



REPUBLIC OF KENYA

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

COMMUNICATIONS FROM THE CHAIR

_____ (No. 077 of 2023) _____

ON

**REPLACEMENT OF THE DEPUTY MINORITY WHIP AND JUBILEE
PARTY LEADERSHIP**

Honourable Members,

1. You will recall that on Thursday, 8th June 2023, I issued a Communication on *Update on the Replacement of the Deputy Minority Whip*. In that Communication, I did guide the House that the correspondence received on the replacement of the Hon. Sabina Chege as the Deputy Minority Whip had been effectively suspended by a Court Order. The Order in question was issued on Tuesday, 30th May, 2023 in Kiambu High Court Petition No. E025 of 2023 ***Association of Friends of Youths and Women versus Speaker of the National Assembly & 3 Others.***
2. I wish to inform the House of developments in the cited Court case since my aforesaid Communication. My office is now in receipt of a Ruling delivered by the Kiambu High Court dismissing the matter. In the Ruling, the Court held as follows, and I quote—

- (a) The Notice of Preliminary Objection dated 12th June, 2023 is partly found to have merit in view of the Doctrine Exhaustion.*
- (b) The Notice of Motion application dated 30th May, 2023 is found lacking in merit and is dismissed accordingly.*
- (c) The parties to move to the appropriate forum for further orders in regard to (the) Petition, and the application for joinder by the 4th and 5th Respondents.*

Honourable Members,

3. I am advised that the upshot of the Ruling is that, **in dismissing the Application made by the Petitioners, the Court redirected the Petitioner to an "appropriate forum for further Orders"**. In effect, the Petitioners have been referred back to dispute resolution mechanisms provided for under the Political Parties Act, 2011. The matter therefore remains live within the jurisdiction of the competent authorities even as the Speaker is being urged to make a determination on the same. Those urging the Speaker to make a determination in the matter ought to realize that the Speaker's guidance only facilitates the transaction of the business of the House. It is not in any way linked to the role bestowed upon other competent authorities by the law.

Honourable Members,

4. From the onset, the process of the replacement of the Deputy Minority Whip has been tied at the hip with the request by a section of the Members of the Jubilee Party to be recognized as a parliamentary party. From my Communication of 4th May, 2023, upon the request for the de-whipping of the Deputy Minority Whip, I received a letter from the Member for Nakuru Town

West Constituency, the Hon. Samuel Arama, MP seeking the recognition of the Jubilee Party as a parliamentary party.

Honourable Members,

5. The letter from the Hon. Arama added to the already existing confusion with regard to the affairs of the Jubilee Party. I had previously received two letters dated 21st September, 2022 from the Hon. Jeremiah Kioni on the leadership of the Jubilee Party and its nominee to the Speaker's Panel. At the time, the Hon. Kanini Kega did also claim to communicate on behalf of the Jubilee Party as the Acting Secretary General.
6. In my then guidance to the House, I noted the need to leave determination of political party disputes to competent authorities outside Parliament as envisaged by the law. On the issue of whether the Jubilee Party is a parliamentary party within the meaning of Standing Order 20A, the House will recall that **I did guide that the party, having twenty-eight (28) Members, clearly surpassed the threshold of eighteen (18) Members required by the Standing Orders.** I was, however, hesitant to wade into the recognition of the party on account of the lingering issue of the persons authorized to communicate with the Speaker with respect to the Jubilee Party.
7. Unfortunately, **Honourable Members,** the confusion relating to the Jubilee Party did not abate. You will recall that in my Communication of 8th June, 2023, I noted receipt of a further flurry of communication said to be made on behalf of the Jubilee Party. I received further letters dated 4th May, 2023 terminating the membership of the Hon. Kanini Kega and the Hon. Sabina Chege, MP in the Jubilee Party.

8. Additionally, I was copied in correspondence dated 2nd June, 2023 between the Jubilee Party and the Azimio La Umoja One Kenya Coalition signed off by a Mr. Nelson Dzuya, as the National Chairperson of the Party. In the letter, Mr. Dzuya urged that the Speaker refrain from effecting changes to House Leadership and Committee membership pending the determination of an alleged dispute between the Jubilee Party and the Azimio Coalition.

Honourable Members,

9. It is against this backdrop and a lack of clarification on the affairs of the Jubilee Party at the time that I, **AGAIN**, expressed my hesitation to recognize the Party as a parliamentary party. Indeed, as Members will further recall, I granted the Minority Party and the Jubilee Party a period of thirty (30) days to allow them to put their affairs in order.

10. Whereas it would seem that the Minority Party has concluded the matter of replacing its whip, the same cannot be said with regard to the affairs of the Jubilee Party and its Members in the House. As at today, the question of who constitutes the *bona fide* leadership of the Party especially in the House remains unclear.

Honourable Members,

11. On the 13th of June, 2023, barely a week after my last Communication on this matter, the Hon. Samuel Arama again wrote on behalf of the Members of the Jubilee Party conveying names and signatures of twenty-one (21) out of twenty-eight (28) Members expressing their support of the recognition of the Party as a parliamentary party.

12. In the past week, I have received two conflicting letters on the matter of the Deputy Minority Whip from the Jubilee Party. A rambling letter dated 20th October, 2023 from the Hon. Jeremiah Kioni, said to support the replacement of the Deputy Minority Whip, is littered with insults and other unpalatable statements unworthy of mention. The message in the letter is lost in its tone which is obviously beneath the standard expected of a person who has sat in this honourable House.

13. On 24th October, 2023, I received yet another letter from the Hon. Joshua Kutuny, who claims to be the Party's Deputy Secretary General. In the letter, the Hon. Kutuny claims that the Hon. Jeremiah Kioni was expelled by the Party and ought not communicate on its behalf.

14. The letter contests the replacement of the Deputy Minority Whip on various grounds and alludes to aggrieved Members of the Jubilee Party not having been afforded access to internal dispute resolution mechanisms to address their grievances. It concludes by reiterating the claim for the recognition of the Jubilee Party as a parliamentary party in the National Assembly.

Honourable Members,

15. While it is not the duty of the Speaker to organize how parties are run, you will agree with me that the state of affairs in the Jubilee Party calls for an intervention, especially for purposes of the smooth conduct of parliamentary business. The myriad letters emanating from outside Parliament do not paint a clear picture as to the current leadership of the party. The pending disputes internally and before the other competent authorities obscure the matter even further.

16. The confusion of the Jubilee Party has permeated the walls of this House and affected the transaction of parliamentary business. We now find ourselves in a situation where a small faction of the Members of the Party seems to be aligned with the Minority Party while twenty-one (21) out of the twenty-eight (28) Members of the Party have expressed their unwillingness to be associated with the Minority Party, **in writing. A definite question arises as to which Members' interests the Speaker should prioritize over the other or whether the Speaker should just accept the reality of the existence of these two factions and the parity of their interests.**

17. From the myriad of correspondence from various claimants to the leadership of the Jubilee Party; including the Hon. Kioni, the Hon. Kanini Kega, the Hon. Samuel Arama, the Hon. Joshua Kutuny, and Mr. Nelson Dzuya; **the cardinal message is the desire by the Jubilee Party to be recognized as a parliamentary party.** It is for this reason, *inter alia*, that I previously directed the Minority Party (Azimio Coalition and the Jubilee Party) to sort out their issues within a period of thirty (30) days. To date, the issues highlighted have not been sorted.

Honourable Members,

18. In the initial letter from the Hon. Arama seeking the recognition of the Jubilee Party as a parliamentary party, the Hon. Member for Nakuru Town West rightly observed that Article 36 of the Constitution on *freedom of association* and Article 38 of the Constitution on *political rights*, confer 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.

19. It therefore logically follows that the current uncertainty with regard to the affairs of the Jubilee Party does not bode well for the continuity of the business of the House and the full participation of the Members of the Party in the House.

Honourable Members,

20. Standing Order 20A governs the manner of recognizing parliamentary parties and designating party leaders and whips in the National Assembly. From my reading of the Standing Order, it allows a party or coalition of parties **that is not the Majority or Minority Party** to designate their leader, whip, and deputy whip UPON recognition as a parliamentary party. Whereas the Standing Order notes that the whips of such a party are appointed for "*purposes of the transaction of the business of the House*", it is strikingly silent on the purpose to be served by having such a leader in the House.

21. At the moment, I am of the considered view that apart from creating unnecessary confusion, allowing the existence of a leader other than the Leader of the Majority Party or the Leader of the Minority Party would be an affront to the constitutional underpinning and recognition of the Majority Party and the Minority Party.

22. Honourable Members who served in this House before the promulgation of the current Constitution and who are well versed with the parliamentary traditions bear testament to the fact that a party that is not in the majority or minority in a presidential system; or which is not in government or the official opposition in a parliamentary system, **is normally afforded minimal facilitation by the House. At most, such a party is only entitled to a whip.**

Honourable Members,

23. Before making my determination on this matter, I would like to draw the attention of the House to a press statement that was recently issued by the Minority Leader in the company of his Deputy on this subject. I shall not reproduce the contents of the statements made by Member for Ugunja issued after the sitting of the House on Thursday last week because of their unpalatable nature.

24. I will only note that it is unfortunate and highly regrettable that the Leader of the Minority Party chose to publicly cast aspersions on valid parliamentary processes even after he and his Deputy had separately visited my Chambers and held cordial discussions with me on this pertinent matter.

Honourable Members,

25. The distinguished Members ought to have known that, unlike the previous Court Order in this matter, which could be validated through the *e-filing* system, the Order of dismissal was manually extracted and served on the Speaker by the Leader of the Minority Party. From our own records, there also existed doubt on whether the House was represented by Counsel at the time the Ruling was delivered.

26. The Leader of the Minority Party may have been unaware that I was only formally briefed on the developments in this matter on Thursday, 19th October, 2023 upon verification of the status of the matter. It is incumbent upon me as your Speaker to ensure that any adverse actions I take are valid, justified and lawful. In this respect, I am enjoined to satisfy myself with regard to the authenticity of any information that I convey to the House.

Honourable Members,

27. I expect the Leadership of the House to conduct themselves with decorum and respect for the high office that they have been entrusted with. In this regard, the conduct and statements attributed to the Leader of the Minority Party, including the wild aspersions cast on the person of the Speaker, leave a lot to be desired and are a stain on the privilege and prestige of the institution of Parliament. **The Speaker takes a very dim view of this kind of unproductive and unhelpful conduct.**

Honourable Members,

28. Going back to the matter at hand, You will recall that my predecessor, Speaker Kenneth Marende, was faced with a similar situation in April, 2009 during the 10th Parliament. At the time, President Kibaki had just appointed his Vice-President as the Leader of Government Business in the House which prompted the then-Prime Minister to write to the Speaker appointing himself to the same position.

29. This resulted in an *impasse* that threatened to paralyze parliamentary business. In his ruling, Speaker Marende broke the deadlock by adopting an **interim measure** that resulted in the Chair of the House Business Committee being occupied by the Speaker. Additionally, the Speaker tasked the joint Government Chief Whips to run the affairs of the Government in the House and threw the ball back to the President and the then Prime Minister to resolve the *impasse*.

30.The Speaker will not shy away from the reality that two factions of the Jubilee Party are tearing each other apart and are unfairly dragging the Speaker into their wars of supremacy. However, to the extent that both factions, collectively and separately, have a stake in the conduct of parliamentary business, **I am inclined to exercise the powers conferred upon me by Standing Order No. 1 to facilitate the continuity of the business of the House until such a time as the competent authorities make a final determination with regard to the disputes relating to the affairs of the Jubilee Party.**

31.In summary, Hon. Members, I therefore guide as follows—

(1) THAT, there currently exists no bar against the decision made by the Minority Party to replace its Deputy Whip. Standing Order 20A(5) requires the Speaker to convey a decision to replace a whip to the House. In this regard, the Hon. Mark Mwenje, MP, forthwith replaces the Hon. Sabina Chege, MP, as the Deputy Whip of the Minority Party;

(2) THAT, to give effect the provisions of Article 36 of the Constitution on *freedom of association* and Article 38 of the Constitution on *political rights* which confer 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, the Jubilee Party is hereby recognized as a parliamentary party within the meaning of Standing Order 20A. This recognition does not in any way elevate it to, or affect the status given to the Majority Party and the Minority Party by the Constitution and the Standing Orders;

- (3) THAT, Consequently, the Hon. Sabina Chege, by virtue of the written support of twenty-one (21) out of the twenty-eight (28) Members of the Jubilee Party in the House in the letter dated 13th June 2023; and on account of her having been the last officially recognized Member of the Party forming part of the Leadership is allowed to perform, in the interim, the role of the Whip of that Party in the House;
- (4) THAT, the foregoing guidance is issued in the interim, purely for purposes of facilitating the continuation of the business of the House until such time as the Speaker will be properly seized of the final determination of the matters relating to the Jubilee Party by the competent authorities.

The House is accordingly guided.


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

Wednesday, 25th October, 2023