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TWELFTH PARLIAMENT– (SIXTH SESSION)
THE NATIONAL ASSEMBLY

GUIDANCE FROM THE CHAIR

(No. 10 of 2022)

ON

THE CONSIDERATION OF PROPOSED AMENDMENTS TO THE
REPORT OF THE BUDGET & APPROPRIATIONS COMMITTEE ON THE
2022/2023 BUDGET POLICY STATEMENT AND THE MEDIUM-TERM
DEBT STRATEGY

Honourable Members,

I wish to guide the House that I have received notices of proposed amendments from various Members as published in today's Order Paper. The proposed amendments are by the Member for Kikuyu, The Hon. Kimani Ichung'wah, Nominated Member, The Hon. Wilson Sossion, the Member for Kilifi North, The Hon. Owen Baya, and the Member for Garissa Township The Hon. Aden Duale.

Honourable Members, as you will have noticed, the proposed amendments as published in the Order Paper are preceded by a **disclaimer** to the effect that they *are subject to the Speaker's decision on application of Article 114 of the Constitution*. It is this decision which I wish to now convey to the House. To start with **Honourable Members**, Article 114(2) of the Constitution states as follows with respect to *Money-Motions*, and I quote –

"114. (2) If, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of "a money Bill", the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.

(3) In this Constitution, "a money Bill" means a Bill, other than a Bill specified in Article 218, that contains provisions dealing with—

- (a) taxes;**
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;**
- (c) the appropriation, receipt, custody, investment or issue of public money;**
- (d) the raising or guaranteeing of any loan or its repayment; or**
- (e) matters incidental to any of those matters."**

On the other hand **Honourable Members**, the processing of the annual Budget Policy Statement (BPS) is provided for in section 25 of the Public Finance Management Act, 2012. The BPS **sets out the broad strategic priorities and policy goals that will guide the national government and county governments in preparing their budgets both for the following financial year and over the medium term** and includes, *inter alia* –

- (a) an assessment of the current state of the economy and the financial outlook over the medium term, including macro-economic forecasts;*
- (b) the financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term;*
- (c) the proposed expenditure limits for the national government, including those of Parliament and the Judiciary and indicative transfers to county governments;*
- (d) the fiscal responsibility principles and financial objectives over the medium term including limits on total annual debt;*
- (e) the fiscal risk statement.*

Before I render my determination, **Honourable Members** it is noteworthy that there are two main purposes of the annual BPS that I would wish to restate. **Firstly**, the BPS informs the basis for the **vertical** distribution of national revenue between the national and county level of governments, which get actualized in the annual Division of Revenue Act. The decision of the House on the BPS therefore determines

the content of the Division of Revenue Bill, whose publication follows the resolution of the House on the BPS.

Secondly, the Budget Policy Statement sets the limits for the distribution of the share of the national revenue to be allocated to each of the three arms of the national government and within the upper limit of distribution amongst the programmes of the national government. Therefore, for all intents and purposes, the resolution of the House on the BPS constitutes a 'Money Motion'.

Honourable Members, Section 25(7) of Public Finance Management Act, 2012 requires Parliament to approve the BPS, **with or without amendments**. Therefore, the law contemplates amendments being made to the BPS by the House. However, **Honourable Members**, we must make a distinction between amendments being proposed to the BPS **as it was submitted to the House by Cabinet Secretary for the National Treasury**, and amendments being proposed by Members to the **amendments of the Budget & Appropriations Committee on the BPS and the financial and policy resolutions as proposed by the Committee**. As you will notice, the financial and policy resolutions proposed to this House by the Committee are normally extracted from the Committee's Report and published in the Order Paper for ease of reference by all Members.

Honourable Members, The first amendment by the Member for Kikuyu basically seeks to alter the budget ceilings by reducing National Government's portion of the shareable revenue and allocating the difference to the County Governments and the Judiciary, by each getting an additional allocation of 125B and 12 Billion, respectively. This also relates to the proposed amendment under paragraph 79 of the Report of the Budget & Appropriations Committee, where the Member for Kikuyu proposes to increase the County Governments' Equitable Share from Kshs. 370 billion to Kshs. 495 billion representing 35% of the last audited and approved

revenues being Kshs. 1.413 trillion. Notably, the House is aware that the Senate passed the 2022/2023 BPS with a similar resolution.

For this reason, Honourable Members, I will allow this amendment to be considered by the House for a decision as it relates to the vertical division of the national revenue. I have allowed this proposal conscious of the fact that the limits on the portions of shareable revenue between the two levels of Government will have an implication on the Division of Revenue Bill, which of course will also be considered by the Senate. Therefore, with the Senate having made its decision by capping it at 35%, it would only be fair for me to allow this amendment for the House to also make its decision on the matter, one way or the other. I will also proffer the same treatment to the proposal to increase the limit to the **Judiciary's budget** ceiling from the amount of Kshs. 18.885 billion to Kshs. 30.885 billion.

Honourable Members, The proposed amendment under paragraph XXA relating to recommendation 75 of the Report on the BPS seeks to reallocate Ksh. 50 billion to support credit finance for Micro, Small and Medium Enterprises (MSMEs) adversely affected by the COVID-19 Pandemic. However, since we are not at the stage of approving the 2022/2023 Estimates, I will disallow this amendment with the hope the Budget and Appropriations Committee will consider the proposal at the time of considering the Estimates.

Honourable Members, The proposed amendment under paragraph *XXB* relating to recommendation 75 of the Report on the BPS is a **policy proposal** for the rolling out of a mapping exercise of exportable goods and services from all constituencies in the country. I will therefore allow this amendment. If approved by the House, the Government will consider the proposal in line with its existing broad priorities. This will also apply to the proposals on operationalization of the Judiciary Fund, the designation of the Inspector-General of Police as an Accounting Officer for the

National Police Service and the proposed additional allocation of resources to facilitate upward review of remuneration for police officers.

The proposed amendment by the Hon. Wilson Sossion seeks to provide for the funding of the Teachers Professional Development Programme under section 35 of the Teachers Service Commission Act, 2009. This being a policy proposition to the Government, I will allow it to be considered by the House.

- **Honourable Members,** The Member for Kilifi North, the Hon. Owen Baya has also proposed various amendments to the Motion. The proposals relate to the allocation of resources to the State Department for Crops Development and Agricultural Research to provide for subsidies on fertilizer so as to reduce the price of purchasing fertilizer. To the extent that the proposal is not asking for any additional resources, but rather asking the Cabinet Secretary for National Treasury to consider reallocating and availing resources to actualize the proposal, I will allow the House to debate and make a decision, one way or the other. However, I will disallow the Member's other two proposed amendments relating to the revival of the cashew-nuts and mangoes sub-sector in Kilifi County and resettlement of Squatters, as they are better canvassed at the level of consideration of the Estimates. The purpose of the BPS is really not to allocate and determine the details of funding but rather to **set out the broad strategic priorities and policy goals that will guide the national government and county governments in preparing their budgets.**

Finally, **Honourable Members,** the Member for Garissa Township, the Hon. Aden Duale has also proposed amendments seeking to alter the budget ceilings for the National Government's portion of the shareable revenue by reducing and reallocating the Kshs. 12 billion difference to the Judiciary. You will notice that the effect of this proposed amendment is similar to that being

proposed by Member for Kikuyu. In this regard, I will therefore allow the consideration of the two, of course in line with our procedures on the processing of amendments of a similar nature.

The Hon. Duale has also proposed the reinstatement of the livestock-off take programme and drought mitigation measures by allocating Kshs.1.5billion and Ksh.2billion to the programmes respectively. Noting that this is a specific programme-based allocation, I will disallow this amendment as it will be best placed at the stage of consideration of the Estimates.

Honourable Members, On the Motion on the Medium-Term Debt Management Strategy under Order No. 12, the Member for Kikuyu is proposing insertion of a new *paragraph (ba)* to the effect that the House **notes** that the approval of the 2022/23 BPS and the Medium-Term Debt Management Strategy is not to be construed to be an approval for the raising of the national debt limit as currently stipulated in law.

It is observed that the Member is asking the House to make a further recommendation whose implication is to affirm that the approval of the BPS and the Medium-Term Debt Management Strategy is not an approval of an increase of the National Debt Limit. It will be noted that, in its recommendation to the House, the Committee is also asking the House to cause the National Treasury to align the projected 2022/2023 expenditure to be within the headroom allowed by the limit set by the House on **9th October 2019**. To this extent, I am inclined to allow this amendment as it is an emphasis of the Resolution of the House of 9th October 2019.

Honourable Members, Before I conclude, I wish to respond to the Point of Order raised by the Hon. Kimani Ichung'wah relating to this matter during the afternoon

sitting of Tuesday, February 22, 2022. The essence of the Point of Order was threefold, being-

- (i) Whether the House can amend the BPS?**
- (ii) Whether the House can amend the report of BAC on the BPS?**
- (iii) And whether amendments proposed are subject to Article 114 of the Constitution?**

Honourable Members, These are fairly straightforward matters for which I have guided before. On whether the BPS can be amended, the answer, as I have stated above, lies in section 25(7) of the PFM Act, 2012 which contemplates an approval of the BPS, with or without amendment. As to whether the House can amend the report of the BAC, I wish to note that the Motion for the adoption of the report is a Motion like any other and may be amended in the usual manner as provided for in the Standing Orders.

Lastly, as to whether amendments relating to the BPS are subject to Article 114 of the Constitution, the answer is in the affirmative whenever the amendments relate to matters provided under Article 114(3) of the Constitution.

In conclusion therefore, the Motions will now proceed as I have directed noting the determinations herein.

The House is accordingly guided.

I thank you.



THE HON. MOSES CHEBOI, CBS, MP
DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, 24th February, 2022