



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

The Official Report of the Proceedings of the East African Legislative Assembly
72ND SITTING - SECOND MEETING: THIRD SESSION – THIRD ASSEMBLY
Wednesday, 26 November 2014

The East African Legislative Assembly met at 2:05 p.m. in the County Hall, Parliament of Kenya, Nairobi

PRAYER

(The Temporary Speaker, Mr. Chris Opoka Okumu, in the Chair)

(The Assembly was called to order)

The Speaker: Hon. Members, the matter of the petition, which was commenced by hon. Mathuki in about April this year, was very clear and during the informal sitting we had deliberations and the Court itself also said the matter is alive. I, therefore, call upon hon. Mathuki to proceed with this matter.

Mr. Peter Mathuki (Kenya): Thank you, Mr. Speaker. Let me pick from where we left on the 1st of April, 2014 in Arusha. Therefore, Mr. Speaker, I wish now to lay the motion on table for removal of the Speaker of the East African Legislative Assembly from office. I wish to table it now.

The Speaker: Hon. Members, yes, I recognize hon. Mwinyi. Pursuant to Rule 9 (4) after the motion is tabled, the matter is to be referred to the Committee on Legal, Rules and Privileges to investigate and report its finding to the Assembly. *(Applause)*

Now, before we do so, I would like to – *(Interruption - yes, hon. Mwinyi.)*

MOTION

Mr. Abdullah Mwinyi (Tanzania): Thank you very much, hon. Speaker. I beg to move a motion under Rule 31 (1). If I may, this is a motion which may be moved without notice any motion on urgent matters of public importance supported by one third of the Members present.

The Speaker: Seconders? Shall we count? We have 19 Members that have stood – (*Interjection*) - the number has increased. So that is more than one third.

Mr. Mwinyi: Thank you very much, hon. Speaker. I beg to move that a motion that the House resolves that hon. Margaret Nantongo Zziwa be barred from all activities or functions of the Speaker pending the finalization of these proceedings. I beg to move. (*Applause*)

The Speaker: Can we have the justification?

Mr. Mwinyi: Thank you very much, hon. Speaker. Rule 9 (6) of the Rules of Procedure stipulates that: “*The Speaker in respect of whom proceedings for removal have commenced shall not preside over the proceedings.*” This rule is not categorical and it is not very clear. It can be interpreted in any way in terms of what proceedings it refers to. Is it the specific proceedings for her removal or all proceedings?

Annex III (3) stipulates as follows: “*The Member wishing to propose a name for the person to preside will rise from his or her place and upon catching the eye of the person presiding shall state that I wish to propose so and so to take the Chair to preside.*”

The proposal shall be seconded if the Member proposed consents and then shall be dully nominated.” You have confused it all. It is III (6).

I proceed with my justification. The key thing is this, we have a head of institution under investigations and we need to ensure that there is no interference and no conflict of interest and that the investigations are made fairly.

So, I would request, since it is not very clear, that this House do move that pending the outcome of the investigation, which is within a specific duration, that no activities or functions of the Speaker should be done by hon. Margaret Nantongo Zziwa for that duration of time to ensure fairness, to ensure rules of natural justice and to ensure non-interference in the proceedings.

The Counsel to the Community (Mr. Wilbert Kaahwa)(Ex-Officio): Thank you, Rt. hon. Speaker. Rt. hon. Speaker, without appearing to be derailing the course of argument, which my Learned hon. Friend is using to justify the motion, I would like to remind him of the need to address the House on the dictates of *ejusdem generis* rule because the word ‘proceedings’ is used twice in that paragraph. If I may read: “The Speaker, in respect of whom proceedings for removal have commenced, shall not preside over the proceedings.”

A reading of the second use of the word proceedings by the *ejusdem generis* rule, leads you to the word proceedings as first used. Maybe hon. Mwinyi would wish to further address the House in that regard.

Mr. Mwinyi: Thank you. I wasn’t very clear with that information. I haven’t understood it but I will proceed.

The Speaker: I think what the hon. CTC is saying is that in the provision that you have quoted, the word ‘proceedings’ was used twice. The second proceedings was the proceedings, which was referring to the first one, which is a proceeding commenced after the petition.

The Counsel to the Community (Mr. Kaahwa): Speaker, you got me right. I believe now my hon. Learned Friend is well informed and he may proceed accordingly. (*Laughter*)

Mr Mwinyi: I am really informed and I shall proceed. The key thing here is that last more than six months, the Assembly has been paralysed due to inappropriate or misapplication of rules and the Treaty by hon. Margaret Nantongo Zziwa.

We clearly envisage a situation whereby if this august House does not pronounce itself, at least in the interim, during the process of the proceedings, this entire process might be interfered with. So, I beg my colleagues to resolve that during the process of these proceedings, hon. Margaret Nantongo Zziwa should not preside or should not continue with the functions of the Speaker until the outcome of the proceedings have been concluded. Hon. Speaker, I beg to move. *(Applause)*

The Speaker: Thank you.

Mr Joseph Ombasa (Kenya): Thank you, Mr Speaker. I stand to second and support what hon. Mwinyi, my Learned Fries has said.

We are looking at it even from practice worldwide. Somebody who has been accused of impropriety; somebody who has been accused of wrongdoing and for that purpose, has been put under investigation, and that somebody is at the helm of an institution, the Committee to which we have referred this matter is a Committee, which is under the head of that institution.

If we are to leave the Speaker to continue with the other proceedings of this House and the activities of this House, then there need not be interference. But there should just be likelihood of interference. The question is, is there likelihood of interference? If you answer that question in the affirmative, then you have to guard against that.

What was she accused of in the motion that has been laid? Poor governance and leadership skills, abuse of office plus abuse of rules, intimidation if Members and staff and all those. Do we now leave her in office so that she can continue with those activities? How do we prevent her from continuing with those activities? And yet this House is very concerned that they should be stopped. That kind of misconduct must be stopped forthwith.

How do we ensure that that is put in place unless we suspend her? We bar her from being our Speaker in the interim period. I want to support the motion and state that it is in order. It is the practice. Even Government officials who are accused of several wrong doings, they step aside so that they give way for proper and fair investigations.

So, we are not saying we have removed her from office; let it not be interpreted that we have removed her from office. We have only required of her to step aside. But because she cannot voluntarily step aside, we have said, we bar her until the Committee finishes the investigations and if she is found that she had no wrong doing, she comes back to her seat. If she is found to have committed those wrongs, then we continue in accordance with the rules and the Treaty. I thank you.

The Speaker: Thank you, hon. Members. Hon. Members, I need to remind Members that the rules that we are following particularly Rule 9 (6) is still the rule of the House. Rule 9 doesn't specifically prohibit the Speaker from doing other duties.

I understand the sentiments and I think hon. Members should also be aware that if we raise so many issues, even hon. Nantongo Zziwa may raise other matters. But that is for the House to take a decision.

Ms Hajabakiga: Thank you, Rt hon. Speaker. Mine is not to oppose. I support the motion but I would like to make an amendment to add another resolution.

The Speaker: To amend the motion?

Ms Hajabakiga: Yeah, I would like to add another resolution on hon. Mwinyi's.

The Speaker: Is it touching the same matter?

Ms Hajabakiga: Hon. Speaker, under Rule 9, the time frame for the investigations is not indicted. It is open ended and I would wish to add another resolution on the motion by saying that we give it a time frame of 21 days. The investigations should be concluded within 21 days and the Committee reports back to the House. That will cure the lacuna in the rules.

The Speaker: Thank you, hon. Patricia but we were going to come to that after giving hon. Mathuki chance to justify his motion and open it up for debate but then hon. Mwinyi moved with an amendment.

Hon. Mathuki had finished. So, on this standalone motion of hon. Mwinyi, I would like to put a question to the House. Those in favour of hon. Mwinyi's motion that the Speaker be suspended from doing any other work until the finalization of these proceedings as amended by hon. Patricia within 21 days, say, aye and the contrary, nay.

(Question put and agreed to.)

(Motion carried)

The Speaker: Hon. Members, under the rules, the House should refer the matter to the Committee on Legal, Rules and Privileges. I now put it to the House, those in favour of this matter being referred to the Committee of Legal, Rules and Privileges, say, aye and the contrary, nay.

(Question put and agreed to.)

(Matter referred to the Committee on Legal, Rules and Privileges.)

The Speaker: This matter is now referred to the Committee on Legal, Rules and Privileges.

Hon. Members, I would like to adjourn the House. Thank you.

(The House rose at 2:25 p.m.)