to be empty.

Most occasions when we meet, it is either for Motions, which are equally important, but the most important business for Parliament is legislation for substantive Bills that come before this House. Virtually, every Committee has a Member that has requested that their Bill be considered and Committees are taking slightly longer.

Last week, when we were considering the business to be brought before the House today, many of the Bills were found to be in the various Committees, yet to be given the final nod of approval for publishing.

I request the Chairpersons to complete the business of any Bills before them before they break for Christmas so that we give authority for publishing. When we begin, chances are that we shall be consulting with my counterpart, the Senate Minority Leader. It is not tenable for us to wait until Valentine's Day next year for us to reconvene yet there is a lot of business that is pending before the House.

The design and context of today's sitting was to have as many Bills as possible be read the First Time so that Committees can begin working on them. Probably, later in the month of January, we meet and process most of those Bills. That is ideally what we should be doing.

I request the Committee Chairpersons to conclude on that business. Have it ready and let it be published, because we are likely to reconvene in the first or second week of January and have 10 or 15 Bills committed to various Committees. As we do our recess, by 15th January when Committees reconvene, they can be processing those Bills into the second stage.

I hope we will have the cooperation of both Members and chairpersons of Committee. Otherwise, I appreciate Sen. M. Kajwang' for what he has proposed to the House.

I do not think I will be at foul of the law, if I take this opportunity to wish colleagues a Merry Christmas. This is because chances are we may not have a chance to meet again before then.

Thank you, Mr. Speaker, Sir.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I echo the words of the Senate Majority Leader.

During the last session, we had many Bills that lapsed. This is because the Secretariat and your office were trying to seek concurrence with the 'lower' House.

It will be important for us to get an update. I should have waited to deal with this matter in the Senate Business Committee (SBC). It is in the interest of the country and for Members of this House to note that there are so many Bills that lapsed. I have two Bills that lapsed in the National Assembly in the last Parliament which I had requested to be republished to enable us have business.

Mr. Speaker, Sir, may be you could advise the House on the status of those Bills. I know the legal department was trying to fast-track, but this requires you to speak to your brother in the 'lower' House for concurrence. These are Bills that had already passed this House. In fact, when we reintroduce those Bills, I remember my Bill on County Oversight and Accountability, I did it the second time because of the decision by the Court of Appeal.

Mr. Speaker, Sir, to be able to bring business in this House and also as the Whip, it will be important for us to whip Members to come when we have a lot of work that will be able to enrich debate and support our counties.

If you can update us on how far we have gone on that, it will really be appreciated.

Sen. Joe Nyutu: Thank you, Mr. Speaker, Sir, for this opportunity. I rise to agree with Sen. M. Kajwang' and my Majority Leader that we defer the County Vocational Education and Training Bill.

We have held several sittings with the Committee. I chair the Committee on Education. There are very many clauses in that Bill. Many stakeholders have given their prepositions and suggestions which we are considering. We agreed that because it is very voluminous, we will have a retreat for a day or two and conclude on this Bill.

Mr. Speaker, Sir, I assure the Senate Majority Leader and the House that this Bill will be dispensed with expeditiously. It is only that we do not want to do a shoddy job. I give that assurance as the Chair of the Committee on Education. I agree with the suggestion that we defer it as requested by Sen. M. Kajwang'.

Sen. Osotsi: Thank you, Mr. Speaker, Sir. I join my colleagues to support the fact that it is important to defer this Bill.

Allow me to raise some two concerns. First, I believe that before a matter is put on the Order Paper, there must be some consultations, particularly involving the owner of the Bill, the Majority and Minority Leaders. It is surprising that it looks like there was no adequate consultation before this matter was put on the Order paper. Given that it was a special sitting, it was important for even the Committee to inform the Majority and Minority Leaders about the status of their work.

That is a matter that we, as a Senate, need to look into so that we do not call special sittings when we are not very sure about the content of what we are going to discuss.

Second, from my experience in this House, the report from the Committee for a Bill that is supposed to be discussed at the Second Reading must be ready so that Members have the benefit of reading it and understanding what the stakeholders said during public participation. Therefore, they will be able to contribute meaningfully to the debate.

If we have a matter, especially a Bill, coming for Second Reading and the report is not ready, we are setting a wrong precedence. Before a matter is put on the Order paper, the report from the Committee must be ready.

With those few remarks, I wish hon. Members a Merry Christmas and a Happy New Year.

The Speaker (Hon. Kingi): Thank you. This matter is so deferred to await the report by the Committee.

(Bill deferred)

As for the matter raised by Sen. Olekina, it shall be discussed at the SBC and the Senate Majority Leader will put the House in the know.

Next order, Clerk.

Sen. M. Kajwang': On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): What is your point of order, Sen. M. Kajwang'?

Sen. M. Kajwang': Mr. Speaker, Sir, Sen. Osotsi has raised a matter that needs some inspection. The matter of consultation before convening a special sitting.

Standing Order No. 33 is quite clear on the procedure and who can call a special sitting. That Parliament is not guided only by the Standing Orders, but there is also tradition and precedence. We have set a precedent in this House that when the Senate Majority or Minority Leaders wishes to convene a Special Sitting, there ought to be some consultation. Not necessarily concurrence, but consultation between the two sides.

I want to encourage us not to kill this spirit. I do not argue that it is mandatory. I argue that is a good precedent and tradition. I wish the Senate Majority and Minority Leaders were here. This is so that when issues are lined up for discussion on a special sitting, there is no disagreement on the agenda or the motive.

If there was consultation, probably we would have dealt with a few other businesses on the Order Paper in form of Motions or we would have found other certain pieces of legislations that were ripe for consideration.

Mr. Speaker, Sir, I do not fault the Senate Majority Leader for calling this Special Sitting in the manner in which he called it. However, I would like that you pronounce yourself from the Chair, that we should never kill the spirit of bipartisanship, which the Senate is known for. This is because today, the Senate Majority Leader may want a Special Sitting and tomorrow, the Senate Minority Leader will want the same. We do not want to balkanize the House.

This is a House of sober second reflection. It is the 'upper' House. There is a reason why the visitors have chosen to come to the Senate. It is because this is a House where they know they are safe and that they will go out with some words of wisdom.

Mr. Speaker, Sir, please prevail upon the Senate Majority and Minority Leaders to consult at all times on the agenda to be brought before this House.

The Speaker (Hon. Kingi): Thank you, Sen. M. Kajwang'. Indeed, this House is guided and operates under Standing Orders and set precedents.

As you have rightly said, a precedent has been set, that whenever a Special Sitting is requested by either the Senate Majority or Minority Leader; there must be some kind of consultation and not necessarily concurrence. We do not intend to deviate from that practice.

Proceed, Sen. Cheptumo.

Sen. Cheptumo: Mr. Speaker, Sir, I think you have already given directions. I was just worried because the Senator created an impression that there was no consultation at all and that that is a problem.

Mr. Speaker, Sir, you having given directions, I rest my point. It is important to consult, but it is wrong to give an impression that this sitting was convened without consultation.

In fact, it was Sen. M. Kajwang' who actually sought for deferment of his Bill, for the reason that the Committee on Education had not given a report to the House. I am only concerned with the impression that there was no consultation. Nonetheless, I agree with you that, in future, that should happen if it was not done in this particular case.

ADJOURNMENT

The Speaker (Hon. Kingi): Hon. Senators, that brings us to the end. There being no other business on the Order Paper, the Senate stands adjourned until Tuesday, 14th February, 2023, at 2.30 p.m.

The Senate rose at 10.43 a.m.