



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY

The Official Report of the Proceedings of the East African Legislative Assembly

Informal Meeting

Wednesday, 26 November 2014

The Informal meeting of the East African Legislative Assembly took place at 10:33 a.m. in the County Hall, Parliament of Kenya, in Nairobi.

PRAYER

(The Chairperson, Mr. Joseph Kiangoi Ombasa, in the Chair)

(The Meeting was called to order)

The Chairman (Mr. Joseph Kiangoi Ombasa) (Kenya): Honourable Members, welcome back again to this informal meeting. Yesterday when we left, we had two matters pending. We undertook to meet as a crisis management committee and deliberate further on the matter. And I will be giving hon. Patricia later on to give our small report.

Secondly, we had requested the Counsel to the Community to give us legal advice on the issue of yesterday's ruling - which was done under Rule 14 (3), as read together with Rule 25 of our Rules of Procedure - whether it was in conformity with the rules quoted, and whether the Speaker could have made a ruling on a matter that had been pending before this House and which had reached the voting stage. So, please allow me now to ask the Counsel to the Community to give us guidance on those two issues.

The Counsel to the Community (Mr. Wilbert Kaahwa) (Ex-Officio): Thank you, hon. Chairperson. The way you have summarized the assignment for the honourable Members, I have, for ease of addressing this august House, put my address in three parts. The first part is on the facts of the situation as I have since learnt about them, secondly, the issues, and then lastly, the legal opinion I should give to this meeting.

Regarding the facts of the situation, I refer you to the Order Paper of yesterday's plenary sitting, which ostensibly - and I want to emphasise the word "ostensibly" pursuant to Rule 16

(4) of the Rules of Procedure – contained, in the Communication from the Chair, two reports and the *EAC Cooperative Societies Bill, 2014* for Second Reading.

As you recall, hon. Chairperson, I was not in attendance at the beginning of the proceedings of yesterday's plenary sitting. I arrived late, and was told - and later I established from the record on the Hansard that:

- (a) In her Communication from the Chair, the Rt. hon. Speaker expressed, on behalf of the EALA, sympathy and condolences upon the sudden death of hon. Senator Gerald Otieno Kajwang, and 28 Kenyans who were murdered by bandits in Mandela.

Thereafter she announced that pursuant to rules 14 (3); 25 (1); and 41 of the Rules of Procedure of this august House, she had decided to expunge and had expunged the proceedings and debate of the motion on the conduct of hon. Shy-Rose Bhanji from the journals of this august House.

Thereafter she sought to proceed with the second order on the Order Paper, which was titled: "*A report on the workshop on the Rules of Procedure of the Assembly for purposes of amendment.*" And thereupon the majority of Members of this House stood up to seek clarification and challenge what the hon. Speaker had just announced in her Communication from the Chair regarding the expunging of the proceedings of the motion on the conduct of hon. Shy-Rose Bhanji.

Hon. Chairperson and hon. Members, from those facts, the issues which arise and pertain to the assignment you gave me are the following:

- (1) Whether or not the Rt. hon. Speaker's decision basing on rules 14 (3) and 25 (1) was in accordance with the Rules of Procedure;
- (2) Whether or not the Rt. hon. Speaker's action basing on rule 14 (3) and 25 (1) of the Rules of Procedure has the effect of expunging the motion on hon. Shy-Rose Bhanji; and,
- (3) Whether or not pursuant to the Rules of Procedure, Order (2) was a proper order on the Order Paper of the plenary sitting of the House on 25 November 2014.

Hon. Chairperson and hon. Members, this is my opinion:

First of all, I wish to address you and remind you of the sanctity of the Rules of Procedure. The Rules of Procedure of this august House made by this House pursuant to Article 60 of the Treaty for the Establishment of the East African Community are guidelines for this Assembly's functioning. They are the bedrock of this august House's independent exercise of its mandate of giving effect to Article 49 of the Treaty for the Establishment of the East African Community.

The rules are, therefore, sacrosanct and can neither be denied nor challenged as the Rt. hon. Zziwa and others sought to do in the East African Court of Justice's consolidated applications

(V) and (X) of 2014. They can never be challenged nor denied or assailed through misinterpretation or misapplication, whether deliberate, capricious, impulsive or otherwise.

Resolution of the first issue

I intended, for the avoidance of doubt, to read the rules that were used by the hon. Speaker in making her decision, but to the extent that before this august House yesterday, my Learned Colleague, hon. Judith Pareno read them, I wish not to repeat them. They are well known - (*Interjections*) - should I repeat then hon. Chairperson? If it is the will of this Assembly, I will read them *in extenso*.

Rule 14 reads as follows:

14 (1) *A Member may, at any time for reasons stated, seek leave to move that this House do adjourn.*

(2) *An adjournment under sub-rule (1) shall be for the purpose of debating a definite matter of urgent public importance.”*

Rule 14(3) - and this is what the Rt. hon. Speaker relied on: *“Unless it appears to the Speaker that the motion is an abuse of the rules of the House or an infringement on the rights of any Member, the Speaker shall put the question on the motion without debate.*

(4) *No Member making such a statement shall speak for more than 20 minutes without leave of the House.*

(5) *The debate on a motion arising under sub-rule (2) shall be confined to the matter of the motion.”*

Rule 25 (1) *“Confidential matters”* states that:

The Speaker may direct any matter which in his or her opinion is of confidential nature to be excluded from the journals of the House and from the verbatim report of the proceedings of the House and to be the subject of a separate verbatim report which shall be kept in the custody of the Clerk and made available only to Members and the clerks.”

Hon. Chairperson, having read those rules, I make this observation: Rule 14 being an aspect of sittings and adjournments of the House provides for an adjournment of the House upon any Member seeking leave for purposes of debating a definite matter of urgent and public importance. So, the rule presupposes a motion from a Member. The rule becomes operational upon a Member moving the motion as stated in that rule.

Paragraph (3) of that rule is operational on the occasion of deciding on such a motion. It is a conditioned precedent that there should be a motion whereby if it comes to paragraph (3), then the Speaker puts the question for adjournment with a proviso as indicated in the sub-rule.

Rule 25 enables exclusion of matters of confidential nature from the journals of the House. The journals of this august House, the Hansard, will show that at the time the Rt. hon. Speaker made her decision, there was no motion by any Member whatsoever for adjournment of the House for purposes of debating a matter of public importance.

(b) Matters relating to the motion on the conduct of hon. Shy-Rose Bhanji were, to the extent that they were the subject of debate, allowed by the Rt. hon. Speaker and in respect of which hon. Bhanji herself participated, not confidential in the meaning of the word “confidential.”
(*Applause*)

Accordingly, on this issue, the Rt. hon. Speaker’s decision coming as it did in her Communication from the Chair was not in accordance with the Rules of Procedure.
(*Applause*)

On the resolution of the issue number two, hon. Chairperson, the *Hansard* being the journal of the proceedings of this House will show that during the Second Meeting of the Third Session of this august House, which was held in Kigali in October and November, 2014,

- (a) A motion on the conduct of hon. Shy-Rose Bhanji was with unequivocal consent of the Rt. hon. Speaker moved by hon. Dora Byamukama;
- (b) The motion was seconded and debated up to a stage when the Speaker was about to put the question as required by the Rules of Procedure; and,
- (c) Before the question could be put, the Rt. hon. Speaker adjourned the House pursuant to Rule 13(3) having established that there was at that material time no quorum.

This development was an adjournment that left the handling of the motion incomplete. The motion remained in the House pending conclusion of it on the strength of Rule 18 (2) of the Rules of Procedure. (*Applause*)

For the avoidance of doubt, hon. Chairperson, allow me to read Rule 18(2). Rule 18 (2) guides the House on procedure of business, and paragraph (2) provides that: “*Any item of business standing on the Order Paper on any particular day, which has not been completed or reached on the interruption of business under the relevant provision of these rules, shall be placed on the Order Paper for the next sitting in such order as the Speaker may decide.*”

That rule allows incomplete business, such as this motion, which was not completed at the time before the question as put, to be completed at a subsequent sitting. (*Applause*)

Accordingly, hon. Chairperson and hon. Members, the Rt. hon. Speaker’s decision on this motion basing herself on Rule 14 (3) and Rule 25 (1) as she did runs afoul of the procedure for conducting the business of this august House, and in particular handling of unfinished business. The decision, I am afraid, has not expunged that motion. (*Applause*)

Resolution of issue Number 3

Hon. Chairperson, the *Hansard* will reveal the sequential handling to date of the proposed amendment of the Rules of Procedure of this august House as mandated by Article 6 of the Treaty, and Rule 83 of the rules themselves.

Basing on that, this august House will recall that:

- (a) The House charged the Committee on Legal, Rules and Privileges with consideration of the rules and making proposals for amendment;
- (b) The Committee tabled a report on review and amendment of the rules;
- (c) The whole House decided that it was important and it does remain absolutely important that all Members, apart from those on the Committee of Legal, Rules and Privileges, be sufficiently acquainted with the proposed amendments;
- (d) Consequently, a decision was made for an informal meeting to consider the amendments. The informal meeting was held from 19th to 25th November, 2014 and its deliberations were handed over to the Committee on Legal, Rules and Privileges who are the agents charged with proceeding with the motion on this matter;
- (e) The Committee met on 25th November and taking into account the outcome of the informal meeting prepared a report and a matrix of amendments, which report will be expected on the Order Paper.

The sequence shows that:

- (a) The motion on the Rules of Procedure is still in the House pending further logical conclusion pursuant to Rule 18 (2) of the Rules of Procedure. (*Applause*)
- (b) The House's involvement in an informal meeting of all Members to consider the proposed amendments did not and cannot dispossess the Committee of its role on this matter and empower an informal meeting to take over that role. (*Applause*) There is no rule that empowers the Rt. hon. Speaker - with profound respect - to divert the Committee out of the role to which it is seized regarding the Rules of Procedure.

Accordingly, and with profound respect, Order (2) was not a proper order in respect of a report on the proposed amendment of the Rules of Procedure. In actual fact, it is possible that - with due respect - if hon. Opoka proceeded, he may be challenged as a stranger on the matter. (*Applause*)

Hon. Chairperson, which is my opinion on the assignment that you gave me. It is threefold, pertinent to the issues framed, and I thank you. (*Applause*)

The Chairperson (Mr Ombasa): Thank you, Counsel to the Community. Your opinion...your answers are so elaborate that they do not need further elaboration from the Chair and, I believe, from Members.

Hon. Members, as I was talking and inviting the Counsel to the Community, the hon. Members of the Council came in. The hon. Chairperson of the Council, the hon. Phyllis Kandie, the hon. Bageine, and the hon. Secretary-General. (*Applause*) You are welcome to listen to these deliberations of hon. Members on these matters that touch on the integrity of this House. Thank you.

Hon. Members, the second issue was the matter that your Committee for this crisis management deliberated on, and without going further, let me give the floor to hon. Patricia Hajabakiga to report as she is the Chair.

The Chairperson, Crisis Management Committee (Ms Patricia Hajabakiga) (Rwanda): Thank you, hon. Chair for giving me this opportunity to report back to the Members on the work, which they assigned us to do.

Hon. Members, when we left, the Crisis Management Committee met before proceeding to see the Clerk, as you had requested. And as we deliberated on the matter, we realised that while the Clerk is a Clerk of the Assembly, he is not a Clerk of the Speaker. Hon. Members, we, therefore, thought the Clerk could not act on verbal submissions and so we decided, as the Crisis Committee, to petition the Clerk to come to the House as you had requested. We thought that we needed a procedure before making him come because he could not just act on verbal instructions. As a result, hon. Members, we did request our Chair and some Members, mainly the lawyers, to help in drafting that petition, which I think is being handed to the Chair right now so that we can append our signatures on it and then be able to petition the Clerk to come today at 12 O'clock to pursue the unfinished work in April this year in Arusha.

I will, therefore, request the Chair, if the document is ready, to give it to the Secretary to read so that you can approve the petition and then request you, hon. Members, to append your signatures, if you agree with what we have written.

Hon. Chair, I think later on after we are done with that, I will also request that hon. Members avail themselves at 12 Noon so that we can complete the uncompleted work which we are supposed to have completed in April - 2nd April if I am not mistaken- yeah, 1st April, and be able to move on. The rest can be deliberated upon by Members after listening to the draft petition. (*Applause*)

We also request to mobilise ourselves to ensure that we have quorum at 12 O'clock. Thank you very much. (*Applause*)

The Chairperson (Mr Ombasa): Thank you, hon. Patricia for that clear report and that you have requested me, though I have seen a draft here, I have not gone through to see the spelling mistakes or whatever is there, but I will give it to the Secretary to read.

The Secretary, Crisis Management Committee (Dr. Kessy Nderakindo) (Tanzania): The letter reads as follows:

“26th November, 2014

Mr Kenneth Madete,

Clerk, EALA.

RE: DIRECTION BY HON. MEMBERS PURSUANT TO ANNEX III OF THE RULES OF PROCEDURE AND PROVISIONS OF THE TREATY

WHEREAS Article 3 (3) of the Treaty for the Establishment of the East African Community provides for the removal of the Speaker of the Assembly for misconduct among other grounds;

AWARE THAT there is a pending motion for a resolution of the House for the removal of the Speaker, which the Speaker has continuously, albeit illegally, prevented from being processed to completion;

AND CONSIDERING that operations of this House have been paralysed by deliberate acts of the Speaker;

NOTING THAT Members now wish to finalise the process of the removal of the Speaker and restore the integrity of this august House;

CONSIDERING FURTHER THAT you are the Clerk of the Assembly, and not the Clerk of the Speaker;

NOW WE the undersigned, constituting the majority of the honourable Members of the Assembly hereby direct you to preside over the sitting of the Assembly at 12 Noon today, the 26th November 2014 to elect a Member to preside over the sittings of the Assembly in the absence of the Speaker who is deemed absent pursuant to Rule 9(6) of the Rules of Procedure.” (Applause)

The Chairperson (Mr Ombasa): Honourable Members that is the letter that was drafted by your Crisis Management Team, giving direction to the Clerk. We are not requesting him. The Clerk is duty bound to perform his duty and that duty is spelt out in the rules and in the Treaty.

According to Rule 9(6), the hon. Speaker cannot preside over the proceedings of her removal. We are aware that previously the hon. Speaker had ruled that she was entitled to preside over the proceedings and that the matter had been completed, but we have on record – I need not repeat and I need not call the Counsel to the Community again to repeat what he has advised this House that the Speaker was not entitled to preside over the proceedings of her own removal.

Therefore, we, your Committee, deemed it, and I hope you agree with it, that she is not present pursuant to 9 (6) because she cannot preside over those proceedings.

Now, hon. Members, a few comments here and there and then we can conclude this matter. Be aware that at 12 Noon, we are meeting in the informal meeting and this letter has to be signed by all of you Members so that it is taken to the Clerk.

Ms Byamukama: Mr Chairman, I am in total agreement; just one comment. I think you need to strike out the word “new Member”. Just say a “Member.” What is new and what is old? I think we don’t need the “new.” It is as if we had an old one and now we have a new one. Just say a Member.

Secondly, I think you should make reference to our Rules of Procedure, and in particular Annex III of the Rules of Procedure, which provides for election of a Member to preside at the sitting of the Assembly in the absence of the Speaker. That is all I would like to add. Thank you.

The Chairperson (Mr Ombasa): Sorry. It sounded like “new” but it is “a Member”. You know our Secretary studied in the US. (*Laughter*)

Now, we need to put this on the official letter head, if you agree. This is a paper for signature, but we need to put the letter on the official letter head of the Assembly. But the way it is typed is such that – alright fine. I think we can get the papers for the signatures. If we put it on the official letter head, does it matter? It doesn’t matter according to me because you are gazetted Members. So, if you sign that is all.

In my opinion, if you agree with me, and I know the need of writing on official letter heads but it also doesn’t carry so much weight. You can even write on any paper. So long as you sign. What is important is your signature and not the letter head. So, we can go ahead and sign this document.

Ms Hajabakiga: We have to do it very fast because we need to give it to the Clerk right now.

The Chairperson (Mr Ombasa): It should go on quietly but I have seen hon. Hafsa has stood up. Yes, hon. Hafsa?

Ms Hafsa Mossi (Burundi): Thank you, Chair. I also want to add my voice to thank Members of the Council of Ministers. We know that there are a lot of meetings going on in preparation for the Summit. So, we really appreciate your presence here. (*Applause*)

Chair, I would like to suggest that since we are going to meet again at 12 Noon, we stay here until we are done with the process. Thank you.

The Chairperson (Mr Ombasa): Any other comments? The paper is going around. I want to thank you, hon. Members for cooperating and for being organised in the manner that you have been. You have carried out these proceedings in an orderly way, and I do hope that the remaining session starting at noon will be carried out with the same spirit. I thank you.

Ms Hajabakiga: Hon. Chair, as indicated, I think we need to mobilise our colleagues who are not here so that by 12.00 they are here and we can conduct the business.

The Chairperson (Mr Ombasa): Hon. Members, hon. Mathuki is reminding me that coordination includes mobilisation. I am not sure about that but maybe we have to look at it from the angle of the Oxford English Dictionary.

As we are seated here, the service for the departure of our colleague, Senator Otieno Kajwang is going on but I did communicate to some of the Members that we have this sitting and we may not be able to get there. So, your apologies, I believe, are registered. But I believe that some of our colleagues, like hon. Abisai are there, so we are represented.

Dr James Ndahiro (Rwanda): Thank you, Chairman. I want us to reflect on a matter; probably the Legal Committee can also look at it and see how to introduce it in our Rules of Procedure. Normally good governance does not allow anybody chairing a meeting using the agenda item “communication from the chair”, to make a decision, a ruling. As Chair, you are just supposed to facilitate debate and you don’t participate unless an issue has been dealt with by people you are chairing, and afterwards you can give your opinion.

But this matter of the person chairing using “Communication from the Chair” to abuse his or her power should not be sustained or maintained. I don’t know how we can fit it into the rules to only permit the Chair carry out that function as a Chair and not as a Member to deliberate on an issue and even to talk on an issue that is not in the agenda items. Thank you Chair.

The Chairperson (Mr Ombasa): Thank you, hon. Ndahiro. I believe that we have a rule that disallows the Speaker to debate. Hon. Byamukama, don’t we have such a rule? You are my former Chair. Rule 42, can you read it?

Ms Byamukama: Yeah, the rules are in my head. 42 says, “*Speaker not to participate in debate – (Interruption) -*

The Chairperson (Mr Ombasa): That is provided for under Rule 42. So, it has been taken care of. But I believe that your further elaboration is important.

Dr Martin Nduwimana (Burundi): Yes, I find that this provision partially responds to the concerns of hon. Ndahiro. That issue of taking advantage of the communication to the House must be addressed as a sub-rule, maybe, to that existing Rule 42. Thank you.

Ms Hajabakiga: Hon. Chair, if I am allowed, let me say something, which is outside these issues of rules and the impeachment of the Speaker but, which this august House and honourable Members probably need to know. This is to the effect that there has been a pending agenda on the agenda of the Commission for almost two sessions, the one which was held in Dar es Salaam and the one which was held in Kigali, on the issue of the renewal of the contract of the Clerk and Deputy Clerk of this Assembly.

But the way the Commission has been running, that matter was never concluded and now that half of the members of the Commission have resigned, there is no possibility of the Commission passing it to the House for approval and yet the deadline of their being in office is 15th December. The only available time is for the Council, when they sit here in Nairobi, to approve the renewal of the contracts of the two important people.

This means that out of the things we have to deal with while we are here, and if possible, today, is to make sure that we pass a resolution to either approve their renewal or reject it or postpone it so that the Council can make a decision on that issue. Otherwise, we have a paralysis in terms of how the House will run. We may also have a paralysis without a Clerk and his deputy. So, we need to deal with that matter as a matter of urgency. I thought it was important to inform the Members. *(Applause)*

Mr. Ombasa: Hon. Patricia, I believe what you have raised can be undertaken after we have finished with what we are undertaking right now.

Mr Bernard Mulengani (Uganda): Thank you, Chair. Chair, now that we have got an opportunity and got information from a former Commissioner that our Clerk and his deputy's terms are expiring and they need renewal and we are aware that the Commission can't sit, we want to seek the indulgence of the Council who are amidst us that they kindly don't consider illegalities because the Commission is not in place.

That we again seek their indulgence that after we have appointed a chairperson, procedurally correctly, they honour the decisions of this House under that Chairperson if we decide to proceed and propose to either renew or disallow the terms of the Clerk and Deputy Clerk.

I am raising this because my sister here reminded me of a saying that once bitten, twice shy. We are dealing with very unpredictable people who are fond of proceeding on illegalities. So, the point I am raising is that if the Clerk comes and we procedurally elect a chairperson, the Chairperson will handle, among other issues, the motions that are pending and other business that is pending, including the renewal or non renewal of the terms of the Clerk and his deputy. I submit.

The Chairperson (Mr Ombasa): Thank you, hon. Mulengani. Annex 3, pursuant to which we are petitioning the Clerk to come here and preside over the sitting of the Assembly says that the Member who is elected will effectively become the Speaker.

And there is a provision here in (7), which says, *"The Member elected would make a short adjournment and would lead a procession to the Office of the Speaker for the Assembly and the Members.*

(8) The Speaker's procession would then return to the House for continuation of the rest of the business.

(9) During the debate in the House, thereafter, all Members shall refer to the Member elected as Mr or Madam Speaker."

So, that Member would legally and effectively carry out those duties that were supposed to be carried out by the former Speaker.

In any case, hon. Mulengani, Article 57(2) of the Treaty for the Establishment of the East African Community provides that: *"In reckoning the number of Members who are present for*

the purposes of paragraph (1) - and paragraph (1) is talking about quorum - the person presiding shall not be taken into account.” So, we believe that the members of the Commission, four of them having resigned, there now remain only five members there and they cannot constitute quorum. So, it will be up to you as the House to either approve – you know that the decisions of the Commission do not become decisions of the House without your approval. So, once you approve, then they are carried as decisions of the House. So, whatever they do must come back to you.

We have 30 signatures and, as I had said before, our other Members are engaged in other activities like that service. (*Loud consultations*) Order, hon. Members! I have just praised you for being orderly. I am reporting that 30 Members have so far signed. I am told hon. Ogle is about to arrive but we can submit it as it is. Do we submit it as it is?

Members: Yes!

The Chairperson (Mr Ombasa): Hon. Ogle and hon. Zein are on the way coming but we can submit it as it is. Do we send a copy to the Speaker or the one to the Clerk is enough?

Members: It is enough! (*Loud consultations*)

The Chairperson (Mr Ombasa): The Clerk will send her a copy? Okay, I have given this to the Chair of the Crisis Management Committee for immediate delivery to the Clerk.

Member: Make a photocopy on which he will acknowledge receipt.

The Chairperson (Mr Ombasa): Hon. Members, do we need an adjournment?

Mr. Mathuki: But Chair, honestly, let me thank hon. Angela Kizigha in a very special way for agreeing to give us quorum on this one. Thank you very much. (*Applause*)

The Chairperson (Mr Ombasa): Welcome hon. Ogle. Please, sit down. Hon. Members, I saw that you wanted to make provision for the Speaker’s panel because it is important for the Speaker or the person chairing to step out. In line with that policy, I am leaving hon. Kessy to be in charge.

Ms Nderakindo: Now, we are in the informal of the informal, could someone go and find out if there is any tea and to let us know?

Hon. Members, members of the Council of Ministers, the hon. Secretary General, the Counsel to the Community and staff, tea is ready, you are all welcome. Thank you.

The Chairperson (Mr Ombasa): Members who are around, please come in. Come in and take your seats.

Hon. Members, before we finish our assignment, we had requested the Clerk to come and chair the informal sitting in accordance with Annex (3) to the Rules. I want to report to you that the letter has been delivered to him in person and another letter to his secretary. He is well aware that we are here.

It is now coming to 12.30 p.m. If it is your resolution, we can give him another 15 minutes to enable him to come. Thereafter, at 12.45 p.m., we shall make such a decision as you may resolve. What are your views, hon. Members?

The messengers we sent...you are not actually messengers, you are hon. Members but the work you did was that of messengers. Hon. Dan Kidega.

Mr Dan Kidega (Uganda): Thank you so much, Chair. I and my comrade, hon. Peter Mathuki successfully reached the Office of the Clerk, dully gave the summons or the letter to the secretary of the Clerk. We insisted that we wanted to see the letter delivered to the Clerk in person and indeed we went up to his office with his secretary and the letter was delivered to him.

He did not show any objection to coming. We even had a short discussion with him, which entailed the mechanism of him coming here. So, from my point of view and that of my colleague, he should be here. That is the last that we heard. Thank you so much, Mr Chair. *(Applause)*

Mr Mathuki: Thank you, Chair. I confirm what my colleague has said.

The Chairperson (Mr Ombasa): Comment also on the request I made.

Mr Mathuki: Thank you, Chair. I confirm the words by hon. Kidega. We reached the office of the Clerk and gave the letter to the secretary and also insisted on meeting the Clerk. He indicated that he was coming, but of course for good orderliness, he said he had to inform the Speaker.

My opinion is that to save on time, as a House we could request the Sergeant-at- Arms to go and bring the Clerk here in the next few minutes. *(Laughter)*

The Chairperson (Mr Ombasa): The House does not request a Sergeant-at-Arms, it directs. So, are you saying “direct” instead of “request”?

Mr Mathuki: Direct with immediate effect.

Mr Ombasa: Is that the concurrence of Members?

Members: Yes!

The Chairperson (Mr Ombasa): Sergeant-at-Arms, if there is anything that is required for purposes of these proceedings, if the mace is required, then it should be here. If it not required, then it is alright. But the Members have resolved that you go. The Clerk may have started, you communicate with him, meet with him wherever you want to meet with him and come with him.

Mr Kidega: Thank you, Chair. Reliably as your messenger who has been tracking your messages, he is on the way coming.

Ms Judith Pareno (Kenya): Chair, I was just looking at the proceedings that we are about to undertake pursuant to Annex 3, the Clerk is supposed to convene the House and then once we elect the person to preside, then that person is taken to the Office of the Speaker and is brought in with the mace. So, that is the procedure. *(Applause)*

The Chairperson (Mr Ombasa): Yes. Thank you, hon. Judith for looking at the rules.

(The Clerk of the Assembly entered the Chamber)

The Chairperson (Mr Ombasa): You are welcome the Clerk of the East African Legislative Assembly.

Hon. Members, our assignment has now formally come to an end. We would like to thank all of you for being patient. At least our Clerk has come. He can now take his place and guide the proceedings. We have become ordinary Members again. *(Applause)*

The Clerk to the East African Legislative Assembly (Mr Kenneth Madete): Hon. Members, good afternoon. I wish to confirm that my office received either a petition or summon at around 10 minutes to midday requiring me to come here. I personally saw it slightly after that because I was not in the office - the Members who brought it can testify to that.

I have read the contents of the petition, and as an officer of this House, I had no alternative but to comply. *(Applause)*

The petition is referring to some provisions of the rules and also the Treaty. As a civil servant, I also immediately sent a note to the Counsel to the Community to help me on how to proceed, since the petition touches on matters of law.

I will, therefore, ask the Counsel to the Community to confirm whether he received my note and to guide me, before we proceed.

The Counsel to the Community (Mr. Wilbert Kaahwa): Hon. Chairperson, I wish to confirm that about 10 minutes ago, I received a memorandum from the Clerk, the subject of which is “*Direction by honourable Members, pursuant to Annex 3 of the Rules of Procedure and provisions of the Treaty.*”

“MEMORANDUM

RE: DIRECTION BY HONOURABLE MEMBERS PURSUANT TO ANNEX3 OF THE RULES OF PROCEDURE AND PROVISIONS OF THE TREATY

The above mentioned subject refers.

I have received the attached directive by Members, which is dated 26th November, 2014...” and whose contents are very well known to all of you and signed by 32 elected Members.

In his memorandum, the Clerk has asked me to kindly advise him on how to proceed. I so confirm.

The Clerk (Mr. Madete): Now, how do I proceed, because the directives are asking me to take certain actions right now in relation to Rule 9 (6) and Annex 3? How can we proceed?

The Counsel to the Community (Mr. Kaahwa): Hon. Chairperson, the directive is based on the need to put into motion Rule 9 for purposes of proceeding with the motion for the removal of the Speaker.

Under Annex 3 of the Rules of Procedure, you are empowered to preside over the election of the Member - (*Applause*) - once you are convinced of their reasons.

The reasons are basically the wish and need for Members of the House to proceed in a manner where the person against whom the motion is cannot preside because the motion is against her. So, you may proceed to handle their request, pursuant to both Article 63 (3) of the Treaty read together with Rule 9 of the Rules of Procedure, and in particular 9(6), and taking into account the requirements of good governance in a matter like this where the person who is more or less a subject matter may not fairly and comfortably preside over the proceedings. I thank you, hon. Chairperson. (*Applause*)

The Clerk: Thank you very much, hon. Counsel to the Community.

Honourable Members, with that guidance from the Counsel to the Community, the matter before you and for which I am here responsible at the moment is to preside over an election of a Member to preside over the Assembly under Annex 3.

Without much ado, we go to the provisions of Annex 3. You may move to Annex 3(2), which says, "*The nomination for candidates for election of a Member to preside over the Assembly shall be done on the floor of the House.*"

(3) says, "*The Member wishing to propose the name of a person to preside shall rise from his or her place, and upon catching the eye of the person presiding shall state that: "I wish to propose that hon. so and so do take the Chair to preside over the Assembly for today's sitting and subsequent sittings until such a time as the Speaker may be present. The proposer shall be seconded, and if the Member proposed consents to the nomination, he or she shall be deemed to be duly nominated.*"

(4) *If more than one Member has been duly nominated, the presiding officer shall call for a vote by show of hands. The Member scoring the highest number of votes shall be declared elected and conducted to the Chair of the Speaker.*

(5) *If only one Member is nominated, he or she shall be declared elected and conducted to the Chair of the Speaker.*"

May I, therefore, under Annex 3 (2) get any nominations?

Mr Peter Mathuki (Kenya): Thank you very much, Mr Clerk. But of course basing on the excellent work that this Assembly has done for the last one week under the chair of hon. Opoka, I wish to propose that hon. Chris Opoka Okumu do take the Chair to preside over the

Assembly for today's sitting and subsequent sittings until such a time as the Speaker may be present.

I would request hon. Ngenzebuhoro and hon. Mwinyi to second. (*Loud consultations*)

The Clerk: No, you don't. They have to do it on their own.

Is there anybody seconding hon. Mathuki's nomination? (*A number of Members stood to second the Nomination*) Whom do I record because you are very many?

Members: All!

The Clerk: I saw the hon. Ngenzebuhoro first and hon. Mwinyi. Hon. Opoka, according to the Rule, you must accept the nomination. Do you accept the nomination?

Mr Opoka: I do consent. (*Applause*)

The Clerk: Is there any other nomination?

Mr Mulengani: Chair, I propose nominations closed. (*Applause*)

The Clerk: Is there anybody to second hon. Mulengani's proposal? Hon. Abdul Karim, hon. Martin, hon. Kessy, hon. Bazivamo, hon. Yves and hon. Hafsa Mossi.

Annex 3 (5) says, "*If only one Member is nominated...*" which now confirms hon. Chris Opoka, "*... he or she shall be declared elected and conducted to the Chair of the Speaker.*" (*Applause*)

Can any two Members help me to conduct hon. Opoka to the Chair?

(Mr. Chris Opoka Okumu was conducted to the Speaker's chair)

The Temporary Speaker (Mr Chris Opoka Okumu): Honourable Members, I wish to express my deepest gratitude to you for having elected me to preside over the sittings of this Assembly. (*Applause*)

I hereby submit myself to the will of the House, to the supremacy of the rules of the House, and lay claim to the privileges of the Assembly and Members. (*Applause*)

In accordance with Annex 3 of the Rules of Procedure, I hereby adjourn the House for 15 minutes, and thereafter, we come back. Thank you. (*Applause*)

(The House was adjourned at 12:15 p.m.)