

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 12th February 2019

The House met at 2.30 p.m.

[The Speaker (Hon. Justin Muturi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

BUSINESS THAT LAPSED WITH THE END OF THE SECOND SESSION AND TRAINING ON PAPERLESS SOLUTION

(Several Hon. Members walked into the Chamber)

Hon. Speaker: Those Hon. Members who are making your way in, please, take your seats. Those of you are desirous to sit, take your seats. I think the two Members for Suba do not like sitting together. Member for Makueni, relax, I can see you are excited.

Hon. Members, I wish to take this opportunity to welcome you all to this august House as we commence the Third Session of the 12th Parliament. It is my hope that you had a happy and restful recess and that you are now fully rejuvenated and ready for the heavy legislative agenda that lies ahead of you this Session.

As we commence the Session, I wish to bring to the attention of the House that, going by our practices and the Standing Orders, certain business that was not concluded at the end last Session has now lapsed. This includes Bills published in the First Session (2017), but whose Second Reading had not been concluded at the end of the last Session of this Parliament, save for a Bill to amend the Constitution or a Bill originating from the Senate. The same applies to all Motions, all Petitions that have not exceeded the 60 days consideration limit and all Questions. To this end, any Committee or individual Member who wishes to re-introduce such business is advised to do so following the usual procedure. In addition, respective Committees are requested to write to the individual Petitioners indicating the status of the lapsed Petitions.

Hon. Members, I wish to also draw the attention of the House to the fact that the term of Sessional Committees has come to an end and, therefore, they will be reconstituted afresh. These include; the Committee on Powers and Privileges and Committee on Members' Services and Facilities. The Committee on Selection is thus required to expedite the process of nominating Members to serve in the said Committees.

As you are aware, the process of installation of the paperless solution in the National Assembly Chamber which has been ongoing has since been concluded and is now ready to be rolled out. The process is aimed at, among other things, enabling the House to fully embrace the e-Parliament initiative. The said installation will ease access to parliamentary papers, documents

and journals such as Order Papers, the Standing Orders, the Constitution, Committee Reports, Bills and Acts of Parliament by enabling access of the same in electronic form.

Hon. Members, to ensure that all Members are familiar and conversant with the use of the paperless system; short briefing sessions have been organised for all Members. The said briefing sessions will take place commencing today Tuesday, 12th February, 2019 after the rise of the House and will go on for the next two weeks, every day from 9.00 a.m. to the close of business when the House is not sitting. You are, therefore, notified to attend these crucial sessions.

In addition, there are ongoing minor alterations and refurbishments of the Members' lounges in the Main Building which will inevitably disrupt some services around the Members' restaurants and lounges.

However, alternative arrangements have been made in the adjacent spaces. Your co-operation is, therefore, requested during this time. Members are at liberty to indicate when they are available, especially for the briefing sessions on the paperless system.

Thank you.

(Several Hon. Members walked into the Chamber)

Hon. Speaker: Hon. Members, if you could please take your seats.

MESSAGES

BILLS ASSENTED TO AND REFERRALS BY THE PRESIDENT

(Hon. Ben Momanyi stood in his place)

Hon. Speaker: Is the Member for Borabu seated or standing?

(Laughter)

The Member for Borabu always offers some comic relief from time to time. Hon. Members, this is a Message from the President.

You may recall that during the Second Session of this Parliament, there were 62 published Bills under consideration at various stages in the National Assembly, 15 of which originated in the Senate. By the end of that Session, 16 of those Bills had been passed and assented into law and, therefore, becoming part of the laws of Kenya while 11 were referred to the Senate for consideration; this House having finalised with them. Of the Bills enacted into law, five were assented to by His Excellency the President on 31st December 2018 following their passage by the House during the last few weeks of the Session. In particular, the following are the Bills that were assented to on that day:

- (i) The Building Surveyors Bill, 2017.
- (ii) The Sacco Societies (Amendment) Bill, 2018.
- (iii) The Capital Markets (Amendment) Bill, 2018.
- (iv) The National Youth Service Bill, 2018, and,
- (v) The Statute Law (Miscellaneous Amendments) Bill, 2018 (which eventually amended a total of 54 pieces of statutes from the 63 contained in the original Bill).

It is also worth reporting that, as at the end of the last Session, there were 145 draft Bills proposed by different Members that were undergoing pre-publication scrutiny before various Committees. I do urge the Budget and Appropriations Committee and the respective departmental committees to prioritise consideration of these draft Bills so as to pave way for publication and also not to really be seen to stifle the initiative of individual members.

I have deliberately provided these statistics so as to clarify certain misleading information that has been circulated elsewhere regarding legislative business transacted by the House during the last session.

Hon. Members, among the Bills that I presented for assent on 31st December 2018 was the Health Laws (Amendment) Bill, 2018. However, in exercise of the powers under Article 115(1) (b) of the Constitution, His Excellency the President, by way of a Memorandum dated 9th January 2019 referred the said Bill back to the National Assembly for reconsideration. This Bill, which was passed by the House on 7th November 2018 is proposing to make various amendments to 13 statutes relating to the health sector.

In his Memorandum, the President has expressed reservations on various provisions relating to the following five statutes as passed by the House:

1. Under the provisions relating to the Pharmacy and Poisons Act (Cap. 244), the President has made reservations on:
 - a) Section 2 on the definition of the terms “pharmaceutical device, pharmaceutical equipment, pharmaceutical product, and good manufacturing practice”;
 - b) Section 3 on the establishment of the Pharmacy and Poisons Board;
 - c) New Section 3B on the functions of the Pharmacy and Poisons Board; and,
 - d) Section 24 on deletion of the word "a pharmacist" and the substitution with the phrase “pharmaceutical practice”.
2. Under the provisions relating to the Medical Practitioners and Dentists Act (Cap. 253), the President has expressed reservations on New Section 48 relating to the powers of the newly established Kenya Medical and Dental Council.
3. Under the provisions relating to the Nurses Act (Cap. 257), the President has made reservations on:
 - a. Section 4 on membership of the Nursing Council of Kenya;
 - b. Section 9 on the functions and Annual Report of the Nursing Council of Kenya; and,
 - c. Section 11 on determination of remuneration and allowances by the Nursing Council of Kenya.
4. Under the provisions relating to the Counsellors and Psychologists Act (No. 14 of 2014), the President has expressed reservations to sections 15, 16, 17, 18, 19, 20, 21, 22, and Third and Fourth Schedules relating to the establishment, membership, functions and election of the Chairperson, Members and Committees of the Council of the Kenya Counsellors and Psychologists Society.
5. Finally, under the provisions relating to the Clinical Officers Act (No. 20 of 2017), the President has expressed reservations on section 4(1) providing for the composition of the Clinical Officers’ Council and representation of other institutions in the Council.

His Excellency the President, having exercised his powers under Article 115(1)(b) of the Constitution now requests the National Assembly to reconsider the Bill against his reservations and the recommendations proposed against each of the reservations and amend the Bill in light

of his reservations. Hon. Members, Standing Order No. 154 requires the National Assembly to consider the President's reservations within 21 days. In this regard, the Memorandum of His Excellency the President now stands committed to the Departmental Committee on Health for consideration. The Committee should table its report by 28th February 2019 to enable the House to conclude with the Bill within the stipulated timelines. May I, at this point, remind the House of the Speaker's Communication delivered on 28th July 2015 concerning the consideration of the President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance, that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of fully accommodating the President's reservations is a simple majority as contemplated under Article 122 (1) of the Constitution as read together with Article 115(2)(a).

On the other hand, an amendment that does not fully accommodate the President's reservations, or indeed, one that has the effect of total override of the President's reservations, including negating his proposed text, would require a two-thirds voting threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution. I wish to further reiterate to the House that only the specific sections of the Bill that have reservations will be considered. I now direct the Clerk to circulate the Memorandum from the President to all Members so that they can familiarise themselves with its contents.

I thank you!

Next Order!

PETITIONS

Hon. Speaker: Those Members who are desirous of coming into the Chamber make your way in.

(Several Hon. Members walked into the Chamber)

REMOVAL FROM OFFICE OF MEMBERS OF THE NATIONAL LAND COMMISSION

Hon. Members, Standing Order No.225(2)(b) requires that the Speaker reports to the House any Petition, other than those presented through a Member. Accordingly, I wish to report to the House that my office has received three Petitions from an organisation called The Land Sector Non-State Actors, acting on behalf of Mr. Samuel Kioi, Ms. Anne Kimani, Mr. George Kiige and Mr. Nagib Shamsan. The Petitioners pray that the National Assembly considers the Petitions and, accordingly finds that the Petitions disclose sufficient grounds for the removal of the following persons from the National Land Commission (NLC); Prof. Muhammad Abdalla Swazuri, Chairperson; Ms. Abigael Mbagaya Mukolwe, Vice Chairperson; and Mr. Clement Isaiah Lenachuru, Commissioner, in accordance with the provisions of Article 251(1) of the Constitution.

The Petitioners allege that the said persons separately and/or jointly brought the Office of the NLC into dishonour and disrepute contrary to the provisions of Article 73(1)(a), (2) (a), (c), (d) and (e) of the Constitution; caused subjugation of the principles of public finance set out in Article 201 of the Constitution; compromised public and/or official interest in favour of a personal interest contrary to the provisions of Article 75(2) of the Constitution; and wilfully or

carelessly incurred expenditure of public revenue, contrary to the provisions of Section 45(2)(b) of the Anti-Corruption and Economic Crimes Act, 2003.

In respect to the Chairperson, Prof. Muhammad Abdalla Swazuri, the Petitioners laid out the following grounds:

- (1) That, he used his office to unlawfully enrich himself or other persons, contrary to the provisions of Article 75 of the Constitution as read together with Section 12 of the Leadership and Integrity Act 2012, by acting with impropriety in relation to reviewing the grant and disposition of public land relating to 1,129 acres of land, then being utilised by the Mombasa Cement Company Limited in Kilifi;
- (2) That, he brought the office of the Chairperson of the NLC into dishonour and disrepute, contrary to the provisions of Article 73 (1) (a), (2) (a), (c), (d) and (e) of the Constitution; subjugated the principles of public finance set out in Article 201 of the Constitution; compromised public or official interest in favour of a personal interest, contrary to the provisions of Article 75(2) of the Constitution; wilfully or carelessly incurred expenditure of public revenue contrary to Section 45(2)(b) of the Anti-Corruption and Economic Crimes Act, 2003, by –
 - (a) Occasioning loss of public funds through irregular payment of compensation for acquisition of 3,701 acres of land for Drive-In Primary School and Ruaraka High School; land illegally allocated to East Africa Gas Company in Kisumu; land parcels Nos. LR 46540 and LR 14277 Eastern Bypass in Nairobi; and plot No. 2/3770; and MN/VI/2464 for the Standard Gauge Railway (SGR) project in Dasahe and Olomotit;
 - (b) Authorising unwarranted compensation of over Kshs200 million for SGR strips of land in Embakasi Township and Darfur Dupoto, yet the title deeds in respect of the said parcels of land had been revoked; and,
 - (c) Fraudulently and illegally allocating 2,380 acres of land to Mombasa Cement Company Limited. without proof relating to ownership of the said land.
- (3) That, he has acted with incompetence to the extent that he has failed to handle and/or respond to various cases relating to public land.

With regard to the Vice Chairperson, Ms. Abigael Mbagaya, the Petitioners have cited the following as grounds for her removal:

1. That, she fraudulently conspired to influence the renewal of land lease for Land Parcel Nos. LR. 209/923, LR. 209/924 and LR. 209/925 by dispossessing M/s Sayani Investments and issuing a new lease to one Sadhani Limited and Keibukwo Investments Limited, which had allegedly bribed her;
2. That, she brought the office of Vice-Chairperson to dishonour by failing to deliver justice with respect to Kanyakwar land in Kisumu County and Mwalimu Farm Owners in Kiambu County;
3. That, she was an accomplice with the Chairperson and other Commissioners in the irregular payment of compensation for SGR land, including parcels whose title deeds had been revoked; and
4. That, as Chairperson of the NLC Committee on Review of Grants and Disposition of Public Land, she allegedly held secret meetings with third parties to the Mwalimu Farm in Kiambu County, hence arriving at a questionable determination that denied the affected persons justice.

The Petitioners also seek the removal of Commissioner Isaiah Clement Lenachuru and have cited the following grounds:

1. That, he received Kshs10 million as bribe to fraudulently conspire with another Commissioner to dispose Sayani Investments lease for the land on which Caxton House in Nairobi sits, and granted a lease to Sadhani Limited and Keibukwo Investments Limited; and
2. That, in collaboration with other Commissioners, he aided in the irregular payment of compensation for SGR land, including parcels whose title deeds had been revoked, hence occasioning loss of public funds.

The Petitioners, therefore, pray that the National Assembly considers those Petitions and accordingly makes findings, and that they disclose grounds under Article 251(1) of the Constitution for the removal from the NLC, of Prof. Muhammad Abdalla Swazuri, Chairperson; Ms. Abigael Mbagaya Mukolwe, Vice Chairperson; and Mr. Isaiah Clement Lenachuru, Commissioner.

Ordinarily, I would refer the Petition to the Departmental Committee on Lands for consideration in accordance with the provisions of Standing Order No.230 which provides that:

“230. (4) Upon receipt of a petition under paragraph (3), the relevant Departmental Committee shall investigate the matter and shall, within fourteen days, report to the House whether the petition discloses grounds for removal under Article 251(a) of the Constitution.

- (1) The House shall, within ten days of tabling of the report of the Committee under paragraph (4) resolve whether or not the petition discloses grounds for removal under Article 251(a) of the Constitution.”

Standing Order No. 230 thus avails to the House a maximum period of twenty-four days to consider and dispose of a Petition for removal of a holder of a constitutional commission office or independent office. Suffice to say that, if this Petition is committed to a Departmental Committee today, the Committee would be expected to report to the House on or before 26th February 2019, for the latter to make a resolution on the matter, by 8th March 2019.

However, the timing of the Petition presents a major challenge to the House in relation to the term of office of the respondents in the Petitions. Article 250 of the Constitution on composition, appointment and terms of office for commissioners of constitutional commissions and holders of independent offices provides that:

“250 (6) A member of a commission, or holder of an independent office –

- (a) unless *ex officio*, shall be appointed for a single term of six years and is not eligible for re-appointment.”

For avoidance of doubt, may I remind the House and the general public that the current Commissioners of the National Land Commission (NLC) were appointed to office on 20th February 2013 through *Kenya Gazette* Notice No. 2224 for the Chairperson and No. 225 for Commissioners. In the terms contemplated under Article 250(6) of the Constitution, the term of the subsisting Commission is therefore set to lapse on or around 19th February 2019 that is Tuesday, next week.

Hon. Members, if I were to refer this Petition to the relevant Departmental Committee, it would be inevitably be overtaken by events as the six days’ period between today and the expiration of the term of the office holders, the petitioners wish to have removed from office would not suffice consideration of their prayers. In view of the foregoing and cognisant that this House does not act in vain, I am constrained from committing the Petition to the relevant Departmental Committee as contemplated under Standing Order No. 230 as the concerned Commissioners would have left office by effluxion of time before they even appear before the Committee to make their representations on the allegations levelled against them.

Hon. Members, in order for the Chair's considered decision on this Petition not to be construed as an impediment to the petitioners' quest for justice and the right to petition Parliament under Article 119 of the Constitution, I advise that the petitioners are at liberty to seek recourse from other relevant agencies with jurisdiction over the allegations contained in their Petition. This is because the jurisdiction of those entities transcends the term of office of a State officer(s) whose integrity is called to question. Indeed, where the grounds contain complaints that are of criminal nature, they are at liberty to forward the Petition to the Directorate of Criminal Investigations (DCI). I, therefore, direct the Clerk to communicate my advisory to the petitioners.

I thank you.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Legal Notice No. 239 of 2018, relating to the adjustment of excise duty rates for inflation and the Explanatory Memorandum from the Kenya Revenue Authority (KRA) to be referred to the Committee on Delegated Legislation.

Gazette Notice No. 1036 on Delegation of Powers and the Explanatory Memorandum from KRA to be referred to the Committee on Delegated Legislation;

The National Housing Fund Regulations, 2018 and the Explanatory Memorandum from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works to be referred to the Committee on Delegated Legislation;

Legal Notice No. 239 of 2018 relating to the adjustment of rates for inflation and Legal Notice No. 240 of 2018 relating to the decrease in rates of the excise duty from the National Treasury which will also be referred to the Committee on Delegated Legislation;

The Reports of the Auditor-General on the Financial Statements in respect of the following Institutions for the year ended 30th June 2018 and the certificates therein:

- (i) The National Police Service Commission.
 - (ii) The Kenya Pipeline Company Limited.
 - (iii) University of Embu.
 - (iv) Insurance Regulatory Authority.
 - (v) The Kenya National Commission on Human Rights (KNCHR).
 - (vi) National Cohesion and Integration Commission (NCIC).
 - (vii) Technical University of Mombasa, and Competition Authority of Kenya.
- Thank you, Hon. Speaker.

(Loud consultations)

Hon. Speaker: Order Members. I appreciate that many of you have not met physically. Therefore, you are not consulting. I believe you are just greeting each other loudly, and it is normal. That should happen. Let us move to the next Order.

The Leader of the Majority Party has already indicated that those regulations will be examined by the Committee on Delegated Legislation. It is so ordered. What is the issue, Member for Suna East?

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Speaker, for giving me the opportunity. I wanted to put to your attention that there is a Statement that I asked in form of a Question last Session on the issue of the Central Bank of Kenya (CBK), but I was not given an answer. The Session lapsed. The Chairman of the Committee is here. You gave directives twice that he should report back to the House but he did not do it. I want to know the fate of my very important Question. I was counting days for Parliament to resume because of this matter. I have been counting hours, days and minutes that I would come back to this Floor of this House when I am alive, so that I can ask that Question again. God has given me the opportunity today. I want to know the fate of my very important Question. The Governor of CBK has decided to become somebody else.

Hon. Speaker: It looks like the Member for Suna East who is the Minority Whip was not listening to my earlier Communication because he has said that he sought a Statement in the last Session.

Hon. Junet Nuh (Suna East, ODM): I had not arrived, Hon. Speaker.

Hon. Speaker: You had not arrived. Anything that was raised in the last Session died with it. It lapsed. That is why I invited Members to immediately begin re-introducing those lapsed businesses. For now, it is assumed that there is nothing before the House. Indeed, that is why you see the Order Paper has the Motion on the Appointment of Members to the House Business Committee (HBC). There is no other business.

Next Order.

MOTION

APPOINTMENT OF MEMBERS TO THE HOUSE BUSINESS COMMITTEE

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order No. 171(1), this House approves the appointment of the following Members to the House Business Committee in addition to those specified under paragraphs (a), (b), (c), (d) and (e).

Paragraph (a) is the Speaker who shall be the Chairperson, (b) is the Leader of the Majority Party or a representative designated in writing, (c) is the Leader of the Minority Party or a representative designated in writing, (d) is the Majority Party Whip or a representative designated in writing and (e) is the Minority Party Whip or his representative designated in writing.

The other seven Members are:

- (i) Hon. Amos Kimunya, EGH, M.P.
- (ii) Hon. Joyce Akai Emanikor, M.P.
- (iii) Hon. Shadrack John Mose, M.P.
- (iv) Hon. Kawira Mwangaza, M.P.
- (v) Hon. (Dr.) Makali Mulu, M.P.
- (vi) Hon. Mishi Juma Khamisi Mboko, M.P.
- (vii) Hon. Godfrey Osotsi, M.P.

Hon. Speaker, as Members are aware, the House Business Committee is a Sessional Committee and pursuant to our Standing Orders each parliamentary party is required to nominate Members for approval by the House at the commencement of every Session. It is in this regard that I have moved this Motion.

The HBC being a very crucial Committee that is mandated to set the business and agenda of the House, I urge Members to approve this Motion and after that, the HBC will sit this afternoon to put in place the business for tomorrow, Wednesday and Thursday and weeks to come, including the calendar of the House.

I confirm to you, Hon. Speaker, as our Chair that Members for this important Committee did their work very well. They were present last Session and participated. I am sure our Whips, in drawing this list, have made sure the Members deserve another year so that they can help the leadership, led by the Speaker in managing the affairs of the House.

With those few remarks, I ask the Leader of the Minority Party to second this Motion.

Hon. Speaker: Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon Speaker. This House is aware that at the beginning of every Session the HBC has to be reconstituted afresh. In addition to those who are specified in our Standing Orders as automatic Members of the Committee, we propose just one change from the membership of the previous Session. It is not for anything, but normally we want other Members to also learn and get used to what the Committee entails.

Therefore, Hon. Omboko Milemba should give way to Hon. Osotsi to learn; probably after one Session, Hon. Omboko Milemba may come back to the HBC. The rest of the membership has been maintained as it was in the last Session.

I beg to second.

Hon. Speaker: Hon. Members, before I propose the Question, let me recognise the presence in the Public Gallery, of pupils from Apostolic Carmel Primary School from Kapseret Constituency, Uasin Gishu County. They are welcome to observe the proceedings.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: It seems to be the desire of the House that I put the Question.

Hon. Members: Yes.

Hon. Speaker: Very well. Hon. Members, let me put the Question. Let me alert you to look at Standing Order No.175 so that you do not split hair over nothing. Meanwhile the desire seems to be that I put the Question.

Hon. Members: Yes.

Hon. Speaker: I proceed to do so.

(Question put and agreed to)

Hon. Members, as you know, a Motion of this nature, even if you are opposed to one Member, you must reject the entire list. That would mean that you can as well go back to the village and relax at home for the next six months, unless you vote again to rescind your earlier decision. There will no business because there will be nobody to prepare the business for you. That is the net effect of rejecting the list. We are through with business.

(Loud consultations)

Hon. Members, it is good to appreciate that once business is...

(Loud consultations)

I am aware that...

(Hon. Omboko Milemba spoke off record)

Hon. Omboko Milemba, this is the National Assembly. It is not that organisation called Kenya Union of Post Primary Education Teachers (KUPPET). We follow rules here. I know you have been a very active and faithful Member of the HBC, but I also appreciate what was said by the Leader of the Minority Party and the fact that I also saw you appreciate it. I am sure there will be an occasion for you to say something, maybe tomorrow morning. We will recognise you Hon. Milemba. For now, this business is over. You will have an opportunity to speak.

(Loud consultations)

ADJOURNMENT

Hon. Speaker: Order Members. There being no other business and the HBC having been approved, it required or requested to immediately meet at the rise of the House in the usual committee room to prepare business for tomorrow, Wednesday, Thursday and Tuesday next week.

The House stands adjourned until Wednesday, 13th February 2019, at 9.30 a.m.

The House rose at 3.18 p.m.