



REPUBLIC OF KENYA

**THIRTEENTH PARLIAMENT- (SECOND SESSION)
THE NATIONAL ASSEMBLY**

COMMUNICATION FROM THE CHAIR

(No. 41 of 2023)

**GUIDE ON CONSIDERATION OF PROPOSED AMENDMENTS TO THE
FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 14 OF 2023)**

Honourable Members,

- 1.** This Communication relates to the business appearing under Order 14 in today's Supplementary Order Paper, Tuesday 20th June 2023, being Committee of the whole House on the Finance Bill (National Assembly Bill No. 14 of 2023). Before the House proceeds with the Committee of the Whole House, I wish to provide guidance relating to consideration of the proposed amendments at the Committee of the whole House.
- 2. Honourable Members,** you may recall that on Thursday, 15th June 2023, after conclusion of Second Reading of the said Bill, I did notify the House that, Members desirous of proposing amendments to the Finance Bill, 2023, were at liberty to submit their amendments to the Clerk in the manner provided for in the Standing Orders.
- 3. Honourable Members,** Standing Order 133 (*Procedure in Committee of the whole House on a Bill*) provides as follows with respect to submission of amendments on Bills –
*"(2) No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, **unless written notification of the amendment shall have been given to the Clerk twenty-four hours before the commencement of the sitting** at which that part of the Bill is to be considered in Committee"*

4. In this regard, **Honourable Members**, at the close of the timeline prescribed in Standing Order 133(2), the Clerk had received several proposed amendments to the said Bill, originating from the Departmental Committee on Finance and National Planning, other select committees and individual Members. Indeed, as you may have observed, the Notices annexed to today's Order Paper contain several amendments that have been proposed to the said Bill.

5. For certainty, **Honourable Members**, other than the Departmental Committee on Finance and National Planning, the following Chairpersons of Committees and individual Members have proposed amendments—

- (i) The Chairperson, Select Committee on Delegated Legislation;
- (ii) The Chairperson, Departmental Committee on Blue Economy, Water and Irrigation;
- (iii) The Chairperson, Departmental Committee on Transport and Infrastructure;
- (iv) The Hon. Samuel Atandi, MP;
- (v) The Hon. Didmus Barasa, MP;
- (vi) The Hon. John Waluke, MP;
- (vii) The Hon. (Dr.) Oundo Ojiambo, MP,
- (viii) The Hon. Lesuuda Naisula, MP;
- (ix) The Hon. Mohamed Daudi, MP;
- (x) The Hon. Jared Okello, MP;
- (xi) The Hon. Caleb Amisi, MP;
- (xii) The Hon. (Dr.) James Nyikal, MP;
- (xiii) The Hon. (Dr.) Makali Mulu, MP;

- (xiv) The Hon. Anthony Oluoch, MP;
- (xv) The Hon. Innocent Mugabe, MP;
- (xvi) The Hon. Wanami Wamboka, MP;
- (xvii) The Hon. Peter Kaluma, MP;
- (xviii) The Hon. Majimbo Kalasinga, MP;
- (xix) The Hon. Robert Mbui, CBS, MP;
- (xx) The Hon. Caleb Mutiso, MP; and
- (xxi) The Hon. Geoffrey Ruku, MP.

6. Honourable Members, as you may be aware, it is now an established practice under the Constitution that, when considering any matter that has a financial implication on public funds, the House is bound by the provisions of Article 114(2) of the Constitution.

7. For clarity, Article 114(2) of the Constitution provides and I quote –

"If, in the opinion of the Speaker of the National Assembly, a motion makes provisions for a matter listed in the definition of 'a money Bill', the Assembly may proceed only in accordance with the recommendation of the relevant Committee after taking into account the views of the Cabinet Secretary responsible for Finance."

8. Honourable Members, under Clause (3) of Article 114, a "money Bill" includes matters that contain provisions dealing with, *inter alia*, **taxation**; the imposition of charges on a public fund; the appropriation, receipt, custody, investment or issue of public money; and, the raising and guaranteeing of any loan or its repayment. In this regard, a Finance Bill, being one that deals with taxation is clearly a money Bill.

9. Therefore, consideration of the Finance Bill, 2023 squarely falls within the confines of Article 114 of the Constitution and other provisions relating to processing of legislation in the House. The provisions of Article 114 of the Constitution are also anchored in section 39A of the Public Finance Management Act, 2012, which state in part, and I quote,—

"39A. Submission, consideration and passing of Finance Bill

(4) Any recommendations made by the relevant committee of the National Assembly or resolution passed by the National Assembly on revenue matters shall —

(a) ...

(b) ...

*(c) consider the impact of the proposed changes on the composition of the **tax revenue** with reference to direct and indirect taxes;*

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth;

(f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and,

(g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty."

10. Additionally, **Honourable Members**, Standing Order 133(5) provides that –

"No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill."

11. In this regard, I have analysed the amendments proposed to the Finance Bill, 2023, and noted that some contain proposals touching on matters listed in the definition of a 'Money Bill' pursuant to the provisions of Article 114(2) of the Constitution. For the record, the amendments proposed by Departmental Committee on Finance and National Planning are not part of those that I have isolated for guidance as they were processed in the manner contemplated in Article 114 of the Constitution.

12. Having applied my mind on various proposed amendments, I have determined that certain amendments are either similar to or they are fully accommodated by those proposed by Departmental Committee on Finance and National Planning. **In this regard, such amendments will be proceeded with in the Committee of the Whole House.**

13. On the other hand, **Honourable Members**, there are proposed amendments that in my opinion, fall within the meaning of a 'Money Bill' in terms of Article 114 of the Constitution. As you may have clearly noticed in the Order Paper, I directed the Clerk to publish such amendments with a disclaimer "*subject to provision of Article 114 of the Constitution*" placed under each of the affected amendments.

14.As stated earlier, **Honourable Members**, whenever a motion or proposed amendments to is subjected to Article 114 of the Constitution, it is expected that such proposal may only be proceeded with if there is concurrence of the National Treasury through the Departmental Committee on Finance and National Planning. In the absence of evidence that the affected amendments were processed in the manner contemplated in Article 114 of the Constitution, the **Speaker is left with no option but to direct that the Committee of the House shall not consider any of amendments or parts of amendments that have been published in the Order Paper with a disclaimer.**

15.Consequently, Members should note that a Member seeking to delete a clause need not have an amendment proposing the deletion of a clause. This is because a Member is only required to rise and oppose a clause as published in the Bill. This effectively enables any Member to prosecute his or her opposition to a Clause, despite the requirements of Article 114 of the Constitution. Further, **Honourable Members**, I hasten to inform the House that all proposed amendments for which the requirements of Article 114 of the Constitution do not apply are annexed in the Order Paper.

16. Honourable Members, a number of proposed amendments have since been received from three members, namely, the Hon. Joshua Kandie, MP, the Hon. George Sunkuyia, MP and the Hon. Basil Ngui, MP, outside the time provided for in the Standing Orders. For clarity, Standing Order 133(2), provides as follows—

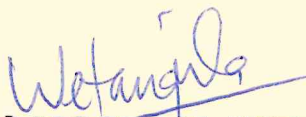
*“133(2) No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless written notification of the amendment shall have been given to the **Clerk twenty-four hours before the commencement of the sitting** at which that part of the Bill is to be considered in Committee”*

The House will therefore note that the proposed amendments are time-barred. However, I note that some of the amendments have been incorporated in the amendments proposed by the Committee on Finance.

17. Honourable Members, I give this direction with full consciousness that the intention of Article 114 of the Constitution is not to curtail the legislative mandate of the House. The Article merely seeks to ensure that, in as much as this House reserves the power to determine revenue raising measures, it does not commit the Executive without taking cognizance of the fiscal policy and considerations of the National Government.

18. The House is accordingly guided.

I thank you!



THE RT. HON. (DR.) MOSES M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, 20th June, 2023

