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TWELFTH PARLIAMENT – (SIXTH SESSION)

THE NATIONAL ASSEMBLY
COMMUNICATION FROM THE CHAIR

PARLIAMENT
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(No. 023 of 2022)

ON
TABLING OF PAPERS BY THE HON. FATUMA GEDI, MP AND GROSS
DISORDERLY CONDUCT BY THE HON. BABU OWINO, MP

Honourable Members,

I wish to welcome you back from the just concluded long Recess. It is my hope that you were able to spend valuable time with your families and constituents notwithstanding the heightened activities that characterize an election year, and are now rejuvenated enough to proceed with the critical business scheduled for this last Part of the Sixth Session of the 12th Parliament before the House proceeds on *Sine Die* Recess.

Honourable Members, I wish to notify the House of two pending matters that were left in abeyance when I adjourned the House under Standing Order 11.2 (*Grave disorder*) for the long Recess on Thursday, 14th April 2022. Ordinarily, Honourable Members, a House of Parliament is typically calm and operates in a friendly atmosphere in the weeks leading to a *Sine Die* adjournment. I am certain most Hon. Members will recall the regrettable and chaotic scenes that were witnessed in this House on 14th April 2022 involving the Members of Wajir County and Embakasi East, the Hon. Fatuma Gedi, MP and the Hon. Babu Owino, MP, which were in complete contrast to the norm and expectation.

Honourable Members, in the case of the Member for Wajir County, the Hon. Fatuma Gedi, MP, my guidance was clear to the fact that all she was required to do at the time was to table documents regarding the allegations that she had made on the floor of this House on **12th April 2022** in accordance with the requirements of Standing Order 91. You will recall that during the said sitting, I also did guide the House on what is the established practice and procedure of the House in considering the admissibility and/or authenticity or otherwise of a document tabled in the House and made reference to the Speaker's guidelines in a number of cases that occurred in the 10th Parliament. In a nutshell, just to refresh the minds of the Members, in considering the admissibility and/or authenticity or otherwise of a document tabled in the House, the Speaker examines if the document-

- (1) relates to the matter for which it has been tabled;
- (2) is signed, and if it is a government document, by the authorized person or persons;
- (3) bears the emblem or logo of the institution/person from which it originated or coat of arms in the case of documents from Government agencies;
- (4) clearly indicates the author and person to whom it is addressed;
- (5) discloses the origin or source of the document;
- (6) bears certification where a document other than the original is being *tabled*;
- (7) if electronic, has been obtained from a source that does not permit alteration of contents (*rule of admission of electronic evidence*);
- (8) is related to a claim made before the House or a Committee and its content has a nexus with the claim; and
- (9) is stamped and clearly indicates the person signing off the stamp.

Honourable Members, what I have just highlighted is what I would call *the basic rules of determining the admissibility and/or authenticity* or otherwise of a document tabled in the House. Any document *tabled* by a Member in this House as evidence for substantiation of any allegations made by the Member under Standing Order 91 must hence pass the threshold set by the nine rules on admissibility.

Honourable Members, now moving to the issue of Hon. Gedi, you will recall that on the material day, that is, on 14th April 2022, the Hon. Gedi did table several documents and in particular attempted to make fresh and further claims and then sought to substantiate them, instead of simply tabling the documents as required. Ordinarily, the Standing Orders require a Member providing evidence in substantiation to a matter claimed in the House to do so within the next sitting day. Given the seriousness of the claims that the Member for Wajir County had made on **12th April 2022,** the Speaker was sufficiently magnanimous, having granted her two days to comply with the Standing Orders.

Whenever a Member is required to avail evidence to substantiate **a claim already made,** the sequence of events is that, he or she table the evidence, the Speaker confirms authenticity and admissibility, before any Member proceeding to make further reference to the paper laid or to use them as evidence. Indeed, this is also the same sequence in a judicial proceeding. However, the Hon. Member failed to comply with this requirement. **The Hon. Member therefore forfeited the opportunity to do so, as set by the Standing Orders. In view of the foregoing, the matter is spent in terms of Standing Order 91 and there shall be no further substantiation by the Member or debate on it.**

Honourable Members, with respect to the documents that were tabled by the Hon. Gedi, I note that they consisted of newspapers prints outs, photographs, uncertified court judgments, a self written Statement by the Hon. Gedi, and other uncertified papers. In particular, I note that the court judgement did not bear any certification and the documents tabled did not also relate to the claims made before the House by Hon. Gedi. Hence their content lacks a nexus with the claims she had made in the House. **In this regard, I rule that the documents are inadmissible for failure to meet the threshold set by the rules of admissibility that I have highlighted. Consequently, I direct that the documents tabled by the Hon. Member during the Sitting of the House of 14th April 2022 be expunged from the records of the House forthwith. I also direct the Clerk to return the documents to the Hon. Member, at an appropriate time. To this end, this matter is spent in terms of Standing Order 91 and there shall be no further substantiation by the Hon. Member or debate on it.**

Honourable Members, allow me to however caution all Members against making claims or allegations in this House which the claimant cannot substantiate. You will indeed observe that Standing Order 91(2) provides that a Member who is unable to substantiate allegations made in the House within the next sitting day *is deemed to be disorderly within the meaning of Standing Order 107* and hence it would be paramount for a Member to be responsible for accuracy of any facts which a Member alleges to be true.

Honourable Members, further allow me to also caution Members against making allegations which amount to discussing the conduct of a person whose removal from office requires a decision of this House without a substantive motion.

Indeed, you will recall that during the sitting of the House on 14th April 2022, the Member for Yatta, Hon. Charles Kilonzo did make reference to the provisions of Standing Order 87 and reminded Members of the need to propose a substantive Motion if a Member intends to discuss the conduct of person whose conduct requires sanction by this House.

Honourable Members, for avoidance of doubt, Standing Order 87(1) requires that any Member who wishes to discuss or refer adversely to the conduct of a person whose removal from office requires a decision of this House should only do so **through a specific substantive Motion of which at least three days notice has been given.** It is clear that, the direction the Hon. Fatuma Gedi was taking this House would circumvent the procedure laid out in Standing Order 87 by discussing the conduct of such a person, without a substantive motion.

Honourable Members, now moving on to the case of the Member for Embakasi East, **You recall that, on the particular day, I did order the Member to withdraw from the Chamber for the rest of the day owing to his disorderly conduct.** However, the Member declined. Hon. Members, it was clear that the Member's conduct was gross and unbecoming. As you are aware, Standing Order 111 provides that, and I quote: -

*"If any Member shall refuse to withdraw when required to do so, by or under these Standing Orders, the Speaker or the Chairperson of Committee as the case may be, having called the attention of the House or Committee to the fact that recourse to force is necessary in order to compel such Member to withdraw, shall order such Member to be removed and such Member shall thereupon without question put be suspended from the service of the House for a **minimum of twenty-one days and a maximum of ninety days** and shall during such suspension, forfeit the right of access to the precincts of Parliament and the Serjeant-at-Arms shall take necessary action to enforce the order."*

Honourable Members, despite calls from some of you for me to enforce this particular provision, I restrained myself from invoking Standing Order 111 on that day, and I intend, for purposes of good order, to restrain myself from invoking it today also. However, it has not escaped the attention of this House that the Member for Embakasi East indeed declined to leave the Chamber when he was ordered to do so by the Speaker. Due to the gross disorder that arose in this House thereafter, I deferred my Ruling on the Member's conduct to today. **In this regard, I hereby order the Member for Embakasi East, Hon. Babu Owino, to withdraw from the Chamber and from the precincts of the National Assembly for five days, inclusive of today, on account of gross disorderly conduct pursuant to Standing Order 107A (*Gross disorderly conduct*).**

Honourable Members, The Serjeant-at-Arms is to enforce this order immediately and if the Member is not presently in the Chamber, the Member shall not be allowed access to the precincts of Parliament or attendance to any Committee meeting or parliamentary function during the five days. Any Committee meeting attended by the Member during the five days shall be invalid, since the Member is now deemed to be a stranger. Further, the Member shall also not attend a Committee meeting as a Member of the Public.

Finally, **Honourable Members**, may I draw the attention of the House, and in particular to the House leadership on both sides, that this Part of the Session has five weeks comprising of eighteen sitting days only. The following critical business with statutory timelines needs to be considered and passed by this House within those four weeks-

- (1) Budget Estimates for the 2022/2023 Financial Year;
- (2) The Appropriations Bill, 2022;
- (3) The Finance Bill, 2022; and,
- (4) The County Allocation of Revenue Bill, 2022.

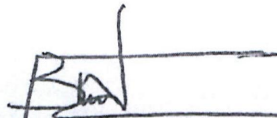
In addition to these statutory pieces of legislation **Honourable Members**, the House Business Committee has accorded priority to other pieces of legislation including, The Huduma Bill, 2021, The Children Bill, 2021, The Universities (Amendment) Bill, 2021, The National Disaster Risk Management Bill, 2022, The Persons with Disabilities Bill, 2021, The Public Finance Management Bill, 2022, Elections-related Regulations from the Independent Electoral and Boundaries Commission, Debt-Related Regulations from the National Treasury, as well as a number of Individual Members' Bills and approval of appointments to certain State Offices.

Honourable Members, whereas I am cognizant that politics is now at center-stage due to the forthcoming elections, Members should refrain from bringing to this House their political differences or use the floor House to advance their political agenda, hence causing disorder in the House. At this stage of the election cycle, politicking should be a preserve of our political rallies and not the floor of this House. **Indeed, it will not be possible for the pending business of the House to be considered in a disorderly and chaotic House.**

Honourable Members, allow me to caution that, as the representatives of the people, the pending business of the House that I have just highlighted is certainly one which is of huge significance to the people you represent. It is hence paramount that you conclude on the pending business before the House adjourns *sine die*. **Honourable Members, I also wish to emphasize that, it is incumbent upon the House Leadership on both sides to secure the maintenance of decorum in the House. To this end, as your Speaker, and indeed this is the position of the entire Presidium, allow me to reiterate that we shall not allow continuity of a sitting in which disorder and chaos is instigated by the same Members who expect the Speaker to marshal and ensure that consideration of such business is expedited.**

The House is accordingly guided.

I Thank You, Honourable Members.



THE HON. JUSTIN B. N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, 10th May, 2022