



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (SECOND SESSION)
THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

_____ (No. 33 of 2023) _____

ON

UPDATE ON THE REPLACEMENT OF THE DEPUTY MINORITY WHIP

Honourable Members,

1. You will recall that on Thursday 4th May, 2023, I issued a Communication *on the Replacement of the Deputy Minority Whip*. In that Communication, I did guide the House that the communication received from the Minority Party with regard to the replacement of the Hon. Sabina Chege as the Deputy Minority Whip was incomplete when viewed against the requirements of Standing Order 20A. Consequently, I granted the Minority Party a period of thirty (30) days within which to convey the appropriate communication on the replacement of its Deputy Minority Whip, if it so wished.
2. I now wish to update the House on further developments that have taken place with regard to the matter since my said Communication of 4th May, 2023.

- 3. Firstly, Hon. Members,** My office is in receipt of letters dated 4th May, 2023 from the Jubilee Party terminating the membership of the Hon. Kanini Kega and the Hon. Sabina Chege, MP. The letters are addressed to the Office of the Registrar of Political Parties and the Speaker of the National Assembly.
- 4.** In relation to the said termination, my office has further been copied in correspondence from the Office of the Registrar of Political Parties dated 8th May, 2023 requesting for particulars from the Jubilee Party on the process leading to the termination of the membership of the Hon. Kanini Kega and the Hon. Sabina Chege, MP.
- 5. Secondly, Hon. Members,** My office was copied in correspondence dated 2nd June, 2023 between the Jubilee Party and the Azimio La Umoja One Kenya Coalition. In the correspondence, a Mr. Nelson Dzuya, who signed off as the National Chairperson of the Jubilee Party, requested the Speakers of Parliament to refrain from effecting changes to the leadership of Parliament and Committee membership pending the determination of a dispute between the party and the Azimio Coalition.
- 6. Thirdly, and of most importance, Hon. Members,** On 31st May, 2023, my office also received a letter from the Leader of the Minority Party, the Hon. James Opiyo Wandayi, MGH, MP communicating the election of the Honourable Member for Embakasi West, the Hon. Mark Mwenje, MP as the Deputy Minority Whip. In his letter, the Leader of the Minority Party conveyed that the election was done at a meeting held by the Minority Party on Tuesday 30th May, 2023. Further, the Leader of the Minority Party indicated that the letter was a follow-up to his earlier letter dated 6th April, 2023 which notified the Speaker of the removal of the Hon. Sabina Chege, MP as the Deputy Minority Whip.

Honourable Members

7. In keeping with the requirements of Standing Order 20A, the letter from the Leader of the Minority Party, accompanied by minutes of the meeting at which the removal and replacement of the Whip was done and a record of the Membership of the Minority Party present at the meeting, **suffices to effect the changes sought by the Minority Party.**
8. **Fourthly, Hon. Members,** My office has also been served with a Court Order issued on Tuesday, 30th May, 2023 in Kiambu High Court Petition No. E025 of 2023. The parties to the matter in question are the ***Association of Friends of Youths and Women*** as the ***Petitioner*** and the ***Speaker of the National Assembly***, the ***Clerk of the National Assembly***, the ***National Assembly*** and the ***Attorney General*** as ***Respondents***. In the Petition, the Petitioner argues that Standing Order 20A(4) of the National Assembly Standing Orders does not clearly outline the process for the removal of a whip or a deputy whip and is therefore contrary to Articles 10, 47 , 73(2) and 236 of the Constitution.
9. For the benefit of Members, the Orders issued by the Court in the matter are as follows, and I quote—
 1. ***THAT*** the application is certified as urgent.
 2. ***THAT*** pending the hearing and determination of the application, conservatory order be and is hereby issued suspending the implementation of the decision to remove Hon. Sabina Chege from the office of the Deputy Minority Whip in the National Assembly as communicated by the 1st Respondent on 4th May 2023.
 3. ***THAT*** the Applicant/Petitioner to serve the Respondents within 7 days from the date hereof.

4. **THAT** the Respondents to file and serve their respective responses within 7 days of being served by the Applicant/ Petitioner.
5. **THAT** mention on 14/6/2023 for parties to confirm compliance and take further directions before court No. 2.

Honourable Members,

10. The Constitution has distributed sovereign power to the three arms of government in a very deliberate manner. Through a robust system of checks and balances, the Constitution has granted each arm sufficient powers to discharge its mandate and defend itself from unwarranted intrusion from either arm, at the same time. For government to work in a harmonious fashion, each arm ought to refrain from inordinately wading into the internal affairs of its counterparts.
11. With regard to the affairs of the Legislature, the Executive may make general legislative proposals but Parliament is solely vested with the mandate of enacting laws. Similarly, though the Court is granted powers to enforce and interpret the Constitution, it normally refrains from interfering with the internal processes of the Legislature.
12. Article 165(6) of the Constitution grants the High Court supervisory jurisdiction over *any person, body or authority exercising a judicial or quasi-judicial function*. In line with the dictates of this Article, the Courts have all along **distinguished the legislative role of Parliament from its administrative and quasi-judicial functions**. Consequently, the Courts have only exercised their supervisory jurisdiction to review the quasi-judicial and administrative functions of the Parliament when either vetting or considering petitions for the removal of persons from office.

13. However, **Hon. Members**, the Courts have always refrained from interfering with the law-making powers of Parliament. They have consistently limited themselves to reviewing the content of Bills after their enactment into law. Indeed, any interference of the Court in the consideration of a Bill that is actively before the Legislature would constitute a striking departure from established constitutional precedent and practice both in the Commonwealth and the Congressional systems.

14. This is a matter which both the Court itself, and my predecessors have ruled. In South Africa, the Court has held as much in the celebrated case ***Doctors for Life International v The Speaker of the National Assembly & Others CCT 12 of [2006] ZACC 11.*** In declining to interfere in the consideration of a Bill, the Court held that the South African constitutional scheme *contemplates that challenges to the constitutional validity of a bill passed by Parliament must await the completion of the legislative process.*

Honourable Members,

15. With the foregoing distinction in mind, I note that the House has been taken before the Courts, including by its own Members, and that the Courts have ruled both in favour and against the House.

16. The House will recall that in the 11th Parliament, the Leader of the Minority Party, the Hon. James Opiyo Wandayi, MGH, MP, did successfully challenge his suspension from the service of the House for the remainder of the Fourth Session. In his suit, the Honourable Member for Ugunja challenged provisions of the Standing Orders on the **fairness** of the penalties relating to disorderly conduct and their effect of on the constitutional right of a Member to represent his or her constituents.

- 17.**The litigation by the Leader of the Minority Party significantly contributed to the amendments made to the Standing Orders to provide for different categories of disorderly conduct; graduated penalties ranging from suspension for a day to a maximum of ninety (90) calendar days; and an appellate process.
- 18.**During the same 11th Parliament, Members will also recall that the Court enjoined the Departmental Committees on Finance and National Planning and Lands from considering petitions submitted to the House for the removal of the then Auditor General and the then Chairperson of the National Land Commission, respectively, pursuant to the provisions of Article 251 of the Constitution.
- 19.**Despite the disaffection of the House and the Presidium with the Orders granted in the foregoing cases, the House nevertheless observed the directions issued by the Court and halted its quasi-judicial and administrative processes. Notably, in guiding the House on the Order issued with regard to the Petition for the Removal of the Auditor General, my predecessor, the Hon. Speaker Justin Muturi, rightly noted that *the only avenue available in law to express disagreement with a judicial finding is an appeal against the decision of the court.*

Honourable Members,

- 20.**I have, in this 13th Parliament, had occasion to uphold my predecessor's guidance in relation to Court Orders made against House and its committees in relation to the exercise of quasi-judicial and administrative functions. Members will recall that on the 15th of November, 2022, the Employment and Labour Relations Court granted conservatory orders staying the vetting of nominees for appointment as Principal Secretaries in Constitution Petition No. E186 of 2022 **Dr. Magare Gikeni versus The President of the Republic of Kenya and 55 Others** and

in Constitution Petition No. E192 of 2022 *Law Society of Kenya versus The National Assembly and 4 Others*.

21.In deference to the directions of the Court with respect to the applicable administrative processes, I did notify the House of the suspension of the vetting process, despite the discomfort that the decision caused to the business of the House. Immediately thereafter, I instructed our Litigation Counsel to challenge the Orders in Court.

22.As your Speaker, I remain cognizant of the obligation imposed by Article 3 of the Constitution on me to respect, defend and uphold the Constitution in guiding the proceedings of the House. On one hand, the Minority Party has met **all** the procedural requirements to effect a change of its leadership. On the other hand, I am confronted by a Court Order that has **specifically** cited both the Speaker and the House as parties to a judicial process that seems to challenge an administrative process.

23.Despite the sympathies I may hold for the predicament that the Minority Party finds itself in, this House has consistently demonstrated its willingness to abide by the Orders of the Court relating to the exercise of its quasi-judicial and administrative functions. Even where certain Orders have been adverse to the interests of the House, we have dutifully obeyed them and sought to set aside the Orders that we were not in agreement with.

Honourable Members,

24.From the foregoing, my hands are therefore tied with regard to the Court Order that has been brought to my attention. Until and unless further information is provided that this Order has been varied or set aside, **the Court Order effectively suspends the decision by the Minority Party on the replacement of the Hon. Sabina Chege as the Deputy Minority Whip.**

Honourable Members,

25.As a seasoned legislator and experienced party leader, my heart sinks whenever I see a dispute that may be resolved through Internal Dispute Resolution Mechanisms being referred to an adversarial Court system. In my experience, Court battles may be counterproductive and may ultimately destroy long-standing political relationships.

26.I encourage the Minority Party and the Jubilee Party to seek an amicable resolution of whatever it is that may be the bone of contention within the Coalition and between the Members of its constituent Party. I am confident that an amicable resolution of the issues shall positively contribute to the continuity of the business of the House and its vibrancy.

Honourable Members,

27.In issuing my Communication of 4th May, 2023, I did guide that I was hesitant to recognize the Jubilee Party as a parliamentary party despite it meeting the threshold prescribed under the Standing Orders. At this stage, I am still hesitant to recognize the Jubilee Party as a parliamentary party on account of this particular update and the lack of clarification on whether the party has put its affairs with regard to its relationship with the Minority Coalition in order.

28. Nevertheless, if the current situation persists and I am provided with all relevant particulars by the Jubilee Party, I may have no choice but to recognize the party as a parliamentary party within the meaning of Standing Order 20A(1) to facilitate the effective transaction of the business of the House, its Committees and the Members of the party.

I thank you!


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

Thursday, 8th June, 2023