

4

PARLIAMENT OF KENYA LIBRARY

MEMO

THE SPEAKER - NATIONAL ASSEMBLY

The petition may be presented to the House, but may have to wait until ^{departmental} Committees are formed (S.O. 227(1))

Thru THE CLERK - NATIONAL ASSEMBLY

debund 24/4/2013 Approved [Signature] 29/4/13 SNA

RE: PETITION FOR REMOVAL OF CHAIRPERSON AND MEMBERS OF THE SALARIES AND REMUNERATION COMMISSION.

The above matter refers.

The petition by the Member for Igembe South Hon Mithika Linturi raises the following two issues-

- (a) Whether the petition is the form and content required by the Standing Orders;(see folio 3)
(b) Whether the House should, in lieu of the doctrine of subjudice, proceed with the petition notwithstanding the existence of High Court Petition No 193 of 2013 that is currently undergoing determination in the Labour division of the High Court.(see folios 1 and 2)

On the first issue, the Member for Igembe South Hon Lithika Minturi, on 17th April, 2013, gave notice under Standing Order 222 of his intention to present a petition for the removal of the Chairperson and Members of the Salaries and Remuneration Commission. The Standing Order requires the Clerk, upon receipt of the petition, to examine the petition and ensure that it is presented in the manner, form and content required by the Standing Orders.

The sequence of events subsequent to the submission of the petition to the Clerk is set out in Standing Order 220 as follows-

220 (3) The Clerk shall, within seven days of the date of receipt of the petition, review the petition to ascertain whether the petition meets the requirements of these Standing orders and of the law.

(4) Where the Clerk considers that a petition does not comply with paragraph (3), the Clerk may give such directions as are necessary to ensure that the petition is amended to comply with that paragraph

(5) The Clerk shall, if satisfied that the petition meets the requirements under paragraph (3), forward the petition to the Speaker for tabling in the House.

We have perused the petition and redrafted it so as to make it comply with the form and content required by the Standing Orders.

We attached hereto the petition signed by the Member.

The presentation of the petition to the House is set out in Standing Order 225 in the following sequence-

225 (1) A schedule of Petitions to be presented or reported to the House on a sitting day may be appended to the Order Paper of the Day in the order that they shall be presented or reported

(2) When the Order "Petitions" is read, the Speaker shall-

(a) in case of a petition presented by a Member, direct that the Member to present the Petition to the House or;

(b) in case of a Petition presented through the Clerk, report the Petition to the House;

Standing Order 230 further elaborates the sequence of events upon presentation of the petition to the House-

230 (3) Every Petition presented or reported pursuant to this Standing Order shall stand committed to the relevant Departmental Committee.

(4) Upon receipt of a petition under paragraph (3), the relevant Departmental Committee shall investigate the matter and shall, within fourteen days, report to the House whether the petition discloses ground for removal under Article 251(a) of the Constitution.

(5) The House shall, within ten days of the tabling of the report of the committee under paragraph (4) resolve whether or not the petition discloses a ground for removal under Article 251(a) of the Constitution

(6) Where the House resolves that a petition discloses a ground for removal, the Speaker shall, within seven days of the resolution transmit the resolution and the petition to the President.

Upon presentation in the House, the petition is committed to the relevant department committee which in this case is the Committee on Finance Planning and Trade. Procedurally therefore, the presentation of the petition may have to wait the formation of the relevant departmental committee by the House.

On the second issue as to whether the House should, in lieu of the doctrine of *subjudice*, proceed with the petition notwithstanding the existence of High Court Petition No 193 of 2013 that is currently undergoing determination in the labour division of the High Court, the question is best answered from a wholistic reading of the Constitution.

Indeed, most State Offices specify breach of the Constitution as one of the grounds for removal from office of the State Office holder.

In respect of the Executive Arm for instance, Article 145(1) of the Constitution provides that the President may be removed from office on grounds of a gross violation for the Constitution or of any other law. However, the institution which the Constitution specifies for purposes of making the finding of breach of the Constitution is the National Assembly in the first instance and the Senate in the second instance. The same applies to the removal of the Deputy President under Article 150 of the Constitution.

As regards the removal from office of the Director of Public Prosecution, the Tribunal appointed under Article 158(4) is the one that makes the determination of breach of the Constitution, the specific finding being non compliance with chapter six of the Constitution.

In respect of the Judicial Arm, the determination as to what constitutes the grounds of removal under Article 168 of the Constitution is made by the Tribunal appointed pursuant to that Article. Indeed, in the case of the removal of the former Deputy Chief Justice, Nancy Barasa, the determination as to whether she had contradicted chapter six of the Constitution was made by the Tribunal and not by the High Court.

As regard members of constitutional Commissions, Article 251(6) contemplates that that the Tribunal established under sub article (5) should be the one to make the determination as to whether a member of a constitutional Commission has

committed any of the grounds for removal from office set out in Article 251(1) including breach of the Constitution or the law.

Accordingly, the Constitution did not contemplate forestalling the process of removal of constitutional office holders merely because issues similar to those constituting the grounds for removal grounds have been raised for interpretation in court.

Submitted for directions.



J.W.NDOMBI,
Director of Legal Services

24th , April, 2013.