

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Friday, 27<sup>th</sup> August, 2010

The House met at 3.00 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### ADMINISTRATION OF OATH

**The Clerk of the National Assembly** (Mr. Gichohi): Hon. Members, you are requested to remain standing until Mr. Speaker has taken his Oath of Allegiance.

*(The Clerk administered the Oath of Allegiance to the Speaker, hon. Kenneth Marende)*

### CONSIDERED RULLING

#### SWEARING-IN OF MEMBERS WITH PENDING COURT CASES

**Mr. Speaker:** Order hon. Members! Mr. Baiya, you may step in!

*(Mr. Baiya entered the Chamber)*

Hon. Members, I have the following Communication to make. Hon. Members, questions have arisen as to whether a Member of Parliament who at any time prior to the promulgation of the new Constitution had been dismissed or otherwise removed from holding public office in terms of Article 75 of the new Constitution should proceed to take and subscribe to the oath or affirmation of allegiance as required under Section 13 of the Sixth Schedule of the new Constitution. The same questions have arisen with respect to hon. Members who have pending cases or matters before courts of law or other tribunals where the matters in issue impugn on the integrity of fitness for office of the Members concerned. As hon. Members will recall, when these questions were raised yesterday by the hon. Member for Ikolomani, Dr. Khalwale, I undertook to give directions at the opportune time.

Hon. Members, the promulgation and the coming into effect of the new Constitution of Kenya today marks the beginning of an important but delicate period of transition from the regime of the former Constitution to the full implementation of the new constitutional dispensation. In seeking to ensure a smooth and streamlined transition to the new Constitution, the Sixth Schedule of the Constitution prescribes a host of transitional provisions. With regard to the National Assembly, Section 10 of the Sixth Schedule provides that the National Assembly existing immediately before the effective

date shall continue as the National Assembly for the purposes of the Constitution for its unexpired term.

In effect, the Members of the National Assembly, though elected under the former Constitution, are by these provisions said, shaved and sheared into the new Constitutional dispensation to continue serving as Members of Parliament. The Members of the National Assembly are then, in terms of Section 13 of the Sixth Schedule, required to take and subscribe to an oath or affirmation of allegiance to the new Constitution.

Hon. Members, Chapter 6 of the Constitution addresses matters of leadership and integrity. It is noteworthy that neither this chapter as a whole nor any of its provisions is suspended from taking effect after the promulgation of the new Constitution. The entire Chapter is, therefore, operational and in effect at this moment. It, therefore, follows that state officers who by dint of Article 260 of the Constitution are defined to include Members of Parliament are required to comply with the provisions of Chapter 6 which, among other things, sets out for state officers relating to:-

- (a) The conduct of state officers as per Article 75.
- (b) Financial probity of state officers as per Article 76;
- (c) Restriction on activities of state officers as per Article 77; and,
- (d) Matters of citizenship and leadership as per Article 78.

Hon. Members, where a state officer acts in contravention of the provisions of Article 75 (1), Articles 76 or 77, or 78(2) of Chapter 6, Article 75(2) of the same Chapter is applicable. Article 75(2) requires that a person who contravenes the cited provisions:

(a) Shall be subject to the applicable disciplinary procedure for the relevant office.

(b) May in accordance with the disciplinary procedures referred to in paragraph (a) be dismissed or otherwise removed from office.

Article 75(3) of the Constitution then provides that “ a person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in Clause (2) is disqualified from holding any other state office.”

Hon. Members, the importance of Chapter 6 cannot be overemphasized. This chapter is a key pillar to the new constitutional order seeking to uproot the culture of impunity and bad governance. It seeks to ensure that only persons of integrity assent to or remain in certain public offices. It, therefore, is very much in keeping with the letter and spirit of the Constitution that questions should be raised on the application of the provisions of Chapter 6.

In ruling on the questions raised as to the eligibility of certain Members to take and subscribe to the oath or affirmation of office under the new Constitution and to take up certain state offices, I wish to draw the attention of this House to three important matters.

Hon. Members, I will pause there so that those at the entrance can walk in.

*(Members Standing at the Bar entered the Chamber)*

*(Applause)*

Order, hon. Members! I wish to draw the attention of this House to three important matters. First, the question must be asked about the applicability of Chapter 6

of the Constitution in general, and Article 75 in particular, to circumstances arising before the coming into effect of the Constitution. Is Chapter 6 and Article 75 in particular, retrospective in its effect, so that the disqualifications of persons from holding certain state offices can operate on account of misdeeds and removal from office under other laws prior to the coming into force of this Constitution? That is the first question you posed. Or is it the case that the chapter and the article are prospective and must apply to events and circumstances arising after the coming into force of the Constitution? Second, Article 50 of the Constitution has explicit provisions relating to fair hearing. Broadly, the article provides that any person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.

In the question on the applicability of Chapter 6, not a question leading to a dispute within the meaning on the Constitution, that entitles an affected person to the benefits of the requirements of natural justice and fair hearing contemplated in Article 50 of the Constitution.

Third, the new constitution just like the former constitution, has defined the respective territories and constitutional competence of the various arms of Government. In particular, the competence to determine whether the Constitution has been contravened or threatened with contravention, is in terms of Article 258 of the enforcement of the Constitution vested in the courts.

Article 258(2) affords the *locus standi* to institute court proceedings to a person making such a claim either acting on their own behalf or on behalf of other persons or generally in the public interest.

Hon. Members, my analysis of the three questions that I have raised leads me to the conclusion that the matters raised regarding the applicability of Chapter 6 and its application to certain Members of this House are not matters which can properly be determined by the Speaker at the present time. These are important issues going to the scope and intendment of the Constitution, the protection afforded by the Constitution to the right of individuals and the competence of the different arms of Government. Furthermore, the questions raised are not limited to the National Assembly and its Members. They are questions about the applicability of the Constitution and its provisions to all other state officers.

Hon. Members, in respect of concerns about the eligibility to be sworn in of Members who have cases pending in court, a somewhat different perspective applies. Firstly, there is no provision in the Constitution barring a state officer from being sworn in terms of Section 13 of the Six Schedule on the grounds that the state officer has a pending court case.

Indeed, Section 22 of the Sixth Schedule makes it clear how pending judicial proceedings and matters are to be dealt with. That section provides that “all judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under the Constitution or as directed by the Chief Justice or the Registrar of the High court.” The Constitution, therefore, clearly recognizes that a person facing any court case continues to be entitled to have the case heard and determined one way or another. The Constitution has not taken away this right.

Hon. Members, in the light of all the circumstances, it will, in my view, be a usurpation and probably the first step on a new and perilous journey towards the return of impunity for this House to arrogate to itself the function of interpreting unilaterally and without due process the meaning, scope and application of the provisions of the new Constitution, extending well beyond the operations of the Legislature. I am satisfied that the Constitution has adequate mechanisms for its own enforcement.

In particular, and as I mentioned yesterday, under Article 258 of the Constitution, it is open to any Member at any time to utilize the mechanisms established by the Constitution to obtain a conclusive determination on this matter. If upon such determination, it is found that any person who was sworn into office ought not to have been sworn, or that any person holding any office is not eligible or is disqualified from holding such office, appropriate orders and reliefs will be issued and all persons including the Speaker of the National Assembly will be obliged to abide.

Order, hon. Member! I will allow those at the entrance to walk in.

*(Members standing at the Bar entered the Chamber)*

Hon. Members, I therefore, rule that in the absence of any lawful obstacle, all Members of this House shall take and subscribe to an Oath of Affirmation as prescribed in the Constitution of the Republic of Kenya commencing forthwith.

## **COMMUNICATION FROM THE CHAIR**

### **GUIDANCE ON SWEARING-IN OF MEMBERS**

In this respect, I now wish to give guidance on how we shall proceed. Hon. Members, it is important to note that this special sitting is a sitting of the House like any other except that it is convened in order to transact a special extra-ordinary business required by the new Constitution. As I, your Speaker, have already taken and subscribed to the oath of allegiance to the new Constitution, I will now proceed to administer the same to all hon. Members beginning with the hon. Deputy Speaker who is also the Member for Lagdera.

The hon. Deputy Speaker will be followed by His Excellency the President and Member for Othaya, then the Rt. hon. Prime Minister and Member for Langata and thereafter, the Vice-President and Member for Mwingi North, in that order if they are present in the Chamber.

Hon. Members, thereafter, I will administer oath to the rest of the Members. The Clerk of the National Assembly will read out the names in clusters of five in alphabetical order in which they appear on the list as tabled in this House on the 15<sup>th</sup> January 2008 when the Tenth Parliament first met and as updated thereafter.

Once called out, hon. Members, you will proceed to take the oath for affirmation and then append your signature in the Oath Book to my left. It is expected that this process will not be interrupted by any Motion, debate or adjournment until I have administered the oath or affirmation of allegiance to the last Member. In this regard, those who may want to take tea as the ceremony proceeds may do so outside the chamber. Arrangements have been made for this.

Hon. Members, I have received a number of requests from Members asking that they be allowed to leave the chamber at some point during this ceremony, either to break the fast in the case of our Muslim brothers and sisters or to attend to other swearing-in ceremonies in the case of a number of Cabinet Ministers. I, therefore, wish to state that Members who have such important callings to attend to, may after evaluating the tempo and estimated time that the ceremony may take, leave the chamber but return to be sworn in at the appropriate time.

Hon. Members, for this purpose, I have directed that after we have gone through the list for the first time, we shall do a second and final round in order to accommodate these requests.

The final matter relates to Members who will not take the oath today. I do recognize that the Constitution also recognizes the possibility that a Member may be prevented by illness or other extra-ordinary cause from being present at this ceremony today. Let me make it clear that I am satisfied that it is in keeping with the letter and spirit of the Constitution to administer the oath or affirmation at the earliest opportunity on any subsequent day to a Member who, because of illness or other extra-ordinary cause, is not able to be present in the House today. It must, however, be noted that no such Member will be eligible to participate in any business of this House or its committees until the Member has taken the oath. It should be noted that this includes the exercise of any functions or duties pertaining to the office of Member of Parliament.

Thank you.

*(Dr. Khalwale stood up in his place)*

Order, Member for Ikolomani! In the Communication which I have made, I have among other things, directed that this ceremony continues without interruption, no motions being raised or adjournment.

*(Applause)*

Hon. Members, I, therefore, want to urge all of us to treat this ceremony with the dignity, respect and decorum that it deserves.

Next order!

#### **ADMINISTRATION OF OATH**

The Oath of Allegiance was administered to the following Members:-

Farah Maalim

Kalonzo Musyoka.

Ababu Namwamba.

Abdikadir Mohamed Hussein

Ahmed Shakeel Ahmed Shabbir

Akula Bulimo Evans

Ali Bahari Abdul

Ali Hussein Mohamed

Anyanga Omondi Edick Peter

Anyango Ochieng' Pollyins  
Baiya Njoroge Peter  
Chanzu Kifuma Yusuf  
Chepchumba Peris.

*(Loud Consultations)*

**Mr. Speaker:** Order, hon. Members! Please lower the level of your consultations! This is a most dignified ceremony. Please love your neighbour as you do yourself. Just as you would want to be heard when you take your oath, please hear the others as they take their Oath.

*(Administration of Oath of Allegiance resumed)*

Chepkitony Kipkosgei Lucas  
Cheruiyot Kipkemoi Zakayo  
Dache John Pesa  
Duale Aden Bare

*(His Excellency the President and the Right Hon. Prime Minister  
were applauded as they entered the Chamber)*

**Mr. Speaker:** Order, hon. Members! We will proceed with the ceremony but as I had indicated in my communication at the beginning of this ceremony, His Excellency the President, the Right Hon. Prime Minister and His Excellency the Vice-President will have priority in accordance with our practices as captured in the records of this House. So, now that His Excellency the President has arrived we will move to him as soon as we have dealt with the Member for Turkana Central and the Member for Subukia, who are already on the queue, and so that we also give His Excellency the President and the Right Hon. Prime Minister time to acclimatize themselves with the Chamber.

*(Administration of Oath of Allegiance resumed)*

Ethuro Ekwee David  
Mr. Gaichuhie Ributhi Nelson

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Those of you who are finding a place to sit, please do so, as much as possible, in silence. Those who are consulting, please lower the level of your consultations. There is space to the left of the Speaker in the Chamber, but please try and find a place to sit quietly. If you cannot find a place to sit, please find a place to stand.

*(Administration of Oath of Allegiance resumed)*

Kibaki Mwai  
Raila Amolo Odinga

**Mr. Speaker:** Order, hon. Members! Hon. Members, we will make an exception to the order of the swearing-in and accommodate the two joint Chief Whips in the next batch of hon. Members to be sworn-in. I am informed that they are required to carry out their duties *inter alia* in the House and away from the House that go to mark this occasion.

*(Administration of Oath of Allegiance resumed)*

Midiwo Jakoyo Washington  
Muthama Nduya Johnson  
Gesami Ondicho James  
Gitau Njuguna Peter  
Githae Njeru Robinson  
Githunguri Munga Stanley  
Godhana Gaddae Dhadho  
Gumbo O. Nicholas  
Gumo Omulo Fredrick  
Gunda Fondo Benedict  
Haji Mohamed Yussuf  
Imanyara Gitobu  
Jeffah Kingi Amason  
Jirongo Shakhalaga Khwa Cyrus

#### **DEPARTURE OF HIS EXCELLENCY THE PRESIDENT**

**Mr. Speaker:** Order, hon. Members! It is now the pleasure of the His Excellency the President to take his leave. The Right Hon. Prime Minister also wishes to leave at this point so that they can attend to other State functions, including a swearing-in ceremony at State House. So, hon. Members, please be upstanding!

*(Hon. Members rose in their places while His Excellency the President and the Right Hon. Prime Minister withdrew from the Chamber)*

*(Administration of Oath of Allegiance resumed)*

Joho Ali Hassan  
Kabando wa Kabando  
Kaino Kipchumba Boaz  
Kajwang Otieno Gerald  
Kaloki Kyalo Philip  
Kamama Abongotum Asman  
Kamar Jepkoech Margaret

Kamau Irungu Jamleck  
Kamau Maina James  
Kambi Kazungu Samuel  
Kapondi Chesebe Fred  
Kariuki Ngata John  
Karua Wangari Martha  
Kathuri Mureithi Emilio  
Kenneth Peter  
Kenyatta Uhuru  
Keter Cheruiyot Charles  
Keya Manyala Atanas  
Keynan Adan Wehliye  
Khalwale Boni  
Khang'ati Alfred  
Khaniri Munyasa George  
Kigen Kipkorir Luka  
Kiilu L.N. Peter  
Kilemi Valerian Mwiria

*(Mrs. Kilimo approached the Chair)*

**Mr. Speaker:** Mrs. Kilimo, you forfeited your chance! We will come back to you during the second round!

Kilonzo Mutavi Charles  
Kilonzo Mutula  
Kilonzo Kiema Julius  
Kimunya Muhinga Amos  
Kinyanjui Maiyani Lee  
Kioni Ngayu Jeremiah  
Kipkiror Cheptumo William  
Kiptanui Kiplagat Jackson  
Kiuna Joseph Ng'ang'a  
Kiunjuri Mwangi Festus  
Kivuti Maxwell Lenny  
Koech Kibet David  
Koli Nanok Josephat  
Kones Pauline Cheron  
Kones Kipyegon Julius  
Kosgei Jemng'etich Sally  
Kosgey Kiprono Henry  
Kuti Abdi Mohamed  
Kutuny Serem Joshua  
Laboso Joyce Cheron  
Lagat Kiptarbei Elijah  
Lankas ole Nkoidila  
Lekuton Joseph

Lesrima Saimanga Simeon  
Lessonet K. Moses  
Letimalo Lakalei Raphael  
Linturi Mithika Franklin  
Litole MwotinyWilson  
M'Mbaya Justus Kizito  
M'Mithiaru Ntoitha  
Machage Gisuka Wilfred  
Magerer Langat Kiprono  
Magwanga Oyugi Joseph  
Maina Mwangi Ephraim  
Mathenge Murugi Esther  
Mbai Itwiku Benson  
Mbarire Mutitu Cecily

**Mr. Speaker:** Order, hon. Members! Hon. Members, you will recall that after I took the oath, the next person to take the oath as required by law in the House was the Deputy Speaker. But on careful reflection and interpretation of the law, the Deputy Speaker wears two hats in the House. He is by the provisions of the Constitution and other relevant laws the Deputy Speaker in the House but he also is a Member of Parliament representing the people of Lagdera. So he is, therefore, under duty to take oath as a Member of Parliament representing the people of Ladgera.

So, hon. Members, I will now invite the Deputy Speaker, the hon. Farah Maalim to take a second oath.

Farah Maalim  
Mbau Elias Peter  
Mbiuki Japheth Kareke  
Mbugua Simon  
Metito Katoo Judah  
Michuki John Njoroge  
Midiwo Jakoyo Washington  
Mututho John Michael Njenga  
Elmi Mohamed Ibrahim  
Mahamud Mohamed Maalim  
Monda Robert Onsare  
Mudavadi Musalia Wycliffe  
Mugo Wambui Beth  
Mung'aro Gideon Maitha  
Munyaka Kioko Victor  
Munyes Kiyonga John  
Muoki Mulatya Isaac  
Muoki Mutula Daniel  
Mureithi Kihara Erastus  
Murgor Recha Julius  
Muriithi Ndiritu  
Murungi Kiraitu

Musila David  
Musyimi Mutava  
Muthama Nduya Johnson  
Mwadeghu Ludindi Thomas  
Mwahima Masudi Mwalimu  
Mwaita Komen Silas Sammy  
Mwazo Danson  
Mwakwere Chirau Ali  
Mwangi Muturi C. Barnabas  
Mwatela Calist Andrew  
Mwathi Mungai Peter  
Mwau Harun John  
Mwaura Kiburi Njuguna David  
Mwiru Mhuri Muthengi Alex  
Ndambuki Musyoka Gideon  
Ndeti Wavinya  
Ng'ang'a Nguyai Lewis  
Ngilu Kaluki Charity  
Ng'ong'o Mbadi John  
Ngugi Mwaniki David  
Nkaisserry Kasaine Joseph  
Ntimama ole Ronkorua William  
Nuh Nassir Abdi  
Nyamai Mutisya Charles  
Nyammo Thombe Francis  
Nyamweya Manson Oyongo  
Nyongesa Otuoma Paul  
Obure Mogere Christopher  
Odhiambo Bwire Alfred  
Oginga Oburu  
Ogindo Otieno Martin  
Ojaamongson Odeke Sospeters  
Ojode Orwa Joshua  
Okemo Chrysanthus  
Olweny Ayiecho Patrick  
Ogari Simon Nyaundi  
Ombui Moriasi Wilfred  
Omollo Ojwang Cyprian  
Ongeri Kegengo Samson  
Ongoro Elizabeth Masha  
Onyancha Charles  
Onyonka Momoima Richard  
Oparanya Ambetsa Wycliffe  
Orengo James Aggrey  
Osebe Nyambati Enock Walter  
Otieno Anyango Dalmas

Otichilo Khasilwa Wilber  
Outa Otieno Patrick  
Poghisio Losuron Samuel  
Rege Kwanya G. James  
Ruteere Muriuki Silas  
Rutto Kiprono Isaac  
Saitoti George  
Sambili Jepkemoi Hellen  
Sambu B.A. Wekesa  
Sasura Tarry Hussein  
Shaban Namsi Naomi  
Shitanda Soita Peter  
Simiyu Eseli David  
Sugow Aden Ahmed  
Langat Benjamin  
Waibara Kungu Clement  
Wamalwa Ludovic Eugene  
Wambugu Muchiri Clement  
Warugongo Nemesyus  
Washiali Jomo Benjamin  
Wekesa Mahalang'ang'a Noah  
Were Aoko David  
Waititu Ferdinard Ndung'u  
Wetangula Masika Moses  
Yinda Ochieng Edwin  
Zonga Mbwana Omar  
Konchela Gideon Sitelu  
Mohamed Hussein Gabbow  
Abdalla Amina  
Abdalla Shakila  
Affey Mohamed Abdi  
Kombo Musikari Nazi  
Maison Leshoomo  
Nyagah Joseph  
Nyamweya George Omari  
Noor Abdi Sophia  
Odhiambo-Mabona Millie G.A.  
Shabesh Rachael Wambui  
Sirma Musa Cherutich  
Yakub Muhamad Dory Mohamed  
Wako S. Amos  
Ali Mohamed Mohamud  
Abu Chiaba Abu Mohamed  
Anyang'-Nyong'o Peter  
Balala Najib Mohamed  
Baya S.K. Francis

Bett Franklin  
Bifwoli Wakoli Sylvester  
Kajembe Seif Ramadhan  
Kilimo Jebii Linah  
Rai Gonzi Samuel  
Ruto Samoei K. William  
Twaha Fahim Yasin

**Mr. Speaker:** Is there any hon. Member in the House who has not yet taken his or her oath?

Well, it will seem that we are all covered. Hon. Members, those of you who are Members of the Parliamentary Service Commission, you will, please, proceed to Committee Room 9 to take your oath of office as soon as the House rises.

### **ADJOURNMENT**

**Mr. Speaker:** Order, hon. Members! Hon. Members, that then brings us to the end of business for the day. Therefore, the House stands adjourned until Tuesday, 31<sup>st</sup> August, 2010 at 2.30 p.m.

The House rose at 6.50 p.m.