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EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

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

3RD SITTING - FOURTH ASSEMBLY: FIRST MEETING – FIRST SESSION

Wednesday, 20 December 2017

*The East African Legislative Assembly met at 2:30 p.m. in the Chamber of the Assembly,
EAC Headquarters Building in Arusha, Tanzania*

PRAYER

(The Speaker, Mr. Martin Karoli Ngoga, in the Chair)

(The Assembly was called to order.)

The Speaker: Honourable Members, there is no Communication. We will proceed.

I beg to move.

(Mr. Omar Abdikadir Aden and Ms. Sergon Jematiah Florence, seconded the Motion)

MOTION FOR THE ELECTION OF THE EALA COMMISSION

- *(Interjection)* -

Mr Opoka-Okumu Christopher (Uganda): Mr. Speaker, Sir, I beg to move:-

“THAT, in accordance with the provisions of Section (3)(2) of the Administration of the Assembly Act, 2011, and Rule 83(1), (2) and (3), the following be nominated Members be nominated Members be elected to constitute the EALA Commission.”

Dr Ngwaru Jumanne Maghembe (Tanzania): On a point of procedure, Mr. Speaker, Sir.

Ms Susan Nakawuki Nsambu (Uganda): Motion, Mr. Speaker, Sir.

(Debate on Election of EALA Commission was interrupted)

MOTION FOR THE SUSPENSION OF RULE 12 OF THE RULES OF PROCEDURE OF THE ASSEMBLY)

Ms Nakawuki: Rt. hon. Speaker, I would like to move a Motion under Rule 30(d) and Rule 84 of our Rules of Procedure, which provides for suspension of a given rule in our Rules of Procedure. I beg that we suspend the application of Rule 12 so that we dispose of this important matter on the Floor.

I beg to move.

The Speaker: Seconders? Hon. Abdikadir and hon. Fred Mukasa Mbidde.

(Dr. Abdullah Hasnuu Makame and Dr. Ngwaru Jumanne Maghembe stood up in their places)

Ms Nakawuki: Rt. hon. Speaker, allow me to start by reading Rule 84 verbatim. As you are aware, rule 30(d) provides for one of the Motions that can be brought to the House without notice – *(Interjection)*.

The Speaker: Hon. Makame, when a Member is on the Floor, it is one at a time. Resume your seat.

Ms Nakawuki: Under Rule 30, there are Motions, which can be brought on the Floor of the House without notice. So, I am proceeding under 30(d), “any Motion for the suspension of any Rules of Procedure”.

Under 84(1):

“Notwithstanding the provisions of the rule to the contrary, any Member may, with the leave of the House, move that any rule be suspended in its application to a particular Motion before the House, and if the Motion is

carried, the rule in question shall stand suspended.”

Rt. hon. Speaker, I have decided to rise because we have very important business in this House to transact, which entails the election of the Commission. As you are aware, the Commission is very critical in this Assembly. It plays a pivotal role when it comes to establishing the business of this Assembly.

Rt. hon. Speaker, we are aware that on several occasions we have had Members walk away from this House deliberately without any sound reason, and without notification to both the Speaker and the Clerk, to frustrate the business of the House. They leave behind people to act as spokespersons to frustrate the House.

Rt. hon. Speaker, I beg that in your wisdom, you will allow this Motion so that we transact business and accomplish the wishes of the East Africans who elected us into this Assembly. I beg to move - *(Applause)*.

The Speaker: Hon. Susan, since I was not furnished with the Motion, I am not in a position to repeat it. However, hon. Members, I have understood the Motion that hon. Susan has put before the House. I will allow a few Members to debate before we make a decision on the way forward. Hon. Maghembe, you have been on your feet for some time. Proceed.

Dr Ngwaru Jumanne Maghembe (Tanzania): Thank you hon. Speaker – *(Interruption)*.

The Speaker: One second, hold on. When a Motion is moved, the Seconder is given the first opportunity. Let me clarify. I am assuming that hon. Maghembe is not standing to debate the Motion. So, when the debate

starts, the Seconder will certainly have the priority.

Dr Maghembe: Thank you hon. Speaker. A few Members approached me and they told me that yesterday I was a bit aggressive. I would like them to know that, that is not my nature. Today, I will speak with my usual decorum and subtlety - (*Applause*).

Under Rule 12(2), "If at any time of the Sitting...the House is sitting and the Speaker is present. Yesterday we debated this issue – (*Interruption*) -

The Speaker: Hold on. Are you intending to debate the Motion that has been moved by hon. Susan?

Dr Maghembe: First, I want to object that there is no quorum inside the House.

The Speaker: So, it is about the same subject. Now, let me go under the procedural sequence. I will give you an opportunity. The procedural sequence is that the Seconder comes first to debate the Motion.

Mr Omar Abdikadir Aden (Kenya): Thank you, hon. Speaker, for the opportunity. From the onset, I want to thank hon. Susan for moving this Motion. I want to say that the crafters of these laws and procedures did us a great favour. This particular one is well intended. It is a Motion that has the support of many. Any attempt to deny this House the opportunity to continue with its work negates the spirit of good intent because any law or action should have good intent of the person moving it.

I want to cite that, indeed, under Article 30(d), this House has the powers, without notice, to move that particular Motion. Mine is to support and to say that, indeed, for us to continue with this work, we should accept

this Motion. I support it in the strongest terms possible.

Article 84(1) is also very clear in terms of procedures that this House can, at any one time, be seized of this Motion and move it. I do not want to take much time because of the importance and urgency of the matters that this House is about to handle. Mine is to second the Motion and to say that it has the right intention to enable this House to do its work.

I beg to second.

The Speaker: Hon. Maghembe, you can resume your debate.

Dr Maghembe: Thank you hon. Speaker. For the sake of the *Hansard*, I had stood up to point out that, there was a procedural issue that I wanted to raise before the Motion was raised, that we did not have a quorum in the House. However, since you have made a ruling, I do not want to sit here and – (*Applause*) – However, I will say this. In my learned opinion, the House- (*interruption*)

The Speaker: Hon. Maghembe, it is not yet too late for you to raise that issue because the Motion is not yet disposed of. You are not sure whether the rule will be suspended or not. I think it is premature for you to express your intentions or what you intended to do. That is totally dependent on what this House will decide.

Dr Maghembe: Hon. Speaker, I said that I had intended. I will now debate and oppose the Motion. However, that does not preclude me from doing it later.

Rt. hon. Speaker, it is my learned opinion that in order for the House to suspend a rule, the House must be fully constituted and the quorum must be present. Otherwise, if we

cleverly – and I say this with no disrespect –
(*interruption*) -

Mr Aden: On a point of procedure, is the honourable Member in order to mislead the House? (*Interruption*)

The Speaker: So, it is a point of order and not a point of procedure?

Mr Aden: It is a point of order. I beg your pardon. Is the hon. Member in order to mislead this House that for this House to move any Motion without notice, there must be quorum? He is misinforming the House.

The Speaker: Hon. Abdikadir, it is in order for a Member to hold a different opinion. You may disagree with him as we move forward, but I think it is in order for him to hold a contrary opinion.

Dr Maghembe: Thank you for protecting me, hon. Speaker. Thank you for your protection. As I was saying, with no disrespect intended, but to wait for the Speaker to come in then quickly raise a Motion to suspend the quorum rule in order to stop us from raising it negates our sovereignty as states. We come here together in good faith. I have been saying this for the past two days and yet people do not understand me. It is our right as Members and as Partner States because we are equal and there is consensus in this Community for us to call for quorum. That is why it says in the rule that at any time of a sitting, *muda wowote, ee aho aho* - (*Interruption*) -

The Speaker: I would like to remind the honourable Member that the language of the Assembly is English.

Dr Maghembe: *Sawa sawa.*

The Speaker: So, the *Hansard* does not understand what you said.

Dr Maghembe: Thank you Mr. Speaker. My point is, and I say this as an East African that all of us Members here, sooner or later will have an issue. I raised this with some of the Members in the House while we were outside. If we start tampering with the issue of quorum now, today, on the first day that we have elected our Speaker, you will not have the protection of this Rule when we have an issue, whether in plenary or in the committees, whether someone says something about your party or president and it brought on the Floor, you will not be able to depend on quorum – (*Interjection*) -

Mr Aden: On a point of information, hon. Speaker.

The Speaker: Will you take the information?

Dr Maghembe: No, no, I will not, with due respect. I am arguing in opposition to this Motion. It is unfortunate, hon. Members that you are turning a blind eye to one of the key principles that this Community is founded on. I will not speculate as to why; that is not my place. However, I urge you to rethink your position. We need to move together. Some of the Members are not here, although we have not counted them. It is possible that there is no quorum. We have not been given the opportunity to verify, unfortunately, again. I will say this again. Today it is Burundi, tomorrow, Kenya. When that happens, I will sit here and fold my hands. Thank you for the opportunity, hon. Speaker.

Mr Fred Mukasa Mbidde (Uganda): Thank you very much Rt. hon. Speaker. I lost my father in the year 2000. That was the time I was competing to be a Guild President of Makerere University. The date of the election was the same day that I lost him. So, there

was a huge choice to make whether I bury the dead, including I, who was alive at the time to politically bury myself, or I choose to remain alive to the extent that the next day I would go and moan. That was a very big choice for me to make. However, I chose to be elected as the Guild President of Makerere University. I am sure that my father got extremely happy because that kick-started my political peroration as Mbidde.

I remember him correctly. There is a time he told me that during his life, he once found a man climbing a mango tree, which had nothing. When he asked him why he was climbing a mango tree, the man said that he was looking for oranges. He told him that there is no way he would find oranges in a mango tree and the man said, "That is why I am coming down." (*Laughter*)

So, Rt. hon. Speaker, by necessary indication that man was busy but to the achievement of almost nothing. Anyone could tell that there were calories, which had been invested but the results, would clearly be a nullity.

This is what I want Members to do. Please, this is a diplomatic job. I want you to enjoy this job. I have been here for the past five years. I have enjoyed it as I can tell you. I opposed my Government but here I proposed and made sure that the Community exists. My Government worked very hard to have me re-elected. You can imagine, this is a very good job. Please, enjoy it.

We are not here as Partner States. I can tell you that frankly. Somebody said here yesterday – I will not mention it practically because that is not the debate, apparently, but permit me to give guidance because it is our duty as lawyers to guide our comrades. Somebody cited Article 6(d) of the Treaty for the Establishment of the East African

Community - a very high-ranking official - as applicable.

Article 6(d) says,

"The fundamental principles that shall govern the achievements and objectives of the Community by the Partner States..."

We are here as the Assembly. This Assembly is for the whole Community. The only political leaders elected for the Community are the Members of this Assembly. The rest are elected to lead their own Partner States. However, once in a while, they form organs. They form part of the Summit; they form part of the Court, while others form the Secretariat. However, that is because they have a high affinity for cooperation. The only people elected for furtherance of integration by the people directly, for this matter, are the Members of this Assembly – (*Applause*). Therefore, clearly, let us understand our job.

I support the Motion for the following reasons: One, it is premised on Article 49(2) (g) of the Treaty for the Establishment of the East African Community. It is the business of this august House to form Committees, the rules governing these Committees, and to make sure that the Assembly moves to perform its functions. This is our business, honourable Members. We are now in business. So, when I stand to support a Motion, which includes, among others, smoothening the way for the application and achievement of this business, I am not wrong. I would like to be applauded for that, honourable Members - (*Applause*).

Two, it is premised on the backbone of the very rules that state the democratic tendencies that govern this House. This House is aware that at one point in time there

will be quorum and that at another time, there might be no quorum. At one point in time, it might be necessary for quorum to exist, while at one point in time, it will be necessary to ignore the existence of quorum. That is why all the rules are enshrined in the Rules of Procedure to the extent that when quorum does not exist, the rules are there, and the sanctions are there to the extent that when you are not battered by the existence of quorum, the rules are there to cure it. They say that people's level to govern themselves democratically is proportionate to the degree of their understanding of the structure and functioning of the whole social body - *(Applause)*.

Get the rules properly in your head and you will see that we are closer to heaven. From EALA, you go to heaven - *(Laughter)*. This is very close. We are at close proximity to God. Therefore, we must act in such a way that we are extremely pure. We do not have to run this Assembly as if there is no democracy. Democracy excludes other interpretation. Democracy excludes what other people misinterpret as democradular, adictablander or the apatular democratica in Mexico. This is a democracy. The majority must have their way, but the minority should continue, consistently, to have their say. That is why I like them - *(Applause)*.

Rt. hon. Speaker, I stand to support the Motion for purposes that the application of Rule 12 should be expunged, at least for purposes of this Motion, as this House prepares a safety take off as a rocket to heaven.

I thank you Mr. Speaker - *(Applause)*.

Ms Fatuma Ibrahim Ali (Kenya): Thank you hon. Speaker. First and foremost, I want to congratulate you for your election. I think

you really deserve the job. You are an able Speaker - *(Applause)*.

Hon. Speaker, my second issue is that I will plead with you to be fair and considerate to all Members of EALA, including the ones who have abstained so that they enjoy the privileges and benefits of the Assembly. I have no doubt, going by the few interactions with you that, that is an ingredient in your character. You will be fair to people.

I want to support the Motion. I was in the National Assembly of Kenya. One thing we must understand is that rules and regulations are appropriate in certain circumstances. There is no rule that is fixed. It is we the lawmakers to interpret it and to see what rule fits in what circumstance. At times when we transfix ourselves to one rule, we disallow ourselves to think broadly, to interpret and to utilise other rules of procedure. I am saying this because sometimes we need to suspend certain rules to move forward and to protect the autonomy of the institution - *(Applause)*.

The Motion that the hon. Member has introduced addresses certain extraordinary situations. When the drafters were drafting, they anticipated that there would be certain scenarios that would occur, probably like this scenario that has happened. With respect to other Members who are not present, who have chosen to abstain or not to come, probably because they have other, burning issues to handle, we do not know. I am assuming that they are reasonable people to choose what is appropriate for them.

Moving forward, this Assembly does not mean that you are undermining the sovereignty of this Partner State. I do not think so. We are protecting, respecting and safeguarding it, but we want this Assembly to move on for us to make a difference for our citizens of these six Partner States -

(*Applause*). Otherwise, if we lock ourselves with specific procedures and do not interpret other enabling procedures, then we will not move. I support the Motion. (*Applause*)

Mr Kennedy Kalonzo Musyoka (Kenya): Thank you Mr. Speaker for the opportunity to address this House. My congratulations to you on your election.

Honourable Members, I stand before you today a very sad legislator. Nothing would please me more than to have all the member states present in the House. However, in a democracy which is the rule of the majority - and I have heard it being quoted repeatedly here - the matter before the House is a simple one. Rightfully so as Members have said, in democracy we must respect the majority but must protect the rights of the minority.

Mr. Speaker Sir, in the current situation whereby we cannot move forward because some Members are not here, is this not tantamount to taking the rights of the minority above those of the majority, which is not a democratic rule and is not how democracy works? Furthermore, I would like to remind this House of the words of one of the founding fathers, hon. Nyerere. He said - I will quote in English, "*Let us agree on something not just by words but in our hearts. If you are woken up at 2.00 a.m. and asked about the same issue, you should say, I agree.*"

With those few remarks, I want to support the Motion so that the work of this Assembly can continue, and so that the responsibilities we have been given by all East Africans are looked after.

The Speaker: Honourable Members, this Motion has taken us by surprise. I think you will agree with me that we need to dispose of it as soon as possible so that we go back to

the main business of today. I suggest that we do not continue with debate on this one.

I will now put the question - Hon. Susan, you did not furnish me with a written copy of the Motion. Okay, I will put it the way I understood it.

(*Question put and agreed to*)

(*The rule on quorum was suspended*)

- (*Applause*) -

The Speaker: Since we are now debating an issue after making a decision on quorum, I will make a few remarks. I am not debating, but I want to make a few remarks - (*Interjection*) -

The Counsel to the Community (Dr. Anthony Kafumbe) (Ex-Officio): On a point of information, Mr. Speaker -

The Speaker: Hold on, I will give you time to speak. Let me conclude my remarks.

One, this is the kind of a situation in which I believe honourable Members have made a decision and will continue to make decisions in abundance of caution. That is not the best way we would want to proceed, but we would make such a decision in extremely compelling circumstances. I also want to remind honourable Members, because this is a new Assembly, of some important rules, particularly Rule 93 that addresses issues of absence without leave. Rule 93 says:

93(1) Every Member shall, during the Session of the Assembly, or any special Sittings of the House, unless leave of absence has been granted to him or her by the Speaker..."

I want to note that if there is any Member absent today, no one has been granted such leave.

93(2) Except with the permission of the Speaker in writing, a Member shall not absent himself or herself from seven consecutive Sittings of the House during any period when the House is continuously sitting.”

I can also say that I have not granted any leave in writing to any Member who may happen to be absent today.

93(3) Where any Member is alleged to have infringed sub-rule (2), the conduct of such Member shall be referred by the Speaker to the Committee on Legal, Rules and Privileges, which shall consider the matter and report to the House.”

Honourable Members, go and read these rules as many times as you can comprehend them. We are a rule-based House and, certainly, going forward we will be guided by them. We have no other choice.

Hon. Opoka, you had moved a Motion, which had also been seconded. You can proceed.

(Resumption of Debate on the Motion on the Election of the EALA Commission)

Mr Opoka-Okumu: Thank you very much Rt. hon. Speaker. Let me now justify my Motion.

WHEREAS the *Administration of the East African Legislative Assembly Act, 2011* came into force on 6 July 2012;

AND WHEREAS the above said Act by the provisions of Section 3(1) establishes a Commission known as the East African

Legislative Assembly Commission, herein known as the Commission;

AND WHEREAS Section 3(2) of the Act provides that the Members of the Commission shall be composed of the Speaker, the Chairperson of the Council, who shall be an *ex-officio* Member, and two Members of the Assembly from each Partner State elected by the Assembly;

AND WHEREAS Section 5(1) of the Act provides that Members of the Commission shall be elected as soon as the Assembly is constituted;

AND WHEREAS Rule 83 provides as follows:

(1) Members of the Commission shall be elected as soon as the Assembly is constituted and shall comprise the Speaker, the Chairperson of Council, who shall be an *ex-officio* Member, and two Members of the Assembly from each Partner State, elected by the Assembly.

(2) The election of Members of the Commission shall be by secret ballot and in accordance with Section 3(2) of the *Administration of the East African Legislative Assembly Act, 2012*, and shall hold office for two and a half years.

(3) Nomination for Members of the Commission shall be forwarded to the Clerk by Members.

NOW THEREFORE, This Assembly do resolve as follows:

(1) To elect Members of the Commission from those duly nominated, pursuant to the provisions of Section 5 of the

Act, and Rule 83 of the Rules of the Procedures of this House.

(a) Republic of Kenya

(1) Hon. Muhia Wanjiku

(2) Hon. (Dr.) Oburu Oginga

(b) Republic of Rwanda

(1) Hon. Kalinda Francois Xavier

(2) Hon. Gasinzigwa Oda

(c) Republic of South Sudan –
(*Interruption*) -

Dr Arol Garang Aher Gabriel (South Sudan): On a point of information, for the Republic of South Sudan, when we were filling out the forms, we had hon. Dr. Gabriel Garang Aher and hon. Dr. Leonardo Itto Anne. However, I am now surprised that a name that was not in the form has appeared. I have already made that correction and handed it over. We need to take care of that before we proceed.

The Speaker: Hon. Garang, I already have that correction. I was going to make that announcement. It is duly corrected.

Dr Arol: Thank you.

Mr Opoka-Okumu: For the Republic of South Sudan, as the Speaker has already pronounced, it is duly corrected as informed by my good friend Gabriel.

(d) United Republic of Tanzania

(1) Hon. Nkuhi Fancy Haji

(2) Hon. Yahya Maryam Ussi

(e) Republic of Uganda

(1) Hon. Mbidde Mukasa Fred

(2) Hon. Nakawuki Susan Nsambu

Those who elected Members of Burundi to be elected to the Commission wrote to the Clerk to withdraw the names initially submitted.

Rt. hon. Speaker that is my justification for the Motion.

The Speaker: Thank you hon. Opoka. Let me first make a communication that you need to know about before you debate.

I have a letter, which is administrative. Since it is administrative, I have made a decision about it. I want to read it to you for the record.

It is dated 18 December 2017, and it is addressed to the Clerk, East African Legislative Assembly.

Notice that the United Republic of Tanzania is withdrawing the submitted proposals of Members to constitute the Commission and Committees.

Kindly refer to the above heading.

This letter is to notify you that the Tanzanian Chapter has withdrawn all nominations to constitute the Commission of the Assembly. Likewise, the Chapter has also withdrawn the list of Members submitted to constitute Committees and the Member to take the role of Committee Chair.

It is signed by Dr. Makame Abdullah Hasnuu, Chair, Tanzania Chapter.

Honourable Members, in our rules we do not have a position of Chapter Chair. This is an informal arrangement meant to facilitate internal organisation of the different Chapters. People who are trusted by their Members cannot assume the role of

communicating to the House on behalf of Members.

I have checked with the Clerk, and there is no communication from Members who had been nominated withdrawing their nominations - (*Applause*). So, the nominations from the United Republic of Tanzania remain valid.

Honourable Members, the proposal before the House is that this House, pursuant to the provisions of Section 3(2) and Section 5(2) of the *Administration of the Assembly Act, 2012*, and Rule 83(1) and (2) do elect Members to constitute the EALA Commission.

(Question proposed)

The Speaker: Yes, hon. Abdikadir...Excuse me, I think the Counsel to the Community had sought to address the House. I am sorry.

The Counsel to the Community (Dr. Anthony Kafumbe) (Ex-Officio): I thank you Rt. hon. Speaker. I had sought an intervention much earlier but that was not possible. I am getting concerned that as much as this is a new Assembly, we seem to be attracting problems. Really, it will be very sad for the deliberations of this Assembly to be challenged in court – (*Interruption*).

The Speaker: Hon. Counsel to the Community, now that you do not intend to address the matter that is open for debate...of course I understand where you are heading, and it is a valid concern, according to you, subject to what the House will decide. Let me give you an opportunity at a later point. However, now let us continue with the debate that is before the Assembly.

Mr Omar Abdikadir Aden (Kenya): Thank you Mr. Speaker for the opportunity. I support the Motion that we should proceed to put in place the Commission for the EALA.

It is by putting in place the Commission that a lot of the very essential work of this Assembly will commence, or be done.

I want to agree very much with your guidance that a Member can only individually write to your office to withdraw his or her personal or individual membership from this Commission because during the application, every Member who applied to this Commission made an application in writing, and he or she was seconded by people. We also have a Chapter Chair as Kenya, but I can confirm that this is not one of the mandates we have given him. A decision is made by a Member, and unless the Member decides to withdraw that by themselves, the Chapter Chair has absolutely no right to act on behalf of the given Members.

The Commission, hon. Speaker, will, among other things, put in place the Committees of the House and ensure that this House is able to perform its functions and duties. For that reason, there is no reason to delay this issue further. I propose to support this Motion.

I know that you have deferred the point that was being raised by the Counsel to the Community. However, at times I feel irritated to see persons, whose job should be to enable the facilitation of this House in undertaking its work, standing here as an obstacle to the work of this House. It is unacceptable. That might, in the very near future reading, the trend of the way things are going, lead to discussion of the conduct of persons here. This House has the powers to do so.

Mr. Speaker, as you lead us, and as I join my colleagues in congratulating you for the job you have been given to do, in which we stand with you as Members of this House, we are with you, and this House has taken the action to suspend Rule 12 so that we do this job.

Nothing else can get in your way and in ours. I support this Motion, and I thank you.

The Speaker: Hon. Kasamba and then hon. Fatuma Ndangiza, in that order.

Mr Mathias Kasamba (Uganda): Rt. hon. Speaker, allow me to take this opportunity to congratulate you for having taken the mantle of presiding over this House.

I stand up to support the Motion submitted by my colleague, hon. Chris Opoka. Without a Commission, the House is more or else incomplete, just as we had a stalemate yesterday. Without a presiding Speaker, we could not do business. It is very painful, and it pains my heart.

On the 18th of this month, all of us, elected by our Partner assemblies, affirmed on the oath of allegiance and not defiance, to give true and faithful service to the provisions of the Treaty. However, it is very unfortunate that we have been struggling for the past two days to put things right. I presuppose that however much you may get annoyed when you have a home, the solution is not to run away from your home. You have to come to the table, put your issues on the table and then life continues.

I stand to support the Motion to put in place a Commission that will facilitate the progress and the harmony we are searching. We know very well that we live in diversity. However, the purpose of cooperation is to sit together so that we discuss, even if we have differences. Let us talk, live together, be harmonious and continue to make sure that the people we represent and the trust we have been entrusted with continues to thrive to improve the lives of our people.

I beg to submit that I support the Motion so that we facilitate the process of the Assembly to continue.

Ms Fatuma Ndangiza (Rwanda): Thank you Mr. Speaker. Let me first take this opportunity to congratulate you on your election as the Speaker, and commit that we shall give you the necessary support as you take up this important position. I also realise that you still have a big challenge, especially in reaching out to our Members who are not with us, who have been boycotting for the past two days. I hope that with your wisdom, you will reach out, and with the support of the House, I hope we will be united as a family at the end of the day.

Having said that, I also want to add my voice to support the Motion on the election of the EALA Commission.

The Speaker: Thank you honourable Members. I do not see any other Member trying to catch my eye. So, I will put the question.

(Question put and agreed to)

(The Motion to constitute the EALA Commission was adopted)

- *(Applause)* -

The Speaker: Honourable Members, before we embark on the actual exercise of electing Members, let me remind you about a few important details on the Commission.

First of all, why do we have to elect a Commission before we do anything else? This is because it is the Commission that appoints Members of the Standing Committees, and Parliament works through committees. They are the heart of the work of Parliament. So, having a functional and fully

constituted Commission is an urgent business of this House. This is under Rule 83. I can read it for you for the record.

83(1) Members of the Commission shall be elected as soon as the Assembly is constituted, and shall comprise the Speaker, the Chairperson of Council who shall be an ex-officio Member, and two Members of the Assembly from each Partner State, elected by the Assembly.

83(2) The election of Members of the Commission shall be by secret ballot and in accordance with Section 3(2) of the *Administration of the Assembly Act, 2012* and shall hold office for two and a half years.

83(3) Nomination for Members of the Commission shall be forwarded to the Clerk by Members.

I would like to ask the Clerk and his team to facilitate the process of electing Members – *(Interjection)*.

Mr Adan Mohamed Nooru (Kenya): On a point of order, Mr. Speaker.

The Speaker: Who is that?

Mr Nooru: I would like to seek your guidance.

The Speaker: I think that for the next two or three days going forward, we should introduce ourselves before we speak. It is too early for us to know each name.

Mr Nooru: Thank you. My name is Adan Mohamed Nooru from Kenya Chapter. I would like to seek your guidance on a small issue, which you have communicated. There are two withdrawals, which have been

mentioned. One is from Tanzania, which came through the Chapter Chair. However, the withdrawal of Burundi has not been communicated properly. How did it come? Did it come from individual Members or from the Chair? We cannot apply double standards on the law. We should not accept the Burundi withdrawal and not accept the Tanzania one. I need a clarification because I do not have official communication from the Burundi side, apart from being told that they have withdrawn. What is the format? Is it the same format or a different format?

The Speaker: I think the omission was based on how the Communication was done as per the documents that we have. Those who nominated the Members from Burundi to be elected to the Commission wrote to the Clerk to withdraw the names initially submitted. That was not done by the Chapter Chair. For the record, once again, I have the letter written by the Chapter Chair from the Republic of Burundi but I have an annexure, a different document on which each Member has signed. So, while I disregarded the letter by the Chapter Chair, I found the letter by the Members, individually, valid as far as withdrawal is concerned. That is the difference.

Mr. Clerk and your team, go ahead.

The Clerk: Honourable Members, in accordance with the Act and the Rules, you have to vote by secret ballot. We have to go through a ballot. I do not know whether it is necessary to go through it chapter by chapter or we go row by row.

Mr Aden: Unless one country has three people, now that we know that every country has produced two people, is there a need for a vote? I seek your guidance because I can see that every country has complied and has only given two people. It would have been a

different case if Kenya had presented the names of three people.

The Speaker: Hon. Abdikadir, we cannot deviate from the rules. There could be that consensus but the vote can come up with different results. Therefore, we have to do it.

Mr Aden: I stand guided.

The Clerk: Since we know the Members, you can come and pick your ballot. Since there are no special numbers required, we will not record anything. You will tick up to two names for each chapter. You could also choose one name. Every chapter should have two members of the Commission. The ballot papers are arranged by chapter.

Ms Rose Akol Okullu (Uganda): Rt. hon. Speaker, maybe it is important that you clarify that either we tick all or we tick our chapter nominations.

Hon Members: All, all.

Ms Okullu: Yes, it is important that we all get to know this because I may tick two. Give us direction.

The Speaker: Let me explain that. It is a very important reminder. A Member of the Commission is elected by the whole plenary and not just people from the respective chapters. Therefore, you will tick all.

Ms Mugenyi Mary (Uganda): On further clarification, Mr. Speaker, given the fact that Members from Burundi have officially withdrawn individually in writing, if they happen to appear on the ballot paper, do we make a decision on them? Do we tick them or not?

The Speaker: They cannot appear on the ballot paper because they have formally withdrawn. Mr. Clerk, are they?

Ms Mugenyi: They seem to be there.

The Speaker: If they are there, that means that the ballot papers were done before the withdrawal was done.

- *(Loud consultations)* -

The Speaker: Allow me to consult so that I give proper guidance.

(The Speaker consulted with the Clerk)

The Speaker: I think the ballot paper that was distributed is the wrong one. It will be withdrawn and the correct one will be distributed.

Ms Fatuma Ibrahim Ali (Kenya): Mr. Speaker, every country has nominated two Members. We are expected to vote for them and yet we do not know them. Is it possible for the names to be read out so that we familiarise ourselves with the Members? I do not know them physically.

The Speaker: The names were read but the individuals were not recognised by the voters. So, from the Republic of Kenya, could you stand up for recognition?

(Ms. Wanjiku Muhia and Dr. Oginga Oburu stood in their places for recognition)

From the Republic of Uganda

(Ms. Susan Nakawuki Nsambu and Mr. Fred Mukasa Mbidde stood up in their places for recognition)

From the Republic of Rwanda

(Ms. Oda Gasinzigwa and Mr. Francois Xavier Kalinda stood in their places for recognition.)

From the Republic of South Sudan

(Dr. Gabriel Garang Aher Arol and Dr. Leonardo Itto Anne stood in their places for recognition.)

United Republic of Tanzania

(No Members from the United Republic of Tanzania stood up for recognition.)

We are addressing the issue of voting. The Members who were proposed are not here but are validly on the ballot. So, your wisdom will inform you how you will vote.

Thank you, honourable Members who are present, not particularly Members from the United Republic of Tanzania but all of you. Their presence is as important as the presence of anybody else.

Another correction on the new ballot paper - you have to excuse us because these people work under very serious stress – is on a mistake that you will find which advises you to tick one. However, you are advised to tick two names because we are electing two from each Partner State.

The Clerk: Let us begin again – *(Interjection) -*

Mr Paul Mwasu Musamali (Uganda): Mr. Speaker, I see like there is already a ballot paper in the ballot box.

The Speaker: I think we should try to move this process faster. It is not as complicated as we think.

(Voting commenced)

- *(Interjection) -*

Dr Arol: I think the correction has not yet been made on this form. The form is still reading Garang Alaak Gabriel. The correction that was supposed to be done has not yet been effected.

The Speaker: Honourable Member, the *Hansard* has captured the correction. We are facing a challenge of mastering our names. We have several honourable Members with the name Garang from South Sudan. However, we know the Garang who is in the ballot.

Dr Arol: Hon. Speaker, this is still the same name that we talked about earlier. We have Gabriel and Garang. We share two names.

The Speaker: Honourable Member, let us proceed this way. Let us first distribute the ballot papers to Members wherever they are seated. We will then ask them to correct the name on their ballot papers.

Dr Arol: Hon. Speaker, some Members know my name while some do not. So, I will probably go ahead and pronounce my name. If you have difficulties in writing it, I will spell it out for you. If you know my name already, my name is Gabriel Garang Aher Arol.

You should replace number two with Dr. Gabriel Garang Aher Arol.

Mr Garang Alaak Gabriel (South Sudan): Mr. Speaker, for Tanzania I am still seeing the two names of the Tanzanians on the ballot paper.

The Speaker: We said that for the United Republic of Tanzania, we still have candidates.

Dr Arol: So, did everybody get it?

Hon Members: Yes.

Dr Arol: Thank you very much.

Mr Musamali: Rt. Hon. Speaker -

The Speaker: Honourable Members, the exercise of voting is still on. So, when we seek to speak before we conclude the exercise, we risk disrupting the exercise. Hon. Musamali, wait until we finish the exercise.

Mr Musamali: Thank you.

(Voting continued)

The Clerk: Has every Member completed voting? Has every Member returned their ballot paper? Are we all done? If so, Sergeant-at-Arms, come over so that we empty the ballot box. We will empty the ballot box and declare the results in the order of total number of votes, spoiled votes and the votes that each Member received.

(The Clerk tallied the votes)

Declaration of Results.

The Clerk: There was no spoiled or blank ballot paper.

Ms. Muhia Wanjiku	35
Dr. Oginga Oburu	33
Mr. Francois Xavier Kalinda	35
Ms. Oda Gasinzigwa	35
Dr. Anne Itto Leonardo	34
Dr. Gabriel Aher Garang Arol	35
Ms. Nkuhi Fancy Haji	35
Ms. Maryam Ussi Yahya	35
Mr. Fred Musaka Mbidde	35
Ms. Susan Nakawuki Nsambu	35

The Speaker: Honourable Members, I therefore declare, hon. Wanjiku Muhia, hon. Dr. Oginga Oburu upon receiving the highest

number of votes as the duly elected Members of the EALA Commission representing the Partner State of Kenya.

I, therefore, declare hon. Kalinda Francois Xavier and hon Gasinzigwa, upon receiving the highest number of votes as the duly elected Members of the EALA Commission representing the Partner State of Rwanda.

I, therefore, declare hon. Dr. Leonardo Itto Anne and hon. Dr. Arol Garang Aher Gabriel, upon receiving the highest number of votes as the duly elected Members of the EALA Commission representing the Partner State of South Sudan.

I, therefore, declare hon. Nkuhi Fancy Haji and hon. Yahya Maryam Ussi, upon receiving the highest number of votes as the duly elected Members of the EALA Commission representing the Partner State of the United Republic of Tanzania.

I, therefore, declare hon. Musaka Fred Mbidde and hon. Nakawuki Susan Nsambu, upon receiving the highest number of votes as the duly elected Members of the EALA Commission representing the Partner State of Uganda.

- *(Applause)* -

Honourable Members, I congratulate you all for participating in this exercise. I, in a special way, congratulate the Members who have been elected to the EALA Commission. Note that we still have two vacancies. We hope that we will fill them in the nearest future. I will want to have an informal meeting with the Members who have been elected to the Commission, immediately after the adjournment, in the Speakers lounge.

I had promised the Counsel to the Community an opportunity to tell us

something that we do not know yet. However, I hope that it will not readdress issues, on which the House has taken conclusive decisions.

The Counsel to the Community (Dr. Anthony Kafumbe) (Ex-Officio): Thank you Mr. Speaker. I am aware that as the Counsel to the Community, I give advice, which you may accept or reject. However, let me say this. EALA is a rule-based organisation. I think, as much as possible, this may be seen in what is done, and not only in what is talked about. Let me use one example, with your permission.

If you look at the composition of the Commission under Section 3(2) of the *Administration of the EALA Act, 2011*, that composition is set out. It requires that there be representation from each Partner State. I am aware that under the issue of quorum, the Commission only needs a simple majority. However, when you have not fully constituted the Commission, it is not proper to say that the Commission will meet tomorrow or the day after and transact business. That will cause a problem. The same rules that we follow, under Rule 12(2) requires that at any time of a sitting, when a Member raises an issue about quorum, that it is ascertained. I appreciate that this is a new Assembly and that we will learn in the process, but I suggest we abide by the rules – *(Interjection)*.

Ms Nakawuki: On a point of order, is the CTC in order to mislead the House that a Member rose and raised an issue of quorum before this august House? Is he in order?

The Speaker: Is that what the CTC said?

Dr. Kafumbe: Yes, an issue about quorum was raised, but it was not followed to its logical conclusion.

The Speaker: Mr. Counsel to the Community, we are talking about the sequencing. There was a Motion to suspend the provision on quorum and there was an attempt to pre-empt the debate but the Speaker was not going to allow debate before the Motion was disposed of - *(Applause)*. I think you are not properly reflecting the records in the way we handled the situation – *(Interjection)*.

Mr Mukasa Mbidde: On further clarification, Rt. hon. Speaker, permit me to clarify further to the Counsel to the Community. In order of supremacy, the Treaty is the supreme law governing the operation needs of the East African Community, including the Assembly. It is supreme to the Administration of EALA Act, supreme to the Rules of Procedure, and supreme to the advice that he gives to the Community. It is also true that the same Treaty, under Article 57, provides for vacancies in the Assembly, particularly Article 57(1).

57(1) Subject to this Article, the Rules of Procedure of the Assembly shall make provision as to the number and composition of elected Members that shall constitute a quorum of the Assembly.

57(2) In reckoning the number of Members who are present for purposes of paragraph 1 of this Article, the person presiding shall not be taken into account.

Obviously, that is another one.

57(3) The Assembly may transact business notwithstanding that there is a vacancy among its Members, and the attendance or participation of any

person not entitled to attend or participate in the proceedings of the Assembly shall not invalidate those proceedings.

Rt. hon. Speaker, the Treaty is extremely loud on vacancies in this Assembly. The Treaty is aware that there will be a situation where there are vacancies. For example, if one of the Partner States is at war, the membership of that Partner State in a precarious situation, one cannot demand for them to be present. Therefore, the Treaty is very clear, one, that there can be a vacancy but that does not invalidate the proceedings.

Two, that persons that are not entitled to attend, can attend. That is the import of this provision. Those two do not invalidate the proceedings of the Assembly. That is the premise under which we invite non-Members of this Assembly like members of the Summit, to attend.

Finally, I would like this House to know that we recognise, in no uncertain terms, the presence of the Counsel to the Community in this Assembly. Before this Assembly, who is the Counsel to the Community? When you look at Chapter 10 of the Treaty, the Office of the Counsel to the Community is among the offices of the Secretariat and the staff of the Community. That office does not require him to be here.

The only office that requires him to be here is that of the *ex officio* Member of this Assembly. Therefore, he comes here as a Member of this Assembly, with equal powers. It is only when we get to vote that he does not get to vote. Therefore, the advice he gives to the Community is a matter of administration. Here, we are not receiving administrative opinion. Here, the Counsel to the Community participates in debates. Here, the alpha and omega of this Assembly to give

imprimaturs, final and conclusive decisions, is the Rt. hon. Speaker, who rules after debate, decisions and opinions are given by all Members, including the Counsel to the Community.

Rt. hon. Speaker, you have a world of prerogative with which to rule. While in that Chair - the courts have already given a ruling to the effect that the ruling of the Speaker of the Assembly is equivalent to the decision of a judge – (*Applause*) – to the extent that if you disagree with the Speaker's ruling - the Community is aware that there can be disagreements - the East African Court of Justice is provided, not as a threat, but as a forum for resolution of disputes. (*Applause*)

We have been there, Rt. hon. Counsel to the Community. You have defeated me in some of the cases. I have also defeated you in some of them. That is the proper forum. In my opinion, the House is progressing with all powers available.

Rt. hon. Speaker, it is with due respect that I ask this House to progress unconcerned.

The Speaker: Honourable Members, the intervention by the Counsel to the Community was not by way of Motion. Therefore, it will not end through voting. It was just an interaction. There was a point of order raised. I do not want to rule the Counsel to the Community out of order but I want to put it on record that all Motions that have been moved in this House were properly moved, and decisions were properly taken.

Therefore, the misrepresentation you have made before the House was misleading. However, I believe that it was innocent.

COMMUNICATION FROM THE CHAIR

The Speaker: Honourable Members, I want to congratulate you upon this successful First

Sitting of the Fourth EALA – (*Applause*). We have started in a very special way, with challenges but at the same time in a very strong way – (*Applause*). The strong way in which we have started will be the basis upon which we will resolve the challenges that are ahead of us – (*Applause*).

I am particularly impressed, and I believe that you are all equally impressed, by the quality of debate from our new Members, the young people in this House, hon. Seron and hon. Kennedy. I think the young people of East Africa are well represented in this House. Thank you very. (*Applause*)

Let me remind you that I requested to meet Members who have been elected to the Commission for an informal discussion right after the adjournment.

Honourable Members, I wish you journey mercies as you travel back to home. I wish you a merry Christmas and a prosperous New Year. We should communicate to you in the shortest time possible about the next activity, and when it will take place. The details will be communicated to you.

I also want to remind you that there are other activities outside plenary. So, when I bid you farewell, it is because we will not have another plenary but not because we will not meet again.

ADJOURNMENT

The Speaker: Honourable Members, I now adjourn the House *sine die*.

(*The Assembly rose at 1.20 p.m. and adjourned sine die.*)