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REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - (THIRD SESSION)
THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

_____ (No. 47 of 2024) _____

ON

**CONSIDERATION OF THE SPECIAL MOTION FOR THE REMOVAL
FROM OFFICE, BY IMPEACHMENT OF H.E. RIGATHI GACHAGUA AS
THE DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA**

Honourable Members,

1. You will recall that earlier, at the commencement of this sitting, I notified the House of receipt of a Notice of a Special Motion, by the Member for Kibwezi West Constituency, the **Hon. Eckomas Mwengi Mutuse, OGW, MP** seeking the removal from office, by impeachment, of **H.E. Rigathi Gachagua, EGH** as the Deputy President of the Republic of Kenya.
2. You may further recall that after the Notice of the Special Motion was given by the Member for Kibwezi West, several Members rose in their places and raised a number of procedural concerns for my guidance. The Members who spoke include the Leader of the Majority Party, the Hon. Kimani Ichung'wah, EGH, MP; the Leader of the Minority Party, the Hon. Junet Mohammed, CBS, MP; the Majority Chief Whip, the Hon. Sylvanus Osoro, CBS MP; the Hon. Farah Maalim, MP; the Hon. Geoffrey Ruku, MP; and the Hon. Maj. (Rtd.) Bashir Abdullahi, MP.
3. **Honourable Members**, cognizant of the obligation on the House to dispose of the Special Motion with urgency, I undertook to address the concerns

expeditiously, in order to allow the House to proceed with the next stages of the Special Motion. As Members are aware, **the seven days available to this House to dispose of the Motion will lapse on Tuesday, 8st October 2024.**

4. In this regard, I retreated to my Chamber to apply my mind to the issues, and also convened a meeting of the House Business Committee for purposes of deliberating on the next steps to be taken with regard to the Special Motion and the procedural concerns raised in the House.

5. **Honourable Members,** I have summarized the issues raised by Members as follows—

- (1) Calculation of the number of Members required to meet the voting thresholds that apply to the impeachment of a Deputy President;*
- (2) Whether the House shall conduct Public Participation in its consideration of the Motion, and if so, the modalities of such an exercise;*
- (3) The right of the Deputy President to be afforded an opportunity to be heard; and*
- (4) Security arrangements for Members of Parliament.*

6. **Honourable Members,** now allow me to examine each of the issues. With regard to the **First Issue** on calculating the number of Members required to meet the voting thresholds that apply to the impeachment of a Deputy President, the attention of the Speaker was drawn to the current Membership of the House in light of the four (4) vacancies relating to Magarini, Ugunja and Banisa Constituencies and the seat recently vacated by the Hon. John Mbadi upon his appointment to the Cabinet. The query around this issue sought guidance on whether calculating the voting thresholds prescribed in Article 145 of the Constitution would take into account the vacancies and the existing 345 Members of the House.

7. I wish to refer the House to the express provisions of Article 145(1) and (2) of the Constitution which provide clear guidance on this issue. The Articles provide, and I quote—

*(1) A member of the National Assembly, supported by **at least a third of all the members, may move a motion for the impeachment of the President—***

(a) on the ground of a gross violation of a provision of this Constitution or of any other law;

(b) where there are serious reasons for believing that the President has committed a crime under national or international law; or (c) for gross misconduct.

*(2) If a motion under clause (1) is supported by **at least two-thirds of all the members of the National Assembly—***

(a) the Speaker shall inform the Speaker of the Senate of that resolution within two days; and

(b) the President shall continue to perform the functions of the office pending the outcome of the proceedings required by this Article.

8. Members will note the instructive words in both provisions subject the prescribed thresholds to **"ALL the Members"**. **To the extent that no reference is made to "existing" Members, the thresholds can only be applied to the membership of the National Assembly that is prescribed under Article 97 of the Constitution.**

9. In this regard, a Member who proposes a motion for the impeachment of a President or Deputy President **must be supported by at least one-third of the 349 Members of the House, being 117 Members.** By extension, **for the House to pass a resolution on a Motion for the impeachment of a President or Deputy President, the Motion must be supported by at least two-thirds of the 349 Members of the House, being 233 Members.**

- 10.** A related issue raised with respect to the first issue was whether the validity of the proceedings of the House would be affected in light of the four (4) vacant seats. Notably, Article 124(3) of the Constitution provides that the proceedings of a House of Parliament are not invalid merely on account of a vacancy in its membership. This settles the first issue.
- 11. Hon. Members,** the **Second Issue** was on the conduct of **public participation** in considering the Special Motion and the modalities of such an exercise. At the very outset, permit me to note that it would be absurd for any person to imagine that a Motion such as the one presently before the House may be concluded without the participation of the public.
- 12. Honourable Members,** Article 118(2) of the Constitution categorically enjoins Parliament to *"facilitate public participation and involvement in the legislative and other business of Parliament and its committees."*
- 13.** My attention has also been drawn to various court decisions relating to the removal from office of state officers including county governors. I am indeed persuaded that public participation is an integral element of the process of removal of **an elected State officer** from office.
- 14.** Having reiterated the centrality of public participation to the process, **how then shall the public participate in the consideration of the Special Motion?**
- 15. Honourable Members,** In answering this question, the House Business Committee has addressed this issue during its meeting this afternoon and approved a programme of public participation across the country to be coordinated from the 47 Counties. The Clerk shall communicate the full details of the programme, for the information of the public, through print and electronic media advertisements to run from tomorrow, 2nd October, 2024.

16. Honourable Members, with regard to the administrative arrangements to facilitate public participation, the House Business Committee also resolved on the following modalities—

- (1) **THAT,** the public participation will be undertaken **on Friday, 4th October 2024.** Consequently all other parliamentary activities previously scheduled between Thursday, 3rd until Monday, 7th October, 2024, shall be suspended;
- (2) **THAT,** this unprecedented occasion is one which requires the House to summon all Members to avail themselves and participate in all activities relating to the Special Motion. Further, Standing Order 68 provides that a Motion for the removal of a person from office takes precedence over all other business on the Order Paper. Consequently, the Consideration of the Special Motion shall have priority over all activities of the House, whether domestic or foreign; and
- (3) **THAT,** the House Business Committee will seek a resolution of the House to—
 - (a) suspend the sitting of the House on Thursday, 3rd October 2024 in order to facilitate the administrative arrangements for public participation; and
 - (b) hold a morning sitting on Tuesday, 8th October 2024 and commence an early afternoon sitting on the same day to consider the Special Motion.

17. Further, Hon. Members I have been requested by the Mover of the Motion and in consultation with the House Business Committee, to convene a forum for a briefing of Members on the modalities of the public participation programme. In this regard, I will interrupt tomorrow's morning sitting at noon

and adjourn the House for this purpose. I also direct the Clerk to make necessary arrangements for the briefing session.

- 18. Hon. Members,** The **Third issue** touched on the manner of affording the Deputy President an opportunity to be heard and the modalities of the same. In this case, Standing Order 67 obliges the House to afford the Deputy President an opportunity to be heard either in person, through a representative or both. Further, the House is under an obligation to accord the Deputy President, the right to fair administrative action under Article 47 and the right to fair hearing under Article 50 of the Constitution.
- 19.** Drawing from the foregoing and the timeline provided for the House to dispose the Motion for which Notice was given today, the Deputy President of the Republic of Kenya is entitled to appear before the House in person, through legal representative, or both during consideration of the Motion.
- 20.** Noting that the Special Motion shall be considered on 8th October, 2024, I have directed that the H.E. the Deputy President be notified of his right to appear on the said date and the allocation of time from 5.00 p.m. to 7.00 p.m.
- 21. Honourable Members,** The **Fourth and final issue** that was raised for guidance was on the security of Members whose support of the Special Motion may affect their personal safety.
- 22.** The security and safety of Members is a paramount priority for the Parliamentary Service Commission which is charged with providing services and facilities to ensure the efficient and effective functioning of Parliament.
- 23.** As Chairman of the Parliamentary Service Commission, I assure all Members that, apart from the existing arrangements made for their security and safety, additional arrangements shall be considered, if the need arises, in consultation with the National Police Service.

24. Honourable Members, as I conclude, I urge each one of us and the public to truly grasp the magnitude of the unprecedented journey the House is about to embark on. In promulgating the Constitution, Kenyans bestowed upon themselves and generations yet to come a document that reshaped the very soul of our nation. Indeed, our Constitution is a living document that espouses the aspirations of our people. To this end, on Friday the 27th day of August 2010, Kenyans affirmed their sovereign and inalienable right to establish a government anchored in democracy, social justice, and the rule of law.

25. The power to impeach is a profound check on the conduct of a State Officer. To safeguard the rights of an affected State Officer, the Constitution prescribes high and graduated thresholds on the National Assembly. The thresholds reflect the gravity of the task before the House. This Special Motion is not just an inquiry into the conduct of a State Officer; it is also a momentous test of the resilience of the constitutional procedures meticulously designed by the framers.

26. As you proceed to scrutinize the conduct of the Deputy President, the House is also under scrutiny with respect to its fidelity to the Constitution and its obligation to uphold the rights of every Kenyan. I have no doubt that we will rise to this defining moment; that we shall confront this test with dignity, resolve, and the utmost integrity. I am confident that the House shall prove itself worthy of the trust placed on it by the Constitution and the people it represents.

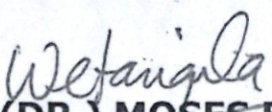
27. Honourable Members, In summary therefore, I wish to guide the House as follows—

(1) THAT, while the threshold for admitting the Special a Motion under the Articles 145 and 150 is 117 Members, the threshold for passing a resolution on the Motion for the impeachment of a President or Deputy President is 233 Members of this House.

- (2) THAT, public participation is an integral element of the process of removal of an elected State officer from office. In this regard, the House Business Committee has approved a programme of public participation across the country to be coordinated from the 47 Counties on 4th October, 2024.
- (3) THAT, in order to observe the requirements of Articles 47 and 50 of the Constitution and Standing Order 67, H.E. the Deputy President shall be notified of his right to appear before the House on Tuesday, 8th October, 2024 and the allocation of time between 5.00 and 7.00pm.
- (4) THAT, in addition to the existing arrangements made for the security and safety of Members, additional arrangements shall be considered in the usual manner in consultation with the National Police Service.

The House is accordingly guided.

I thank you!


THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, 1st October, 2024