

REPUBLIC OF KENYA

**TWELFTH PARLIAMENT - (FOURTH SESSION)
THE NATIONAL ASSEMBLY**

COMMUNICATIONS FROM THE CHAIR

(No. 64 of 2020)

**THE IMPORT OF THE JUDGEMENT OF THE HIGH COURT IN
CONSTITUTIONAL PETITION NO. 284 OF 2019 AS CONSOLIDATED
WITH CONSTITUTIONAL PETITION NO. 353 OF 2019 ON THE
LEGISLATIVE FUNCTION OF THE NATIONAL ASSEMBLY**

Honourable Members, as you may be aware, last week, the High Court in Constitutional Petition No. 284 of 2019 as consolidated with Constitutional Petition No. 353 of 2019, issued amongst other orders, an order for cessation of consideration of all pending Bills in both Houses of Parliament until the requirement of Article 110(3) of the Constitution is first fulfilled. The Judgement also contains other related declaratory orders that shall have a direct implication on the legislative work of this House.

Honourable Members, consequently, on Friday 30th October, 2020, the House Business Committee did meet and deliberate on the matter of the judgment and took a firm view that the judgment is unconstitutional, erroneous and flawed in law.

Honourable Members House Business Committee in particular noted with grave concern that the court erred, misdirected and misapplied the Constitution on the following issues amongst others-

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- (i) The High Court failed to consider the architectural design of the bicameral Parliamentary system under the Constitution. The Constitution has clearly set out the mandate of the two Houses of Parliament. Article 109 of the Constitution mandates the National Assembly to enact bills not concerning county governments without the participation of the Senate. The Senate is only mandated to participate in the enactment of laws concerning county governments.
 - (ii) The High Court's Judgment has effectively curtailed the National Assembly's mandate under Article 109(3) of the Constitution by requiring that any Bill not concerning county government must be considered by the Senate too.
 - (iii) The Judgment has also muted the provisions of Article 114 of the Constitution as read together with Article 109(5) of the Constitution regarding money-bills;
 - (iv) The effect of the High Court's judgment is that Members of Parliament and Committees in either House of Parliament **cannot** introduce Bills in their respective Houses, without the concurrence of the two Speakers. This curtails Members' right to initiate legislations and their right to represent the people of the constituencies and special interests.
 - (v) The Judgment also attempts to set aside previous judgments of the High Court and the Court of Appeal which had validated some of the 23 laws like The Finance Act, 2018, The National Government Constituency Development Fund Act, The Computer Misuse and Cybercrimes Act, No. 5 of 2018, The Statute Law (Miscellaneous


Amendments) Act, 2018 and The Statute Law (Miscellaneous Amendments) Act, 2018 and 2019, amongst others.

(vi) The Judgment has grave implications on the general presumption of constitutionality of a statute and the legislative sovereignty and will affect government taxation measures, government international commitments, reforms and policy decisions already taken in relation to various Acts of Parliament.

Honourable Members, in view of the foregoing, I therefore wish to inform you that the House Business Committee resolved as follows in regard to the High Court judgement -

- 1. THAT,** the National Assembly does appeal the decision of the High Court in Constitutional Petition No, 284 of 2019 as consolidated with Constitutional Petition No. 353 of 2019; and,
- 2. THAT,** in the meantime, no legislative business will be undertaken by the House in the coming days, whether from the National Assembly or the Senate pending a way forward on the decision contained in the High Court's Judgment, while seeking stay or setting aside of the Judgement by the Court of Appeal.

I thank you!


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

Tuesday, 3rd November, 2020