

REPUBLIC OF KENYA
MANDERA COUNTY ASSEMBLY

THE HANSARD

Tuesday, 23rd June, 2020

*The House met at the Assembly Chambers
County Assembly Buildings, at 2.45 p.m.*

[The Speaker (Hon. M. A. Khalif) in the Chair]

PRAYER

COMMUNICATION FROM THE CHAIR

ON THE MATTER OF DISCHARGE OF HON. YUSSUF MAALIM DAKANE
FROM BUDGET AND APPROPRIATIONS COMMITTEE

The Speaker (Hon. M. A. Khalif): Honorable Members, you are aware that my office is in receipt of the letter dated 16th, June, 2020 from Hon. Ahmed Gabnan Ali, the Minority chief whip giving notice of discharge of Hon. Abdullahi Yunis Guliye and Hon. Yussuf Maalim Dakane from Budget and Appropriations Committee pursuant to the provision of Standing Order 159 (1) of the Mandera County Assembly.

You are further aware that the presiding Speaker conveyed the notice of discharge of Hon. Abdullahi Yunis Guliye (a Member of Jubilee Party) from Budget and Appropriations Committee which is in line with the provision of Standing Order 159 (1) on Tuesday, 16th June, 2020.

Hon. Members, you recall that Deputy Speaker Hon. Farah promised to give a ruling on Tuesday, 23rd June, 2020 at 2.30 PM with regards to the notice of discharge of Hon. Yussuf Maalim Dakane from Budget and Appropriations Committee, a member of NARC KENYA Party.

Hon. Members, as the Speaker, I am duty-bound to give procedural guidance as provided for in the Constitution of Kenya, Standing Orders, precedents and other Parliamentary jurisdiction to ensure fair administration to our Hon. Members and adherence to the rule of law.

Hon. Members, I am also in receipt of a letter from NARC Kenya Party dated 15th June, 2020 Ref NK/CAM/2020/1 confirming that NARC Kenya did not and has no coalition agreement with any political party.

Disclaimer: *The electronic version of the Mandera County Assembly Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Mandera County Assembly.*

I am further in receipt of Jubilee Party letter dated 17th June, 2020 highlighting that the Party is under represented in Budget and Appropriations Committee as it is entitled to five slots. The leader of Minority party Hon. Jimale Abdi Hassan stated that Jubilee party has one less sharable slot in Budget and Appropriations Committee. The Party also claims that NARC Kenya Party has two member slots in the Budget and Appropriations Committee instead of one. The jubilee party further argues to have its fair share in the Budget and Appropriations committee so that it can execute its party obligations.

Hon. Members, the issue before me today is to guide the House on –

- i. Whether the Minority party can discharge a Member of another party who is not in coalition agreement and in this particular case to determine whether provision of our Standing Order 159 (1) was adhered to by Minority Party in discharging Hon. Yussuf Maalim Dakane, a member of NARC Kenya, from Budget and Appropriations Committee.
- ii. And my guidance on claims raised by Jubilee Party with regards to less ratio slots in Budget and Appropriations Committee and the appropriate remedy if any?

Hon. Members, before I give my guidance on the matter that requires my indulgence, I want to highlight on the following for the benefit of the House-

- i. Article 185 of the Constitution of Kenya, 2010, vests the legislative authority of the County on the County Assembly while respecting the principle of separation of powers. The Members of the County Assembly are entrusted with the responsibility to undertake legislation and oversight, to ensure that policies announced by the County government and authorized by the assembly are actually delivered; to enhance transparency and enhance public trust in the County Government.
- ii. The preamble to the Constitution of Kenya 2010 recognizes aspirations of all Kenyans for a government based on essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

Hon. Members, our Standing Order outlines the provisions for nomination of members of select committees, as per standing No. 156 as follows-

- (1) “Unless otherwise provided by any written law or these Standing Orders, the Committee on Selection shall, in consultation with County Assembly parties, nominate Members who shall serve on a select committee”.
- (2) The Committee on Selection shall give consideration to the need for gender balance and shall, so far as may be practicable, ensure that no more than two-thirds of members of a committee of the County Assembly, including a committee established through a resolution of the County Assembly, shall be of the same gender.
- (3) A vacancy occasioned by resignation or removal of a Member from a select committee shall be filled within fourteen days of the vacancy.
- (4) A Member against whom an adverse recommendation has been made in a report of a select committee that has been adopted by the County Assembly shall be ineligible for nomination as member of that committee.

Hon. Members, Standing Order 159 (1), states that; -

Disclaimer: The electronic version of the Mandera County Assembly Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Mandera County Assembly.

“The County Assembly party that nominated a member to a select committee may give notice, in writing, to the Speaker that the member is to be discharged from a select committee”.

Hon. Members, the total membership of our County Assembly currently stands at forty-Eight Members. In terms of political parties, there are four parties with representation in the House, namely Economic Freedom Party (EFP), Jubilee Party, National Rainbow Coalition Party (NARCK) and Orange Democratic Movement. Only Economic Freedom Party, Jubilee Party, National Rainbow coalition-NARC-Kenya meet the threshold of the County Assemblies Party.

Our Standing Order under definition of terms defines the County Assembly parties as a party or a coalition of parties consisting of not less than five percent of membership of County Assembly. The Economic Freedom Party (EFP) has a total of twenty-seven Members, Jubilee party has seventeen Members, and Narck-Kenya Party has three Members, while the Orange Democratic Movement has one Member.

Hon. Members, the formula of sharing party's slots (Nomination of members to serve in Committees) is provided for in Standing Order 157 (1). The Majority Party (Economic Freedom Party) with 27 members has got 106 slots, Jubilee Party with 67 slots and NARC K has 12 slots. The remaining three slots were reserved for ODM. The total shareable committee slot was therefore 188.

Currently the shareable parties slot stand as follows-

1. Economic Freedom Party= 106
2. Jubilee Party =63
3. NARCK = 12
4. ODM= = 5

Total 186

Two Members of Jubilee party, Hon. Ahmed Gabnan and Hon. Abdirashid Maalim Osman who were recently discharged from the Committees on Finance and Public Service respectively have not been replaced as per the provision of the Standing Order 156 (3) which requires that the vacancy shall be filled within fourteen days of the vacancy.

Before I proceed to issue my guidance on whether the Minority Party can discharge a member of another party who is not their member, I want you to reflect on the following-

Hon. Members, the records of Kenya Gazette Vol.CXIX-No.121 by (IEBC) dated 22nd, August, 2017 indicates that Hon. Yussuf Maalim Dakane is a member of the County Assembly elected by the people of Alango-Gof Ward through NARCK Party.

Hon. Members, the Constitution of Kenya, 2010, lay the foundation for the legal framework of political parties in order to enhance internal democracy in the Kenyan political system. Article 260 of the Constitution of Kenya 2010 defines a political party as an association envisaged in Part 3 of chapter seven of the Constitution of Kenya, 2010. The Political Parties Act, 2011 provides the institutional, legal and regulatory framework for registration, regulation and funding of political parties in Kenya. The Act provides legal reference for management of political parties in accordance with Articles 91 and 92 of the Kenya Constitution 2010.

Article 91 (1) of the Constitution of Kenya, 2010 states; -

- (1) Every political party shall—

- (a) Have a national character as prescribed by an Act of Parliament;
- (b) Have a democratically elected governing body;
- (c) Promotes and uphold national unity;
- (d) Abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party;
- (e) Respect the right of all persons to participate in the political process, including minorities and marginalized groups;
- (f) Respect and promote human rights and fundamental freedoms, and gender equality and equity;
- (g) Promote the objects and principles of this Constitution and the rule of law; and
- (h) Subscribe to and observe the code of conduct for political parties.

Hon. Members, according to Section, 2 of Political Parties Act 2011, a “coalition” means an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar. Accordingly, I have been notified that there is no record in our House to indicate that NARC Kenya has coalition agreement with Jubilee party or any other Party.

Then the question arises, how did the Minority party de-whip a member who is not a member of their Party? The Jubilee Party has not adduced any evidence or any form of coalition agreement before or after election between the Jubilee Party and NARC-Kenya Party as per the requirement for coalition agreement as set out in the Third Schedule of Political parties Act, 2011. This issue that I have isolated above sets a very important basis for my guidance.

Hon. Members, I refer you to similar precedent set by the Speaker of National Assembly Hon. Justin B. Muturi on Tuesday 9th June, 2020 on the entitlement of slots in Select Committees and discharge of a Member from Select Committees by Parliamentary parties and whether a member belonging to a party other than a parliamentary party may be discharged from committee of the House by any Parliamentary Party with regards to issue raised by Hon. David Ochieng, Ugenya MP (a Member of Movement for Democracy and Growth, (MDG), following his discharge by the Minority Party from Departmental Committee on Health.

Hon. Muturi issued indulgence to the House that-

- i. The Exercise of power of Party is restricted to a member belonging to the particular parliamentary party and those from the smaller parties who have entered into formal coalition agreement as per Standing Order 176.
- ii. That no Parliamentary Party is to exercise the Discharge of Party under Standing Order 176 to remove a member who is not a member of particular parliamentary party from any Committee of the House.

Hon. Members, there is no lacuna in our Standing Orders with regards to provision of discharge of members from Committees as it is provided for under Standing Order 159 (1) (2). Our democratic ideals call for mutual cooperation for orderly flow of business of the Assembly without coercing members to fulfill their political party interest. We must therefore comply with the provision prescribed by our Standing Orders and Political Parties Act, 2011 in order to avoid procedural lapses when undertaking party issues.

The Assumption of mutual agreement to work together for the common good does not necessarily mean that parties are in a coalition agreement. The procedure of coalition is entered

by a party on the basis of pre-election agreement which is adequately provided for in Political Parties Act, 2011.

Hon. Members, my guidance on claims raised by Jubilee Party with regards to ratio slots in Budget and Appropriations Committee and the appropriate remedy if any?

Hon. Members, Standing Order No 157 (1) states that-

“In nominating Members to serve on a select committee, the Selection Committee shall ensure that the membership of each committee reflects the relative majorities of the seats held by each of the County Assembly parties in the County Assembly”.

Hon. Members, Jubilee party stated in their submission of appeal that the party represents the County Executive in Mandera County Assembly. This is not definitely true. My reading of Article 183 and 185 of CoK 2010 does not in any way indicate that the role of the legislators is to represent the will of the Executive. It is therefore important that we ought to observe the principle of separation of power between the Executive and the Assembly.

As the Speaker of this House, it is my responsibility to ensure fairness and uphold the rule of law without fear or Favour. I want to assure the House that my guidance on this matter is not inclined to party's loyalty to Executive but will be based on the provision of our Standing Orders and applicable laws in relation to fair representation in Committees.

Hon. Members, the issue raised by Jubilee party with regards to their under representation in Budget and Appropriations Committee raises some fundamental questions on criteria of nomination to the Budget and Appropriations Committee. The membership of each Committee ought to reflect the relative majorities of seats held by each of the County Assemblies as per the requirement of the Standing Order 157 (1). The Jubilee Party raised concerns that NARC Kenya Party got two slots in Budget and Appropriations Committee. Currently the Budget and Appropriations Committee has thirteen Members, of which seven slots is allocated for Economic Freedom Party, four slots to Jubilee Party and two slots allocated to NARC-KENYA Party.

I want to bring to your attention that NARC-Kenya party has also two slots in Committee on Selection instead of one.

Hon. Members, it is true that NARC-Kenya slot allocation to Committees currently is within the maximum limit of their entitled shareable proportion of slots. I have further observed that the Committee on Selection allocated 12 entitled shareable proportions to NARC-Kenya party and thereafter nominated its members (12 Slot) to serve in various Committees of the House as I have highlighted earlier on current shareable parties' slots.

While it is perfectly the prerogative of the Selection Committee to nominate respective committee members to serve in Committees as domiciled in Standing Order 156 (1-4), 157(1-3) and 158(1-3), I however observed that the provision of Standing Order 157 (1) was not adhered to with regards to parties shareable proportions in Budget and Appropriations Committee; the matter that has been expressly provided for in our Standing Orders.

Hon. Members, having carefully analyzed the issue for determination, I hereby issue guidance that; -

- i. The notice of discharge of Hon. Yusuf Maalim Dakane from Budget and Appropriations Committee by Minority party has fallen short of fulfilling the requirement of our Standing Order 159 (1). Hon. Yussuf Maalim Dakane is a

Member of Narc- Kenya that has no coalition agreement with any party including the jubilee Party and therefore the decision of Minority party to discharge Hon. Yusuf Maalim Dakane from Budget and Appropriations Committee is contrary to our Standing Orders.

- ii. On issue raised by the jubilee party with regards to one slot in Budget and Appropriations Committee, I have observed that the formula for nominating members to serve in committees is provided for in Standing Order 156 (1-4), 157 (1-3) and 158 (1-3). However, it is my considered view that the provision of Standing Order 157 (1) was not adhered to with regards to party's shareable proportions of slots in Budget and Appropriations Committee and Committee on Selection. I have also observed that the jubilee party has been excluded from the fair share in Budget and Appropriations Committee.
- iii. Turning to question of appropriate remedy, you are all aware that a member of a Committee can only be discharged as per the provision of Standing Order No. 159 (1), the prayers raised by the jubilee party and discrepancies in allocating shareable slots can only be rectified through moving substantive Motion by relevant parties in reconstituting the Budget and Appropriation Committee or any other committee that has fallen short of fulfilling the requirement of our Standing Order 157 (1).
- iv. In order to enhance fairness and to coordinate party issues, I direct that NARC-Kenya party members sit and elect its party whip among themselves as soon as possible.
- v. I also recommend that the House amends the provision of Standing Order 159 (1) on discharge of a Member from a Committee in order to give opportunity to the member to be heard by the party so as to enhance our parliamentary democracy.

The House is guided accordingly.

NOTICE OF MOTION

ADOPTION OF THE FIRST PROGRESS REPORT OF MANDERA COUNTY ASSEMBLY AD HOC COMMITTEE ON COVID-19 SITUATION IN MANDERA COUNTY

Hon. Abass Abdille (Nominated): Mr. Speaker, I rise to give Notice of the following Motion; -

THAT, the County Assembly adopts the first progress report of Mandera County Assembly Ad Hoc Committee on COvid-19 situation in Mandera County.

Thank you.

ADJOURNMENT

The Speaker (Hon. M. A. Khalif): The House stands adjourned to tomorrow at 2.30 p.m.