

Thirteenth Parliament

**First Session
Afternoon Sitting**

(No.21)

(159)



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – FIRST SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, NOVEMBER 10, 2022 (AFTERNOON SITTING)

1. The House assembled at Thirty Minutes past Two O'clock.
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker
4. **MESSAGES**

The Honourable Speaker conveyed the following Messages:-

Message from H.E. the President regarding Substitution of nominee for Appointment as the Principal Secretary.

Honourable Members, Standing Order 42 (1) relating to Messages from the President provides that “The Speaker shall read to the House any message from the President delivered to the Speaker for communication to the House”. In this regard, **Hon. Members**, I wish to convey the following message from H. E. the President regarding the substitution of a certain nominee for appointment as a Principal Secretary.

Honourable Members, in the Message, His Excellency the President conveys that, in exercise of powers conferred on him by Article 155(3) of the Constitution, as read together with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, he has nominated **Ms. Mary Muthoni Muriuki** for appointment as Principal Secretary for the State Department for Correctional Services.

He indicates that this is due to **Ms. Caroline Nyawira Murage** withdrawing her candidature for the position.

Honourable Members, H.E. the President now seeks the approval of the nominee by the National Assembly for appointment to the said position, and further requests for her consideration to be undertaken on a priority basis.

Honourable Members, Pursuant to the provisions of Standing Order 42(3), I hereby refer the Message together with the curriculum vitae of the nominee to the Departmental Committee on Justice and Legal Affairs for consideration. Section 8 of the Public Appointments (Parliamentary Approval) Act provides that, unless otherwise provided in law, the Committee to which such nomination is referred shall consider the matter and table a report in the House **within twenty-eight (28) days**.

Honourable Members, for clarity, and to enable the House conclude this exercise speedily, I direct the Clerk of the National Assembly to take the necessary action by notifying the nominee and the general public by placing an advert in the daily newspapers of national circulation and the Parliamentary Website of the time and place of holding the approval hearings tomorrow, **Friday, 11th November, 2022**, following which the approval hearings should commence.

Thereafter, the said Committee should table its report in the House on or before **Tuesday, 29th November, 2022** for the House to debate and make decision on the nominee before the House proceeds for its long recess on Thursday, 1st December, 2022.

I thank you.”

(a) Message The Senate on Approval of Members for Appointment to Parliamentary Commission Service

Honourable Members, Pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received a Message from the Senate regarding its *decision on the approval of Members for appointment to the Parliamentary Service Commission*.

Honourable Members, the Message conveys that, on Wednesday, 9th November, 2022, the Senate considered the Motion on approval of Members of the Parliamentary Service Commission and **approved** the Motion with amendment to paragraph (b) by deleting the name of the **Hon. Sen. Fatuma Adan Dullo, CBS, MP and substituting therefor the name of Sen. Erick Okong’o Mogeni, SC, MP**.

Honourable Members, you will recall that, on Tuesday, 8th November, 2022, this House, **approved** the appointment of the following Members to the Parliamentary Service Commission—

(a) under sub-section (c)(i) of the Constitution—

- (i) The Hon. Faith Gitau, M.P.
- (ii) The Hon. Mohamed Ali, M.P.
- (iii) The Hon. Sen. Nderitu Kinyua, M.P.
- (iv)** The Hon. Sen. Joyce Korir, M.P.

(b) under sub-section (c)(ii) of the Constitution—

- (i) The Hon. Mishi Juma Khamisi Mboko, M.P.
- (ii) The Hon. King'ola Patrick Makau, M.P.
- (iii) The Hon. Sen. Fatuma Adan Dullo, CBS, M.P.

Honourable Members, I did convey the aforementioned resolution of the National Assembly to the Senate for its consideration. Of the seven (7) names transmitted by the National Assembly, the Senate approved six (6) names. The Senate also substituted the name of the Hon. Sen. Fatuma Adan Dullo, CBS, M.P. with that of the Sen. Erick Okong'o Mogeni, SC, MP. The decision of the Senate is therefore at variance with that of the National Assembly to the extent of one of the Members contained in the Message. This therefore requires me, as your Speaker, to guide the House on the implications of this variance.

Honourable Members, There is an established parliamentary practice where bicameral approval of an appointment is only construed to have been granted if both Houses unequivocally approve a nominee. Consequently, the decision by the Senate implies that—

- (1) Both Houses of Parliament have unequivocally approved the appointment of six (6) out of seven (7) Members to the Parliamentary Service Commission; and
- (2) The appointment of the Hon. Sen. Fatuma Adan Dullo, CBS, M.P. as a Member of the Parliamentary Service Commission stands rejected as the nominee only obtained the approval of one House.

Honourable Members, What does this portend. As you are aware matter at hand is not subject to the mediation process contained in Article 113 of the Constitution. This is because approval of a person for appointment to office by Parliament is distinct from the process of law-making.

Honourable Members, On a matter related to this issue, I wish to also inform the House that I have received a letter this morning from the Parliamentary Leadership of the Jubilee Party related to this Message. In the letter, the Leadership of the Jubilee Party alludes to the entitlement of one of its Members to a slot in the Commission on account of an agreement with its coalition partners in the Azimio La Umoja One Kenya Coalition.

Honourable Members, The claim by the Jubilee Party is not novel. Indeed, in the 12th Parliament, my predecessor resolved a similar issue raised by the Wiper Democratic Movement by perusing the coalition agreement entered into by the partners in the NASA Coalition. The NASA Coalition agreement did expressly provide for the sharing of positions in the Commission on constituent party strength in the Parliament and that allowed the consideration of the Hon. Ben Momanyi for appointment to the Commission.

Honourable Members, The present claim is unique for two reasons. First, you will recall that in providing guidance on the issue that arose earlier on the Leadership of the Majority and the Minority in the House, I did rule that the Azimio La Umoja One Kenya Coalition Agreement conveyed to this House by the Registrar of Political Parties was inadmissible. Secondly Honourable Members, unlike the case in the 12th Parliament where the Wiper Democratic Movement raised the issue of their entitlement to positions in the Commission before a vote had been taken by the

House, the Jubilee Party has made its claim AFTER the House has unequivocally pronounced itself on the matter.

Honourable Members, I have taken the liberty to peruse the Azimio La Umoja One Kenya Coalition Agreement, despite its inadmissibility, to help me navigate this issue. I have noted that the Agreement makes no mention of the sharing of positions in the Commission. That alone deals a fatal blow to the claims made by the Jubilee Party. When added to the fact that the claim is made after the House has voted on the matter, it becomes rather clear that the horse has bolted. No amount of sympathy that I may have for the plight in which the Jubilee Party finds itself would allow me to arbitrate on this matter. My hands are therefore tied.

Honourable Members, with respect to the Senate's approval of the Sen. Erick Okong'o Mogeni, SC, MP it is notable that, in accordance with the law and established practice, the approval requires a concurrent decision of this House. The decision therefore lies with you as to who the House wants to represent it in the Commission. It has to be unequivocal.

Honourable Members, As the Chair of the Commission, I have noted and severally expressed the urgent need to fully constitute the Commission. This view has also been echoed by the House Business Committee. There are myriad matters pending before the Commission relating to the welfare of Members. These include consultations with the Salaries and Remuneration Commission over Members welfare matters. Additionally, Commissioners sit on key committees such as the Members' Mortgage and Car Loan Committees where there are numerous pending requests.

Additionally, **Honourable Members,** the Commission lacks a significant portion of its membership. Some Commissioners who were Members were not reelected and there is currently a vacancy with regard to one representative of the public. I would discourage any further delay in the formation of the Commission.

Honourable Members, For these reasons and as required by Standing Order 41 and 42, when I received this Message, I instructed the Clerk of the National Assembly to publish a Supplementary Order Paper for the sitting of the House of today, Thursday, 10th November, 2022 in order for the House to consider and make an unequivocal decision one way or other on the appointment of Sen. Erick Okong'o Mogeni, SC, MP as a member of the Parliamentary Service Commission. I therefore draw your attention to the Supplementary Order Paper which is now in circulation.

It is my hope that the House will conclude this business today and pave the way for the constitution of the Commission in full and commencement of its most urgent work.

The House is accordingly guided.

I thank you.

5. PETITIONS

The Hon. Speaker convey the following Petition regarding the completion of House units for Kibra residents funded by the World Bank:

Honorable Members, as you know, Article 119 of the Constitution gives right to any person to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition, other than those presented by a Member. In that regard, I wish to report to the House that I have received a Petition from Mr. Peter Kinyua Waweru being the Chairperson of Ng'ando PAPs Housing Co-operative Society Limited.

Honorable Members, the Petitioner and five hundred and sixty (560) other members of the Cooperative Society are residents of Soweto, Laini Saba and Mashimoni areas of Kibera, Kibra Constituency and Lang'ata Constituency who are awaiting to be allocated the housing units under construction on the land in Jamhuri area, specifically, Ng'ando area near Station Road in Kibera.

This project is part of the Relocation Action Plan by the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and Kenya Railways Corporation financed by the World Bank. The objective of the project was to relocate persons living near the railway operating area whose continued stay posed a safety risk to the operations of the railway.

Honorable Members, the Petitioners claim to be the intended beneficiaries of the project and were supposed to receive their units seven years ago, a dream which has not yet been realized.

The Petitioners also note that Kenya Railways Corporation had resettled similar affected persons in Mukuru, Soweto, Laini Saba, and Mashimoni areas. However, the five hundred and sixty (560) affected persons who are members of Ng'ando PAPs Housing Co-operative Society had missed out since their housing units are incomplete to date. Further, the Petitioners aver that they have complied with all the conditions given and that their houses were even demolished with a promise of alternative housing in the new project.

Honorable Members, the Petitioners state that their engagement with Kenya Railways Corporation to revive the stalled project has bore no fruit as the corporation insists, it has not yet received funds from the government to facilitate completion. Further, the Petitioners continue receiving reminders from Kenya Railways Corporation to comply with rental payments for the stalled units.

Honorable Members, the Petitioners pray that the National Assembly intervenes on their behalf to ensure that the Kenya Railways Corporation expedites the completion of the housing units and settles the intended beneficiaries, who are currently residing in deplorable make-shift shelters, as per the agreement at inception of the project.

Honorable Members, having established that the matter raised in the Petition is well within the authority of this House, I direct that the Petition be committed to the Public Petitions Committee for consideration in accordance with the provisions of Standing Order 208A. The Committee is required to consider the Petition and report its findings to the House and to the Petitioners in accordance with Standing Order 227(2).

I thank you.

6. PAPERS

The following Papers was laid on the Table of the House: -

i.) Fourth Batches of Nominees to Forty-Three (43) National Government Constituencies Development Fund Committees from the National Government Constituencies Development Fund Board for the following Constituencies-

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| 1) Ainabkoi; | 23)Konoin; |
| 2) Ainamoi; | 24)Kuria East; |
| 3) Aldai; | 25)Kwanza; |
| 4) Awendo; | 26)Lafey; |
| 5) Bobasi; | 27)Likoni; |
| 6) Bonchari; | 28)Loima; |
| 7) Bureti; | 29)Mavoko; |
| 8) Central Imenti; | 30)Moiben; |
| 9) Chesumei; | 31)Mwatate; |
| 10)Dagoretti North; | 32)Nakuru Town East; |
| 11)Galole; | 33)Ndhiwa; |
| 12)Garsen; | 34)Nyali; |
| 13)Gatundu South; | 35)Nyaribari Masaba; |
| 14)Gichugu; | 36)Rangwe; |
| 15)Homabay Town; | 37)Ruaraka; |
| 16)Igembe South; | 38)Sigowet/Soin; |
| 17)Kajiado South; | 39)South Mugirango; |
| 18)Kamukunji | 40)Suba South; |
| 19)Kagundo; | 41)Suna West; |
| 20)Kasarani; | 42)Turkana East; and |
| 21)Keiyo North; | 43)Voi. |
| 22)Kilome; | |

ii.) Revised List of Nominees for Laikipia East Constituency from the National Government Development Fund Board;

- i.) Legal Notice No. 203 of 2022 relating to the Adjustment of Specific Rates of Export Levy, 2022, Regulation, 2022 and the Explanatory Memorandum from the Kenya Revenue Authority;
- ii.) Legal Notice No. 204 of 2022 relating to the Adjustment of Rates of Excise Duty, Regulation, 2022 and the Explanatory Memorandum from the Kenya Revenue Authority.
- iii.) Report of the Auditor-General and Financial Statements of the National Youth Service for the financial Year ended 30th June, 2021 and the certificates therein;
- iv.) Report of the Auditor-General and Financial Statements of the Private Security Regulatory Authority for the fifteen month's financial Year ended 30th June, 2021 and the certificates therein;
- v.) Report of the Auditor-General and Financial Statements of the following institutions for the financial Year ended 30th June, 2021 and the certificates therein:

- a) Egerton University Investment Company;
- b) Kieni Technical and Vocational College;
- c) Kenya Academy of Sports;
- d) Intergovernmental Relations Technical Committee;
- e) Auctioneers Licensing Board;
- f) Tanathi Water Works Development Agency;
- g) National Authority for Campaign against Alcohol and Drug Abuse (NACADA);
- h) National Authority for Campaign against Alcohol and Drug Abuse Staff Mortgage and Car Loans Fund;
- i) Non- Governmental Organizations Co-ordination Board;
- j) Kenya Meat Commission;
- k) Sports Kenya;
- l) Kenya National Library Service;
- m) Ndia Technical and Vocational College; and
- n) Dedan Kimathi University of Technology.

(Leader of the Majority Party)

- vi.) Report of the Select committee on National Government Constituencies Development Fund on List of Nominees to the National Government Constituencies Development Fund for 124 Constituencies.
(The Hon. Musa Sirma, EGH, MP, Chairperson, Select Committee on National Government Constituencies Development Fund)

7. NOTICES OF MOTION

The following Notice of Motion was given by the Chairperson, Select Committee on National Government Constituencies Development Fund:-

THAT, this House **adopts** the Report of the the Select committee on National Government Constituencies Development Fund on List of Nominees to the National Government Constituencies Development Fund for 124 Constituencies *laid on the Table of the House on Thursday, November 10, 2022.*

8. QUESTIONS AND STATEMENT

A statement by the Leader of the Majority Party on Business before the House the following week *(pursuant to SO.44(2)(a)).*

9. MOTION – DEVELOPMENT OF A UNIFIED NATIONAL POLICY ON SMALL AND MICRO-ENTERPRISES

Motion made and Question proposed

THAT, aware that Kenya's economy is largely driven by the informal sector spearheaded by entrepreneurs presenting themselves in form of Small and Micro-Enterprises (SMEs); concerned that the informal sector popularly known as the Jua Kali has different segments and categories spread out in value chains ranging from agriculture, trade, manufacturing, apparels, IT, transport, the creative economy, education among others; recognizing that, there is need to improve coordination of SMEs through development of an all-inclusive well-structured delivery platform that

encompasses multiple solutions and all key stakeholders; noting that this sector has a potential to create employment opportunities to over eighty (80) percent of Kenya's working population; further noting that these SMEs have the capacity to leapfrog our nation to a middle-income economy as witnessed in other economies around the world; recalling that strong and consistent commitment and political goodwill can deliver the needed growth for the realization of steady and sustainable economic growth; concerned that previous support by the government to this sector has merely been a knee-jerk reaction in form of skewed funding and tokenism; cognizant that there exist no unified national policy or legislation in support of the sector and SMEs across the entire value chain; now therefore, this House resolves that the National Government develops a unified National Policy on Small and Micro-Enterprises (SMEs) detailing recognition, funding, mentoring, expansion, restructuring and marketing of the SMEs products.

Debate arising;

Mover replied;

Question put and **agreed to.**

10. SPECIAL MOTION - CONSIDERATION OF THE NOMINEE FOR APPOINTMENT AS INSPECTOR-GENERAL OF THE NATIONAL POLICE SERVICE

Motion made and Question proposed;

THAT, taking into consideration the findings of the Joint Committee of the National Assembly Departmental Committee on Administration and Internal Affairs and the Senate Standing Committee on National Security, Defence and Foreign Relations in its Report on the vetting of Eng. Japhet Koome Nchebere for approval as Inspector-General of the National Police Service, laid on the Table of the House today, Wednesday, November 9, 2022, and pursuant to the provisions of section 12(1) of the National Police Service Act, 2011 and section 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Eng. Japhet Koome Nchebere as the Inspector General of the National Police.

Debate arising;

Mover replied;

Question put and **agreed to.**

11. MOTION - TREE PLANTING ALONG THE ROADSIDES AND ROAD RESERVES

Motion made and Question proposed –

THAT, aware that Article 42 of the Constitution accords every person the right to a clean and healthy environment and that Article 69 (1)(d) also mandates the State to encourage public participation in the management, protection and conservation of the environment; further aware that, deforestation is one of the main contributors to climate change; noting that, Kenya has not been spared by the effects of global warming and climate change as a result of deforestation amongst other aspects; also aware that, the road network in the country currently stands at approximately 177,800 kilometres with a development rate of 600km per annum;

deeply concerned that, there has been persistent destruction of trees and vegetation along the road reserves and roadsides during road construction leading to adverse effects on the ecosystem; cognizant that, studies have shown that the benefits accumulated from roadside tree planting include better soil formation due to shedding of dead leaves, increased water quality by reducing sediment flow, reduced erosion, road beautification, flood control as the trees slow and absorb water runoff, wind-breaking, providing important pollinator, habitats, improving peoples' health, and protecting crops; now therefore, this House **resolves** that the Government includes a component of tree planting in all road network designs and also makes it compulsory for road contractors to replace any tree harvested during road construction upon completion of the project.

(The Hon. John Kiarie, M.P.)

Debate arising;

(Change of Chair from the 6th Chairperson to the 3rd Chairperson)

And the time being seven O'clock, the 3rd Chairperson of Committees interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

12. HOUSE ROSE - at seven O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Tuesday, November 15, 2022 at 2.30 p.m.

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