

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY
OFFICIAL REPORT

Wednesday, 6th December, 2017

The House met at 5.28 p.m.

[The Speaker (Hon. (Mrs.) Mwangangi) in the Chair]

PRAYERS

Hon. Speaker: Am I bowing to a half House? Where are the members on this side? I am assuming they are coming in.

COMMUNICATION FROM THE CHAIR
CONSIDERED OPINION ON PEOPLE'S ASSEMBLIES

Hon. Speaker: Hon. Members, the Chair has communication which arises from the business of yesterday; there was a notice of motion by the Hon. Majority Leader, which resulted into a point of order being raised as to the legality of the motion and I gave the Hon. Members time to ventilate on that aspect after which I indicated that I would give a considered opinion today.

Let me apologize, I was not able to do it at 2.30 p.m. It took a while. When you look at the considered opinion finally, you will appreciate that it needed the time I have taken on it and that is why I am giving it now.

Hon. Members, I have the communication it is going to be circulated to you and it is also going to be on the HANSARD for public consumption. This is the considered ruling of the Speaker dated 6th December, 2017.

Introduction;

In parliamentary procedure, a considered ruling of the Speaker is founded on the parliamentary tradition of what has come to be known as Speakers' Rules.

Over the years the sum total of rulings from Speakers has helped to shape the way in which the House conducts its business. When you finally get the write up you will note that, I have put footnotes so that whatever reference I am making you will be able to cross refer under the footnotes. Speakers' Rulings have either settled issues or encouraged the House to take steps to resolve the issues.

Speakers' Rulings deal with the procedural acceptability of some matter before the House and address mainly procedural issues raised on a point of order or a question of privilege and seek to give directions to the House.

In arriving at a ruling on a procedural point, the Speaker must never act whimsically, impulsively, erratically or capriciously but must be guided by the Constitution and statutes,

journals and Debates of Parliament which form Parliamentary precedents, practices and usages and precedents of Courts as well.

In the considered ruling contained herein, I have sought guidance from the above repositories of information and more so guided by the Standing Orders of this Assembly which states the following; 'the decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, Speaker procedures and traditions of the Assembly and the Parliament of Kenya and other jurisdictions to the extent that these are applicable to the Assembly.

I have in particular found great guidance in the Constitution of Kenya, 2010 particularly Chapters 1 on the sovereignty of the people and supremacy of the Constitution; Chapter Four on the Bill of Rights; Chapter Six on Leadership and Integrity; Chapter Seven on representation of the people; Chapter Eight on the Legislature; Chapter Ten the Judiciary; Chapter Eleven Devolved Government; Chapter Sixteen on Amendments of the Constitution; Chapter Seventeen on General Provisions: enforcement interpretation and construing of the Constitution; various statutes that have been enacted in Kenya in the implementation of the Constitution and the Standing Orders of this Assembly, among others.

Further guidance has been available to me from past rulings of our national parliament particularly those made under the current constitutional dispensation and decisions of the superior courts of Kenya made in the interpretation of the Constitution of Kenya 2010 and the Supreme Court of United States of America among others.

The County Assembly of Machakos is a creature of the Constitution of Kenya, 2010;

The Constitution provides for the establishment of a County Government for each county consisting of a County Assembly and a County Executive. Its membership comprises the elected members, special seat members to address the 2/3 gender rule, members of marginalized groups and the Speaker who is an *ex-officio* member.

The powers and mandate/roles of the Assembly are also provided for in the Constitution: the three major roles of the County Assembly are representation of the people, legislative and oversight over County Executive.

The County Governments Act No. 12 of 2012 exemplifies the oversight function of the Assembly to include vetting and approving nominees for appointment to county public offices, approving the budget and expenditure of the county government, approving borrowing by the County government, approving county development planning and perform any other role as may be set out under the Constitution or legislation.

The Constitution mandates Parliament to enact legislation providing for the powers, privileges and immunities of County Assemblies, their committees and members. Hon. Members, all these I am citing is going to become relevant when I come to my decision.

In compliance with this constitutional requirements, Parliament passed the County Assemblies Powers and Privileges Act No. 6 of 2017 which provides that 'no civil or criminal proceedings may be instituted in any court or tribunal against a member of a county assembly by reason of any matter said in any debate, petition, motion or other proceedings of a county assembly.'

Further, the same Act states that 'no proceedings or decision of a county assembly or the committee of Powers and Privileges acting in accordance with this Act shall be questioned in any Court'

Brief background

On 9th November, 2017 Hon. Francis Ngunga, Leader of the Majority Party, gave a notice of motion under the Standing Orders of the Assembly in the following terms:

Aware that on 8th August, 2017 and 26th October, 2017 IEBC conducted illegal, unconstitutional and undemocratic presidential elections;

Recognizing the fact that the turnout for the presidential elections was 30 per cent or thereabouts of the total number of all the registered voters in Kenya and therefore the President cannot, by delegation or otherwise, be properly vested with the people's sovereign power and authority;

Observing that the exercise of the executive authority by the President has in the past few years re-introduced the trappings of the imperial presidency and despotic tendencies in the conduct of public affairs;

Knowing that Parliament has been legislating unconstitutional, illegal, undemocratic and draconian laws, and in particular laws that contravene the Bill of Rights and the principles for the electoral system and;

Acknowledging the sovereign power of the people of Kenya, the supremacy of the Constitution of Kenya 2010 and the sovereign right or authority of the people to determine the form of governance in Kenya.

The House resolves as follows;

- a. The presidential elections held on 8th August, 2017 and 26th October, 2017 were each and all invalid, null and void; and no government formed and/or president declared as a consequence thereof, and considering the negligible turnout in the presidential elections held on the latter date, can have Constitutional authority or legitimacy to govern;
- b. A People's Assembly be formed to discuss and determine the affairs of the country and recommend a pathway towards and for the achievement of the promise, aspirations, objectives and rights and freedoms provided by the Constitution of Kenya 2010;
- c. The House and its membership will participate in the proceedings of the People's Assembly and will constitute a special college for the appointment or election of members, delegations and observers to the People's Assembly;
- d. A truly independent electoral and boundaries commission be established with a view of holding a fresh presidential election on or before 9th February, 2018.
- e. The action and performance of Constitutional commissions including the Independent Electoral and Boundaries Commission, the National Police Service, the National Intelligence Service, the Public Service Commission, the Ethics and Anti-Corruption Commission and the National Cohesion and Integration Commission be reviewed with the purpose of ensuring that the said commissions are independent to enable them protect the sovereignty of the people and to promote Constitutionalism;
- f. Appropriate measures be undertaken to safeguard and promote devolution and the organs and instruments of devolution including county assemblies and county governments (sic) and secure their financial viability and security with the ultimate objective of the creation of large autonomous devolved units within one indivisible sovereign nation;

- g. A review of the Constitution of Kenya 2010 be undertaken to reform the structure of the Executive and Parliament and devolution and to reinforce concrete measures for the promotion of inclusivity, the welfare of the marginalized, advancement of women and youth, eradication of corruption and poverty and to secure social justice, equality and fairness.

On its face the motion refers to various rights, freedoms and principles provided for in the Constitution of Kenya, 2010, including but not limited to the sovereign power of the people; the supremacy of the Constitution; the Bill of Rights; the sovereign right or authority of the people to determine the form of governance in Kenya; the electoral system; the independence and performance of various independent commissions and service; devolution and review of the Constitution. It will however be noted that the Motion is silent on the specifics of the provisions of the Constitution or statute(s) upon which it is premised.

Upon the tabling of the of the Notice of Motion on the 9th November, 2017, the Hon. Speaker committed it to the House Business Committee for balloting and gave directions that the notice be circulated to all the Hon. Members in good time.

At the time when the notice of motion was given, the House was scheduled to go on a short recess from 9th November, 2010 to 28th November, 2010 and so the motion could only be debated until after the 28th November, 2017.

In the intervening period, on 20 November, 2017, the High Court of Kenya sitting in Kitui High Court in Petition No. 7 of 2017: Counties Development Group versus the Attorney General, the Senate, the National Assembly, the Kitui County Assemblies and 46 other County Assemblies issued the following Orders:

- a. That the notice of motion application dated 20th November, 2017 is hereby certified urgent and service thereof dispensed with in the first instance;
- b. That an interim conservatory order be and is hereby issued restraining the 4th to 50th respondents and the members of the County Assemblies from constituting a special college for the appointment of election of members, delegations and observers to the People's Assembly, or in any way participating in the People's Assembly, implementing the motions tabled and moved before the County Assemblies, proposing, ratifying or adopting recommendations for amending, modifying or in any way changing the Constitution without complying with Article 257 of the Constitution pending inter parties hearing of the application on 25th January, 2018;
- c. Leave is hereby granted to the Petitioner/Applicant to serve the Orders herein on the Respondents and notice of filing the Petition by substituted service in the Daily Nation and Standard Newspapers.

It is apparent that thereafter the Orders were publicized the Daily Nation and Standard newspapers of 22nd November, 2017 for purposes of service. The House Business Committee initially balloted the motion for 29th November, 2010 at 2.30 p.m. when the mover of the motion informed the House that there was a Court Order (touching on the Motion) which had been issued by a Kitui Court and he requested for time to seek legal advice on it and his request was granted.

Thereupon the Hon Speaker was availed a Newspaper advertisement in the Standard Newspaper of 22nd November, 2017 and upon perusal of the same and appreciation of its contents,

directed the mover of the motion to take time and seek legal advice in view of the Court Order then referred the motion to the back to the House Business Committee for balloting.

The motion was placed before the House Business Committee on 4th December, 2017 but was not balloted as the mover of the motion had not availed the legal advice that the mover had on 29th November, 2010 offered to provide and the mover was also absent at the time when the business was reached by the House Business Committee.

On Tuesday, 5th December, 2017 at 9.30 a.m. the motion was listed again before the House Business Committee and was balloted for Tuesday, 5th December, 2017 at 2.30 p.m.

On 5th December, 2017 when the Motion came up on the floor of the House, an objection over the Motion was raised at the onset by Hon. Moffat Maitha on a point of order on the basis of its constitutionality or legality in view of the Court Orders referred above.

The Hon. Speaker gave the Hon. Members the opportunity to ventilate on the objection raised by Hon. Moffat Maitha and the following Hon. Members made speeches specifically on the issue: Hon. Francis Ngunga, Hon. Justus Kiteng'u, Hon. S. Mwanthi, Hon. Cosmas Masesi, Hon. Margaret Mwikali, Hon. F. Kalumu, Hon. G. King'ori, Hon. Alice, Hon. A. Kamitu, Minority Party Leader, Hon. J. Katumo, Hon. Nziva, Hon. Johana, Hon. Caleb Mule, Hon. Chair of Chairs Mr. Museku, Hon. J. Ndawa, Hon. Brian Kisila, Hon. T. Mulatya, Hon. Angela, Hon. B. Mueni, Hon. T. Kaloki, and Hon. Irene. Quite a sizeable number of Hon. Members.

From the speeches of these members, I have identified the following issues for determination;

- a. Whether there is an Order of the High Court touching on the motion and if so, which Court?
- b. What is the purport of the Order?
- c. Whether the said Order relates to the Machakos County Assembly?
- d. Whether the Order bars the Assembly from debating the motion?
- e. Whether the Order was served upon the Assembly?
- f. Whether the High Court has power to suspend the Standing Orders of the Assembly at play in respect of the motion?
- g. Whether the High Court has powers to stop the Assembly from exercising the freedom of speech and debate in the House provided for in Article 196(3) of the Constitution as implemented in Sections 8, 10 and 11 of the County Assemblies Powers and Privileges Act No. 6 of 2017?
- h. What actions may the Assembly take with regard to the Order in the light of the provisions of Article 1(2) of the Constitution on the sovereign power of the people which they exercise through their democratically elected representatives?

To enable me address the above issues, I directed that I would make a communication to the Assembly on the matter on 6th December, 2017 at 2.30 p.m.

My consideration of the matter;

In considering the matter, I took cognizance of the following;

On 13th March, 2017 the High Court in *Nairobi Petition No 62 of 2017: Okiya Okiit Omtatah versus the National Assembly* (Justice E. Chacha Mwita) issued conservatory Orders restraining the National Assembly Committee on Finance, Planning and Trade from further proceedings and debating the impeachment of Auditor General Edward Ouko on a petition filed in Parliament and whose hearing had started, pending the hearing and determination of the case.

Hon. Members, I am being advised and I was not looking and it is approaching 6 p.m. and-

--

Hon. Museku: Yes, Madam Speaker, actually I wanted to stand on a point of order.

Hon. Speaker: Hon. Museku.

Hon. Museku: Thank you, Madam Speaker.

Pursuant to Standing Order 27(3);

Madam Speaker, aware that Standing Order 27(2) provides that the House shall adjourn its business at 6.30 p.m. or 7.00 p.m. on allotted day;

Aware that Standing Order 27(3)(a) provides for extension of time and aware that Standing Order 27(4) provides that motion to extend time be moved at least 30 minutes before the time appointed for adjournment;

Madam Speaker, I wish to move the motion that the House resolves to extend its sitting time until all business in the Order Paper is exhausted and finalized.

(Applause)

I call upon the Hon. Peter Mutiso to second that.

Hon. P. J. Mutiso: Thank you, Madam Speaker. I stand here to second that request, so as the members to finish the agenda which is in our hands. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Members. Now, I remove the hat of reading a considered opinion and wear that of an ordinary Speaker.

(Question proposed)

(Question put and agreed to)

Continuing, Hon. Members, I was reading a further case I considered on this ruling. On 14th March, 2017 Justice George Odunga granted similar Orders in *Judicial Review Application No. 108 of 2017: Mr. Edward Ouko versus the National Assembly of Kenya and Others*. On those developments, the National Assembly Committee on 14th March, 2017 resolved to suspend all scheduled meetings related to the Petition as ordered by the courts and sought the guidance of the Speaker.

It is expressed in the report of the House that the Committee suspended its proceedings with respect to the Petition in order not to be acting in defiance of an Order of the Court. I have given a citation where that is. After the matter was brought to the attention of the Speaker, he directed that he would rule on a later day whether the National Assembly will obey the Court Order.

When the matter came finally came before the National Assembly, various members spoke on it seeking guidance from the Speaker and from the speeches, the Speaker isolated several issues for determination, some of which, briefly, were whether the High Court has power to impede the National Assembly from considering a petition and whether the High Court has power to suspend

the Standing Orders of the Assembly and whether the High Court has powers to stop Parliament from exercising the freedom of speech and debate; whether the High Court has powers to impeded the National Assembly and its Committees from exercising oversight over state organs; whether the present Orders issued by the High Court were lawfully made and issued in good faith as contemplated in Article 160(5) of the Constitution; what actions may the National Assembly take with regard to the decisions of the High Court in the light of the provisions of Article 1(2) of the Constitution.

The Hon. Speaker gave his considered ruling on Tuesday, 21st March, 2017 at 2.30 p.m. as a communication from the Speaker titled 'considered ruling: petition on removal of Mr. Edward Ouko as the Auditor General. I have given the citation where that material is.

The Hon. Speaker, addressed the House at length on the provisions of the Constitution which obligates Parliament to protect the Constitution and promote democratic governance; privileges of the House and its Committees; exercise of judicial powers; interpretation of the Constitution and the doctrine of separation of powers.

The Hon. Speaker cited the Constitution at length on separation of powers to the effect that different arms of the government are divided in persons and functions so as to safeguard liberties and guard against excesses of the other. He further quoted the 'father of the principle of separation of power, a French person called Montesquieu who expressed himself in 1748 in the following terms; when legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty...there is no liberty if the powers of judging is not separated from the legislative and executive arms...there would be an end to everything, if the same man or the same body were to exercise those three powers.

The Hon. Speaker observed that, and I agree with him entirely, this way Parliament is allowed to give voice to the will of the people and the Judiciary ensures that Parliament remains faithful to the Constitution.

The Hon. Speaker, after quoting the above, then then proceeded to state as follows by way of his considered opinion;

- i. I have since then instructed the Assembly lawyers to challenge the Order as this is the avenue to express disagreement with judicial findings and also give the court opportunity to hierarchically express itself on the question of separation of powers,
- ii. In respecting the Court Orders, the Committee continues to suspend its investigation on the specific grounds covered in the Order but the committee to report on the proceedings up to 13th March, 2017.
- iii. That the calculation of time granted to the committee in respect of the grounds in the order also remain suspended.
- iv. The court Order does not amount to a blanket order restraining the Assembly on any other matter outside the petition.

Now, my considered ruling on the issues for determination on the matter before this House. Remember, I set out issues for determination and the first one is;

- a. Is there an Order of the High Court touching on the Motion and if so, which Court? My answer: Yes, the Court is Kitui High Court.
- b. What is the purport of the Order? My answer: the gist of the Order is THAT an interim conservatory order be and is hereby issued restraining the 4th to 50th Respondents and the members of the County Assemblies from constituting a special college for the appointment of election of members, delegations and observers to the People's

Assembly, or in any way participating in the People's Assembly, implementing the motions tabled and moved before the County Assemblies, proposing, ratifying or adopting recommendations for amending, modifying or in any way changing the Constitution without complying with Article 257 of the Constitution pending inter parties hearing of the application on 25th January 2018. I have emphasized in bold because I felt it is necessary for purposes of this communication.

- c. Whether the said Order relates to the Machakos County Assembly? My answer is yes. Machakos County is one of the Assemblies named as Respondents.
- d. Whether the Order bars the Assembly from debating the motion? My answer: a keen reading of the Order indicates that it does not bar the Assembly *per se* from debating the motion.

(Applause)

The order, which I again reproduce for emphasis, restrains the 4th to 50th Respondents and the members of the County Assemblies from constituting a special college for the appointment of election of members, delegations and observers to the People's Assembly, or in any way participating in the People's Assembly, implementing the Motions tabled and moved before the County Assemblies, proposing, ratifying or adopting recommendations for amending, modifying or in any way changing the Constitution without complying with Article 257 of the Constitution.

In my considered and respectful view to the Court that issued the Order, the aspect of the Order that restrains the Assemblies from implementing the motions tabled and moved before the County Assemblies can never have been intended by the Court to place a blanket muzzle over the Assembly in the conduct of its business as that would be out rightly unconstitutional.

(Applause)

In this regard, I am guided by the decision of the Hon. Speaker of the National Assembly in the considered ruling referred hereinabove where he stated 'respecting the Court Orders, the Committee continues to suspend its investigation on the specific grounds covered in the Order but the committee to report on the proceedings up to 13th March, 2017.'

- e. Whether the Order was served upon the Assembly? My answer is yes. The service was effected by substituted service of advertisement in the Standard and Daily Nation newspapers of 22nd November, 2017.
- f. Whether the High Court has power to suspend the Standing Orders of the Assembly at play in respect of the motion? My answer; while addressing his mind on this issue, the Hon. Speaker of the National Assembly held that courts ought not call into question internal decisions of Assemblies and cited the US Supreme Court in Marshall Field & Amp Co versus Clark. The citation of that case is also indicated.

The Supreme Court of Kenya in Speaker & Another versus Attorney General & 4 Others, the citation is also given, held that the Court cannot supervise the workings of Parliament and the institutional comity between the three arms of government must not be endangered by the unwarranted intrusions of one arm by another.

Further, the high Court in Republic versus National Assembly Committee of Privileges & 2 others *ex-parte* Ababu Namwamba held that it would not interfere with the internal business of the Legislature. I associate myself with the holding of those Courts and of the Speaker of the National Assembly. Hon. Members, you appreciate it is a little bit hot.

- g. Whether the High Court has powers to stop the Assembly from exercising the freedom of speech and debate in the House provided for in Article 196(3) of the Constitution as implemented in Sections 8, 10 and 11 of the County Assemblies Powers and Privileges Act No. 6 of 2017? My answer is No.

(Applause)

The doctrine of the freedom of speech of debate, privileges and immunities in parliament is core to the very existence and functions of the Assembly. The Hon, Speaker of the National Assembly, citing Article 117 of the Constitution pronounced himself on this in the considered ruling referred herein to the effect that 'underlying the constitutional doctrine of parliamentary privilege is the recognition that the privileges facilitate the Assembly's business for efficiency and effectiveness of the Assembly in the performance of its role. No Court Order should restrict or prohibit parliamentary privilege.'

- h. What actions may the Assembly take with regard to the decisions of the High Court in the light of the provisions of Article 1(2) of the Constitution on the sovereign power of the people which they exercise through their democratically elected representatives sitting in this assembly? Answer: Noting that the Assembly was made a party in the case that gave the order which we are dealing with, the Assembly may be minded to take action in the case firstly, to defend itself and secondly to seek a vacation or variation of the Orders to enable the Assembly pursue the motion to its logical conclusion in view of the great public interest in the motion.

Dated at Machakos this 6th day of December, 2017 by myself. Thank you, Hon. Members.

(Applause)

Mr. Clerk, proceed.

MOTIONS

FORMATION OF PEOPLE'S ASSEMBLY

(Hon. Ngunga 05.12.2017)

(Resumption of Debate on the Motion tabled on 9.11.2017)

Hon. Speaker: Hon. Members, under this Order, we have a motion by Hon. Francis Ngunga, the Leader of Majority.

Hon. Ngunga: Thank you, Madam Speaker, and thank you, Madam Speaker again for that very informed ruling. I had sought that because I knew that I was on the right side of the law. Madam Speaker, I want to use this opportunity to ask the rest of the NASA affiliate

Assemblies that are dilly-dallying and not ready to move this motion, to pick that informed ruling and use it in form of forming these Assemblies.

(Applause)

Madam Speaker, guided by your wisdom therefore, I place my motion for deliberation by this House and adoption.

So, aware that on the 8th August, 2017 and 26th October, 2017, IEBC conducted illegal, unconstitutional and undemocratic Presidential elections;
Recognizing the fact that the turnout for the Presidential elections was 30 per cent or thereabouts as the total number of all the registered voters in Kenya and therefore the President cannot, by delegation or otherwise, be properly vested with the People's sovereign power and authority;
Observing that the exercise of the executive authority by the President has in the past few years re-introduced the trappings of the imperial presidency and despotic tendencies in the conduct of the public affairs---

(Loud consultations)

Knowing that the Parliament has been legislating unconstitutional illegal and democratic draconian laws and in particular laws that are---

Hon. Speaker: Hon. Kamitu, what is the point of order?

Hon. Ngunga: Oh, there is one?

(Laughter)

Hon. Kamitu: Madam Speaker, my point of order is very constitutional and this is in regard to the motion on paragraph 1, that the Presidential election held on 8th August, 2017 and 26th October 2017 were each all invalid and this Country is very much aware, the Assembly is very much aware that on 26th August, elections was held---

Hon. Speaker: Point of information. Please resume your seat Hon. Kamitu.

Hon. Masesi: Thank you, Madam Speaker. I just want to inform the Member that, this is the view of the NASA coalition. Remember that this is the view of the NASA coalition, it is not about the Kenyans.

Hon. Ngunga: Thank you, Madam Speaker. I beg to continue---

Hon. Speaker: Are you informed, Hon. Kamitu?

Hon. Kamitu: I have not been informed.

Hon. Ngunga: Acknowledging---

Hon. Speaker: Hon. Ngunga, just a moment. What is the issue?

Hon. Kamitu: There is no point of information because it is a point of order that I had moved to the mover of the motion because the elections were held, Madam Speaker, on 26th and on 28th, the President was constitutionally declared as the President of Kenya. So, in this section, it is even seditious, Madam Speaker, that---

Hon. Kiteng'u: Point of order, Madam Speaker.

Hon. Kamitu: That the country has got---

Hon. Speaker: Let the Member first finish.

Hon. Kamitu: Yes, let me finish. Madam Speaker, it is very clear that the Kenyan Government had an election on 26th and if I may repeat myself, on 28th, he was declared as the President of this nation. So, in this regard, on this motion---

Hon. Ngunga: Point of order, Madam Speaker. Is it in order for the Minority Leader to intervene when I am reading the motion? Madam Speaker, it is procedural that the mover of a motion is given time, he moves the Motion then the House is given out for debate.

(Applause)

At this point, Madam Speaker, as it has been the practice---

Hon. Speaker: Hold on, Hon. Majority. As a matter of fact, a point of order is never explanatory. It is very brief and to the point. So, can you allow the mover to finish moving the motion and let us debate it?

(Applause)

Hon. Ngunga: Thank you, Madam Speaker.

Hon. Kamitu: Point of order, Madam Speaker.

Hon. Speaker: Carry on.

Hon. Ngunga: I think from the opinion, Madam Speaker, you have just given us, I think this House must be guided by rules and procedure. When I am.....Madam Speaker---

Hon. Speaker: I am not allowing points of order. Let us debate the matter when it is now---

Hon. Ngunga: Acknowledging the sovereign power of the People of Kenya, the supremacy of the Constitution of Kenya 2010 and the sovereign right authority of the people to determine the form of Governance in Kenya, this House resolves the following;

1. The Presidential Elections held on 8th August, 2017 and 26th October, 2017, were each and all invalid, null and void and no Government formed under or President declared as a consequence thereof and considering the negligible turnout in the Presidential Elections held on the latter date can be constitutional authority or legitimacy to govern.
2. A People's Assembly to be formed to discuss and determine the affairs of the country and recommend a pathway towards and for the achievement of the promise, aspirations, objectives, rights and freedoms provided by the Constitution of Kenya, 2010.
3. The House and its Membership will participate in the proceedings of the People's Assembly and will constitute a special college for appointment or allocation of Members, delegation and observance of the People's Assembly.
4. A truly Independent Electoral and Boundaries Commission be established with a view of holding a fresh Presidential election on or before the 9th February, 2018.
5. The action of and performance of constitutional commissions including the Independent Electoral and Boundaries Commission, the National Police Service Commission, the Ethics and Anti-Corruption Commission and the National Cohesion and Integration Commission be reviewed with the purpose of ensuring that the said Commission are independent to enable them protect the sovereignty of the people and to promote constitutionalism.
6. Appropriate measures be undertaken to safeguard and promote devolution and the organs and instruments of devolution including County Assemblies and County Governments and their financial viability and security with the ultimate objective of the creation of large autonomous devolved units within one independent sovereign nation.
7. A review of the Constitution of Kenya 2010 be undertaken to reform the structures of the Executive and Parliament and devolution and to reinforce concrete measures for the promotion of exclusivity, the welfare of the marginalized, advancement of women and youth, eradication of corruption and poverty and to secure social justice, equality and fairness.

(Applause)

Madam Speaker, I therefore ask Hon. Justus Kiteng'u to second this Motion.

Hon. Maitha: Point of order!

Hon. Speaker: What is the point of order Hon. Maitha?

Hon. Maitha: Madam Speaker, in your ruling, you said this Assembly should find ways to vacate the order and after you said that the Majority Leader rose up and started bringing the motion for discussion.

Hon. Speaker: Hon. Maitha, let me refer you to the ruling.

Hon. Maitha: Madam Speaker, are we being forced to listen?

Hon. Speaker: I am referring you to the ruling which you have referred to.

(Loud consultations)

Let me just refer to the ruling which you have just referred to. Remember, I was relating to the decision of the National Assembly's Speaker. I indicated this. From the question of whether, that is 'd' and the paragraph is 39(d), 'whether the order bars the Assembly from debating the motion? The answer is that, 'a keen reading of the order indicates that, it does not bar the Assembly *per se*---

(Applause)

....from debating the motion but it bars the Assembly from constituting a special college for the appointment for the election of Members. It bars the Assembly from delegations and observers to appoint constituting delegations and observers to the People's Assembly. It bars the Assembly in any other way participating in the People's Assembly; not forming the People's Assembly. It bars the Assembly from implementing the motions.

(Applause)

From implementing the motions tabled and moved before the County Assemblies in respect of the motion. It bars the Assembly from proposing, ratifying or adopting recommendations to amend or modify the constitution without complying with Article 257 of the Constitution.

(Applause)

The minute we get there, I will not allow it.

Hon. Kiteng'u: Thank you, Madam Speaker. I do second the motion and I will give few points. As you know, Madam Speaker, on 8th August, Kenya did election whereby the Chief Justice nullified the Presidential elections and the election also was rather again to take place on 26th---

(Applause)

.....and as you know, Madam Speaker, on 26th NASA team did not participate in the election. Thank you, Madam Speaker.

Hon. Speaker: Hon. Members, may I propose the question, I notice it is as per the order of the Court.

(Question proposed)

That is the proposed question in line with the order and the considered opinion that I have just given.

Hon. Kamitu: Point of order.

Hon. Speaker: Point of order, Hon. Kamitu.

Hon. Kamitu: Madam Speaker, I need to be guided, you have just mentioned, you have guided the House that---

Hon. Ngunga: Point of order, Madam Speaker.

Hon. Speaker: Just a moment.

Hon. Kamitu: I stand to be guided, Madam Speaker. I am worried that you are saying that you want to put the question and---

Hon. Speaker: Not putting; proposing.

Hon. Kamitu: Proposing to put a question. Procedurally, you are supposed to---

Hon. Ngunga: Point of order, Madam Speaker.

Hon. Kamitu: Madam Speaker, I stand to be guided.

Hon. Speaker: Hon. Ngunga. On a point of order?

Hon. Ngunga: Yes, Madam Speaker. I want to draw the attention of the Minority Leader that when you rise on a point of order, you are raising on a Member who is on the floor. The Speaker, is not a Member. So, now, I was wondering who is disorderly, who was disorderly?

(Applause)

Because you must quote the Member who is disorderly at least for that Member to be in order. Thank you, Madam Speaker.

Hon. (Ms.) Mueni: Point of information.

Hon. Speaker: Hon. Mueni.

Hon. (Ms.) Mueni: Thank you, Madam Speaker. I think you have to put the question that, we have passed the People's Assembly---

(Laughter)

Because, Madam Speaker, the motion has already explained itself and I do not know whether Hon. Kamitu can accept this motion. I think he is wasting his time here; he has to follow his people. That is important. Thank you, Madam Speaker.

(Laughter)

Hon. Speaker: Hon. Mueni, you are being out of order because Hon. Kamitu is in this House.

Hon. (Ms.) Mueni: I apologize, Madam Speaker, Sir.

(Laughter)

Hon. Speaker: Hold on. Do not disturb the Chair. Hon. Kamitu.

Hon. Kiteng'u: Point of information.

Hon. Speaker: No point of information when the Chair is talking, Hon. Kiteng'u.

Hon. Kiteng'u: Yes, Madam.

Hon. Speaker: Refresh your mind on the Standing orders. Hon. Kamitu is here as a matter of right so he is not going to follow anybody. He is seated here to debate this motion. Any issues? Hon. Kieti.

Hon. Kieti: Thank you, Madam Speaker. I stand to support the motion that, we pass the People's Assembly because it is self-explanatory. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Hon. Ndawa.

Hon. Ndawa: Thank you, Madam Speaker. I take this opportunity to talk about this motion. Madam Speaker, I stand here to oppose the motion and I am opposing this motion with two reasons.

(Applause)

Reason number 1; there is an existing Court Order and the law is very clear, it is the function of the court---

Hon. Ngunga: Point of order, Madam Speaker.

Hon. Speaker: Point of order. Hon. Francis Ngunga.

Hon. Ngunga: Yes. Madam Speaker, I want to draw the member to the fact that, for the last three, four days, we have actually dwelt ourselves on the matter of the court order and this afternoon from 5.30 p.m. to now, you have just been telling us about the intricacies of that court and order and I think we are already beyond the court order issue. Thank you, Madam Speaker.

(Applause)

Hon. Museku: Point of information, Madam Speaker.

Hon. Speaker: Point of information by Hon. Museku.

Hon. Museku: Yes, Madam Speaker, I would like, just for the information of Hon. Ndawa, to know that in as far as the issues of the court order concerned, the Hon. Speaker has made a ruling and given all the interpretation on that court order and has allowed this House to debate on the issue of creation of People's Assembly. So, just for your information. Thank you.

(Applause)

Hon. Speaker: Hon. Ndawa, proceed.

Hon. Ndawa: Yes. The other point that I wanted to raise Madam Speaker, is that the motion sites two election dates; date 8th and 26th. About the 26th day---

Hon. Speaker: Hon. Ndawa, you are out of order. That is not part of the motion at hand. The motion at hand is creation of a People's Assembly. Please refrain from matters which are not part of the motion at hand.

(Applause)

Hon. Ndawa: Thank you, Madam Speaker.

(Laughter)

The other issue that I wanted to point out, is to say that these Hon. Members were elected by people to come and represent them. So, passing this motion, it will say that, this Assembly has been defeated by the work that they were sent to do and that is just like reverting or giving the powers---

Hon. Speaker: I am not going to take a point of order on the speech by the Hon. Member, he must finish.

Hon. Ndawa: Thank you, very much Madam Speaker, for the protection and it is good that you control the House because I can see that now the tension is too high and these people have to be sober.

(Laughter)

In fact, what we are discussing here is for the entire nation and the entire county, it is not only for one person. So, if the motion passes, it is going to affect everybody. If it fails, it is going to also affect everybody. So, there is no need of fighting, we are brothers and sisters and Hon. Members elected by electorates. We need to understand that before we came here we were friends and we cannot make enemies when we are here. We need to observe decorum.

(Applause)

Madam Speaker, I have said and I want to speak my mind, I am opposing this motion because it will have repercussions. Which repercussions? The people whom we were competing with, that is the opponents, will use the same, same forums to start fighting the elected Members of this County Assembly.

Hon. Ngunga: Point of order.

Hon. Speaker: The Hon. Member has finished his speech. Hon. Kamitu.

Hon. Kamitu: Thank you, very much Hon. Speaker. Hon. Speaker, I stand here to oppose the motion and with due respect Madam Speaker, I would request that we go to Fourth Schedule, page 306 of the Constitution of Kenya, Madam Speaker, it is part two---

Hon. Speaker: Schedule two or four, Hon. Kamitu?

Hon. Kamitu: Page 306 schedule four.

Hon. Speaker: Schedule Four?

Hon. Kamitu: Yes, Fourth Schedule, part two, that is the County Government. Madam Speaker, if you are there, my point of contribution, Madam Speaker, would be that, you talked about separation of powers and it is in this regard that powers of the County Government include duties that are bound to be done by the County governments.

Madam Speaker, the functions and powers of the County governments, has documented for example issues to do with agriculture, county health services, county air pollution, cultural activities, county transport, animal control and welfare and Madam Speaker, in this regard, under this constitution, I stand here to be guided; where does the People's Assembly as a function of this Hon. House come in?

Two, Madam Speaker, on the strength of what has been brought under this House, the motion by Hon. Francis Ngunga, the Majority Leader, paragraph (a), he cites the Presidential elections; it is in this paper, taking in consideration--

Hon. Speaker: Taking you back, Hon. Kamitu on a point of clarification. Let me just let you know; in my considered ruling and I take you to paragraph 9, please have a seat, resume your seat.

Paragraph 9, I stated that the mandate and roles of the Assembly are provided in the Constitution and there are three major roles. The first one is representation and I said the citations where that is provided for are in the report. In representation, you find it under Article 1(2) and (3) and Chapter 7 of the Constitution representation.

The other role is legislative. Legislative, the citation is also given, is under Article 185 of the Constitution and that you would read with Fourth Schedule of the functions of the County Assembly, devolved functions so that, you have representation, you have legislation and you also

have oversight of the County Executive and when it is about a People's Assembly, it is about representation. It is not on legislation---

(Applause)

There is no Bill that is on the table, it is a motion and to bring business before this House, there are many different ways. Motions, is one such way. I hope you are guided accordingly. I repeat, finally, that we are not discussing any aspect of the motion other than just forming a People's Assembly.

(Applause)

Hon. Kamitu: So, Madam Speaker, I do not want to go further but my question would be; so, does it mean that Fourth Schedule, part 2, is null and void in regard to the Kenyan Constitution because it is clearly, I understand what you have told me Madam Speaker, but functions of this Assembly under the County Government, where is the People's Assembly coming in?

Hon. Ngunga: Point of order, Madam Speaker.

Hon. Speaker: Point of order, from Hon. Francis Ngunga.

Hon. Ngunga: My brother, Hon. Kamitu, we are assisting you understand.

(Laughter)

We are saying, the functions of the County Assembly are legislation, representation and that is actually part of what we are doing today. Hon. Kamitu, I want you to awaken to the fact that, there is a distinction between the County Assembly and the County Executive and I do not know why you seem to have hang overs about the County Executive; this is the County Assembly and one of the biggest roles that the County Assembly is to legislate and we legislate on motions and so---

(Applause)

Hon. Speaker: Hon. Francis Ngunga, you are out of order. Revert the business that is on the table of the House, do not bring irrelevant matters to the House.

Hon. Ngunga: Thank you, Madam Speaker.

Hon. Kamitu: As I said, Madam Speaker, I do not want to repeat myself because the Majority Leader was out of order. I would kindly say that, I stand to be guided and that my reasons have been given because this is a House of purpose, a House of reasons but I am not seeing any legitimacy of what is happening in this motion. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Kamitu. Hon. Cosmus Masesi.

Hon. Masesi: Thank you, Madam Speaker. Madam Speaker, I stand to support that this House passes the motion on the basis that, no Government is above the Constitution and no constitution is above its people. Madam Speaker, the constitution is very clear on Chapter 1 that all the supreme power lies within the people of Kenya.

(Applause)

Passing of the People's Assembly will help to restore democracy and the rule of law. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Hon. Mwikali.

Hon. (Ms.) Mwikali: Thank you, Madam Speaker. Madam Speaker, realizing that you have given us directions and we have exhaustively debated on this motion, I request you Madam Speaker, to put forth the question then we will have saved ourselves more time when we are doing this when it is already exhausted. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Hon. Members, can I give the mover of the motion the opportunity to reply.

(Applause)

Hon. Ngunga: Thank you, Madam Speaker and I did say that, today might turn out to be one of the greatest days for the NASA Coalition.

(Applause)

I am happy, Madam Speaker, for the Members and the way they have debated on this motion. I am equally happy with the opposing side because of the strong sentiments that they have been able to rise although they have also been countered with the same resilience. Madam Speaker, when we talk about the People's Assembly, this is a concept that this House has and has to internalize.

The idea of the People's Assembly is a concept; it is not an institution that we are forming. We want the people of Kenya to realize that the power remains with the people themselves and so, when we say that we are not recognizing---

(Applause)

.....that there is legitimacy in elections that were conducted on the 8th, it is true, Madam Speaker, and you are aware that, the turn out in Machakos County---

Hon. Speaker: Hon. Ngunga, you are out of order, restrain yourself to the matter that is before the House.

Hon. Ngunga: Thank you, Madam Speaker. While replying this, Madam Speaker, let me take this opportunity to also thank you for having taken a lot of your time in trying to interpret the orders that were existing and giving this House a good guidance. Let me appreciate the Members for having found time to this late hour, this is almost about 7 o'clock to debate this. This is what duty calls for and so thank you, Madam Speaker, thank you, Members and goodnight.

(Applause)

(Question put and agreed to)

(Applause)

ALTERATION OF ADJOURNMENT DATE FOR LONG RECESS

Hon. Speaker: Hon. Members, we still have business undone, we have the second motion by Hon. Francis Ngunga, Leader of Majority.

Hon. Ngunga: Thank you, Madam Speaker.

Madam Speaker, that aware that the first session began on 7th September, 2017; Aware that that House approved an Assembly Calendar pursuant to Standing Order 25(1);

Further aware that the calendar guides the House on when to have a break and when to resume sittings;

Aware that the approved Assembly Calendar shows that the Assembly should adjourn for long recess on 7th December, 2017;

Noting that there are important businesses pending before the House and Committees which need to be addressed before breaking for recess;

Aware that electorates are eagerly awaiting service delivery and acknowledging that Standing Order 25(4), provides that the Assembly may by resolution alter its calendar or the adjournment date;

Madam Speaker, I wish to move the motion that, this House resolves to alter the adjournment date of the Assembly for long recess from 7th December, 2017 to 20th December, 2017, to allow it to finalize the pending businesses.

Thank you, Madam Speaker.

Hon. Speaker: Hon. Members. Who is your seconder?

Hon. Ngunga: Thank you, Madam Speaker. At this juncture, I would like to ask Hon. Justus Katumo to second this motion.

Hon. Katumo: Thank you, Madam Speaker. I want to second this motion of extension of the operation and business of this House from 7th to 20th December. Thank you, Madam Speaker.

(Question proposed)

Hon. Speaker: Hon. Members, do we have any debate on this particular issue? Can I have some reactions from Members? Hon. Jeremiah.

Hon. Munguti: Thank you, Madam Speaker. I stand to propose that, this motion be passed to the Members so that we may extend our sittings from 7th to 20th December due to the pending business of the House.

As you are aware that, as the Chair of Labor, Public Service and ICT, we had given our report and there are so many other pending businesses in the Labor Committee. Therefore, I find it prudent for this House to allow Members to continue with the businesses of the House until 20th of this Month. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Jeremiah. Hon. Katumo.

Hon. Katumo: Thank you, Madam Speaker for this opportunity. I want just to say that this session had a lot of interruptions and of course we have a lot of energy before we break for the long vacation to spend on this House the businesses before. I have motions that I feel we should not jump to next year before passing them and so are other Members. We need some time to make sure that we offer services to our electorates before even we go back to discuss and get more business. Thank you, Madam Speaker.

Hon. Speaker: Hon. Koki.

Hon. (Ms.) C. Koki: Thank you, Madam Speaker. I stand to support the motion that we adjourn the date for our long recess because we came here to work and as a Hon. House, we want to earn an honest living. So, I support the motion that we extend our dates for recess. Thank you, Madam Speaker.

(Question put and agreed to)

ADJOURNMENT

Hon. Speaker: Hon. Members at this juncture, this House will adjourn to re convene on Wednesday the 13th December, 2017 at 10.00 a.m.

The House rose at 6.43 p.m.