



**REPUBLIC OF KENYA**

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**THIRTEENTH PARLIAMENT – (SECOND SESSION)  
THE NATIONAL ASSEMBLY  
COMMUNICATIONS FROM THE CHAIR**

*(No. 29 of 2023)*

**ON REPLACEMENT OF THE DEPUTY MINORITY WHIP**

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**Honourable Members,**

1. You will recall that on Thursday 13<sup>th</sup> April, 2023, I issued a Communication notifying the House that I had received a letter from the Minority Party through the Leader of Minority Party, Hon. Opiyo Wandayi de-whipping the Hon. Sabina Chege, MP as the Deputy Minority Whip. I also did inform the House that I had received another letter from the Member for Nakuru Town West Constituency, Hon. Samuel Arama, MP seeking the recognition of the Jubilee Party as a *parliamentary party* within the meaning of the Standing Orders.
2. You will also recall that during the particular sitting, I made reference to two letters dated 21<sup>st</sup> September, 2022 received from the Hon. Jeremiah Kioni who signed off as the Secretary-General of the Jubilee Party. The letters sought to notify the House of the leadership of the Jubilee Party and its nominee to the Speaker's Panel outside the framework of its Coalition. On account of the weight of the matter, I allowed Members to make general comments to inform my guidance.

- 3. Honourable Members,** In the ensuing debate, several Members including the Leader of Majority Party, Hon. Kimani Ichungw'ah, MP; the Leader of Minority Party, Hon. Opiyo Wandayi, MP; the Deputy Minority Leader, Hon. Robert Mbui, MP; Hon. Sabina Chege, MP; Hon. Adan Keynan, MP, the Member for Eldas Constituency; Hon. Rachel Nyamai, MP, the Member for Kitui South Constituency; Hon. Gathoni Wamuchomba, MP, the Member for Githunguri Constituency; and the Hon. Zamzam Mohammed, MP, the Member for Mombasa County among others, weighed in on the matter.
- 4. Notably, Hon. Members,** the Hon. Sabina Chege observed that her proposed removal from the position of the Deputy Minority Whip was contrary to Article 47 of the Constitution which grants every person the right to administrative action that is lawful, reasonable and procedurally fair. Additionally, the Hon. Chege was of the view that the proposed removal contravened Article 236(2)(b) of the Constitution which requires that the due process of law should precede any removal from office.
- 5. Honourable Members,** I wish to inform the House that since reserving this matter for a considered ruling, my office has received further correspondence from the Jubilee Party signed by the Hon. Kanini Kega as the Acting Secretary General of the Party. In the correspondence, the Hon. Kega has conveyed certain changes to the leadership of the party, including the appointment of a new Party Leader. The letter raises issues on who the *bona fide* officials of the Party are. I note that the letter is copied to the Registrar of Political Parties who I trust will exercise her mandate as appropriate.

**6. Honourable Members,** from the foregoing, I have distilled the following three issues requiring my guidance—

**(1) Whether the proposed removal of Hon. Sabina Chege as the Deputy Minority Whip is contrary to Articles 47 and 236 (b) of the Constitution on the due process of law;**

**(2) Whether the proposed replacement of the Deputy Minority Whip complies with the Standing Orders of this House; and**

**(3) Whether the Jubilee Party is a Parliamentary Party within the meaning of the Standing Orders.**

**7. Honourable Members,** At this stage I shall refrain from addressing the **First Issue** that I have isolated. This is because the Issue touches on matters falling partly within the mandate of the House, and partly within the mandate of other competent constitutional and statutory bodies. These bodies include the Judiciary, the Political Parties Disputes Tribunal and the Internal Dispute Resolution Mechanisms of political parties and coalitions.

**8. Honourable Members,** The centrality of the Bill of Rights in the architecture of our Constitution cannot be gainsaid. Indeed, human rights are one of the national values and principles of governance under Article 10 of the Constitution. Article 47 of the Constitution on the right to fair administrative action and Article 236(2)(b) of the Constitution which requires the due process of law to be followed before the removal of a holder of an office, finds their basis in the Bill of Rights.

9. These rights accrue to every person, including Members of this House, and cannot be limited except in the manner provided for under Article 24 of the Constitution.
10. **Honourable Members**, Whereas Article 22 and Article 165 of the Constitution confer the exclusive jurisdiction to determine the question of whether a right or fundamental freedom in the Bill of Rights has been violated, Article 3 of the Constitution obliges the Speaker to uphold, defend and respect the Constitution.
11. It is noteworthy that, under Article 20 of the Constitution, the Bill of Rights binds all state organs and persons. Pursuant to Article 21 of the Constitution, every State organ is under a duty to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of rights. In this regard, where a question arises touching on the possible violation of a Member's fundamental right or freedom, the Speaker cannot fold his arms and fail to act in blindness of the express requirements of the provisions of the Constitution that I have cited.
12. However, **Hon. Members**, as I have observed earlier, addressing this issue exhaustively requires the involvement of other competent constitutional and statutory bodies besides the Speaker. Whereas the Speaker may make interim interventions to facilitate the continuity of the business of the House, the final interpretation and enforcement of the rights and freedoms lies with the Judiciary as outlined under Article 165 of the Constitution.

- 13. Honourable Members,** on the **Second Issue**, I note that Standing Order 20A(4) provides that a decision of a parliamentary party replacing its whip or deputy whip shall be communicated to the Speaker in writing. In the case of the Minority Party, the decision is to be communicated by the Leader of the Minority Party. Please note the emphasis of the Standing Orders on the use of the word "replacing".
- 14.** Further, Standing Order 20A(5) obligates the Speaker to convey the decision of a Party to replace its whip or deputy whip as soon as practicable following receipt of the decision.
- 15. Honourable Members,** In most multi-party democracy jurisdictions all the over the world, party discipline is key to the very existence of political parties. It may rightly be said that without party discipline, the functionality of political parties and multi-party democracy would be prejudiced. Permit me to note that Standing Order 20A finds its basis in Article 4(2) of the Constitution which establishes Kenya as a multi-party democracy. Additionally, paragraphs (4) and (5) of the Standing Order on replacement of party whips are in line with the democratic right of parliamentary parties to enforce party discipline of its Members as provided for in the Political Parties Act, 2011.
- 16. Honourable Members,** From a close reading of Standing Order 20A(4) and (5), it is evidently clear that the Azimio La Umoja One Kenya Coalition is fully entitled to discipline its Members and to determine the composition of its leadership in the House. The only condition to the exercise of this right is that it has to follow the process prescribed under Standing Order 20A.

**17. Honourable Members,** During yesterday's afternoon sitting, the Leader of the Minority Party submitted that the Speaker should not be seen as interfering with the manner in which a parliamentary party elects to organize its affairs. I cannot agree more. Indeed, this the accepted practice, particularly in the Commonwealth.

**18. Honourable Members,** an examination of precedents from Parliaments in comparative jurisdictions lends itself to the adoption of a delicate approach in resolving internal party matters in the Chamber of the House. In New Zealand, the arrangements for the appointment of whips are internal matters for the respective parties to determine on condition that the Speaker is advised of the appointment of whips. (*Parliament of New Zealand, Standing Order 35(1)(b)*).

**19.** Similarly, in South Africa, the the National Assembly of South Africa was recently confronted with a leadership and decision-making dispute in the Pan Africanist Congress of Azania (PAC). In the matter, PAC had one seat in the National Assembly, which was filled by the nomination of Hon. Mzwanele Nyhontso who had already been sworn in as the party's representative in the House.

**20.** Subsequently, **Hon. Members** a dispute arose within the PAC regarding its leadership and there was uncertainty about communicating the membership of Hon. Nyhontso and, consequently, who should represent the party in the National Assembly. The guidance provided to the House by the Speaker was as follows, and I quote, —

- (a) the Speaker has no authority to adjudicate internal party disputes about membership to the National Assembly or its leadership;*
- (b) neither the Speaker nor the House gets involved in party political matters;*
- (c) it is neither for the Speaker nor a House of Parliament to decide which is the legitimate leadership structure of a political party;*
- (d) it would be incorrect for either the Speaker or House to recognize one structure as the legitimate leadership of ...a political party... (the PAC) over another.*

**21. Honourable Members,** you will agree with me that the foregoing guidance of the Speaker of the South African Parliament is relevant to the questions that confront us today, **including the question of which formation of the Azimio Coalition or the Jubilee Party the Speaker should recognize in this House.**

**22. Honourable Members,** The determination of political party disputes is best left to the competent authorities outside of Parliament as envisaged by the law. This House passed the Political Parties Act whose provisions you are all aware of. The House, or indeed the Speaker, ought not to be called upon to arbitrate party matters. In the case of party leadership in the House, the Speaker only communicates party decisions as received through the authorized persons. **It should not be lost to us that the question of who the authorized persons are with respect to the Jubilee Party is one of the issues lingering.**

**23. Honourable Members,** Party Whips are and have been an invaluable cog to the continuity of parliamentary business. Erskine May, a renowned authority on Parliamentary Procedure notes that, and I quote, "*The efficient and smooth running of the parliamentary machine depends largely upon the Whips*". Erskine May further outlines the nature of the duties undertaken by whips that makes them deserving of this lofty status. In this regard, Erskine May also notes, and I quote,—

*"Certain duties are common to Whips of all parties: to keep their Members supplied with information about the business of the House; to secure the attendance of Members; to arrange, when possible, for those of their Members who cannot attend divisions to 'pair' with others on the opposite side of the House so that their votes might not be lost; to suggest Members to serve on general and certain select committees; and to act as intermediaries between the leaders and the parliamentary membership of their parties in order to keep each informed of the views of the other."*

**24. Honourable Members,** This authority creates a very strong nexus between facilitation of the business of the House and the office of a Whip or a Deputy Whip. In this regard, I am of the considered view that the Standing Orders of the National Assembly are deliberately worded to ensure the continuity of parliamentary business.



- 25.** A close reading of Standing Order 20A leads to the inescapable conclusion that once a parliamentary party has designated a Whip or a Deputy Whip, the only subsequent change that the parliamentary party may make with regard to the two positions is a ***replacement*** of the person designated as a whip or deputy whip.
- 26. Honourable Members,** according to the Oxford Learners' Dictionary, the word "*replace*" means *to remove someone or something and put another person or thing in their place*. It therefore follows that, a replacement has two components, that is, the act of removal and the act of substitution which must happen simultaneously.
- 27. Honourable Members,** In the current scenario, the Minority Party has conveyed its decision seeking to remove one of its leaders without simultaneously offering a substitution. The letter by the Minority Party only partially meets the express requirements of the Standing Orders.
- 28. Honourable Members,** The Speaker is also confronted by several correspondence from a constituent party of the Minority Party that is currently facing its own internal disputes. Any Speaker would be highly constrained to facilitate the continuity of the business of the House in an environment which raises pertinent questions that cannot be ignored, including—

*(i) Should the Speaker ignore correspondence that affects the rights of Members who collectively meet the threshold to constitute a parliamentary party?*

*(ii) Should the Speaker take cognizance of the precedent of the House on access to pre-election and post-election coalition agreements affecting its Leadership?*

**29. Honourable Members,** To my mind, the matters at hand cannot be conclusively resolved without affording the affected parties adequate time to comply with the procedural requirements outlined in the Standing Orders. The affected parties basically have to put their affairs in order. The National Assembly is a House of Order. Consequently, the Minority side and the Jubilee Party must organize their affairs and also endeavour to appear organized.

**30.** As per the Calendar, the House is scheduled to adjourn at the end of this sitting for the May recess. I am inclined to allow the Minority Party and the Jubilee Party thirty (30) days within which to put their affairs in Order. By the time the House resumes from the recess, it is my expectation that my office shall be in receipt of communication from the Minority Party replacing its Deputy Minority Whip, if they so wish, in the manner contemplated under Standing Order 20A.

**31. Honourable Members,** the **Third Issue** for determination is whether the Jubilee Party is a Parliamentary Party within the meaning of the Standing Orders. You will recall that in his letter seeking the recognition of the Jubilee Party as a parliamentary party, the Hon. Samuel Arama observed that Article 36 of the Constitution on freedom of association and Article 38 of the Constitution on political rights, confers upon each Member of the House the right to determine which entities they wish to be associated with and the right to make political choices.

**32. Honourable Members,** Standing Order 2 defines a “parliamentary party” as a party recognized by the Speaker as a parliamentary party pursuant to Standing Order 20A (*Recognition of Parliamentary Parties and Designation of leaders and Whips*). Standing Order 20A(1) provides that the Speaker shall recognize a party or coalition of parties consisting of not less than five percent of the membership of the National Assembly as a parliamentary party.

**33. Honourable Members,** five percent of the membership of the National Assembly is eighteen (18) Members. From the records of the House, the membership of the Jubilee Party in the National Assembly, comprises twenty-eight (28) Members. In this regard and pursuant to Standing Order 2 and 20A(1), the Jubilee Party meets the threshold to be recognized as a Parliamentary Party.

**34.**Whereas the Jubilee Party meets the threshold to be recognized as a Parliamentary Party, I am hesitant to invoke this provision given the myriad correspondence received from the Party with respect to its leadership and the persons authorised to communicate on its behalf to the Speaker.

**35.Honourable Members,** In summary, my guidance is as follows—

- (1) THAT, the communication received from the Minority Party with regard to the replacement of the Hon. Sabina Chege as the Deputy Minority Whip is incomplete and therefore does not comply with the requirements of Standing Order 20A of the National Assembly Standing Orders.**
- (2) THAT, I hereby grant the Minority Party a period of thirty (30) days from today within which to convey the appropriate communication on the replacement of its Deputy Minority Whip, if it so wishes.**
- (3) THAT, Whereas the Jubilee Party meets the threshold to be recognized as a Parliamentary Party pursuant to a Standing Order 20A(1), I am hesitant to invoke this provision given the myriad correspondence received from the Party with respect to its leadership and the**

persons authorised to communicate on its behalf to the Speaker.

**36.Honourable Members,** I take this decision conscious of the fact that as your Speaker, my duty is to uphold the Constitution, any law and the Standing Orders to the extent to which they relate to the management of the business of the House. It is not the duty of the Speaker to be involved in the management of the internal affairs of any political party.

**I thank you!**



**THE RT. HON. (DR.) MOSES M. WETANGULA, E.G.H, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

*Thursday, 4<sup>th</sup> May, 2023*