



**REPUBLIC OF KENYA**  
**THIRTEENTH PARLIAMENT - (SECOND SESSION)**  
**COMMUNICATION FROM THE CHAIR**

\_\_\_\_\_ (No. 42 of 2023) \_\_\_\_\_

**ON**

**THE MANNER OF INTRODUCTION, CONSIDERATION, AND PASSAGE OF A  
FINANCE BILL**

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**Honourable Members,**

1. You will recall that during the afternoon sitting of Thursday, 15th June, 2023 before the Budget Presentation by the Cabinet Secretary for the National Treasury, the Hon. Otiende Amollo, MP rose on a Point of Order and sought procedural guidance on adherence with Standing Order 244C with regard to the introduction, consideration and passage of the Finance Bill, 2023 by the House.
2. It was the contention by the Honourable Member that Standing Order 244C outlines a particular order requiring the Cabinet Secretary for the National Treasury to make a pronouncement of the budget policy highlights and revenue raising measures for the national government and thereafter present a legislative proposal which is published and introduced as a Finance Bill.
3. According to the Member, a strict reading of Standing Order 244C would therefore indicate that the House had jumped the gun by concluding the 2<sup>nd</sup> Reading of the Finance Bill before the appearance of the Cabinet Secretary for the National Treasury.

**4. Honourable Members,** At the time, I did indicate to the Hon. Otiende Amollo that Standing Order 244C had been rendered nugatory by a Court decision and offered to share the relevant judgment after the sitting.

**5. Honourable Members,** Following the Budget Presentation by the Cabinet Secretary for the National Treasury and Economic Planning, I did receive inquiries and representations from several Members of the House relating to the matter raised by the Honourable Member for Rarieda. Given this turn of events, I have decided to issue this particular guidance to the House.

**6. Honourable Members,** From the inquiries and representations received, I have isolated two issues in relation to the consideration of the Finance Bill that require clarification. These are—

- (1)** The effect of the Court Judgment alluded to in my response to the Hon. Otiende Amollo, to the manner of considering and passing of a Finance Bill;
- (2)** The procedure applicable to the consideration of a Finance Bill in light of the provisions of section 39A and 40 of the Public Finance Management Act, 2012 and Standing Order 244C;
- (3)** The effect of the presentation of the Budget Statement on the consideration of a Finance Bill.

**7.**With regard to the **First** Issue, the Court Judgement that I alluded to relates to a matter filed the Hon. Senator Okiya Omtatah challenging the constitutionality of the Provisional Collection of Taxes and Duties Act. As per the practice obtaining in 2018, the Cabinet Secretary for the National Treasury would submit a Finance Bill after the passage of the Budget Estimates and on the same day that he or she made a Budget Speech in Parliament.



8. Pursuant to the then Standing Order 245, the House was required to pass a Finance Bill within ninety (90) days of the passage of an Appropriation Bill. In the interim, the House would consider and pass a Motion operationalizing all the revenue raising measures proposed in a Finance Bill for the period between its publication and its passage in line with the Provisional Collection of Taxes and Duties Act, 1959.
9. A point of Order raised by the Member for Ruaraka, the Hon. Tom Joseph Kajwang', MP during the afternoon sitting of the House on 5<sup>th</sup> July, 2018 may have precipitated the matter filed by the Honourable Senator. At the time, the Hon. Kajwang' queried the propriety of operationalizing all the revenue raising measures proposed in a Finance Bill in line with the Provisional Collection of Taxes and Duties Act, 1959. In light of the provisions of the Constitution and the Public Finance Management Act, 2012.
10. The *Hansard* records that several current Members of the House ventilated on the point raised by the Hon. Kajwang', including the Majority Leader, the Hon. Kimani Ichung'wah, MGH, MP, the Hon. John Mbadi and the Hon. Makali Mulu, MP.
11. The High Court issued its judgment in **Okiya Omtatah Okioti v Cabinet Secretary, National Treasury & 3 others** [2018] eKLR on 19<sup>th</sup> September, 2018 and gave the following Orders, and I quote,—
  1. *A declaration that by presenting the Finance Bill 2018 to the National Assembly on 14th June 2018, while the financial calendar ends on 30th June 2018, the Cabinet Secretary violated Section 37 of the Public Finance Management Act, 2012 which sets the 30<sup>th</sup> April deadline for the Cabinet Secretary to table the budget estimates and any other Bills*

*required to implement the national government budget for approval by the National Assembly.*

2. *A declaration that the Provisional Collection of Taxes and Duties Act No.44 of 1959 (Chapter 415 of the Laws of Kenya) is unconstitutional and, therefore, invalid, null and void.*
3. *A declaration that the Finance Bill 2018, or any parts or provisions thereof, including on taxation, cannot be implemented before the Bill becomes the Finance Act after it goes through the parliamentary legislative process laid out in the Constitution for approval and adoption by Parliament, and assent by the President.*

**12.** Arising from these orders of the Court, and ostensibly informed by the debate that ensued on the point raised on the propriety of approving provisional collection of taxes and duties, the House subsequently amended the Public Finance Management Act in July 2019 through the Statute Law (Miscellaneous Amendments) Act, 2019 **to introduce section 39A** into the Act.

**13.** The section requires the Cabinet Secretary to submit the Finance Bill before 30th April every year and that it be passed before the end of the financial year on 30th June. The section clarified the manner in which a Finance Bill ought to be introduced, considered and passed by the House. It provides follows, and I quote,—

*(1) The Cabinet Secretary shall submit to the National Assembly, on or before 30th April, the Finance Bill setting out the revenue raising measures for the National Government.*



*(2) Following submission of the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly.*

*(3) The National Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be presented for assent by 30th June each year.*

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

*(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework;*

*(b) take into account the principles of equity, certainty and ease of collection;*

*(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.*

**14.** This leads us to the second issue of an apparent variance in the provisions of Standing Order 244C and the dictates of the Judgment and the provisions of the Public Finance Management Act, 2012.

**15. Honourable Members** As I had indicated, my attention was drawn to the existence of an apparent variance in the provisions of Section 39A and section 40 of the Public Finance Management Act, 2012 with regard to the manner of introduction and consideration of a Finance Bill. Section 40 of the Act provides as follows—

*(1) Each financial year, the Cabinet Secretary shall, with the approval of Cabinet, make a public pronouncement of the budget policy highlights and revenue raising measures for the national government.*

*(2) In making the pronouncement under subsection (1), the Cabinet Secretary shall take into account any regional or international agreements that Kenya has ratified, including the East African Community Treaty and where such agreements prescribe the date when the budget policy highlights and revenue raising measures are to be pronounced, the Cabinet Secretary shall ensure that the measures are pronounced on the appointed date.*

***(3) On the same date that the budget policy highlights and revenue raising measures are pronounced, the Cabinet Secretary shall submit to Parliament a legislative proposal, setting out the revenue raising measures for the national government, together with a policy statement expounding on those measures.***

***(4) Following the submission of the legislative proposal of the Cabinet Secretary, the relevant committee of the National Assembly shall introduce a Finance bill in the National Assembly.***

*(5) Any of the recommendations made by the relevant committee of the National Assembly or adopted by the National Assembly on revenue matters shall—*



*(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;*

*(b) take into account the principles of equity, certainty and ease of collection;*

*(c) consider the impact of the proposed changes on the composition of the tax revenue with reference to the 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 agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.*

*(6) The recommendations of the Cabinet Secretary in subsection (5)(f) shall be included in the report and tabled in the National Assembly.*

**16.** A plain reading of section 40(3) and 40(4) of the Act indicates that the Cabinet Secretary for the National Treasury and Economic Planning is required to submit a legislative proposal setting out the revenue raising measures for the national government on the same day that he or she makes a pronouncement on the budget policy highlights and revenue raising measures. This would seem to be at variance with the express obligation under the **more recent section 39A which requires the Cabinet Secretary to submit a Finance Bill to the House not later than 30th April, every year** in compliance with the Orders of the Court in *Okiya Omtatah Okoiti v Cabinet Secretary, National Treasury & 3 others* [2018] eKLR.

**17.**In my view, a purposive interpretation to bridge the apparent conflict between the two provisions requires the application of established principles of statutory interpretation and reference to the practice, precedent and conduct of the Cabinet Secretary and House since the Court Judgement was issued.

**18. Honourable Members,**It is a canon of statutory interpretation that when faced with conflicting provisions, **preference must be given to a specific provision as opposed to a general provision.** Additionally, the **Last-in-time principle**, where the most recent addition to a statute is given precedence over a provision that was enacted earlier, should be applied.

**19.** From my reading of Section 39A and section 40(3) and (4), It is noteworthy that Section 39A specifically refers to the introduction, consideration and passage of a **"Finance Bill"**. On the Other hand, the provisions of section 40(3) and (4) only generally refer to **"a legislative proposal"**. Additionally, section 39A is the most recent addition to the Act and represents the most specific and current position of the House on the manner of consideration of a Finance Bill.

**20. Honourable Members,** the practice and conduct of the Cabinet Secretary and the House since the decision in **Okuya Omtatah Okoiti v Cabinet Secretary, National Treasury & 3 others** [2018] eKLR and the amendment of the Public Finance Management Act, 2012 has been consistent. Notably, in 2020, the Cabinet Secretary submitted the Finance Bill together with the Budget Estimates on 30th April, 2020. The Bill was published on 5<sup>th</sup> May, 2020 and was considered and passed by the House on 23<sup>rd</sup> June 2020. It was assented to by the President on 30<sup>th</sup> June, 2020. The Cabinet Secretary presented the Budget Statement for FY 20/21 on 11th June 2020, **well after the publication of the Bill.**



**21.**In 2021, the Cabinet Secretary submitted the Finance Bill together with the Budget Estimates on 29<sup>th</sup> April, 2021. The Bill was published on 5<sup>th</sup> May, 2021 and was considered and passed by the House on 24<sup>th</sup> June 2021.

The particular Bill was assented to by the President on 29<sup>th</sup> June, 2021. The Cabinet Secretary presented the Budget Statement for FY 21/22 on 10<sup>th</sup> June 2021, **well after the publication of the Bill.**

**22.**In 2022, on account of the general elections scheduled for August 2022, the Cabinet Secretary submitted the Finance Bill together with the Budget Estimates on 7<sup>th</sup> April, 2022. This was on the same date that he presented the Budget Statement to the House. The Bill was published on 8<sup>th</sup> April, 2022 and was considered and passed by the House on 7<sup>th</sup> June 2022. In keeping with the provisions of Section 39A of the PFM Act, 2012 and the new court judgement, the Finance Bill, 2022 was assented to by the President on 21<sup>st</sup> June, 2022.

**23. Honourable Members,** From the foregoing, it is clearly apparent that the Cabinet Secretary and the House have adhered to the letter of the Orders of the Court in **Okiya Omtatah Okoiti v Cabinet Secretary, National Treasury & 3 others** [2018] eKLR and section 39A of the Public Finance Management Act, 2012. This clearly signifies that section 39A of the Public Finance Act, 2012 is the operative provision with regard to the introduction, consideration and passage of a Finance Bill.

**24. Honourable Members,** The Third Issue was with regard to the effect of the presentation of the Budget Statement on the consideration of a Finance Bill. Section 40 of the Public Finance Management, 2012 requires the Cabinet Secretary to make a public pronouncement of the budget policy highlights and revenue raising measures for the national government.

- 25.**In doing so, the Cabinet Secretary is required to take into account international obligations entered into under the East African Community Treaty.
- 26.**The House is aware that the EAC partner States have agreed to present and table their budget statements to their respective parliaments every second Thursday of June. It is largely a ceremonial exercise which, particularly in our case, does not take away that all documentation relating to the Budget is required to be submitted well in advance of the presentation of the Budget Statement. Indeed, as Members are aware, no question or comment is permitted during the presentation of the Statement.
- 27.**As a budget-making House, we are seized of the Estimates and the Finance Bill latest the 30<sup>th</sup> of April every year. Save for compliance with applicable statutory timelines, the House is left to its own devices on how to consider the Budget documents submitted to it. The House is under an obligation to prioritize the consideration of a Finance Bill with a view of passing it before the lapse of the June 30<sup>th</sup> deadline imposed by section 39A of the Public Finance Management Act, 2012.
- 28.**It should not be lost to Hon. Members that the procedures of the House cannot be left to the whim of another arm of government. The House is therefore at liberty to prioritize consideration of a Finance Bill before or after the presentation of the Budget Statement by the Cabinet Secretary for the National Treasury.
- 29.**As I conclude I note that the variance in the Sections 39A and 40(3) and (4) of the Public Finance Management Act extends Standing Order 244C which I gave rise to the point raised by the Member for Rarieda, The Hon. Otiende Amollo, EBS, SC, MP. The Standing Order does not take into account provisions



of section 39A and the requirement for the submission and passage of the Finance Bill before the 30<sup>th</sup> of April and the 30<sup>th</sup> of June, respectively, every year.

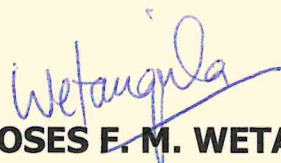
**30. Honourable Members,** Having guided that Section 39A is the operative provision with regard to the consideration of a Finance Bill, I direct the Procedure and House Rules Committee to note the variance and include the Standing Order in the items earmarked for review when it next proposes amendments to the Standing Orders.

**31.** In summary, therefore, my guidance is as follows—

- (1) THAT,** Section 39A of the Public Finance Act, 2012 requires the Cabinet Secretary for the National Treasury to submit the Finance Bill before 30<sup>th</sup> April every year and that the Bill be passed before the end of the financial year on 30<sup>th</sup> June. The section governs the manner in which a Finance Bill ought to be introduced, considered and passed by the House.
  
- (2) THAT,** It is a canon of statutory interpretation that when faced with conflicting provisions, **preference must be given to a specific provision as opposed to a general provision.** Additionally, the **Last-in-time principle**, where the most recent addition to a statute is given precedence over a provision that was enacted earlier, should be applied. Section 39A of the public Finance Management Act, 2012 specifically refers to the introduction, consideration and passage of a **"Finance Bill"** and represents the most specific and current position of the House on the manner of consideration of a Finance Bill.

- (3) **THAT**, The Cabinet Secretary and the House have consistently adhered to the Orders of the Court in *Okuya Omtatah Okoiti v Cabinet Secretary, National Treasury & 3 others* [2018] eKLR and section 39A of the Public Finance Management Act, 2012. This clearly signifies that section 39A of the Public Finance Act, 2012 is the operative provision with regard to the introduction, consideration and passage of a Finance Bill.
- (4) **THAT**, The House is under an obligation to prioritize the consideration of a Finance Bill with a view of passing it before the lapse of the June 30<sup>th</sup> deadline imposed by section 39A of the Public Finance Management Act, 2012. The House is therefore at liberty to prioritize consideration of a Finance Bill **before or after** the presentation of a Budget Statement by the Cabinet Secretary for the National Treasury.
- (5) **THAT**, The Procedure and House Rules Committee notes the variance between Standing Order 244C and section 39A of the Public Finance Management Act and include the Standing Order in the items earmarked for review when it next proposes amendments to the Standing Orders.
- The House is accordingly guided.

**I Thank You!**



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

*Tuesday, 20<sup>th</sup> June 2023*