



**REPUBLIC OF KENYA**

**THIRTEENTH PARLIAMENT**

**NATIONAL ASSEMBLY**

**THE HANSARD**

**VOL. I NO. 3**

## THE HANSARD

Tuesday, 4<sup>th</sup> October 2022

The House met at 2.30 p.m.

*[The Speaker (Hon. Moses Wetang'ula) in the Chair]*

### PRAYERS

*(Several Hon. Members walked into the Chamber)*

**Hon. Speaker:** Shall we be silent to administer the Oath to the Honourable colleague, Hon Tubi Bidu Mohammed.

*(Hon. Tubi Bidu Mohammed was escorted into the Chamber by  
Hon. Ali Wario Guyo and Hon. Julius Sunkuli)*

*(Loud consultations)*

**Hon. Speaker:** Order Hon. Members. We shall administer the Oath in silence.

**Hon. Ali Guyo** (Garsen, ODM): Hon. Speaker, I, Hon. Ali Wario Guyo, and Hon. Julius Sunkuli, wish to introduce to you the Member-elect for Isiolo South Constituency, Mr. Tubi Bidu Mohammed.

### ADMINISTRATION OF OATH

The Oath of Office was administered to:

Mr. Bidu Tubi Mohammed.

**Hon. Speaker:** Congratulations. You may proceed to sign the Oath.

**Hon. Bidu Tubi** (Isiolo South, JP): Thank you.

**Hon. Speaker:** Hon. Abubakar Talib. Next Order!

### COMMUNICATION FROM THE CHAIR

#### RE-INTRODUCTION OF BILLS AND LEGISLATIVE PROPOSALS TO AMEND THE CONSTITUTION THROUGH PARLIAMENTARY INITIATIVE

**Hon. Speaker:** Hon. Members, I wish to welcome you back to the House following the swearing-in, induction and the official opening. It is my hope that the events have been beneficial and enriching to your knowledge of the House and its workings as we commence the business of the 13<sup>th</sup> Parliament.

As you are aware, and for the benefit of the new Members, the period before the approval of the Cabinet and the formation of Committees is usually characterized by light business in the

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House and is therefore somewhat relaxed. This is attributable to less business emanating from the Executive or Committees for consideration by the House. Once the Cabinet and the Principal Secretaries are fully in place, the Calendar of the House becomes crowded with majority and minority party businesses.

Hon. Members, I also wish to bring to the attention of the House that, going by our practices and our Standing Orders, all business that was not concluded at the end of the last Parliament has lapsed. However, in its wisdom, the 12<sup>th</sup> Parliament amended the Standing Orders to save certain business from part of the pre-legislative processes. In particular, the House amended Standing Order 114A (1)(c) and (d) to exempt certain Bills from pre-publication scrutiny upon their lapsing to allow Members to re-introduce the Bills, if they so wish.

Hon. Members, for clarity, Standing Order 114A (1)(c) and (d) states as follows:

“Speaker to exempt certain legislative proposals

114A. (1) The Speaker may exempt a legislative proposal from the provisions of Standing Order 114 (Introduction of Bills) if the proposal—

(c) is identical to a proposal that was passed by the House but lapsed at the expiry of the term of the preceding Parliament; or

(d) was introduced by the same Member and read a Second time but lapsed at the expiry of the term of the preceding Parliament.”

In this regard, Hon. Members, the House provided a window that allows expedited re-introduction of Bills. The first category relates to expedited re-introduction of Bills that were passed by the House in the last Parliament but lapsed in the Senate. The second category allows consideration of Bills which had gone beyond second reading.

Hon. Members, under the new procedure, these Bills can now be re-published in the same form as initially passed by the House and are exempted from pre-publication scrutiny. In this regard, the Bills which may benefit from expedited re-introduction under the first category are as follows:

1. The Livestock and Livestock Products Marketing Board Bill (National Assembly Bill No.2 of 2019), which was sponsored by the Member for Mandera North, the Hon. Bashir Abdullahi, MP;
2. The National Youth Council (Amendment) Bill (National Assembly Bill No.8 of 2019), which was sponsored by former Nominated Member, the Hon. Gideon Keter;
3. The National Disaster Management Authority Bill (National Assembly Bill No.10 of 2019), which was sponsored by the Member for Kikuyu, the Hon. Kimani Ichung’wah, MP;
4. The Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No.17 of 2019) and the Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No.57 of 2019), which were initially sponsored by the then Member for Wundanyi, the Hon. Andrew Mwadime;
5. The Equalization Fund Bill (National Assembly Bill No.23 of 2019), which was sponsored by the Member for Tiaty, the Hon. Kassait Kamket, MP;
6. The Crops (Amendment) Bill (National Assembly Bill No.25 of 2019), which was sponsored by the Member for Matuga, the Hon. Tandaza Kassim Sawa, MP;

7. The Assisted Reproductive Technology Bill (National Assembly Bill No.34 of 2019) which was sponsored by the mother of the House, the Member for Suba North, the Hon. Millie Odhiambo-Mabona, MP;
8. The Land (Amendment) Bill (National Assembly Bill No.54 of 2019) which was sponsored by the Member for Ruiru, the Hon. Simon King'ara, MP;
9. The Health (Amendment) Bill (National Assembly Bill No.64 of 2019) which was sponsored by the then Member for Kesses, the Hon. Swarup Mishra;
10. The Cancer Prevention and Control (Amendment) Bill (National Assembly Bill No.65 of 2019). This Bill was sponsored in the last Parliament by the then Member for Homabay County, the Hon. Gladys Wanga.

Can the Hon. Members at the bar take their seats?

*(Several Members walked into the Chamber)*

11. The Sugar Bill (National Assembly Bill No.68 of 2019), which was sponsored in the last Parliament by the then Member for Kanduyi, the Hon. Wafula Wamunyinyi; and
12. The Community Health Workers Bill (National Assembly Bill No.30 of 2020) which was sponsored in the last Parliament by the Member for Ndhiwa, the Hon. Martin Peters Owino, MP.

Hon. Members, in light of the foregoing, the Bills that were sponsored by former Members, any Member is at liberty to take them up and have them re-introduced.

In this regard, sponsors of the Bills or any other Member who is interested in republishing any of the aforementioned Bills is encouraged to write to my office seeking approval to re-introduce a specified Bill from the above list. The earlier you do this the better for you, Hon. Members. It is, of course, expected that those who have been re-elected or nominated back to this House would naturally take-up their respective Bills from the list I have read.

Hon. Members, the second category refers to expedited re-introduction of Bills which went beyond Second Reading but lapsed before consideration at Committee of the whole House. Pursuant to the provisions of Standing Order 114A (1)(d), these can be re-introduced by the same Members who initially sponsored them and would be exempted from pre-publication scrutiny. The Bills in this category include the following:

1. The Public Service Commission (Amendment) Bill (National Assembly Bill No.27 of 2019), which was sponsored by the Member for Embakasi Central, the Hon. Benjamin Gathiru Mwangi, MP;
2. The Alcoholic Drinks Control (Amendment) Bill (National Assembly Bill No.70 of 2019), which was sponsored by the Member for South Mugirango, the Hon. Silvanus Osoro, MP;
3. The Kenya Food and Drugs Authority Bill (National Assembly Bill No.31 of 2019), which was sponsored by the Member for Endebess, the Hon. (Dr.) Robert Pukose, MP;
4. The Pensions (Amendment) Bill (National Assembly Bill No.26 of 2020), which was sponsored by the Member for Kimilili, the Hon. Didmus Barasa, MP;
5. The National Construction Authority (Amendment) Bill (National Assembly Bill No.45 of 2020) and the Penal Code (Amendment)(No.2) Bill

(National Assembly Bill No.47 of 2021), both of which were sponsored by the Member for Nakuru Town East, the Hon. David Gikaria, MP.

Hon. Members, the following 29 other Bills did not go beyond the Second Reading but may be re-introduced by the same or any other Member, pursuant to the provisions of Standing Order 114 (Introduction of Bills), after undergoing pre-publication scrutiny:

1. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No.19 of 2022), which was sponsored by the then Member for Mwatate, the Hon. Andrew Mwadime;
2. The Birth and Death Registration (Amendment) Bill (National Assembly Bill No.32 of 2020), which was sponsored by the Member for Gilgil, the Hon. Martha Wangari, MP;
3. The Alcoholic Drinks Control (Amendment) Bill (National Assembly Bill No.35 of 2020), which was sponsored by the Member for Wundanyi, the Hon. Danson Mwakuwona, MP;
4. The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No.20 of 2020), which was sponsored by the then Member for Thika Town, the Hon. Patrick Wainaina;
5. The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No.34 of 2020), which was sponsored by the then Member for Nyaribari Chache, the Hon. Richard Tong’i;
6. The Central Bank of Kenya (Amendment) Bill (National Assembly Bill No.47 of 2020), which was sponsored by the former Nominated Member, the Hon. Gideon Keter;
7. The Pharmacy and Poisons (Amendment) Bill (National Assembly Bill No.1 of 2021), which was sponsored by the then Member for Nandi Hills, the Hon. Alfred Keter;
8. The Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No.11 of 2021), which was sponsored by the Member for Garissa Town, the Hon. Aden Duale, MP;
9. The Public Procurement and Asset Disposal (Amendment) (No.3) Bill (National Assembly Bill No.49 of 2020), which was sponsored by the Member for Embakasi Central, the Hon. Benjamin Gathiru Mwangi, MP;
10. The Poverty Eradication Authority Bill, (National Assembly Bill No.13 of 2020) which was sponsored by the Member for Sirisia, the Hon. John Waluke Koyi, MP;
11. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No.29 of 2020), which was sponsored by the former Nominated Member, the Hon. Gideon Keter;
12. The Health (Amendment) Bill (National Assembly Bill No. 28 of 2020), which was sponsored by the Member for Kandara, the Hon. Alice Wahome, MP;
13. The Institute of Social Work Professionals Bill (National Assembly Bill No.31 of 2020) , which was sponsored by the Member for Kaiti, the Hon. Joshua Kivinda Kimilu, MP;

14. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No.52 of 2021), which was sponsored by the then Member for Chepalungu, the Hon. Gideon Koskei;
15. The Public Finance Management (Amendment) Bill (National Assembly Bill No.16 of 2022) which was sponsored by the Member for Butula, the Hon. Joseph Oyula, MP;
16. The Public Service Internship Bill, (National Assembly Bill No.25 of 2021) which was sponsored by the Member for Samburu West, the Hon. Naisula Lesuuda, MP;
17. The Public Audit (Amendment) Bill (National Assembly Bill No.59 of 2021), which was sponsored by the then Member for Wajir South, the Hon. Mohammed Mohamed Sheikh;
18. The Child Justice Bill (National Assembly Bill No.11 of 2022), which was sponsored by the Member for Suba North, the Hon. Millie Odhiambo-Mabona, MP;
19. The Sexual Offences (Amendment) Bill, (National Assembly Bill No.24 of 2020) which was sponsored by the Hon. Gathoni Wamuchomba, MP;
20. The Criminal Procedure Code (Amendment) Bill (National Assembly Bill No.41 of 2020), which was sponsored by the Hon. Nelson Koech, MP;
21. The Penal Code (Amendment) Bill (National Assembly Bill No. 40 of 2021), which was sponsored by the Hon. Nimrod Mbai, MP;
22. The Whistleblower Protection Bill (National Assembly Bill No.50 of 2021), which was sponsored by the Hon. Irene Kasalu, MP;
23. The Geriatric Bill, 2021(National Assembly Bill No.51 of 2021), which was sponsored by the Hon. Gathoni Wamuchomba, MP;
24. The Kenya Roads (Amendment) Bill (National Assembly Bill No.6 of 2022), which was sponsored by the Hon. Naisula Lesuuda, MP;
25. The Land Control Bill (National Assembly Bill No.7 of 2022), which was sponsored by the Hon. Wilberforce Oundo, MP;
26. The Valuers Bill (National Assembly Bill No.18 of 2022), which was sponsored by the Member for Ol Jororok, the Hon. Michael Muchira, MP;
27. The Public Appointments (Parliamentary Approval) (Amendment) Bill (National Assembly Bill No.54 of 2022), which was sponsored by the Member for Kisumu East, the Hon. Shakeel Shabbir, MP;
28. The National Transport and Safety Authority (Amendment) Bill, (National Assembly Bill No. 2 of 2022), which was sponsored by the Member for Ruiru, the Hon. Simon Ng'ang'a Kihara; and,
29. The National Land Commission (Amendment) Bill (National Assembly Bill No.12 of 2022), which was sponsored by the Member for Kilifi North, the Hon. Owen Baya Yaa, MP.

Hon. Members, cognisant of the work that went into the processing of the said Bills by Committees and the efforts made by the Members to have the Bills published in the last Parliament, I request the Committees to which these legislative proposals will be referred, to expedite their consideration at the pre-publication scrutiny stage. Should conclusion of the scrutiny of the Bills be inordinately delayed, the House Business Committee, which I will chair, will not

hesitate to move this House to exempt the said Bills from pre-publication scrutiny so as to ensure that the Bills proceed without undue delay.

Hon. Members, you will also recall that before the adjournment of the 12<sup>th</sup> Parliament, as I had noted in my acceptance speech, the House made progressive amendments to the rules of this House, amongst them being the new Standing Order 114 (7A) which prescribes a new *sui generis* procedure for conducting pre-publication scrutiny of legislative proposals seeking to amend the Constitution. Standing Order 114 (7A) provides that in respect of a proposal to amend the Constitution, the proposal shall be accompanied by signatures of at least 50 other Members in support, unless it is sponsored by the Majority Party or the Minority Party.

Hon. Members, since the commencement of this Parliament, I have received several requests from Members wishing to introduce legislative proposals to amend the Constitution. Amongst them are proposals from the Member for Gichugu Constituency, Hon. Robert Githinji Gichimu; and the Member for Matungulu Constituency, Hon. Stephen Mule. The two Members are proposing to amend the Constitution to anchor the National Government Constituency Development Fund (NG-CDF) in the Constitution.

In this regard, I request that any Member seeking to introduce a legislative proposal to amend the Constitution does comply with the requirements of Standing Order 114 (7A). This requires attachment of the signatures of at least 50 other Members to the legislative proposal for approval by the Speaker.

Hon. Members, the new Standing Order No. 114 (7A), in my view, shall enrich the legislative process as it seeks to provide for consensus through collection of views of other Members, the Attorney-General, the constitutional commissions and the Kenya Law Reform Commission (KLRC) on any proposed amendments to the Constitution. Indeed, the new Standing Order No.114 (7A) actualises the provisions of Article 256 (2) of the Constitution, which obligates Parliament to publicise any Bill to amend the Constitution and facilitate public discussion.

It is also notable that Standing Order No.114 (1) as amended also allows Members to co-sponsor Bills in the House. In this regard, Members with legislative proposals dealing with related issues may opt to co-sponsor legislative proposals for introduction in the House.

Hon. Members, when adopting the Report of the Procedure and House Rules Committee on amendments to the Standing Orders, the National Assembly of the 12<sup>th</sup> Parliament also noted that there is need to amend a number of statutes that have implication on the rules of procedure. The intention of the proposed amendments is to keep them in accord with the Constitution, related laws and the reality of modern times. The *Hansard* of the afternoon Session of Tuesday, 31<sup>st</sup> May 2022 records that the Committee also tabled four draft legislative proposals containing amendments to statutes that were proposed to be urgently considered to operationalize certain procedures of the House.

Hon. Members, the said proposals are:

1. The Draft Public Finance Management (Amendment) Bill, 2022 that sought to enlarge the time for consideration of the Budget Policy Statement from 14 to 21 days;
2. The Draft Political Parties (Amendment) Bill, 2022 that sought to require the Registrar of Political Parties to convey certified copies of all coalition agreements to the Clerk of each House of Parliament;
3. The Draft Parliamentary Powers and Privileges (Amendment) Bill, 2022 that sought to streamline the Membership of the Committee of Powers and Privileges;

4. The Draft Petitions to Parliament (Procedure) (Amendment) Bill, 2022 that sought to involve the Public Petitions Committee in the determination of the admissibility of petitions and the full consideration of all admissible petitions; and,
5. The Draft Statutory Instruments (Amendment) Bill, 2022 that sought to ensure the negative resolutions of the House on Statutory Instruments are implemented.

To this end, the Acting Clerk of the National Assembly has informed me that the legislative proposals have been finalized. Consequently, and to the extent that the 12<sup>th</sup> Parliament did resolve that the proposals be prioritized, I direct that they be urgently introduced in the House.

Hon. Members, I have another Communication to make. Can the Members at the Bar take their seats?

*(Several Hon. Members walked into the Chamber)*

#### CONSTITUTION OF THE HOUSE BUSINESS COMMITTEE

**Hon. Speaker:** Hon. Members, as you are aware, today is the First Sitting of the House following the Official Opening of the 13<sup>th</sup> Parliament last week. By practice, the first business of the House at the beginning of each Session is the formation of the House Business Committee. Subsequently, the Committee, once constituted, proceeds to determine and set up the business of the House. The next set of Business that follows is the consideration and passage of the several Procedural Motions under Standing Order No.97 relating to limitation of time during debates in the House. Thereafter, with respect to the first Sitting following a general election, the House debates the President's Address as contemplated under Standing Order No.24 (6).

According to today's Order Paper, the Motion for the approval of the membership of the House Business Committee is not one of the business to be transacted today. This is because a question has since arisen relating to the constitution of the Committee with respect to the names of persons under paragraphs (b), (c), (d) and (e) of Standing Order No.171 (1). To illustrate this, allow me to refer to Standing Order No.171 (1). This rule provides that the House Business Committee consists of the following:

1. the Speaker, who shall be the Chairperson;
2. the Leader of the Majority Party or a representative designated in writing;
3. the Leader of the Minority Party or a representative designated in writing;
4. the Whip of the Majority Party or a representative designated in writing;
5. the Whip of the Minority Party or a representative designated in writing; and,
6. nine other Members, who shall be nominated by parliamentary parties and approved by the House at the commencement of every Session, reflecting the relative majorities of the seats held by each of the parliamentary parties in the National Assembly and taking into consideration the interests of parties other than parliamentary parties and Independents.

From what I have read, you will note that the House Business Committee consists of a total of 14 Members. It is also notable that besides the Speaker, four Members sit in the Committee by virtue of their offices. These are the Leader of the Majority Party, the Leader of the Minority Party, the Majority Party Whip and the Minority Party Whip



I wish to inform you that I received a letter dated 21<sup>st</sup> September, 2022 from the Secretary-General of the Azimio La Umoja One Kenya Coalition Party, the Hon. Junet Mohammed, MP. In the letter, the Member for Suna East also signs off as the Majority Whip of the Azimio La Umoja One Kenya Coalition Party.

In a nutshell, the letter conveys that at its Parliamentary Group Meeting held from 16<sup>th</sup> to 17<sup>th</sup> September, 2022, the Azimio La Umoja One Kenya Coalition Party elected the following as its House leaders in the National Assembly:

1. Hon. James Opiyo Wandayi, MP as the Leader of the Majority;
2. Hon. Robert Mbui, MP as the Deputy Leader of the Majority;
3. Hon. Junet Mohammed, MP as the Majority Whip; and
4. Hon. Sabina Chege, MP as the Deputy Majority Whip.

I also wish to inform you that I received another letter dated 22<sup>nd</sup> September, 2022 from the Member for South Mugirango, the Hon. Silvanus Osoro Onyiego, MP. In the letter, which he also signs off as the Majority Chief Whip of the Kenya Kwanza Coalition, notifies that in discharge of his role under Standing Order No.19A (7), the Kenya Kwanza Coalition held its Parliamentary Group meeting on 16<sup>th</sup> and 17<sup>th</sup> September, 2022 at Sawela Lodge in Naivasha and elected persons to occupy the following specified offices:

1. Hon. Kimani Ichung'wah, MP, the Member for Kikuyu Constituency – Leader of the Majority Party; and,
2. Hon. Owen Baya, MP, the Member for Kilifi North Constituency – Deputy Leader of the Majority Party.

In his letter, the Member for South Mugirango also attaches an excerpt of the minutes of the Parliamentary Group meeting and a list of Members who attended the meeting, signed by the attendees.

Hon. Members, on the same day, I also received a letter from the Member for Kikuyu Constituency, Hon. Kimani Ichung'wah, MP, dated 22<sup>nd</sup> September 2022. In the letter, the Member for Kikuyu Constituency signs off as the Leader of the Majority Party and conveys that the Kenya Kwanza Coalition held its Parliamentary Group meeting on 16<sup>th</sup> and 17<sup>th</sup> September 2022 at Sawela Lodge in Naivasha and elected the following persons as the Chief Whip and Deputy Chief Whip:

1. Hon. Silvanus Osoro Onyiego, MP, Member for South Mugirango – Chief Whip; and
2. Hon. Naomi Jillo Waqo, MP, Member for Marsabit County – Deputy Chief Whip.

Similarly, the Member for Kikuyu Constituency also attached an excerpt of the minutes of the Parliamentary Group meeting and a list of Members who attended the meeting, duly signed by the attendees. In his letter to me, the Member for Kikuyu Constituency indicated that he was discharging his role under Standing Order No.20A (3)(a), which requires that the names of the persons designated as the Majority Party Whip and Majority Party Deputy Whip to be communicated to the Speaker by the Leader of the Majority Party.

On 22<sup>nd</sup> September 2022, I also received a letter dated 21<sup>st</sup> September 2022 from Hon. Jeremiah Ng'ayu Kioni identifying the following Members as the leadership of the Jubilee Party Parliamentary Group in the House:

1. Hon. Shurie Abdi Omar, MP, Member for Mbalambala – Leader;
2. Hon. Samuel Arama, MP, Member for Nakuru Town West – Whip;
3. Hon. Sarah Korere, MP, Member for Laikipia North – Deputy Whip, and

4. Hon. Adan Keynan, MP, Member for Eldas – Secretary.  
Can the Members at the Bar take their seats?

*(Several Hon. Members walked into the Chamber)*

Order, Hon. Members. The distinguished immediate former Member for Ndaragwa Constituency signs off as the Secretary-General of the Jubilee Party. In the letter, he also notes that the Jubilee Party remains a member of the Azimio La Umoja - One Kenya Coalition Party.

Hon. Members, ordinarily and in keeping with the requirements of Standing Order Nos.19A (1)(4) and 20 (A)(5), following receipt of the names and attendant accompanying documentation, as your Speaker, I am supposed to convey the names of the leadership of the Majority Party, the Minority Party and the Whips of any parliamentary party in the House to the assembled House. If the House is not sitting, the Standing Orders require me to notify Members in the usual manner of Speaker's Notifications to all Members. It is this action that subsequently sets in motion the next steps. In this case, the Clerk would write to the Leader of the Majority Party and the Leader of the Minority Party, copying the respective whips, asking for the names of the nine Members nominated to sit in the House Business Committee under Standing Order No.171 (1)(f). Thereafter, the Clerk would publish the names in the Order Paper for approval by the House at its first Sitting each Session, which would have been today.

Faced with these conflicting correspondences, you will agree with me that it is impossible for me and the Clerk to discharge those requirements of the Standing Orders at this moment. You will also agree with me that from the foregoing, three pertinent questions arise at this moment.

These are:

1. Who is the *bona fide* Leader of the Majority Party and who is the *bona fide* Leader of the Minority Party in this House?
2. In absence of a House Business Committee, what business is to be transacted by this House for the next few days before the question of the leadership of the Majority and Minority parties is determined?
3. Before the question of the leadership of the Majority and the Minority parties is determined, who is to move the business in the House whose moving is ordinarily reserved for the party leaders?

With respect to the first question, I will reserve the rest of today's Sitting to allow the House to address me on this matter so that I can retreat to make a reasoned ruling and guidance to the House.

With respect to the second question on what business is to be transacted by this House for the next few days before the question of the Leadership of the Majority and the Minority parties is determined, allow me to guide the House as follows:

Firstly, as you are aware, Standing Order No.30 on the Hours of Meeting provides that the House shall meet on Tuesdays at 2.30 p.m. for the afternoon sitting, Wednesdays at 9.30 a.m. for the morning sitting and 2.30 p.m. for the afternoon sitting, and Thursdays at 2.30 p.m. for the afternoon sittings. It is, therefore, clear that with or without any scheduled business, the House must sit on the prescribed days and times.

Standing Order No.30 dictates that tomorrow, the House shall sit in the morning from 9.30 a.m. and in the afternoon commencing at 2.30 p.m. That is mandatory and your Speaker has no authority to stop commencement of a sitting of the House unless in very exceptional circumstances, which are not obtained here. Indeed, as your Speaker, I have a constitutional obligation to ensure

continuity of the business of this House at all times. The only authority granted to the Speaker with respect to the time of a sitting is to vary the time of commencement or adjournment of the sittings, but only for the convenience of the House.

Further, Standing Order No.38 providing for the preparation and circulation of the Order Paper obligates the Clerk to prepare an Order Paper indicating the business to be transacted by the House. In this regard, it is also mandatory that before every sitting of the House, there should be an Order Paper which should be published on the parliamentary website and made available to Members at least 12 hours before the House meets. It is for this reason that I authorised the Clerk to publish the Order Paper that is before you this afternoon and which she also published on the website during the weekend.

Hon. Members, if you look at the Order Paper, the business listed there is Procedural Motions. For the benefit of new Members, a Procedural Motion is one that concerns the manner or time of consideration of a matter before the House. Procedural Motions include Motions on limitation of debate where Members are allocated a specific period of time within which they may speak on a matter before the House, and a Motion for exemption of business from specified provisions of the Standing Orders.

Standing Order No.24 (5) provides that whenever the President delivers an Address, a Member may as soon as practicable thereafter, lay the Address on the Table of the House. Standing Order No.24 (6) further provides that a Member may give notice of Motion “THAT, the thanks of the House be recorded for the exposition of public policy contained in the Address of the President” but debate on the Motion shall not exceed four sitting days. What is contemplated under Standing Order No.24 (6) is that the debate on the Speech of the President shall not be interrupted by a dilatory Motion.

By practice of our Parliament, debate on the President’s Address is accorded priority before any other business, save for Procedural Motions. It, therefore, naturally follows that the business that is to be transacted by the House for the next four sittings is debate on the President’s Address. This, therefore, settles the second question.

Hon. Members, allow me to also note that the debate on the Speech of the President ordinarily accords first-time Members the solemn opportunity to make their maiden speeches in the House. This opportunity for new Members, in my view, should not be curtailed by the question of the Majority and Minority Party leadership and the composition of the House Business Committee. However, it is worth noting that the continuity of the business of the House will not, and should not in any, way be seen to prejudice the determination of the question of the Leadership of the Majority and Minority parties in the House.

In this regard, since there is no objection as to who the Deputy Speaker is, I will exercise my powers under Standing Order 1 and authorize the Deputy Speaker to move certain business as follows:

1. Under Order No.5, I will allow the Deputy Speaker to lay certain Papers in the House, which have a statutory deadline and which the law requires that they must be laid in the House when it first sits.
2. Under Order No. 6, I will allow the Deputy Speaker to give notice of Motion on the noting of the President’s Address.
3. Under Order No.8, I will allow the Deputy Speaker to move the Procedural Motion on limitation of debate on the President’s Address under Standing Order 97. Moving of the rest of the 10 Procedural Motions will stand stayed until a later time.

4. Tomorrow morning, under Order No.8, I will allow the Deputy Speaker to move the business under Standing Order 24 (6), being the Motion on debate on the President's Address. This shall give Members an opportunity to debate the President's Address for four sitting days, starting tomorrow morning until Tuesday, 11<sup>th</sup> October 2022.

Hon. Members, this now settles the third and last question. The House is accordingly guided. I now ask the Clerk to read the next Orders. After the House concludes with Order No. 8, I will allow Members to address me on the question of the Majority and Minority Party leadership.

Next Order.

### PAPERS

**Hon. Deputy Speaker:** Hon. Speaker, I beg to lay the following Papers on the Table of the House:

1. Address by His Excellency the President delivered on Thursday, 29<sup>th</sup> September 2022.
2. Legal Notice No. 65 of 2022 relating to the Capital Markets (Whistleblower) Regulations, 2022 and the Explanatory Memorandum from the National Treasury and Planning.
3. Legal Notice No. 86 of 2022 relating to the Legal Aid (General) Regulations, 2022 and the Explanatory Memorandum from the Attorney-General.
4. Legal Notice No. 87 of 2022 relating to the Legal Aid Code of Conduct for Accredited Legal Aid Providers, Regulations, 2022 and the Explanatory Memorandum from the Attorney-General.
5. Legal Notice No. 94 of 2022 relating to the Suppliers Practitioners Management (Council Election), Regulations 2022 and the Explanatory Memorandum from the National Treasury and Planning.
6. Legal Notice No. 95 of 2022 relating to the Pharmacy and Poisons (Conduct of Clinical Trials) Regulations, 2022 and the Explanatory Memorandum from the Ministry of Health.
7. Legal Notice No. 96 of 2022 relating to the Pharmacy and Poisons (Pharmacovigilance and Post Market Surveillance) Rules, 2022 and the Explanatory Memorandum from the Ministry of Health.
8. Legal Notice No. 97 of 2022 relating to the Pharmacy and Poisons (Transportation of Pharmaceutical) Rules, 2022 and the Explanatory Memorandum from the Ministry of Health.
9. Legal Notice No. 98 of 2022 relating to the Pharmacy and Poisons (Amendment) Rules, 2022 and the Explanatory Memorandum from the Ministry of Health.
10. Legal Notice No. 99 of 2022 relating to the Pharmacy and Poisons (Pharmaceutical Waste Management) Rules, 2022 and the Explanatory Memorandum from the Ministry of Health.
11. Legal Notice No. 100 of 2022 relating to the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules, 2022 and the Explanatory Memorandum from the Ministry of Health.

12. Legal Notice No. 101 of 2022 relating to the Crops (Miraa) Regulations), 2022 and the Explanatory Memorandum from the Ministry of Transport, Infrastructure Housing, Urban Development and Public Works.
13. Legal Notice No. 102 of 2022 relating to the Coffee (General) (Amendment) Regulations, 2022 and the Explanatory Memorandum from the Ministry of Transport, Infrastructure Housing, Urban Development, and Public Works.
14. Legal Notice No. 120 of 2022 relating to the National Transport and Safety Authority (Transport Network Companies, Owners, Drivers, and Passengers) Regulations, 2022 from the Ministry of Transport, Infrastructure Housing, Urban Development, and Public Works.
15. Legal Notice No. 141 of 2022 relating to the Kenya Roads Board (General) Rules, 2022 and the Explanatory Memorandum from the Ministry of Transport, Infrastructure, Housing Urban Development.
16. Legal Notice No. 146 of 2022 relating to the Accountants (Quality Review Assurance) Regulations, 2022 and the Explanatory Memorandum from the National Treasury and Planning.
17. Legal Notice No. 147 of 2022 relating to the Accountants (Standard of Professionals and Practice and Ethical Conduct) Regulations, 2022 and the Explanatory Memorandum from the National Treasury and Planning.
18. Legal Notice No. 152 of 2022 relating to the Accountants (Examinations) Rules, 2022 and the Explanatory Memorandum from the National Treasury and Planning.
19. Legal Notice No. 153 of 2022 relating to the Accountants Regulations, 2022, and the Explanatory Memorandum from the National Treasury and Planning.

**Hon. Speaker:** Thank you, Deputy Speaker. Hon. Members, order.

**Hon. Aden Duale** (Garissa Township, UDA): On a point of order, Hon. Speaker. I want you to give us direction. It looks like most of these legal notices are of the previous administration.

**Hon. Speaker:** Order, Hon. Duale. You are jumping the gun. I have a communication on the matter. You can intervene after my communication.

### COMMUNICATION FROM THE CHAIR

#### STATUTORY INSTRUMENTS SUBMITTED BETWEEN 4<sup>TH</sup> JUNE 2022 AND 4<sup>TH</sup> OCTOBER 2022

**Hon. Speaker:** Hon. Members, I have a short Communication on Statutory Instruments submitted between 4<sup>th</sup> June 2022 and 4<sup>th</sup> October 2022.

As you may have noticed, a few minutes ago, the Deputy Speaker laid before the House 18 Statutory Instruments. Some of the Statutory Instruments, commonly referred to as Regulations, were submitted during the *sine die* recess of the 12<sup>th</sup> Parliament while others were submitted just after the inauguration of the 13<sup>th</sup> Parliament. The Statutory Instruments Act (No.23 of 2013) provides that upon receipt of such Statutory Instruments, they should be tabled in Parliament within seven days or, if the House is not sitting, as soon as possible when the House next sits. It is for this reason that I have allowed the Deputy Speaker to lay the 18 Regulations this afternoon.

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The consideration of the different Regulations will now await the establishment of the Committee on Delegated Legislation. It should consider them within 28 sitting days thereafter.

Hon. Members, on a similar note, by way of a letter dated 9<sup>th</sup> September 2022, the Hon. Attorney-General brought to the attention of all State Departments and Agencies the provisions of Section 21 of the Statutory Instruments Act, 2013. The effect of this provision is that -

1. There is a general revocation of Statutory Instruments 10 years after their making, unless they are repealed or a regulation is made exempting them from expiry. Subject to this provision, all statutory legislations enacted prior to the commencement of the Act stand to be revoked and are thus null and void as from 25<sup>th</sup> January 2023.
2. An extension of the Statutory Instrument may be made for 12 months, subject to the consultation between the respective Cabinet Secretary (CS) and relevant parliamentary committee.

During the passage of the Finance Act, 2022 in June this year, this House extended the period of automatic revocation of regulations made under the laws relating to tax matters. This includes regulations made under the following Statutes:

1. The Income Tax Act, Cap 470;
2. The Stamp Duty Act, Cap 480;
3. The Value Added Tax, No. 35 of 2013;
4. The Tax Appeals Tribunal Act, No. 40 of 2013;
5. The Excise Duty Act, No. 23 of 2015; and
6. The Tax Procedures Act, No. 29 of 2015.

Hon. Members, it is therefore expected that the State Departments and Agencies will approach the Committee, upon its establishment, to consider whether similar treatment may be accorded to the rest of the impugned regulations to avoid any form of legislative crisis in the country. This means that the in-tray of the Committee on Delegated Legislation is already full even before its establishment.

The House is now accordingly informed and guided.

Hon. Duale, does that solve your issue?

**Hon. Aden Duale** (Garissa Township, UDA): Yes, Hon. Speaker.

**Hon. Speaker:** Order, Hon. Members. We will now go back to the Order.

## NOTICE OF MOTION

### PRESIDENT'S ADDRESS

**Hon. Deputy Speaker:** Hon. Speaker, I beg to give a notice of the following Motion:

THAT, the thanks of the House be recorded for the exposition of the Public Policy contained in the address of the President delivered on Thursday, 29<sup>th</sup> September 2022.

## PROCEDURAL MOTION

### LIMITATION OF DEBATE ON PRESIDENT'S ADDRESS

**Hon. Deputy Speaker:** Hon. Speaker, I beg to move the following Procedural Motion:

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THAT, noting that Standing Order 24 (6) provides that the debate on the Motion on the Address by the President shall be limited to not more than four sittings, and pursuant to the provisions of Standing Order 97 (1), this House orders that the debate on the Motion on the Address by His Excellency the President under Article 132 (1) (a) of the Constitution delivered on the 29<sup>th</sup> September 2022 on the opening of Parliament shall be limited as follows-

1. No more than 20 minutes for the Mover in moving and 10 minutes in replying;
2. No more than 15 minutes for the designated Party Leaders;
3. No more than 10 minutes for the other Members speaking;
4. At least 10 minutes before expiry of the time, the Mover shall be called upon to reply.

Hon. Speaker, in moving the Motion, permit me to inform the House, for the benefit of the newly elected Members, that parliamentary debates are oral exchanges of opinions intended to facilitate the House in the plenary to arrive at collective decision-making on certain issues. They can take place on special occasions such as opening speeches or at different stages of the examination of proposed legislation. They provide opportunities for us, as Members, to discuss Government policies, proposed laws and deliberate on current issues. They allow Members of Parliament to consider matters and address the concerns and interest of their constituents. Members can also speak about issues which are brought to their attention by the public. They are designed to enable the House reach an informed decision on any subject matter. With this understanding, debates are a critical mechanism for Members in this House. Indeed, each Member ought to have an opportunity to debate and address issues which affect the citizenry.

The object of this Procedural Motion is to limit debate by allocating the Mover 20 minutes to move, 15 minutes for our designated Leaders and at least 10 minutes to any Member who will speak. Hon. Members, this move will save time and accord more Members an opportunity to make their contributions on the President's Speech.

In addition, approving this Motion will also allow more newly elected Members to make their maiden speeches, as they contribute on the Floor of the House. Further, when you calculate the time which is allocated for this Motion, it totals to 1,020 minutes. If each Member speaks for 10 minutes, you will notice that less than 102 Members will contribute to this Motion. I therefore seek for extension of the sitting time, through this Procedural Motion, to afford more Members time to debate the Motion.

It is against this backdrop that I urge Members to support this Motion to enable the House to debate the President's Speech, and allow more Members to make their contributions within the four sittings, as envisaged under Standing Order 24 (6).

Hon. Speaker, I beg to move and request Hon. (Dr.) Makali Mulu, Member for Kitui Central, to second the Motion.

**Hon. Speaker:** Who is seconding the Motion? Hon. Makali Mulu.

**Hon. (Dr.) Makali Mulu** (Kitui Central, WDM): Thank you very much, Hon. Speaker. I want to take this opportunity to second this important Motion but before I do so, I want to quote your Statement. Since there is no doubt who the Member for Kitui Central is, I take this opportunity to thank my people, before I second this Motion. This is the first time I am getting the opportunity to speak in the 13<sup>th</sup> Parliament. The people of Kitui Central are very special. They have given me a third term, which is not easy. I must thank them.

This Motion is very important. I am seconding it because it will give the House the opportunity to look at the proposed policies and legal frameworks by the new Government. They said that they would come to this Parliament with some amendments to the law. It gives the new Members an opportunity to make their maiden speeches.

Hon. Speaker, the reason as to why I strongly support the issue of ten minutes is that new Members will have time to thank the people who voted for them. It was not easy to win this election. As they are aware, when one is making a Maiden Speech is not interrupted by anybody—you take your ten minutes and say what you want to say. Even as you do so, it is important that you remember that you will be debating the Address by the President.

Hon. Speaker, even though this Address was by all standards very short, I think it has many important policy statements and many legal frameworks that are required for the President to implement some of the things he has promised Kenyans. I agree with Hon. Deputy Speaker that, as a House, we need to limit debate to the allowed timelines in terms of minutes. By doing that we will have more Members debating to this Motion. Even as we say that, I urge Hon. Members to take time and read through the statement itself because it will not make a lot of sense if we all come here and talk before reading into the required details of the President's Address. I was able to listen to the Speech but I will still take a lot of time to read through. I really encourage my colleagues in the Azimio Coalition because our work is to make sure that we objectively analyze the policies.

**Hon. (Dr.) Robert Pukose** (Endebess, UDA): On a point of order, Hon. Speaker.

**Hon. Speaker:** Order, Hon. Makali. Yes, Hon. Pukose. Give Hon. Pukose the microphone.

**Hon. (Dr.) Robert Pukose** (Endebess, UDA): Thank you, Hon. Speaker. I stand on a point of order on anticipation of debate. The Hon. Makali Mulu is already debating. He is not being relevant to what he is supposed to second. He is already debating a Motion that is not yet before the House. I think he should stick with relevance.

**Hon. Speaker:** Hon. Makali, you are seconding a Motion as to whether the times set out are the times we should abide by.

**Hon. (Dr.) Makali Mulu** (Kitui Central, WDM): Hon. Speaker, I have been in this House long enough to know what needs to be done to a Motion like this one. What we are saying is that debate time will come but there is no way you can expect me to just second a Motion by saying I second. You know, Hon. Pukose is known for saying “put the question”.

*(Laughter)*

I urge the House that this is the 13<sup>th</sup> Parliament. Under your guidance, Hon. Speaker, we must be a Parliament of debate. The man to watch mostly is Hon. Pukose because he is among the guys who do not want people to debate.

With those many remarks, I second the Motion.

*(Question proposed)*

**Hon. Members:** Put the question!

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Put the question!

*(Laughter)*



**Hon. Speaker:** Is that the mood of the House?

**Hon. Members:** Yes.

**Hon. Speaker:** Hon. Members, there being no interest in debating this Procedural Motion, I now put the question.

*(Question put and agreed to)*

## CONTESTATION ON HOUSE LEADERSHIP

### LEADER OF MAJORITY/MAJORITY WHIP

**Hon. Speaker:** Hon. Members, as I communicated earlier, we have an issue on leadership in the House and the contested communications before the Speaker. Before we make a determination and direction, I want to give the House the remainder of the time this Afternoon to ventilate on this matter. I urge you to debate with decorum. This House is not a political rally. We do not want to use this as a platform to engage in trivial and parochial politics. The matter as to who is the Leader of the Majority or the Leader of the Minority Party must be grounded in our Standing Orders, the law, the Constitution and facts.

*(Applause)*

So, I urge Hon. Members to give each other time to speak without unnecessary interruptions. I also urge those speaking to avoid unhelpful provocations of situations that can create unnecessary exchanges. What we want is to have a House guided and led by our own Standing Orders, the law and the Constitution. So, I will invite Members to contribute to this debate. I will give the first opportunity to the protagonists. That is Hon. Kimani Ichung'wah and Hon. Opiyo Wandayi. I will then give chance to their Whips who are also protagonists and then open debate to the rest of the House. I will start with the Hon. Kimani Ichung'wah.

**Hon Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Speaker, for clearly guiding the House. Let me begin to give my take on the issue of the Leader of the Majority Party. First, I thank Members of my Kenya Kwanza Coalition who elected me their Leader of the Majority Party. Let me also take the opportunity to thank the great people of Kikuyu Constituency who have afforded me a third opportunity to continue serving them as their Member of Parliament. I also dedicate my time to serve this House as the Leader of the Majority Party designate from the Kenya Kwanza Coalition.

Hon. Speaker, the question that you are being asked to make an informed decision on...

*(An Hon. Member crossed the Floor without bowing to the Chair)*

**Hon. John Mbadi** (Nominated, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Order, Hon. Ichung'wah. There is a point of order. Yes, Hon. John Mbadi.

**Hon John Mbadi** (Nominated, ODM): Hon. Speaker, I am alive to the fact that we have very many new Members. We need to start training them from day one. An Hon. Member, whose name I am yet to learn, has twice crossed the Floor going to the other side and coming back without going to the Bar. In terms of orientation, we want to help you that next time you must go to the Bar, bow to the Chair and then cross over to the other side.

**Hon. Speaker:** For our new colleagues in the House, it is out of order to walk across the aisle. If you want to cross the Floor to talk to your colleagues across, you go up to the Bar, bow and then walk across.

For avoidance of doubt on the debate, I already see a lot of interest on the screen. Hon. Ichung'wah and those who will speak, organise your thoughts properly. I will give you and Hon. Opiyo Wandayi 15 minutes each, and the rest of the Members will start off with about ten minutes. If the interest continues persisting, I will reduce it to five minutes.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Speaker. I will endeavour to do so in the 15 minutes.

Hon. Speaker, the question that you are being called upon to make a decision on is well grounded in Article 108 of the Constitution that establishes the Office of the Leader of the Majority Party. The same is replicated in Standing Order 19. Allow me to quote Article 108 of the Constitution, which provides that there shall be a Leader of the Majority Party and a Leader of the Minority party. It goes on to state that the Leader of the Majority Party shall be the person who is the leader in the National Assembly of the largest party or coalition of parties, and that the leader of the Minority Party shall be the person who is the leader of the second-largest party or coalition of political parties.

Hon. Speaker, the question that is before this House is to simply determine which is the largest coalition of political parties or the largest political party and that party must be a parliamentary political party as stipulated in Standing Order 20A. You have said, in your Communication, that you received a letter dated 21<sup>st</sup> September 2022 from Hon. Junet Mohamed, who wrote on behalf of the Azimio la Umoja-One Kenya Coalition Party. It is worth noting that as you communicated, you also indicated that Hon. Osoro and myself wrote to you communicating the decision of Kenya Kwanza Coalition to elect us leaders of our Coalition. You will note from your own Communication that while we attached minutes stating the place, time and attendees of our parliamentary group meeting, the letter by Hon. Junet Mohamed has neither the place and time nor the attendees of that meeting. This is important because we are a House of procedures. Such letters should have indicated who the attendees were. The question before you is on the constitution of either the Kenya Kwanza Coalition of political parties in this House as parliamentary political parties or if Azimio la Umoja-One Kenya Coalition Party exists as a coalition of political parties.

It is my humble submission that those of us who were in this House during the 12<sup>th</sup> Parliament remember the animated debate that we had as we amended the Political Parties Act through the Political Parties (Amendment) Bill. It was a very chaotic debate. I remember many of us vehemently opposed many of the amendments that were proposed. Top among them was the creation of an amorphous or a mongrel sort of thing that was called the "coalition political party".

Hon. Speaker what you are being asked to decide on today is anchored in the amendments that we made during the 12<sup>th</sup> Parliament to our political parties. The chaos we witness in this House today in terms of management of our political parties emanates from the passage of the amendments to the Political Parties (Amendment) Bill in the last Parliament. Particular amendments created certain definitions. Section 10 of the Act defines what a Coalition Political Party is. A political party is said to be...

**Hon. Caroli Omondi** (Suba South, ODM): On point of order, Hon. Speaker.

**Hon. Speaker:** Yes, Hon. Member. Please, say your name, your constituency and the Standing Order that has been violated?

**Hon. Caroli Omondi** (Suba South, ODM): Thank you very much, Hon. Speaker. My name is Hon. Caroli Omondi from Suba South.

It is quite unfortunate that I begin my statement in this House by raising a point of order under Standing Order 2B. Is it in order for the House to debate a matter that should have been determined by the Clerk of the House by simply writing a letter to the Registrar of Political Parties to determine the relative majorities of the parties in this House?

Thank you, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Caroli Omondi, that is a matter that is way behind us. I have given direction and you are under no legal authority to challenge what the Hon. Speaker has directed.

*(Laughter)*

I also encourage Members that, because of the limited time we have, I have the capacity and ability to listen to your arguments and determine this matter. Let us give the Members who are debating silent listening so that I can hear them properly and bring you back a determination. So, unless it is a really serious breach of the Standing Orders, let us restrain ourselves from raising unhelpful points of order.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Speaker, for that guidance.

The current mess that we are witnessing on this issue is occasioned by the definitions of the term “coalition” and “coalition political party”. For clarity, I want to read the definitions as they exist in the Act. “Coalition” means “an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar.” It is worthwhile to note that the Kenya Kwanza Coalition is a coalition pursuant to that definition and therefore it is a coalition of political parties that are governed by a written agreement, which I shall be tabling. We have a number of coalition agreements that are agreed upon and signed. I will be tabling the coalition agreement between founding parties of Kenya Kwanza: UDA, ANC, Ford Kenya and further agreements with Umoja na Maendeleo Party.

I will also be tabling a coalition between Kenya Kwanza and:

1. Tujibebe Wakenya Party
2. The Service Party of Kenya
3. Pamoja African Alliance (PAA)
4. Mandeleo Chap Chap
5. Farmers Party
6. Economic Freedom Party
7. The Devolution Party of Kenya
8. The Democratic Party of Kenya
9. The Communist Party of Kenya
10. Chama Cha Kazi
11. The National Agenda Party of Kenya
12. The Grand Dream Development Party (GDDP) led by our friend and colleague the Hon. Fabian Muli

I will, further, table the post-election coalition agreement amongst:

1. GDDP and Kenya Kwanza
2. The United Democratic Movement (UDM) and Kenya Kwanza

3. The Movement for Democracy and Growth (MDG) with Kenya Kwanza, led by our brother and colleague Hon. David Ochieng.

Hon. Speaker, all these coalitions are to bear witness that, indeed, Kenya Kwanza is a Coalition of Political Parties as per the definition of the Act.

The second definition is one of a coalition political party. The Act tells us that this means a coalition registered by the Registrar as a political party. I would, therefore, beg and challenge my colleagues – Hon. Junet Mohamed and Hon. Opiyo Wandayi – whom you call my protagonist even though he is my very good friend. They are here contending to be leading the Majority.

Hon. Speaker, the question of determining the majority party is very easy. That is because it is a question of calculating the numbers of parliamentary political parties. The definition of a parliamentary political party is in Standing Order No.20. We must then ask ourselves the question: Is the Azimio One Kenya Alliance a coalition political party or a parliamentary political party? The straight answer is that Azimio One Kenya Coalition Party does not exist as a parliamentary political party.

Hon. Speaker, but that does not mean that the constituent parties that came together to form Azimio One Kenya Alliance Political Party are not parties in their own right. That is why with all due respect to the other parties and, indeed, Hon. Speaker, you have also in your Communication alluded to the fact that Jubilee Party, which is my former Party, has also written to you communicating their leadership in this House. What does that tell you? It means that the Jubilee Party appreciates that the Azimio One Kenya Alliance Coalition Political Party does not exist in this House either as a parliamentary political party or as a coalition of political parties as per the definition in Article 108 and Standing Order No.19. That would then mean that ODM, besides KANU, is the oldest political party in this country with slightly above 80 MPs. It is then the second largest political party after the Kenya Kwanza Coalition of Political Parties.

I am not saying this to belittle all the other partners in the Azimio One Kenya Alliance. But that is what we created in the mess that was in the Political Parties (Amendment) Bill that was debated in this House over the Christmas recess in December 2021, and completed in January, 2022.

I remember standing in my place somewhere behind here, reminding our colleagues: “That this law that you have just passed will punish you more than it will ever punish me, or those of us that were then called the *Tanga Tanga* or UDA brigade.

Hon. Speaker, chickens have come home to roost. Nobody is being punished! But we are paying for that acrimonious debate and a law that was procured in this Assembly in a manner that we should never ever engage in procuring or in legislating. We are a House that legislates through consultations. We never consulted each other as we passed that law. It is sad and I pray that this 13<sup>th</sup> Assembly will not and will never take the route that the 12<sup>th</sup> Assembly took. We must be a House that consults. I am glad that we sit here with my brother, Hon. Opiyo Wandayi and Hon. Junet as colleagues in one House listening to each other and debating, because this is a House of debate. We must gain the respect and dignity that we are accorded by the Kenyan people who have elected us by coming to this House, listening to each other and debating.

Hon. Speaker, I want to submit that besides the agreements that we are tabling, when I say that Azimio One Kenya Coalition Party is not a parliamentary political party, it is because the definition as contained in our Standing Orders stipulates that you must have at least 5 per cent of

Members of the National Assembly to be a parliamentary political party. The Azimio One Kenya Alliance Coalition Party has no single Member of Parliament. Indeed, in a case that was filed by Thurania and Four Others versus the Attorney-General and Two Others; including the Registrar of Political Parties and Three Others as interested parties, the High Court allowed the constituent parties in Azimio One Kenya Alliance to field individual party candidates and that is what they did. That is why we have 26 parties represented in this House, including ODM, Jubilee, Wiper, UDA, ANC, FORD-K and all other the parties.

Hon. Speaker, vide Gazette Notice that was published on the 1<sup>st</sup> July 2022, this is the schedule that published all the people who were nominated to run for either President or parliamentary seats. I will be tabling this Gazette Notice. There was only one candidate who ran for the Office of the President of Kenya, Hon. Raila Odinga and Ms. Karua Martha Wangari, who ran as Azimio la Umoja Coalition Party candidate with the emblem and symbol of Azimio la Umoja One Kenya Political Party. That Party has no representation in this House. We, therefore, need to ask ourselves: If Azimio One Kenya Alliance Political Party is not represented in this House, and the leader of that Alliance is not in this House either! Therefore, it is only natural that the Coalition with the largest number of Members in this House – being the Kenya Kwanza Alliance – the Leader of the Majority Party then is the Leader of the Majority Party that leads that Coalition, and that is yours faithfully.

We must also ask ourselves - and because I have seen it in the media and without quoting - you are being asked to rule on issues that touch on individual and corporate political rights. That is because parties belong to the people. They are managed by people and they harbour them. People in those parties and corporate entities enjoy political rights in line with Article 38 of our Constitution.

Hon. Speaker, you know that Article 36 of our Constitution guarantees us certain rights that cannot be taken away. We must ask ourselves, because the contention relates to a few of us, especially those Members who belong to UDM who are sitting here, and Members who belong to MDG like my brother David Ochieng' who is sitting here; members who belong to Maendeleo Chap Chap and PAA, and are in this House. The following is the fundamental question that we want to ask you to make a determination on as the Speaker. Can you ignore their fundamental rights to freedom to association to be able to associate or coalesce with anybody that they want to coalesce with as individuals and as political parties? Can that right be taken away by Clause 22 of the Azimio Agreement?

I dare challenge my brothers in the Azimio la Umoja One Kenya Coalition Party. I have tabled coalition agreements between parties that assented to the Kenya Kwanza Alliance. I dare you to table the Azimio la Umoja One Kenya Alliance Party Agreements that are signed by any of these political parties. It is also in contention as to how those agreements were procured.

We have heard of harrowing stories of how people were coerced under the last regime to sign blank pieces of paper with just your political party's name on a dotted line on one piece of paper and not knowing what you were signing for.

Hon. Speaker, I know you have been a senior member of the legal profession, and I do not want to pretend to be one but, at least, I studied a little bit of the law of contracts as I studied for my CPA with Hon. John Mbadi, although I was slightly ahead of him.

(Laughter)

Hon. Speaker, the Hon. John Mbadi might be slightly older than me, but I was slightly ahead of him in the profession. I qualified as a Certified Public Accountant (CPA) when I was in my first year at the University of Nairobi.

Hon. Speaker, in the law of contracts, any contract that is obtained either under duress or with the concealment of material facts cannot stand in law. Therefore, I am sorry for our brothers in the Azimio la Umoja One Kenya Coalition... I am sorry to you as well as the Kenyan people, because we created this mess right on this Floor. As I conclude, that is why I appeal to our colleagues that on this issue, we are confident that you will make a ruling on this issue. However, as we begin this 13<sup>th</sup> Assembly, I dare say that we must never get back to where we got to in the 12<sup>th</sup> Parliament.

We never consulted each other as we made a mess out of the Political Parties Act that governs and guides the growth of our democracy. This particular law as was passed, I said then that it will not only punish us and those who were vehemently opposing it, but even those who were vehemently supporting it more. It was a dangerous law for the governance of our country and the growth of our democracy.

Hon. Speaker, I beg to submit that my colleagues in the Azimio la Umoja One Kenya Alliance do know that they lack the numbers. They know that Hon. Jeremiah Kioni, former Member for Ndaragwa Constituency, as Secretary General of Jubilee, has written to you Hon. Speaker communicating their leadership in this House. They do know that the Azimio la Umoja One Kenya Alliance party does not exist in this House.

Indeed, Hon. Speaker, I must commend the Orange Democratic Movement (ODM), because they have been magnanimous to share positions with Jubilee and Wiper political parties. Them being the oldest political party, and the ODM being the second largest political party, they ought to be the Minority Party. Hon. Opiyo Wandayi ought to be the leader of Minority Party in the House; and Hon. Junet the Minority Chief Whip.

**Hon. Speaker:** Hon. Member, your time is up. Let us have Hon. Wandayi.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, thank you very much. This being my first time to speak in the 13<sup>th</sup> Parliament, allow me to take this opportunity to, first and foremost, congratulate you on your election as the Hon. Speaker of this 13<sup>th</sup> National Assembly. I also congratulate my colleagues who have made it to this House this time round.

Hon. Speaker, I am, indeed, pleased to note that you have repeatedly said since your election, that you will be the Speaker of the whole House, in spite, of course, of the fact that my coalition did have a candidate against you. I also recognise that you have got immense experience as a Parliamentarian and a distinguished legal practitioner spanning so many years.

Hon. Speaker, let me tell you that when I was growing up, I came to learn that you, as a young advocate then, was bold enough to come up and defend some of the victims of the 1982 coup attempt. That goes to say the kind of person you are. Therefore, I believe that this House stands to benefit immensely from your wise counsel and very rich experience.

Hon. Speaker, coming back to the issue at hand, I want us to take note of the fact that Article 3(1) the Constitution of the Republic of Kenya 2010 makes it an obligation for every single person to respect, uphold and defend the Constitution. That responsibility is even more so pertinent for some of us who have taken oath of office to defend that Constitution.

Hon. Speaker, I have been listening very keenly to my friend and compatriot, the Hon. Kimani Ichung'wah. However, let me take you to Article 259 of the Constitution, which requires

that as we interpret the Constitution, we do so in a manner that promotes its purposes. Allow me to just take you through it. It reads thus:

- (1) This Constitution shall be interpreted in a manner that—
  - (a) promotes its purposes, values and principles;
  - (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
  - (c) permits the development of the law; and,
  - (d) contributes to good governance.

What I mean to say is that you need to undertake a wholistic reading of the Constitution for you to arrive at any particular conclusion or determination. Selective reading of the Constitution or any law, for that matter, may not be helpful in determining a matter of significance such as the one that we are faced with this afternoon.

Hon. Speaker, Article 108 has been spoken about by my colleague, the Hon. Kimani Ichung’wah. There is no doubt, indeed, that under Article 108 of the Constitution, both part 1 and 2, the Hon. Leader of Majority Party shall be the person who is the leader of the National Assembly of the largest party or coalition of parties. Those of us who were privileged to be in this House in the 12<sup>th</sup> Parliament will recall that we did make some amendments towards the end of that House. The Standing Order No. 1 provides thus:

“In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the House, any procedural question shall be decided by the Speaker.”

But it goes on to say in part 2, and this is very important:

“The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law---

I dare say, in this case, the Political Parties Act of 2011 as amended severally, including the amendment of 2022. Part 2 goes on to say:

“---and the usages, forms, precedents, customs, procedures, traditions and practices of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.”

Hon. Speaker, we have come to a point where you are being asked to make a determination on a matter that is so well provided for expressly by not only our Constitution, and the Political Parties’ Act, but also by our own Standing Orders.

Hon. Members, let me take you to Standing Order No.2B, which I will read for avoidance of doubt. The sub-title is: Clerk to Obtain Coalition Agreements. That is the sub-title of that Standing Order. Hon. Members, listen carefully! It states:

“The Clerk shall obtain from the Registrar of Political Parties a certified copy of any coalition agreement entered into by two or more parties in the National Assembly for purposes of ascertaining the relative majorities in the House and facilitating the transaction of the business of the House.”

Hon. Speaker, pursuant to this particular Standing Order, I dare say that the Acting Clerk of the National Assembly – and I must commend her for her diligence – wrote to the Registrar of Political Parties on the 2<sup>nd</sup> September 2022 seeking for this information. The Registrar of Political Parties wrote to the Acting Clerk of the National Assembly.

Indeed, the Registrar duly responded to her letter on 7<sup>th</sup> September 2022. I want to read excerpts of that letter...

**Hon. Aden Duale** (Garissa Township, UDA): On a point of order, Hon. Speaker.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, if I could be allowed to read...

**Hon. Speaker:** Yes, Hon. Duale.

**Hon. Aden Duale** (Garissa Township, UDA): Hon. Speaker. I do not want to correct my former Chairman of the Public Accounts Committee (PAC). But before he reads Standing Order 2B, just like Hon. Ichung'wah, can he first table the Azimio la Umoja One Kenya agreement, as provided and certified by the Registrar of Political Parties?

**Hon. Members:** Yes! Table!

**Hon. Opiyo Wandayi** (Ugunja, ODM): Can I continue!

**Hon. Speaker:** Yes. Give him the microphone.

**Hon. Aden Duale** (Garissa Township, UDA): Hon. Speaker, why am I saying so? I am saying so because Standing Order 2B, as correctly read by Hon. Opiyo Wandayi, is very specific. It says the Clerk of the National Assembly will write to the Registrar of Political Parties, one Anne Nderitu, asking the National Assembly to be provided with... So, the basis of our argument is not about the letter, but the coalition agreement. We have seen the one for Kenya Kwanza. Can we get the one for Azimio la Umoja?

**Hon. Members:** Table!

**Hon. Speaker:** Hon. Members, that is a line of argument which you can pursue when I give you an opportunity.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Thank you, Hon. Speaker, for protecting me from my friend and senior in the House, Hon. Duale. In the course of my submissions, I will be educating him a little bit on matters law.

Hon. Speaker, I was saying that on 7<sup>th</sup> September, the Registrar of Political Parties wrote back to the Clerk of the National Assembly on her: Request for Information on Coalition Agreements. She said:

Reference is made to the above subject matter and your letter dated 2<sup>nd</sup> September 2022, whose content is duly noted. Pursuant to Section 10 of the Political Parties Act 2011, as read together with Regulation 21 of the Political Parties Registration Regulations 2019, and in line with your request, the constituent political parties of coalitions and effective dates are as listed below:

1. Coalition name – Azimio la Umoja - One Kenya Coalition Party.

The constituent parties are: Jubilee (JP), Orange Democratic Movement (ODM), Wiper Democratic Movement (WDM-K), Kenya African National Union (KANU), National Rainbow Coalition (NARC)...

**Hon. Members:** No!

**Hon. Opiyo Wandayi** (Ugunja, ODM): You can say no, but I am telling you what is here. You can continue shouting no, but it will not make a difference.

“Muungano Party (MP), Maendeleo Chap Chap (MCC), Democratic Action Party (DAP-K), Devolution Empowerment Party (DEP), United Party of Independent Alliance (UPIA), United Democratic Movement (UDM), United Progressive Alliance (UPA), Pamoja African Alliance (PAA), Kenya Union Party (KUP), United Democratic Party (UDP), Movement for Democracy and Growth (MDG), Kenya Reform Party (KRP), Chama Cha Uzalendo (CCU), Party for Peace and Democracy (PPD), National Liberal Party (NLP), People’s Trust Party (PTP), Ubuntu



People's Forum (UPF), Party of National Unity (PNU), Labour Party of Kenya (LPK), Movement for Democracy and Growth (MDG).

Those are the 26 political parties that had signed a coalition agreement under the umbrella of the Azimio la Umoja One Kenya Coalition Party on 21<sup>st</sup> April 2022. Of course, it goes on to list those parties under the Kenya Kwanza Alliance, which I do not want to read. Okay, I can read and they are:

“United Democratic Alliance (UDA), Amani National Congress (ANC), Forum for the Restoration of Democracy (FORD-Kenya), Chama Cha Kazi (CCK), Communist Party of Kenya (CPK), The Service Party (TSP), Tujibebe Wakenya Party (TWP), Farmers Party (FP), Devolution Party of Kenya (DPK), Economic Freedom Party (EFP) and Umoja na Mandeleo Party (UMP) that had signed an agreement with Kenya Kwanza on 3<sup>rd</sup> June 2022.

Listen carefully Members, there are other parties listed here as having signed a coalition agreement under Kenya Kwanza post-election, that is on 5<sup>th</sup> September 2022. They are: Democratic Party (DP), National Agenda Party of Kenya (NAP-K), Grand Dream Development Party (GDDP), Chama cha Mashinani (CCM).

Then, it goes on – and this is important - to state that further, that the following political party is not a member of any coalition; that is, National Ordinary People Empowered Union (NOPEU), but it has since got some arrangement with Azimio.

Finally, you may wish to note that the following political parties have filed constitutional petitions or objections with regard to their membership in Azimio. These are: Maendeleo Chap Chap (MCC), United Democratic Movement (UDM) and Movement for Democracy and Growth (MDG).

As I continue, allow me to table this Hon. Speaker.

*(Hon. Opiyo Wandayi laid the letter on the Table of the House)*

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, we shall hear the Hon. Wandayi in silence.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, on this matter, I want to refer to Standing Order 19A (8). At this rate, I need an assistant. No, Junet is a senior Member of this House and so, he cannot be my assistant. First and foremost, let me go to Standing Order 19A (3), which states:

“The Majority Party Whip shall communicate the name of the Members elected under paragraph (1) to the Speaker in writing on behalf of the Majority Party.”

I want to say this because there was an argument that Hon. Junet did not attach the minutes of the Parliamentary Group (PG) Meeting. There is no requirement under Standing Order 19A (3) for that. The only time you need the minutes of a PG meeting is when you are changing the leadership of majority or minority, which is under Standing Order 19A (7).

Hon. Speaker, Standing Order 19A (8) says: “Upon receipt of the notification and the documents under paragraph (7) and confirmation that the threshold for removal---” Well, that is for removal. Okay.

*(Laughter)*

As I had earlier on alluded to, Standing Order 19A (4) says:

“The Speaker shall, as soon as practicable following receipt of the names under paragraph (3), convey the information to the assembled House, if the House is sitting, or notify Members, if the House is not sitting.”

What am I saying? That upon the convening of the 13<sup>th</sup> Parliament and upon the determination by the Clerk of the National Assembly of the status of the various coalitions from the Registrar of Political Parties, pursuant to Standing Order 2(b); and upon the confirmation by the Registrar of Political Parties to the Clerk, the Speaker is simply expected – indeed required – under Standing Order 19A (4) to simply convey the same to the House. That is what the law and Standing Orders dictate. Any other thing is mere hot air.

*(Laughter)*

Hon. Speaker, let me take you back to the provisions of the Political Parties Act, because an argument has been advanced before that Azimio la Umoja One Kenya Coalition Party is not a coalition. Let me educate you, Hon. Members. If you go the Political Parties Act, and this is an Act of Parliament that we all know was passed in this House and subsequently amended, including the latest one of this year. The interpretation of the Act states:

“In this Act, unless the context otherwise requires, political party means an association of citizens with an identifiable ideology or programme that is constituted for the purpose of influencing public policy of nominating candidates to contest elections.”

Part (b) says that “a political party includes a coalition political party”. It goes on to define what a coalition political party means. It says that a coalition political party is a coalition that is registered by the Registrar as a political party. In short, therefore, Azimio la Umoja One Kenya Coalition Party is both a political party and a coalition under the Political Parties Act. This is the law and nobody has challenged it, and no court of law has declared it unconstitutional. As you all know, the mandate to determine constitutionality of any law is vested in the High Court under Article 165 of the Constitution.

Hon. Speaker, the High Court in Petition 043 of 2022 affirmed this position, that Azimio la Umoja One Kenya is both a party and a coalition. Let me read the excerpt of that court ruling. There was no difference between a coalition party under the old law and a coalition political party. It stated:

“As for coalitions, the same have always existed in the law as they are provided for in Section 10 of the Political Parties Act for all practical purposes; we have had coalition political parties in Kenya. One example is the Jubilee Political Party, which comprised of parties like The National Alliance (TNA), United Republican Party (URP), among others. The only difference is that at that time, the constituent parties would be dissolved. But in the new definition of the constituent parties under the Act, parties will retain their individual identities. Therefore, all that the amendment has done is to formalise these practices through legislation.”

That is the High Court of the Republic of Kenya speaking. Again, to educate my colleague, Hon. Didmus, a court judgement is what we call case law. I have quoted the court.

The author of the letter that I have just quoted from – that is the Registrar of Political Parties – is the official custodian of all coalition agreements. There is actually no need for us to table any agreement, because the author of that letter is the custodian of all those agreements. If you want to confirm with her, you simply take a walk to her office and confirm the same. We do not act in vain.

In conclusion, this is a matter that, as I had said earlier, does not need to exercise your mind. It is a matter that you can dispense with very easily by simply going back to Standing Order 2B.

Hon. Speaker, let me say this: Erskine May, who is one of the authorities that is acclaimed the world over, has determined previously in his writings that the matters of leadership of political coalitions or parties in the House, is a question of the results of parliamentary elections. If you read the 25<sup>th</sup> Edition of Erskine May, which was published I think in 2019, you will come to realise that these matters that we are discussing here were determined way back at the time we were doing parliamentary elections. Indeed, even in the USA, the matters of majority and minority are determined in the House of Representatives at the time of parliamentary elections. No amount of gerrymandering can change the situation.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): On a point of order, Hon. Speaker.

**Hon. Speaker:** Order, Hon. Wandayi. There is a point of Order.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you Hon. Speaker. As much as I do not like to interrupt my good friend and colleague, when you allude to court cases that are before the courts, the burden is on Hon. Opiyo Wandayi to make statements of fact. The case that Hon. Opiyo Wandayi alludes to is the same case I was alluding to. He knows that the court, indeed, determined, as he says, that a coalition political party is a political party and, therefore, can field candidates and the constituent political parties can also field candidates. That is the reason why Hon. Opiyo Wandayi is here as a Member of Parliament under the ODM. Therefore, that cannot be used to vitiate the fact that Azimio la Umoja One Kenya Coalition does not exist as a coalition of political parties. Hon. Opiyo Wandayi indicated in his submission that Azimio la Umoja One Kenya, from that court ruling, can be interpreted to mean that Azimio la Umoja One Kenya Coalition Party is a coalition of political parties. The question before the court was on a party and a coalition political party, and not a coalition of parties.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Let me end, Hon. Speaker.

**Hon. Speaker:** You have 10 seconds, Hon. Wandayi.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, let me end by saying this: That in the present circumstances, may you be guided by the famous doctrine in the Law of Torts “*Res Ipsa Loquitur*”.

With those many words, I thank you.

**Hon. Speaker:** It is called “*Res Ipsa Loquitur*”. I will now give the chance to the Whip of the Kenya Kwanza Coalition. If you want to speak later, I can give other Members the chance. I had committed to give it to the whips.

**Hon. Sylvanus Osoro** (South Mugirango, UDA): I am very ready, Hon. Speaker.

**Hon. Speaker:** After you, I will give Hon. Junet a chance, then I will allow other Members to speak.

**Hon. Sylvanus Osoro** (South Mugirango, UDA): Thank you very much, Hon. Speaker.

**Hon. Speaker:** You have 10 minutes.

**Hon. Sylvanus Osoro** (South Mugirango, UDA): Okay, Hon. Speaker. This being my inaugural address in this 13<sup>th</sup> Parliament, I wish to take this opportunity to thank the great people

of South Mugirango for having faith in me for the second time. I also congratulate you for being elected the Speaker for this Session.

Hon. Speaker, having said that, allow me to table the letters from the Kenya Kwanza Coalition which appointed Hon. Kimani Ichung'wah, the Kikuyu Member of Parliament (MP), as the Leader of the Majority Party of the Kenya Kwanza Coalition; Hon. Owen Baya as the Deputy Leader of the Majority Party, and Hon. Naomi Waqo as the Deputy Whip of the Majority Party of this coalition. These letters are accompanied by the resolution...

*(Hon. Junet Mohamed consulted loudly)*

Hon. Junet, you have to cool down. I have tabled the letters appointing the Leader of the Majority Party and the Deputy Leader of the Majority Party. These letters are accompanied by...

**Hon. Junet Mohammed** (Suna East, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Yes, Hon. Junet. What is your point of order?

**Hon. Junet Mohammed** (Suna East, ODM): I do not want to interrupt the Member.

*(Hon. (Dr.) Robert Pukose consulted loudly)*

Hon. Pukose, behave like a Member who has been here before.

Hon. Speaker, I did not want to interrupt him. However, I want to bring to your attention that when a Member is tabling a document, he does it himself. It is unprocedural to let another person do it for him. On the records, it will indicate that it was tabled by another Member. I know he has been busy campaigning.

**Hon. Sylvanus Osoro** (South Mugirango, UDA): I stand guided. I appointed someone to act as my handyman for this session, but they adequately tabled as guided. If you so wish, I can have them back and table them myself.

**Hon. Speaker:** Go on.

**Hon. Sylvanus Osoro** (South Mugirango, UDA): The tabled letters are annexed with the resolutions and the minutes from the Kenya Kwanza Coalition. Their content includes the entire list of attendees, who are about 179 Members drawn from different parties, who appointed Hon. Kimani Ichung'wah as the Leader of the Majority Party. The UDA party had 145, United Democratic Movement (UDM) had eight, Pamoja African Alliance (PAA) had three, MCCP had two, MPG had one, Amani National Congress (ANC) had eight, Forum for Restoration and Democracy (FORD-Kenya) had six, The Service Party (TSP) had two, Democratic Party (DP) had one, Chama Cha Mashinani (CCM) had one, NARC-Kenya one and GGDP one. In total there were 179 Members.

In the past one week, I have been busy receiving requests from several Members of this House requesting me to place them in Committees, some of whom are independent MPs. They could be 10 in total. Today, we are talking of about 189 Members associating themselves with the Kenya Kwanza Coalition, thus clearly describing our majority in terms of numbers.

Hon. Speaker, if this was a marriage where you were called upon to be a vicar, then clearly, the consummation of that marriage happened in Naivasha, and four children were born out of it. You are being invited today to make a determination on which particular partner a certain spouse wants. A marriage is claimed to have taken place 2 months ago or thereabouts, and there is a spouse who feels that they do not belong here and they have decided to go the other direction. That spouse

is equipped with the Constitution of Kenya, in Article 38 and Article 36 on the Rights of Association.

Even a first-year student knows that a contractual agreement entered through coercion and threats is a nullity and cannot be validated even from your seat, Hon. Speaker. Any agreement that is entered into at night through blackmail and coercion is a nullity. Today, I challenge the Hon. Junet, who is salivating at my Whip of the Majority Party seat, to table before the House, a resolution by the Azimio la Umoja One Coalition Party today with a list of Members who have appended their signatures in attendance of that meeting, and minutes of the same meeting. Not mere statements of ‘we have the numbers, we are the majority’ and, at some point, ‘we were together and had a coalition agreement.’

Hon. Speaker, as legal practitioners, we both know that any law, legislation or agreement that contravenes the supreme law of the land, the Constitution, is null and void. Our Constitution is supreme. Article 36 provides for the Rights of Association. You cannot force MDG or Maendeleo Chap Chap to go to bed with you against their will. They do not want. They are protected by Article 36. You cannot use a mere paper that you coerced them to sign. Those Members are protected by Article 36 and Article 38 of the Constitution.

The invitation that you are being called upon to determine is on a mere agreement, whose contents were not shared to the people who signed it, is wrong. Please decline that invitation. The Majority coalition is Kenya Kwanza. The right of association cannot be downplayed by a mere agreement.

Hon. Speaker, as you retire to make your determination, you need to relook at the provision of Article 108 on the definition of a political party. By all standards, at whichever angle you chose to approach this matter, the definition of Azimio currently, is Azimio la Umoja One Kenya Coalition Party. It stands on the same level as ODM, UDA, Maendeleo Chap Chap and all the other parties. If you call for a count on the Members of Azimio Coalition Party in this House, you will get none. There is only one member of Azimio Coalition Party as provided for by the definition in Article 108 (2), and that is the Hon. Raila Amolo Odinga. The rest are members of parties, including myself. I am a Member of UDA. The Hon. Junet is a Member of ODM. They enjoy a sizeable number in this House. They are about 88. I want to echo the sentiments of my colleague, Hon. Ichung’wah.

He said they have been fair to share their very small meagre cake with their short brothers, the ones who do not deserve anything such as the Wiper Democratic Movement-Kenya (WDM-K) and other parties. We challenge them today.

**Hon. Robert Mbui** (Kathiani, WDM-K): On a point of order, Hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Yes, Hon. Mbui.

**Hon. Robert Mbui** (Kathiani, WDM-K): Hon. Speaker, I am sorry for standing to interrupt his debate, but honestly, is it parliamentary for the Member of Parliament to belittle political parties that are actually parliamentary parties because they have already hit the five per cent threshold that the Standing Orders define? I ask that the Member respects this Party and withdraws those statements.

*(Loud consultations)*

**Hon. Silvanus Osoro** (South Mugirango, UDA): Hon. Speaker, for clarity purposes, I meant that the WDM-K is short on numbers in the House. That was my description. As I wind up...

**Hon. Speaker:** Your time is up.

**Hon. Silvanus Osoro** (South Mugirango, UDA): That is all, Hon. Speaker. Thank you.

**Hon. Speaker:** Okay. Hon. Junet, you have ten minutes.

**Hon. Junet Mohamed** (Suna East, ODM): Thank you, Hon. Speaker. From the onset, I first congratulate you for being elected as Speaker. Secondly as a country, we are governed by the Constitution and the rule of law.

Hon. Speaker, you and the Members know very well that, as a country, we have decided to legally manage our politics. We amended the Political Parties Act and, as alluded to by Hon. Ichung'wah, as acrimonious as it was, the law was passed. The law was assented to and some of its architects might be in this House with us, but that is a story for another day. The law was passed, assented to and taken to the Constitutional Court by a private citizen. The Court affirmed that the law was enacted constitutionally. Numbers were raised in the House and voting was done.

The issue I want to raise is that in governing our politics, we decided to have pre-election and post-election coalitions. We are discussing Members of parties that made a pre-election coalition agreement. That agreement was registered with the Registrar of Political Parties. When I finish my presentation, I would like to table that Coalition Agreement. I have it here with me. All those parties appended their signatures in broad daylight, in a ceremony that was held at the Kenyatta International Convention Centre (KICC). Those who are saying that it was at night were probably campaigning somewhere. But the ceremony started at 9.00 a.m. in the morning and ended at 3.00 p.m. We went to a rally in Jacaranda Estate after that until 6.00 p.m.

All these parties like WDM-K, the Kenya African National Union (KANU), the National Rainbow Coalition – Kenya (NARC-Kenya), the Muungano Party, the Maendeleo Chap Chap Party with their Secretary, Mr. Wilfred Nyamu, the Democratic Action Party, and the Devolution Party of Kenya appended their signatures. I want to table this Agreement. Hon. Ochieng's Party, the Movement for Democracy and Growth (MDG) Party signed the Agreement. I know why he signed it, but that is a story for another day.

Hon. Speaker, we must respect our laws. You were a party leader before the elections. You decided on your own volition that your party wanted a pre-election coalition agreement with another coalition. Those parties should have followed suit. You cannot break a marriage just to pick up from where Hon. Osoro left. You cannot marry another person before you divorce the first one. If you want a divorce, there is a procedure to be followed. You must divorce procedurally. This Pre-Election Coalition Agreement is in force and is registered. This country has left behind the era when coalition agreements would be rubbished. That is why the Political Parties Act put in place provisions to ensure that coalition agreements are upheld by those who signed them.

You remember the Memoranda of Understanding that were signed in 2002, and those that were signed when the new Constitution was promulgated. This Parliament, in its own wisdom, passed the Political Parties Act which stated that parties have to re-deposit the agreement with the Registrar of Political Parties. If a party wants to exit a coalition agreement, there are exit clauses that they have to follow, and which allow them to do so. More importantly, parties that claim to have left this Coalition have written to me, as the Secretary-General of the Azimio la Umoja One Kenya Alliance Party with petitions stating that they are going to the Constitutional Court to get an order to get out of the Coalition. That is the right route. If they knew they could walk in and

walk out as they wished, why have they decided to go to court? They should have just walked away like somebody who is in a supermarket.

When we came here, we swore to uphold and defend the Constitution. That is the Oath of Office we took. The Constitution demands that we respect instruments of a legal nature like this that we have committed ourselves to. If you want to walk out of it, that is your choice. But the fact of the matter is that this country will be governed by the rule of law and the Constitution.

How do we have a mature democracy? The presidential system that we are using to govern our country was borrowed from the United States of America (USA). There are times when the President of the USA does not have numbers in Congress, but he does not cease being the president. They have had mid-term elections, where the President loses the Congress. Former President Obama lost it in 2015, but he did not cease being the President of the USA. It does not mean that for you to become President, you must have numbers in Parliament. No! Parliament is a separate arm of Government. You can still remain the President without numbers in the National Assembly. You may have numbers in the Senate. That is how mature democracies operate. You can get numbers in Parliament through elections. You cannot get Members of Parliament through poaching. That is the fact of the matter.

I want to categorically state on the Floor of this House that the precedence that we are going to set in this Parliament this time will be for posterity. That is because we will have elections in 2027. A President might be elected with fewer numbers in the National Assembly and he may want to force people to accept that he has the majority party in Parliament because he is the President. No! The presidential election is separate from the parliamentary election. People can be elected in one coalition. Let us not mutilate democracy on the Floor of this House. We must accept that the will of Kenyans who elected the President as President must be respected as the will of the people who gave certain coalitions and parties the majority in this House.

I am being told that the Azimio la Umoja One Kenya Alliance has no leadership in this House. Their presidential candidate is not in this House. The leader of the Kenya Kwanza Alliance is not in this House. He is sitting in State House. He is the President. He is in State House. He is not in this House with us. There is no requirement that the leader of a coalition must be in this House. The leader of a coalition can sit anywhere in town as long as his troops and Members of Parliament are in the House. If that is the case, then let us have the President sitting here with us, as the Leader of the Kenya Kwanza Coalition. As Azimio la Umoja One Kenya Alliance, we do not want to be given an undue advantage. The parties that joined the Azimio la Umoja One Kenya Alliance did so knowing very well that they are in that coalition in their right frame of mind and the people who elected them to this House knew very well that they are in that coalition. It will be betrayal of the people who elected them in the name of Azimio for them to come to Parliament and change course. That is not the democracy we want to advance in this country. Let us have clean politics that follows the law. Let us have politics that respects institutions. For example, the Registrar of Political Parties has this document.

**Hon. Speaker:** There is a point of order, Hon. Junet.

**An Hon. Member:** Hon. Speaker, Standing Order No.1 states clearly that should Hon. Junet Mohamed lie to the House that he is the Director of Elections in ODM and again the Secretary-General of Azimio-One Kenya Coalition Party... One must bear allegiance to one political party. Can he tell us which positions he holds in both Azimio and ODM and as a promoter of Building Bridges Initiative (BBI)?

**The Speaker:** Hon. Junet, your time is up. I will give you 30 seconds to conclude.

**Hon. Junet Mohamed** (Suna East, ODM): To conclude my submission, this Parliament has a date with destiny. The way you rule on this matter will determine the way our politics will be conducted going forward. I urge you, with humility, to have fidelity to the Constitution and the law.

Thank you very much.

**Hon. Speaker:** Hon. Duale.

**Hon. Aden Duale** (Garissa Township, UDA): Hon. Speaker, today is a day that I will remember. Early this year, we passed the Political Parties (Amendment) Bill in a very chaotic Sitting.

An Hon. Member: You are a CS!

Hon. Aden Duale (Garissa Township, UDA): I am not a CS until I am approved by this august House. I remember - and *the Hansard* will prove me right - I told my colleagues then: "Do not make laws that will haunt you!". There are people who are running away from that chaos. As they say, "*Murife*, do not run. *Murife* do not run". Hon. Junet and his colleagues, do not run. This matter must be decided this afternoon.

Hon. Speaker, your predecessors have decided more complex issues. I was with you in the 10<sup>th</sup> Parliament, during the Grand Coalition Government, where the Leader of Government business used to be the Chair of the House Business Committee. When the Vice-President, then Hon Kalonzo Musyoka, and the Rt. Hon. Raila Odinga argued on who would chair the Committee, Speaker Marende took over. In the Legislature, you are the arbiter. You should not be referred to anything. Listen to us and base your ruling on law, facts and evidence.

Hon. Speaker, what our opponents are going through is what the medical doctors call placebo. Placebo is something like a lie in a healing. It is where you claim that you have healed psychologically, but you have not healed .

*(Hon. Junet Mohamed spoke off-record)*

**Hon. Aden Duale** (Garissa Township, UDA): Hon. Speaker, you know we are not in Eastleigh where he and I talk to each other like that. We are in the august House. When we are in Eastleigh, I can talk to Hon. Junet the way I want. This is the august House.

They thought this was the healing. Healing time is over. I want you to rule on six things that I want to tell you. I am going to start with Article 2(4) of the Constitution. It says any law, including customary law, which is inconsistent with the Constitution is void to the extent of the inconsistency and any act or commission in contravention of the Constitution is invalid. Even an Act of Parliament passed by this House, if it is not consistent with the Constitution, is null and void. Article 36 of the Constitution is on the Bill of Rights. It is on the human rights. It says the freedom of association.

**Hon. Anthony Oluoch** (Mathare, ODM): On a point of order, Hon. Speaker.

**Hon. Aden Duale** (Garissa Township, UDA): Hon. Speaker, you have to give me my time. I am being disrupted! This is the Member for Mathare! He must say what is out of order.

**Hon. Speaker:** Hon. Oluoch is on a point of order.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon Speaker. Is it in order that the former Leader of the Majority Party misleads this House by giving the impression that the question of constitutionality or nullity is a question that can be determined otherwise than by a court of law? We can have our own interpretations and thinking on what is constitutional or not, but this is a question that can only be determined by a court of law. Is he in order?



**Hon. Aden Duale** (Garissa Township, UDA): Hon. Speaker, in this august House, you are the arbiter. You are the one who decides. Those who want to go to court can go, as Hon. Wandayi said.

Article 36 of the Constitution is on the Bill of Rights. To amend it, you must go to a referendum. It is about freedom of association. It says you can join or participate in any activity of any association. Article 36 (2) says that nobody can compel you to join a political party. Hon. Speaker, PAA and MDG, and I want to thank the leader of the Movement for Democracy and Growth (MDG), who is in this House. He is a leader to be watched in Luo Nyanza. He is a serious person. He came to this House on a small party from Siaya County. He must enjoy his rights. The framers of the Constitution protected MDG. The framers of the Constitution, both in letter and spirit, protected the Pamoja African Alliance (PAA) as a party and its membership, rank and file.

Article 38 of the Constitution – and you must rule on it – again, is on the Bill of Rights. It is about human rights. It provides for political rights of very person, including members of PAA, MDG, MCC and other small parties. They have got political rights in the Constitution under Article 38. A legal document signed... I am sure when you talk to your colleague Speaker of the Senate and the nominee for Cabinet Secretary for Foreign and Diaspora Affairs, they will tell you they signed the last page under coercion and intimidation. Can you rely on such a document?

**Hon. (Ms.) Sabina Chege** (Nominated, JP): On a point of order, Hon. Speaker.

**Hon. Aden Duale** (Garissa Township, UDA): Hon. Speaker, let me finish. You have to give me time, Hon. Speaker. I will prove. I will bring Kinoti here. Kinoti is still alive.

**Hon. Speaker:** Yes, Hon Chege.

**Hon. Sabina Chege** (Nominated, JP): Thank you, Hon. Speaker. I respect Hon Duale as a ranking Member and any evidence that he gives to this House must be factual. So, for him to come and lie to this House that people signed a document under coercion is really unfortunate. I would like us to restrict ourselves to facts. We have people here who signed and they can speak on behalf of the parties involved and on their own behalf. I would really urge Hon. Duale to just stick to the facts.

**Hon. Aden Duale** (Garissa Township, UDA): Hon. Speaker, you need to add me more time. In this House, my good sister Hon. Sabina Chege was the custodian of the instrument at that time. Hon. Ochieng' will speak. Hon. Kamket will speak. Members of PAA will speak. Members of MCC will speak. And they will say the condition under which they signed the documents. The people of Kenya must hear them because a commission of inquiry into certain things might be formed. So, relax! So, Hon. Speaker, listen to us under Article 36 (1), Article 36 (2) and sub-article 8 on political rights.

The other thing I am inviting you to consider is whether Azimio Coalition is a political party or a coalition party? I want to give, as a ranking Member, and these are the Members who will approve me... Please, now I am the Member for Garissa Township. In fact, the serious issue Azimio coalition should think about is that they will not access funding from the Political Parties Fund, and I will tell you why.

Hon. Raila Odinga got 6.9 million votes. He is a man who inducted me into politics. He was the only candidate of that party in the General Elections. There were no Members of the County Assemblies (MCAs), MPs and Governors in Azimio la Umoja One Kenya Coalition. Read the Political Parties Act. It says...

*(Hon. Ken Chonga spoke off-record)*

Hon. Speaker, defend me from...

**Hon Speaker:** He is pursuing an argument.

**Hon Aden Duale** (Garissa Township, UDA): No! I am pursuing my argument. He will have his time. No, Hon. Speaker! When I am on my feet, you cannot shout.

*(Hon. Ken Chonga spoke off-record)*

**Hon. (Dr.) Robert Pukose** (Endebess, UDA): Hon. Chonga, sit down.

**Hon. Speaker:** Order, Hon. Chonga! Order, Hon. Duale! Hon. Chonga, I believe that you are a first-termer.

*(Laughter)*

**Hon. Ken Chonga** (Kilifi South, ODM): This is my second term.

**Hon. Speaker:** Okay. Then you should know even better than this.

*(Hon. Ken Chonga spoke off-record)*

Order, Hon. Chonga! There are your colleagues here who are here for the first term. They are looking up to you to learn how to conduct themselves. It is out of order to stand up and shout at your colleague across the aisle. You seek the Speaker's permission and then you pursue a counter-argument. However, you do not stand up and behave as if you are in a rally situation, which I said we should not have.

*(Loud consultations)*

**Hon Aden Duale** (Garissa Township, UDA): Hon. Speaker, because I have been very much distracted, give me about three more minutes.

**Hon. Speaker:** I give you two more minutes.

**Hon Aden Duale** (Garissa Township, UDA): I want to ask you whether the exit clause in the post-election agreement has any basis. I looked at the Political Parties Act, 2011, and there is nowhere that will stop PAA and all these other parties from exiting. Let my colleagues tell me which section that says that. Some Members are telling you the matter is *sub judice*. I agree with them. However, Standing Order No.89 (5) allows you, as the Speaker, to allow this House to discuss a matter that is in court. So, we are within the parameters of law.

Finally, use Article 108 of the Constitution. This matter is very serious. Forget about coalitions and deal with political parties. If you have 84 Members, that is your share as the ODM. If you have 145 Members, that is your share as the UDA, which has been given to you by the People of Kenya. If you have five or 10 Members like KANU – Hon. Kamket has left the Party and now you have fewer shares.

*(Laughter)*

There are three Members of PAA. They want to enjoy their freedom. During the tenure of your predecessor, he made a ruling on a matter concerning Hon. David Ochieng'. When he was elected in a small party and coming from the ODM stronghold, they refused to give him his share.

They were called National Super Alliance (NASA) at that time. I have been in this House. You know that they have mutated from Coalition for Reforms and Democracy (CORD) to NASA, to Azimio la Umoja One Kenya Coalition. The mutation and the turnover is so high. I do not know what they will be next. The Hon. Speaker ruled that Hon. Ochieng must be given a committee.

*(Laughter)*

Hon. Speaker, defend PAA Members. They have the rights under Article 38 of the Constitution.

**Hon. Speaker:** Your time is up.

**Hon Aden Duale** (Garissa Township, UDA): Do not look at agreements signed by...At one time, on a lighter note, you were about to join the Azimio la Umoja One Kenya Coalition Party. However, God forbid, you are a good Christian. So, you did not join.

**Hon. Speaker:** Order, Hon. Duale. No Member shall use Hon. Speaker to advance an argument.

*(Laughter)*

Hon. John Mbadi.

**Hon. John Mbadi** (Nominated, ODM): Thank you, Hon. Speaker. Let me first start by saying that we have started in the right direction. Why do I say so? You have allowed Members to ventilate on this matter. It comes out very clearly that you want to benefit from opinions or contributions by Members from across the political divide.

Hon. Speaker, there are certain things that are not in contention. One, that both Kenya Kwanza Coalition and Azimio la Umoja One Kenya Coalition are not in dispute on who should lead the two Coalitions. There is just one letter which came from Kenya Kwanza Coalition nominating Hon. Kimani Ichung'wah as the Leader; Hon. Owen Baya as the Deputy; Hon. Osoro as the Whip; and my great sister as the Deputy Whip. From the Azimio side, there is no dispute. The Leader is Hon. James Opiyo Wandayi. He is deputised by Hon. Mbui. The Majority Whip is Hon. Junet Mohammed, who will be deputised by Hon. Sabina Chege. So, that matter is settled. Both sides are clear on who should lead them. So, the issue of minutes which are appended or attached and copies to be provided or submitted to the House rests there. If there is contention as to who has been nominated by either side, then we would be discussing whether there are minutes, addendums or whatever it is.

Having settled that, Hon. Speaker, the contention in this House is which side is the majority. That is where we see the argument from Hon. Kimani Ichung'wah and his team; and Hon. Opiyo Wandayi and his team. The Constitution is not ambiguous. Article 108 of the Constitution talks about the Leader of the Majority Party being the Leader of a party or coalition of parties which has the majority membership in this House. Since it is clear, then what is not clear? What is being disputed here is which coalition has the majority membership. I have heard the arguments that we passed a law in this House that has created or caused chaos. Nothing can be further from the truth. Let us accept the legal framework that we have. We might have been used to the old framework. However, what we, as a House, created was where we can have a political party with corporate membership. Therefore, it is a coalition political party and coalition of political parties.

If you want to argue that Azimio la Umoja One Kenya Coalition is a political party and not a coalition of political parties, the question you would like to ask or address yourself to is this: What are the legal provisions for registering a political party? They are clear. You must have 24,000 members, at least 1,000 from majority of our counties, which are 24. Azimio la Umoja One Kenya Coalition was exempted from that because it is a corporate political party.

When you say that this is not a coalition, the next question you will ask is where in this country, out of the 47 counties, does Azimio la Umoja One Kenya Coalition has a registered party office? It has none. Yet, that is a requirement in law to register a political party. The reason why Azimio la Umoja One Kenya Coalition was accepted to be registered is because it is a corporate political party. So, the moment ODM, WDM-K, Jubilee and KANU have registered offices, then Azimio la Umoja-One Kenya Coalition in effect has registered offices.

Hon. Speaker, it is in that same reasoning why Hon. Raila Amolo Odinga was cleared by Independent Electoral and Boundaries Commission (IEBC) when he presented his papers. There was a requirement that he should present signatures of proposers and supporters. Those signatures must be from members of your political party. Azimio la Umoja One Kenya Coalition does not have even a single direct membership. Therefore, Hon. Raila was cleared after being supported by members of KANU, Wiper, ODM and Jubilee. Therefore, those members of KANU, ODM and Jubilee are all members of Azimio la Umoja One Kenya Coalition as a corporate entity. The moment you are a member of ODM, by extension you are also a member of Azimio la Umoja One Kenya Coalition. Therefore, this reasoning that there is no member in this House who is a member of Azimio la Umoja One Kenya Coalition is faulty.

There is a gentleman in this House whose name is Junet Sheikh Nuh Mohammed. This gentleman is the Secretary-General of the Azimio la Umoja One Kenya Coalition, and he is representing the people of Suna East. He is registered with the Registrar of Political Parties as the Secretary-General. Then you come here and want to say that Azimio la Umoja One Kenya Coalition does not have even a single Member of Parliament. That, completely, is misrepresentation of facts.

*(Applause)*

Hon. Speaker, Azimio la Umoja One Kenya Coalition was exempted from provisions of Section 5 and Section 6 of the Political Parties Act. Why? Because this is a corporate political entity—a political party which has corporate membership. That is why we were amending the law here. So that you could provide a situation where a political party is both a political party where you can be a member directly and, at the same time, political parties can be members of that political party. That is the situation as it obtains today. You can take advantage of it and make sure all your political parties are also collapsed to a mega or a bigger political outfit called Kenya Kwanza without having to just have it as a coalition of political parties.

Hon. Speaker, you know Azimio la Umoja One Kenya Coalition is based on a coalition agreement, just like any other coalition, like Kenya Kwanza. It is based on a coalition agreement. I listened very carefully and I was trying to avoid usage of these words, but I will use them because Hon. Osoro used them. Hon. Osoro was saying that you cannot stop a political party from going to bed with another one. That is, if someone has married another person, you cannot stop them from going to bed with them. Yes! You cannot stop anybody from going to bed with another, but you can stop another marriage before the earlier marriage is dissolved. So, someone can go to bed as they so wish. But marriage only subsists...

**Hon. Omboko Milemba** (Emuhaya, ANC): On a point of order, Hon. Speaker.

**Hon. Speaker:** Order. Hon. Junet. Sorry, Hon. Mbadi. There is a point of order. Give him the microphone. There it is.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. Hon. Mbadi is my mentor and I really did not want to interrupt him. Nevertheless, I now see that this may progress and progress and progress. We have parliamentary language, but the language he is using of marriage and going into bed, though earlier used by Hon. Osoro, is not parliamentary. Please, we could restrain ourselves from that. I am very sorry, Hon. Mbadi. You are a seasoned Member. Thank you.

**Hon. John Mbadi** (Nominated, ODM): Hon. Speaker, I think Hon. Omboko is uncomfortable with the language, but the language is not un-parliamentary. Going to bed is just going to bed; and marriage is marriage. What am saying is that you cannot start another marriage until you wind up the previous marriage.

Hon. Osoro you should advise your new whatever – what do we call them? You should advise it to make sure that the other marriage is first concluded. There was an argument here by Hon. Duale which, if you allow me to challenge, that there is something unconstitutional about what we have done in terms of making agreements. There is nothing unconstitutional. Article 92 of the Constitution allows Parliament to enact legislation to provide for the regulation of political parties. In doing that, we created the Political Parties Act that gave rise, within the Act, to the agreements.

Finally, allow me to say this. As you protect the rights of Members of PAA, MDG and others who want to leave Azimio, remember there is also the rights of the people of Ugenya, who elected Hon. Ochieng', knowing very well he was in Azimio, and he has not consulted them. Whose right is superior? Is it the people or the Member?

**Hon. Speaker:** Your time is up, Hon. John Mbadi. Thank you. From now going forward, allow me to regulate your time down to five minutes per Member. Are we in agreement?

**Hon. Members:** Yes.

**Hon. Speaker:** I will give the Floor to Hon. David Ochieng'.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you so much, Hon. Speaker. I will request for 10 minutes, because my name has been mentioned so many times on this matter.

**Hon. Speaker:** Compress your arguments in five minutes.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you, Hon. Speaker. On this particular matter, I wrote to your Office on 9<sup>th</sup> September 2022 about our position in Azimio, and having left the coalition party and joined Kenya Kwanza. I have a letter here and I would like to table it.

*(Hon. Ochieng' laid the document on the Table)*

The reasons for our leaving Azimio la Umoja are very instructive. So much has been said about us and how the marriage was done a raw deal. After the elections, the MDG's National Executive Committee (NEC) sat and reviewed the campaigns and our position in the Azimio la Umoja. Members brought the following issues: That in the former Nyanza, the Azimio leadership was so hostile to MDG Members running in that party. They were called *madoa doa*. They were told that Azimio ends in Awassi. That when you come from Nairobi and get to Awassi, you now leave Azimio because it is dead, and it is now an ODM stronghold. This same thing happened in my constituency. When the Azimio party leader came to my constituency, I could not even attend

because I was a *madoa doa*. How could I be a *madoa doa* and still belong to the party that calls me a *madoa doa*?

Hon. Speaker, I would also like to table a letter from the Registrar of Political Parties. We have written to the Registrar severally asking for a copy of the Azimio la Umoja One Kenya agreement. To date, it has not been given to us. The letter I am tabling here today indicates the Registrar telling us that they cannot give it to us; and that we should go to Azimio la Umoja. I must say that nobody can verify the authenticity of what Hon. Junet has tabled today. Nobody knows whether what he has tabled is the document that we signed. The letter that I have here, if you allow me to read it, is from the Registrar of Political Parties to our party, and it is saying they cannot give us the agreement and that we should go to the Azimio la Umoja Headquarters.

*(Hon. Ochieng' laid the document on the Table)*

When you go there, you are told to come back tomorrow or next week. Up to now, our party has never received a copy of this agreement. I have perused what Hon. Junet has given us, and I dare say that the contents of that agreement are not the ones that we negotiated. I cannot verify nor totally say that what Hon. Junet has tabled today is what we negotiated or signed.

Number three, our party says that Azimio la Umoja had three organs—the council, the NEC and the secretariat. In all those organs, the MDG has nobody representing them there! Not one! How do we belong to a coalition that does not recognise that we exist? On 29<sup>th</sup> August 2022, we wrote to the Registrar of Political Parties withdrawing our membership from Azimio. I also wish to table the letter and the minutes of our NEC withdrawing our membership from the Azimio la Umoja, if you allow me.

*(Hon. Ochieng' laid the document on the Table)*

Secondly and most importantly is the argument of the nature of the Azimio political party. What Hon. Junet has tabled today is the instrument for registering Azimio Coalition Party. There is nowhere – and you will not find it with the Registrar of Political Parties or Hon. Junet – where the parties forming Azimio registered a coalition. You must differentiate the two. There is a coalition party and the coalition. If we registered a coalition, the argument that Azimio is a coalition of parties is incomplete.

**Hon. Junet Mohammed** (Suna East, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Order, Hon. Ochieng'!

**Hon. Junet Mohammed** (Suna East, ODM): Hon. Speaker, it is not my intention to interrupt the Hon. Member. I urge him to go through the document first. The formation of the Azimio coalition is written well inside there. Misrepresentation of facts will not be allowed. This is a House of records. We do not want it to go on record when the document is very clear on the formation of the Azimio coalition. It is well stipulated in the document.

**Hon. David Ochieng'** (Ugenya, MDG): Hon. Speaker, the document I am holding which was tabled by Hon. Junet says there is a deal of agreement in respect of the Azimio la Umoja One Kenya being a coalition political party. My argument is that for the argument that Azimio is a coalition within the frame of 108 and 19 of Standing Orders 108 and 19 to stand, two things must have been done. One, register Azimio la Umoja as a coalition party, which was done. But, where is the Azimio la Umoja Coalition of Parties agreement to enable them claim that they are a coalition of parties at the same time? That is the argument that I am trying to make.

*(Applause)*

On one hand, there is a distinction between a coalition party, which exists, and a coalition of parties on the other. Azimio la Umoja is saying that they have two legs. Today we have only been given one leg. Where is the other one?

**Hon. Speaker:** Your time is up.

**Hon. David Ochieng** (Ugenya, MDG): Hon. Speaker, allow me two more minutes.

**Hon. Speaker:** I will give him 30 more seconds to wind up.

**Hon. David Ochieng** (Ugenya, MDG): Thank you.

**Hon. Speaker:** You have a microphone next to you.

**Hon. David Ochieng** (Ugenya, MDG): Hon. Speaker, the same law we passed here in May allows a Member of a party to be deemed to have resigned from the party if that Member forms another party, joins another party or talks about forming another party. The Movement for Democracy and Growth Party (MDG) has clearly, openly and publicly said that it is part of the Kenya Kwanza Coalition. Under that law, we request that you deem MDG to have moved from Azimio la Umoja - One Kenya Alliance to Kenya Kwanza Coalition.

I submit.

**Hon. Speaker:** Hon. Naisula Lesuuda. She has left. I will give the opportunity to Hon. Kamket.

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you very much, Hon. Speaker, for giving me this opportunity. This is my first time to speak in the 13<sup>th</sup> Parliament. I thank the people of Tiaty Constituency for bringing me back to this Parliament. I also congratulate you and your deputy on your election as Speaker and Deputy.

Hon. Speaker, as you make your determination on this matter, I would like you to have me in mind as the Member of Parliament for Tiaty Constituency. As you do that, kindly refer to Article 36 of the Constitution in its entirety. I ask you to protect me from being forced to stay in an abusive marriage.

*(Applause)*

I plead with you to protect me from being forced to stay in a very bad marriage. I saw Hon. Junet table a document which was not disclosed to us throughout.

*(Applause)*

The document he has tabled is not known to me as a Member of KANU, it was never disclosed to us although we kept asking for it. Therefore, I cannot be party to an agreement that was signed without my knowledge of the material facts in it. As a very serious nomadic pastoralist, I cannot be put in a cage and I cannot be tied to a tree. If my cow cannot be tethered to a tree, how can a whole me, the Member of Parliament for Tiaty Constituency, be tied to a tree?

Hon. Speaker, the question you need to ask yourself as you determine this matter is, which agreement supersedes the other? Is it the pre-election agreement or post-election agreement? This is because it depends on how the agreement was reached. It was reached through deceit and duress. These Members know that in the last term I was arrested severally on trumped-up charges. Is that

not one of the reasons some of us decided to play along at that time? Yes! Now we are here free. Freedom has come to the Republic of Kenya.

*(Applause)*

**Several Hon. Members:** Freedom! Freedom!

**Hon. Speaker:** Order! Order, Hon. Members. We shall listen to Hon. Kamket in silence.

**Hon. Kassait Kamket** (Tiaty, KANU): So, Hon. Speaker, as you retire to determine this matter, it is important to take into account the present circumstances. You cannot deny Members of this House, those who have attained that freedom, the opportunity to exercise their political and constitutional rights as provided for in Article 36 of the Constitution.

Fundamentally, even in the laws of natural justice, it is provided that when a new agreement is signed, the other one just dies naturally. Also, when someone makes a decision today, yesterday's decision does not matter. That is the law on natural justice.

Hon. Speaker, I plead with you to save me from the bad and abusive marriage.

**Hon. Speaker:** Your time is up.

**Hon. Kassait Kamket** (Tiaty, KANU): I was not the Azimio candidate. I am the Member of Parliament (MP) for Tiaty and my people know that I am in Kenya...

**Hon. Speaker:** I will give the Floor to Hon. Didmus Barasa. You have five minutes.

**Hon. Didmus Barasa** (Kimilili, UDA): Thank you, Hon. Speaker, for giving me this opportunity.

I invite you to Article 36 of the Constitution. We believe in the supremacy of the Constitution. Article 36 of the Constitution guarantees an individual and a political party the freedom of association. Even as you retreat to write the judgment on this matter, I want you to be guided by two things. If we believe in the supremacy of the Constitution and freedom of association, can this freedom, which is a fundamental right, be taken away by an agreement between two people or between one party and another, an agreement which was signed in an opaque manner? I do not believe so.

The second thing that I want you to look at is that it will be indeed a very sad day for Kenya, a dark day for this country, if you will allow an individual or political parties to be forced to remain or associate with a person they have vehemently refused. All those parties that have said that they do not belong to Azimio la Umoja - One Kenya Alliance have done so through a letter *en masse*. They have left this abusive marriage and it will be wrong.

Hon. Speaker, your hands are tied. You took the oath of office to protect and uphold the Constitution. And because we believe in the supremacy of the Constitution, the fundamental right of an individual to associate with a political party of their choice cannot be washed away by you. Your hands are tied. If these people want to leave the Azimio la Umoja - One Kenya Alliance, the party must let them go. They should leave.

Lastly, I was in this House when that law was passed. I have a lot of respect for my good friend TJ Kajwang'. But, he misled ODM Members by masquerading as the people's chief justice into believing that this is a good law.

*(Laughter)*

They planted their mango tree, they have to eat it and to live by it. Azimio la Umoja - One Kenya Alliance....



**Hon. John Mbadi** (Nominated, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Order, Hon. Didmus. Yes, Hon. Mbadi.

**Hon. John Mbadi** (Nominated, ODM): Hon. Speaker, I did not want to interrupt my good colleague, Hon. Didmus Barasa. Hon. Speaker, is it in order for the Member to impute improper motive on the membership of this House, and especially from Orange Democratic Movement (ODM) Party by insinuating that TJ Kajwang' misled a whole lot of us? We who have gone to school and properly? He should withdraw that remark and apologise. Someone like me who has gone to school, and has done so properly, cannot be misled by TJ Kajwang'.

*(Laughter)*

**Hon. Speaker:** Hon. Mbadi, the only difficulty I have is that Hon. TJ Kajwang' is sitting there smiling broadly, as he is being described.

*(Laughter)*

Hon. Didmus, please wind up your argument.

**Hon. Didmus Barasa** (Kimilili, UDA): Hon. Speaker, I want to conclude by saying that we warned the ODM Party that when you make laws, they should be for posterity; you do not make laws to support where you are standing. They are now finding themselves on the receiving end. The Constitution must be applied rightfully, and cannot be rubbished.

The rights that are in this Constitution cannot be taken away by people who signed a document. I am told that when they were signing the said document, they may have drunk some things which do not go to the stomach but upstairs. The ruling for you therefore, is going to be very clear – that the Majority Coalition is Kenya Kwanza.

*(Loud consultations)*

**Hon. Speaker:** Hon. Robert Mbui.

**Hon. TJ Kajwang'** (Ruaraka, ODM): On a point of order!

**Hon. Speaker:** Nobody is on the Floor, Hon. TJ. There is therefore, nothing out of order.

**Hon. Robert Mbui** (Kathiani, WDM): Thank you, Hon. Speaker for this opportunity.

First, the issue of who the Majority and Minority are has caused a lot of confusion. The media and our voters are confused to the point where some think that the same way we voted for the Speaker here, is the same way we might end up having to vote for the Leader of the Majority Party. This issue is not opaque; it is in black and white.

I have heard Members here talk about some issues. Members have even talked of marriage. The problem we are now facing is a situation whereby your newlywed wife after settling in your home, notices that your neighbour has a brand new car; she then starts talking about an abusive marriage even though nothing has gone wrong.

*(Laughter)*

Any relationship with a neighbour with a brand new car or a house on top of the hill is actually a cohabiting relationship. It is not a properly procured marriage. Who has a properly procured marriage? It is those who signed an agreement before the time of the election.

Hon. Speaker, Article 108 of the Constitution is very clear about the Leader of the Majority Party. Part (2) says that it is the Leader of the largest party or coalition of parties. I want to point out that the size of a party is based on the number of elected Members. In the last election, there were four teams that were competing for elective office. Let us forget Mr. Wajackoyah's Roots Party and Agano Party. We were left with two teams under Hon. Rtd. Raila Amolo Odinga and His Excellency, Hon. William Samoei Ruto. Each had a coalition which was known by everybody in the country including nursery school children.

The results of this election were announced and clearly it showed that those who were elected under Azimio la Umoja Coalition were more than those that were elected under Kenya Kwanza Coalition. It is only after the election and announcement of His Excellency Hon. William Ruto as the President, that things started changing. If the results were different, we would not even be having this discussion. Let us be honest with ourselves.

I have heard people complain but the fact is to determine the majority by a letter that was read and tabled on the Floor today. What further argument do we have about deciding who the majority are? In another month, I agree that Azimio la Umoja Coalition would not be the majority party. However, as we speak today, we are under no obligation to make that decision because it is already made for you. The Constitution and the Standing Orders have made that decision. Hon. Speaker, your work therefore, is very easy. It is just to announce what the law expects you to do.

I have heard the issue of Political Parties Act being lambasted by Members of this House. It is unfortunate that Members of this House are the ones that passed this law and now insulting it. There is no duress because Members of Parliament took a vote. There are those who voted for it and those who were against.

Hon. Speaker, as you sit on your Chair, please note, and this is a fact that Members make a decision through a vote. If a vote is taken and this becomes a law, it became a law for the land and His Excellency the former President Uhuru Kenyatta assented to it. So, when we start saying it is an amorphous law, a bad law or a law that was under coercion, it is unfortunate because as a House we made a decision. We made our bed and we must lie on it.

There is nothing wrong with the Political Parties Act. It is only curing political indiscipline where people want to belong to one party and another at the same time. This is where people are elected in one coalition and the next day they troop in their numbers to go and get coerced so that they can defect from the parties that elected them. Members of Parliament must remain true to the people who elected them into the House. Those who were elected under Azimio la Umoja Coalition must stick with it.

Hon. Speaker, there are people from our region who were elected. As Wiper Party, we went to the ground and supported them because they were under Azimio la Umoja Coalition. After the election, they immediately jumped ship to Kenya Kwanza Coalition. They have, however, not gone back to the people who elected them to tell their electorate why they defected. It is a simple decision that Azimio la Umoja is the Majority Party and I am the ....

**Hon. Speaker:** Thank you, Hon. Mbui. We really, have many Members who want to speak to this. Who can I give the chance first? Should I give it to Hon. Chonga or Hon. Chepkonga? Let us have Hon. Chepkonga.

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): Thank you, Hon. Speaker. My name starts with a "Ch" and it was clear.

This is my first time to speak to this Motion. I would like to take this opportunity to first congratulate you, for your worthy election as the Speaker of this House.

Two, I would like to thank the people of Ainabkoi for electing me as their Member of Parliament.

Hon. Speaker, there has been an attempt to persuade and convince you to believe the wrong facts. In fact, Papers have been tabled in this House. You have been told about the election of the Leader of the Majority Party from the Azimio la Umoja Coalition. Standing Order 91 requires you to be correct in the information you provide to this House. You should not redact. This is not an ICC process where you redact certain information. The Azimio la Umoja Coalition must include the minutes and they know it. When you are being elected as the Member of Parliament, you are not elected by any other person. There is a register of members in that polling station and when you are declared as a Member of Parliament, there is a register which shows that certain voters participated in the said election.

You have not been shown anything. They have been trying to convince you by trying to hide facts under some cloud here. You have heard Hon. Ochieng, my good friend. He participated in the Parliamentary Group meeting of Kenya Kwanza and those are the same people who elected Hon. Opiyo Wandayi as the Leader of the Majority Party. I do not know whether he split himself into two so that we had a half of Hon. David Ochieng in Azimio la Umoja and the other one in Kenya Kwanza Coalition. That is why I am inviting you, Hon. Speaker, to consider the document that was tabled here as half information. It is neither complete nor factual. They need to provide the people who participated in electing the Leader of the Majority Party. This was not a nomination. The Standing Orders are very clear on an election. There is nothing as skirting around this matter. You must be faithful to the law.

Secondly, Hon. Speaker I have just had an opportunity to have a casual look at the coalition agreement of Azimio which has already been tabled and I would like to invite you to consider Page 11. I will read for you since you are the one who has provided it. Article 12 of the Code of Conduct states thus:

“Members of the coalition parties shall abide by the provisions of Article 10 of the Constitution.”

I would like invite you to consider what this Article says. According to the Article, Members will abide by the national values and principles of good governance which include human dignity, human rights, transparency and equality.

**Hon. Speaker:** Order, Hon. Member. Before you quote in *extenso*, I have been looking at this document tabled by Hon. Junet. Having gone through it very carefully, it does not meet the test of a required legal document. Some pages are initialled, some are signed and some are blank. In areas where there is a requirement of two signatures of certain political parties, there is only one signature. Others that require the signatories as outlined on the document such as Pages 27, 28 and 29 are blank. I therefore want to direct and rule that this document is inadmissible and you shall make no reference to it.

*(Loud consultations)*

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): I thank you, Hon. Speaker. In fact. the document was worthless.

**Hon. Speaker:** I am sorry. Hon. Chepkonga.

In future Hon. Junet, if you bring a copy of a document try and authenticate it so that it can carry the colour and force of law.

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): Thank you, Hon Speaker, for rescuing us from what Hon. Wandayi has sought to put us into. I would like to invite you to consider Article 36 of the Constitution on Freedom of Association and Article 38 on Political Rights. I do not know what is wrong with the Constitution.

**Hon. Speaker:** That is expunged from the record and so we cannot debate it.

**Hon. Junet Mohamed** (Suna East, ODM): On a point of Order, Hon. Speaker.

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): Hon. Junet, you cannot have a point of order against Hon. Speaker. Where are you coming from?

*(Laughter)*

Hon. Speaker, I would like you to consider the two Articles that I have mentioned together with Article 25. You have heard Hon. Ochieng' saying that he has moved from that political party. Article 25 of the Constitution protects and outlaws slavery and servitude. You cannot tell us that you want Hon. Ochieng' to be your slave or put him in servitude. That is outlawed in the Constitution. That argument should not be pursued in this House and the person initiating it should be ashamed.

*(Loud consultations)*

May I tell the Member that there is nothing unparliamentary about the English language.

Hon. Speaker, I accept the decision to expunge this and therefore there is nothing for me to add on this matter. With those few remarks, in light of your decision, declare Kenya Kwanza as providing the Leader of Majority Party.

I thank you, Hon. Speaker.

**Hon. Speaker:** Your time is up. Yes Hon. Junet.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Speaker the ruling you have just made has a serious implication on the issue that we are debating. The only known coalition agreement demanded by the Members here that we should table is the same document that in your ruling has been expunged from the records of the House.

Hon Speaker, unless the House has another set of coalition agreements, the only coalition document that is registered with the Political Parties Registrar is this one.

*(Hon. Samwel Chepkonga spoke off record)*

Hon. Chepkonga has been farming for five years and has just come back to the House. Relax my brother. I am speaking to Hon. Speaker.

**Hon. Speaker:** I will hear Hon. Junet.

**Hon. Junet Mohamed** (Suna East, ODM): We are a House of debate and you are the only one we can address. The ruling you have made has a fundamental implication on the issue that we are canvassing before you, Hon. Speaker. All our coalition agreements for those 26 parties are based on that document that you have expunged. Does this mean that as far as the House is concerned at this point, Azimio la Umoja Coalition document is not recognised by this Parliament? Then we move from there, Hon. Speaker.

**Hon. Speaker:** Babu Owino!

**Hon. Babu Owino** (Embakasi East, ODM): Thank you very much, Hon. Speaker. The interregnum between Azimio la Umoja-One Kenya Coalition and Kenya Kwanza is cured in the apex of the law, the supreme law of the land and in the Constitution in Article 108(2) which was also read by Hon. Kimani Ichung'wah. The Article is clear that the Leader of Majority Party shall be the Leader of the Majority Party or coalition of parties. Going by that Hon. Speaker, in simple terms it is very clear that Azimio...

*(Hon. Samwel Chepkonga spoke off record)*

Kindly give me time. I do not know why the Member is so excited.

Hon. Speaker going by that fact, it is very clear that Azimio la Umoja-One Kenya Coalition Party is the majority party in the National Assembly.

*(Hon. Samwel Chepkonga spoke off record)*

Just keep quiet *Bwana*. I know you are only conversant with the "is was" English. Going by the rules of interpretation, the literal rule, the golden rule and the purposive approach the fact is that Azimio la Umoja-One Kenya Alliance is the Majority Coalition Party.

Secondly, we talked about marriage. Azimio is a subsisting marriage and it is a potential polygamous marriage. It is therefore not voidable because there was consummation. The person who presided over this marriage was overqualified. The grounds for divorce are adultery or unfaithfulness which we never experienced in our marriage because we campaigned together happily. Another ground is irreconcilable differences which we never experienced in our marriage. Hon. Speaker, a ground of insufficient or lack of finances has never been a ground. Our partners having seen that Kenya Kwanza was forming the Government decided to run away. That marriage is not voidable.

Lastly, when we talk about Article 36 as quoted by Hon. Didmus Barasa, on the Bill of the Right to Associate, there are limitations to the Bill of Rights including the right to life. Hon. Speaker in the doctrine of necessity, in the case of the Queen versus Dudley and Stephens in the United Kingdom, the defendants were on a trip, a voyage... As I finish.

**Hon. Speaker:** The ones who ate a small boy?

**Hon. Babu Owino** (Embakasi East, ODM): Yes. Thank you, Hon. Speaker. The two defendants killed Mr. Parker and fed on him. Then, the High Court decided it was necessary to take life. But upon appeal, they were vindicated that it was necessary for them to take life since either way they would have died. Therefore, there are limitations to any law. Be that as it may, our marriage was...

**Hon. Speaker:** Hon. Babu the courts said they should have cast lots as to who should be eaten.

*(Laughter)*

**Hon. Babu Owino** (Embakasi East, ODM): Hon. Speaker, you are diverting the law. In conclusion, this requires simple interpretation. We have already been given direction by the Leader of the Majority Party and the Majority Whip that is Hon. Wandayi and Hon. Junet, respectively, on this matter.

Thank you.

**Hon. Speaker:** Hon. Ndindi Nyoro.

**Hon. Ndindi Nyoro** (Kiharu, UDA): Thank you, very much, Hon. Speaker. First, I want to thank the people of Kiharu for giving me another chance to serve them in the august House. Also, I singularly thank them because they advised me not to have any campaign materials because they would elect me without them which they did. I want to applaud the people of Kenya for voting and conducting our elections in a very peaceful manner. That is why we are all here celebrating our democracy.

Going to the issue, I remember very well when we were recalled from recess to discuss amendments to the Political Parties Act, we looked subdued then. This is because we were facing people in this House who were chest-thumping, telling us they are the system and their way was the highway.

Hon. Speaker, we advised them it was important for this House to continue making laws for posterity and for the good of all. Unfortunately, the bad law they passed has put us in the situation we are in today. The question before this House is which team is the majority? This is very clear because we have Kenya Kwanza where I belong. This is an organised coalition of political parties with agreements of the constituent parties. When we went for elections, the parties that make this coalition of Kenya Kwanza emerged victorious in so far as majority is concerned. This has been said before but it is good for me to put it on record. That, the United Democratic Alliance (UDA) Party, where I belong, has 145 Members in this House. The Forum for the Restoration of Democracy - Kenya (FORD - K), the 'simba party' has six Members.

**Hon. Elisha Odhiambo** (Gem, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Yes, there is a point of order by Hon. Elisha.

**Hon. Elisha Odhiambo** (Gem, ODM): Hon. Speaker, as one of the celebrated Members of Parliament from Gem, I want to remind my brother about phonetics. He should be clear in the language he is using. Please, speak good English.

*(Laughter)*

**Hon. Ndindi Nyoro** (Kiharu, UDA): We may not have time to respond to every frivolity. FORD-K has six Members; Amani National Congress (ANC) has eight Members; United Progressive Alliance Party (UPA) has eight Members; Maendeleo Chap Chap Party (MCCP) has two Members; Pamoja African Alliance (PAA) has three Members; The Service Party (TSP) has two Members and the Democratic Party (DP), Movement for Democracy and Growth (MDG), National Agenda Party of Kenya (NAP-K), Chama Cha Mashinani (CCM) have one Member each. This makes a total of 179 members in the National Assembly. Already, this is majority. If you add the 10 Independent Members who are currently leaning towards the majority side, you will clearly see we almost have a super majority. There are other issues in as far as some of the parties I have mentioned are concerned.

Going to the other side of Azimio la Umoja-One Kenya Coalition Party, they have tabled some agreements which you have already ruled as void. These agreements were signed on a blank paper at night in a dark room. Most of the material was not given to all parties, and they were under duress. There is no contract or agreement that can be made in those kinds of circumstances.

**Hon. Babu Owino** (Embakasi East, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** There is a point of order. Yes, Hon. Babu.

**Hon. Babu Owino** (Embakasi East, ODM): Thank you, Hon. Speaker. What Hon. Ndindi Nyoro is saying is important and detailed. The problem is that the most important parts are not detailed and the most detailed parts are not important. It is very unparliamentarily for him to act

in a frivolous way by saying the documents were signed in a dark room. Did he see this and was he there? This is out of order.

**Hon. Ndindi Nyoro** (Kiharu, UDA): Hon. Speaker, because I can see my time is already up, I call upon...

As I was saying the purported agreements made by the other coalition cannot stand any test. They were made under duress, in dark rooms at night. Most of these people were given blank pages without content to sign and they are not counter signed by the signatories. Our country is in paralysis...

**Hon. Speaker:** Order, Hon. Ndindi! Your time is up. Sabina Chege.

**Hon. Sabina Chege** (Nominated, Jubilee): Thank you, Hon. Speaker, for giving me an opportunity. First and foremost, I want to thank the Jubilee Party for nominating me to be a Member of this Parliament. Also, I want to confirm that Jubilee Party is part of Azimio la Umoja–One Kenya Coalition Party. The letter presented earlier was about Jubilee’s internal affairs which is firmly in Azimio la Umoja–One Kenya Coalition Party.

Secondly, the issue at hand is who is the majority in this House and many people have alluded to marriage. We all went to a competition to look for votes. We had two handsome men and each political party chose where they wanted to go. After the battle which was a fierce and a very close call, we got the results.

Fortunately, Azimio la Umoja–One Kenya Coalition Party got the majority of Members in this House. As fate would have it, when part of our team saw the other side was rising to go to the house on the hill, some of them ran away. I just want to remind them that it is good when signing a document to read and know the content. Also, I want to remind the ones who left that they might vote for the other side, but legally they are with Azimio la Umoja–One Kenya Coalition Party. This is until 90 days are over from the elections date, that is 9<sup>th</sup> August.

Hon. Speaker, I am part of the Azimio la Umoja-One Kenya Coalition Council and they are welcome to table their grievances. We shall consider whether the grievances are true and let them go if they so wish. As at this point, some of them have gone and we respect their decisions. Nobody is being forced or coerced. I want to inform them about the document they signed because ignorance has no defence; whether they read it or not, they are bound by it. Azimio la Umoja-One Kenya Coalition has several parties and we are the majority.

Hon. Speaker, I know you have received communication from the Registrar of Political Parties. So, we are not disputing who the majority is. Give us a chance to agree on the way forward and form the House Business Committee (HBC) so we can serve Kenyans.

Thank you.

**Hon. Mwengi Mutuse** (Kibwezi West, MCCC): Thank you, Hon. Speaker, for the opportunity to address this House. This being my inaugural address to the House, like many have done, I wish to thank my people of Kibwezi West for electing me to represent them here under Maendeleo Chap Chap Party.

You notice that our party, MCCC, is among the parties whose numbers are being contested, and therefore, we have a greater interest than many in the current matter. As a lawyer, I know legal arguments follow facts. Therefore, it is important for us to lay the facts bare so that when you retreat to make your ruling, it will be as reasoned as possible. It has been insinuated by our friends under Azimio Coalition that MCCC and other parties only jumped after His Excellency the President was declared. Nothing could be further from the truth. I will be tabling before this House a letter that was written by my party on the 20<sup>th</sup> of April, over 100 days before elections, to the Registrar of Political Parties, in which we requested the Registrar to supply us with the coalition

agreement, the constitution of Azimio la Umoja-One Kenya, and the nomination and election rules. As it were then, a country that was run through dictatorship, a country that thought that the system is everything, and a country that disregarded the Constitution, the letter was not replied to.

I will also table before this House another letter that we wrote to the Registrar of Political Parties on 27<sup>th</sup> April 2022, in which we communicated the decision of the party to be removed from Azimio la Umoja-One Kenya Alliance. Instead, the Registrar told us that she was under instructions from above, as it were, that we could not exercise our democratic rights to move out of the Azimio la Umoja- One Kenya Alliance. Owing to that, therefore, it is not factual as it has been insinuated that MCCP under which the Member for Machakos and I are elected moved out of Azimio Coalition after the elections because the facts speak against that.

Again, after the elections, and noticing that the majority and minority determine how allocation of committees and leadership in this House is to be determined, we wrote a letter to you, Hon. Speaker, on 26<sup>th</sup> September 2022, which was received in your office on 29<sup>th</sup> September 2022, in which we restated that we, the two elected members, will be associated with Kenya Kwanza Coalition. I will also table that letter so that it goes on record.

In the letter, we enumerated the circumstances under which our party was forced and coerced to join the Azimio Coalition. We stated that the circumstances under which we were coerced to join could not legally stand. Therefore, we wish our numbers to be counted under Kenya Kwanza Coalition. The question that you would be answering is: when I stand here as a Member of Parliament and say I want to be counted under Kenya Kwanza, can somebody else force me to be in another coalition that I do not want? Do I not have a right, under the Constitution, to decide where I want to be?

**Hon. Members:** You have!

**Hon. Mwengi Mutuse** (Kibwezi West, MCCP): I do not want to restate the Constitution because it has been properly stated before you.

Hon. Speaker, it has been put to you that rights have limitations, and indeed rights have limitations, but when you sit to determine the limitations under Article 36, I invite you to look at Article 24 which states the test for limitation of rights. To limit a right, a right must be limited by legislation, and that legislation must clearly state the right which is being limited. In this case, our good friends are relying on limitation under the coalition agreement. The question you will ask yourself is: can a coalition agreement limit fundamental God-given human rights? When you sit, Hon. Speaker, determine that I, Mwengi Mutuse, under Maendeleo Chap Chap and my colleague, Hon. Caleb, wish to be associated with Kenya Kwanza and that is why our numbers should be counted. We cannot be forced to be in a coalition that we do not want.

Also as you sit to determine, realise that the particular... I know you have expunged it from the records and so we do not have a document speaking to the coalition agreement under the Kenya Kwanza. But I have seen in documents that the coalition agreement says that you cannot move until three months are over after elections. Also exercise your mind as a seasoned advocate that that time is going to lapse on 9<sup>th</sup> November, which is about three weeks to come. Therefore, it is anticipated that people can move out.

*(Loud consultations)*

We are making our argument and everybody will have their opportunity to make that argument.

Hon. Speaker, find that the requirement to wait for 90 days is unreasonable. Under Article 38 of the Constitution, the citizens are supposed to enjoy political rights that are given without



unreasonable restrictions. Mark the words “unreasonable restrictions”. To require us to stay for a particular time when we are not there, is an unreasonable restriction and, therefore, null and void to the extent that it is unreasonable.

I beg to support that we are in Kenya Kwanza and that is where our numbers should be counted. Thank you.

**Hon. Speaker:** The Member of Parliament for Mandera North,

**Hon. Major (Rtd.) Abdullahi Sheikh:** (Mandera North, UDM): Thank you, Hon Speaker, for giving me this opportunity to contribute to the debate. For the record, I am a member of United Democratic Movement (UDM). In fact, a senior Member - Deputy Party Leader of UDM.

The Constitution guarantees freedom of association and freedom of movement. You can at any one time associate yourself with any party or individual as you so wish. The Constitution is supreme. The Azimio la Umoja-One Kenya Alliance has what we call the council where members represent their parties. For the record, UDM is not represented in that council and it is in black and white.

If they say that we were part of the Azimio Coalition, our party contested in many counties. One example is in Siaya County which is also the bedrock of Azimio. A member who was a candidate under UDM has been called names, including “*hii ni watu ya Alshabab*”. That is from Azimio. That means we are not part of Azimio. That has been said and it is on record. That shows we are not part and parcel of Azimio. We have moved away from you. Actually, we have run like Murife. It is said “Murife do not run,” but we ran very fast.

Standing Order 2B is very clear and I want to remind my former Chairman of Public Accounts Committee (PAC), Hon. Wandayi, that the Clerk shall obtain certified copy of coalition agreement, not a letter.

What we have is a letter by the Registrar of Political Parties, not a certified copy of the coalition agreement. Why is this agreement not seen in public? You have just ruled that in the agreement that was presented to you, some pages are blank. It is very true. We signed a blank paper under duress, under coercion and under threat! You have actually confirmed that what Hon Junet has presented is blank in some pages. That is exactly what was presented to some of the members on 12<sup>th</sup> March at Kenyatta International Convention Centre (KICC). The most important part is that we have freedom of association and freedom of movement. We are no longer part of Azimio la Umoja One-Kenya Coalition Party. I have stated with reasons that they never treated us as one. For instance, they did not include us in the council but treated us as *madoadoa* during the campaigns as my friend, Hon. Ochieng, has confirmed.

Our party UDM has eight Members in the National Assembly and three in the Senate making us strong and we are fully in Kenya Kwanza Coalition, having signed a post-election agreement in broad daylight where all pages were signed in my presence as a senior member of UDM. The agreement we signed at the KICC on 12<sup>th</sup> March 2022 is not available except for the last page which only had a signature. Therefore, whatever we had signed, as Hon. Junet has presented with some blank pages, is hot air.

*(Laughter)*

Hon. Speaker, I want to confirm as the Deputy Party Leader of UDM that we are firmly in Kenya Kwanza Coalition and we do not have any association with Azimio la Umoja One-Kenya Coalition Party.

**Hon. Speaker:** Hon. Korere, you have the Floor.

**Hon. Sarah Korere** (Laikipia North, JP): Thank you, Hon. Speaker. Indeed, I want to confirm to this House that Jubilee Party is a Member of the Azimio la Umoja One-Kenya Coalition Party.

*(Loud consultations)*

**Hon. Speaker:** Order Members!

**Hon. Sarah Korere** (Laikipia North, JP): I want to tell my colleagues in Kenya Kwanza Coalition that I am an independent woman and I did not come to Parliament through some party waves; I created my own wave. I am a member of Jubilee and Azimio la Umoja One-Kenya Coalition. Many people have talked about coercion and duress and they leave me wondering what sort of cowards we have in this House. Does coercion mean some Members have been held at gunpoint, knifepoint or could they not scream for help or what exactly was the problem?

Hon. Speaker, many people have been talking and referring to the same Constitution that Members want to defile. Articles 107 and 108 have been read out as to who is the Leader of Majority Party leaving no doubt that it is Azimio la Umoja One-Kenya Coalition until such a time when you can officially defect from it. I come from a community where polygamy is accepted and celebrated. Similarly, in this marriage that is the Azimio la Umoja One-Kenya Coalition Party, some Members have chosen to flee with people because of money yet they do not know its source. I plead with the Members of this House knowing that we are enjoying democracy that many Kenyans died for...

**Hon. Speaker:** There is a point of order, Hon. Korere.

**Hon. Kimani Ichung'wa** (Kikuyu, UDA): Hon. Speaker, when you state something, more so when you state something like what Hon. Sarah Korere is stating and waving a copy of the Constitution quoting Articles 107 and 108 and qualifying it by saying that it states that Azimio la Umoja One-Kenya Coalition Party is the Majority Party, I think she is completely out of order. There is nothing in the Constitution that decrees that a party by name is the majority party. It is a defilement of the Constitution to purport that it decrees that Azimio la Umoja One-Kenya Coalition Party is the Majority Party. Article 108 simply defines who the majority party is and not a specific political party.

**Hon. Speaker:** You have made your point. Hon. Korere, *endelea*.

**Hon. Sarah Korere** (Laikipia North, JP): Hon. Speaker, I may not want to respond to Hon. Ichung'wa but I want to inform him that I am properly schooled, I am literate therefore I can read the Constitution. I was only explaining that we cannot purport to defend the same Constitution which we want to defile.

As I wind up, I was saying that some Kenyans fought for the democracy we enjoy today while others died for it. As somebody mentioned, indeed there is slave trade in this country and that is why young people are desperately going to Saudi Arabia. They are going there because they have been promised heaven on earth, the same way some people are crossing the Floor now because of promises.

**Hon. Speaker:** Member for Ganze, if you speak in three minutes, I will give the last chance to Hon. Atandi.

**Hon. Kenneth Tungule** (Ganze, PAA): Asante sana, Bwana Spika. Hii ni mara yangu ya kwanza kuzungumza Bungeni.

**Hon. Speaker:** Is it your maiden speech?

**Hon. Kenneth Tungule** (Ganze, PAA): Ndio. Ninachukua nafasi hii kuwashukuru watu wa Eneo Bunge la Ganze kwa kuniamini na kunichagua kuwa Mbunge wao katika Bunge hili la Kumi na Tatu. Nimechaguliwa kwa chama cha PAA. Kusema kweli ninashangaa hii leo ninaposimama hapa kusikia kuwa Wabunge wa Chama cha Muungano wa Azimio One-Kenya wakisema chama cha PAA ni miongoni mwa vile vyama ambavyo viko katika muungano huo.

Chama cha PAA kilitoka katika Chama cha Muungano wa Azimio One-Kenya Coalition Party tarehe 5 Mei, miezi mitatu kabla ya uchaguzi mkuu. Hii ilifanyika kwa sababu ndoa ya PAA na Azimio la Umoja One-Kenya ilikuwa na mizozano mingi. Wakati wa kampeni, chama cha Azimio la Umoja One-Kenya kilipozuru kule Pwani kule mashinani, kilikuwa hakiruhusu wanachama wa vyama vingine waweze kuungana katika mikutano yao. Walikuwa pia hawaruhusu posta za kampeni zichapishwe katika chama cha Azimio la Umoja One-Kenya. Kwa hivyo, tulikuwa na shida wakati wa kampeni na wanachama wa Azimio la Umoja One-Kenya walikuwa na kiburi na madharau. Nashangaa kwa nini wanatutaka sasa ila hawakututaka wakati huo. Swali ninalojiuliza ni iwapo Azimio la Umoja One-Kenya wangeongoza serikalini wangekubali vyama vingine viwaunge?

Tunashukuru Muungano wa Kenya Kwanza uliotukaribisha na tukafanya kampeni miezi mitatu kabla ya uchaguzi pamoja nao. Ninathibitisha kuwa wanachama wote wa Bunge la 13 wa chama cha PAA walio ndani ya Bunge hili hawako katika Muungano wa Azimio la Umoja One-Kenya na wako katika Muungano wa Kenya Kwanza. Hapo ndipo tutakapokua katika muda wa maisha ya Bunge hili.

Asante sana, Mheshimiwa Spika.

**Hon. Speaker:** I would like to ask the House if you concur that we reduce the debating time to three minutes, so that we can at least have 10 Members speaking to this.

Let us have Hon. Atandi. You have three minutes.

**Hon. Samuel Atandi** (Alego Usonga, ODM): Thank you, Hon. Speaker, for giving me the opportunity. Like all my colleagues have done, I congratulate you for being elected the Speaker of the 13<sup>th</sup> Parliament. I also thank my voters, the great people of Alego Usonga, for re-electing me to this House. Since the introduction of multiparty democracy in Kenya 30 years ago, I am the first to be re-elected to Parliament. So, I thank my voters for that.

Hon. Speaker, coming back to this matter, I see that you are being persuaded to rule in favour of the Kenya Kwanza Alliance, in as far as the majority leadership of this House is concerned. I urge you to confine yourself to the Standing Orders of this House. Standing Order 2B shows that the authority from where you are supposed to receive the guidelines on the majority leadership of Members of this House is the Registrar of Political Parties. I urge you to restrict yourself to that Standing Order when you sit back to make your decision on this matter because we cannot purport to guide you on which side is the majority when the law is very clear. The Standing Order is also very clear.

Secondly, I have seen that most Members are complaining that they were coerced into joining the Azimio la Umoja – One Kenya Coalition. I want to be specific to my brother, David Ochieng, who is here and is my neighbour. David Ochieng joined the Azimio la Umoja – One Kenya Coalition by force. Actually, we did not even want him to join. He joined by force because he knew that without the Azimio la Umoja – One Kenya Coalition, he would never be elected. He would never be here. He was using *baba's* name to be elected. It is the same with these UDM Members.

Hon. Speaker, if you rule in any other way, you will be helping in mutilating democracy...

*(Loud consultations)*

**Hon. Speaker:** I will give the Floor to Hon. Julius Melly. You have three minutes. You will get time to speak.

**Hon. Julius Melly** (Tinderet, UDA): Thank you, Hon. Speaker. I also rise to...

**Hon. Speaker:** If you can compress your argument to two minutes, the better.

**Hon. Julius Melly** (Tinderet, UDA): Yes. Thank you, Hon. Speaker. I am well-guided. I thank the people of Tinderet for giving me this chance to serve them for the third time in this National Assembly. I also thank you most sincerely, Hon. Speaker, for giving us this time to deliberate and talk about the issues that are before us.

The Constitution is quite clear on which party forms the majority in this House. Article 108 of the Constitution is very clear that the party with the majority forms the majority in this House. As it has been stated quite clearly by our Leader of the Majority Party, designate, Hon. Ichung'wah, we have 179 Members in this House. The Standing Orders put it very clearly that the party with the highest number of Members forms the majority party. You have been magnanimous enough to allow us to ventilate and show the House and the country that the Kenya Kwanza Alliance is actually the majority party. The Azimio la Umoja - One Kenya Alliance has built its house by force, coercion and blackmailing Members. There are many testimonies from a number of Members from all parties such as the Maendeleo Chap Chap Party, UDM and even the PAA Party stating that they are not in that coalition.

Hon. Speaker, you know that even during the campaigns, Maendeleo Chap Chap Party, PAA and all the other parties campaigned with the Kenya Kwanza Alliance. That they are being counted in the Azimio la Umoja – One Kenya Alliance is illegal and unconstitutional. Article 38 of the Constitution states that there is freedom of expression and association. Forcing these Members to sit in the Azimio la Umoja – One Kenya Alliance is unconstitutional, illegal and should be voided.

Therefore, you should guide this House that the Kenya Kwanza Alliance is actually the majority party in the House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have Owen Baya.

**Hon. Owen Baya** (Kilifi North, UDA): Thank you, Hon. Speaker. I also want to thank the people of Kilifi North for re-electing me.

From the outset, before we amended the law on political parties, there was sufficient law for the Azimio la Umoja – One Kenya Alliance to be a coalition. They did not need to change the Constitution to form themselves into a coalition political party. Now that the chickens have come home to roost, they want to come back and say that they are a coalition. They are a coalition political party, but they do not have membership here. Hon. Speaker, first rule that there is no Azimio la Umoja – One Kenya Coalition.

Secondly, Article 259 of the Constitution talks about good governance. When you have a President who runs the Executive, the party that is not in Government runs the Public Investments Committee (PIC) and the Public Accounts Committee (PAC). We have heard arguments between Mbadi and Babu Owino about who will be the chair of PIC and PAC. In essence, they are preparing themselves to sit in the minority side because that is the one that will check Government. Now, we cannot have the team that says...

**Hon. Speaker:** There is a point of order from Hon. Mbadi.

**Hon. John Mbadi** (Nominated, ODM): Hon. Speaker, it is completely out of order to misrepresent facts. On the issue of PAC and PIC, we decided on our own that it will be chaired by a party or coalition of parties which does not form the national Government. There is no mention of majority or minority parties.

**Hon. Owen Baya** (Kilifi North, UDA): Now, Hon. Speaker, I do not want to get into an argument with the former. That is why ODM removed him. I also want to say that from...

**Hon. John Mbadi** (Nominated, ODM): Removed from what?

**Hon. Owen Baya** (Kilifi North, UDA): I do not want to listen to you now...

**Hon. Speaker:** Address the Chair.

**Hon. Owen Baya** (Kilifi North, UDA): Hon. Speaker, we cannot have the party that purports to be the majority in Parliament sitting in PIC and PAC at the same time. We cannot do that.

Lastly, there is the issue of fidelity to the Constitution. The Articles of the Constitution on political rights and freedom of association need to guide you so that you protect the fundamental rights of the Members of parties that are said to be in the Azimio la Umoja – One Kenya Alliance.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Member for Kabondo Kasipul.

*(Loud consultations)*

**Hon. (Ms.) Eve Obara** (Kabondo Kasipul, ODM): Thank you very much, Hon. Speaker, for giving me the opportunity to speak.

First and foremost, I thank my constituents in Kabondo Kasipul for electing me for the second time.

Secondly, I congratulate you for being elected the Speaker of this House. Today, we are talking about the matter of numbers to determine who the majority and minority parties are. We have received communication from the office of the regulator. The regulator has stated clearly that the majority side is the Azimio la Umoja – One Kenya Alliance as at 7<sup>th</sup> September 2022.

We signed coalition agreements. When you sign an agreement, you abide by the laws of the agreement. I did not see anybody being pulled or forced to sign the agreement. In any agreement or contract, there is an exit clause. We have an exit clause within the coalition agreement of the Azimio la Umoja – One Kenya Alliance. Members who were not comfortable with the Azimio la Umoja – One Kenya Alliance after the marriage are free to move, but within certain rules and regulations of that contract. We know that it ends on 9<sup>th</sup> November 2022. Today, Azimio la Umoja – One Kenya Alliance is the leader. On 9<sup>th</sup> November 2022, that might be a different question altogether.

This Parliament is unique. Apart from 2007, we have never had a Parliament where the majority side was not clearly defined by the numbers. Therefore, it will be your wisdom and the letter from the regulator that will determine what happens today. But after 9<sup>th</sup> November 2022, I do not think you will have a problem if those people decide to stay with Kenya Kwanza or with Azimio. I want to ask you to be patient and wait for the time for them to exit.

**Hon. Speaker:** Member for Kangundo

**Hon. Fabian Muli** (Kangundo, GDDP): Thank you very much, Hon. Speaker. I would like to congratulate you on being elected Speaker. I thank the people of Kangundo for electing me for the second time, being the party leader of the Grand Dream Development Party (GDDP).

As members of GDDP, we signed a coalition agreement with Kenya Kwanza. As you retire to make a determination, I want you to remember the following plea from GDDP: Article 48(2) of the Constitution provides the definition of the largest party or coalition of parties in this House to be able to determine the majority and minority parties. We have talked about this provision very much. When you come up with a determination, I want you to tell us how many coalitions participated in the 2022 elections. Kenyans want to know whether Azimio Coalition Party was a coalition or a party. Standing Order 19 provides that the party with more Members elect the Leader of the Majority Party. We want to understand if the majority party which is not in a coalition with another party can elect a Leader of the Majority Party and a deputy from another party. This is also going to affect the leaders from the minority side. If the minority party is ODM, we want to know whether the Deputy Leader of the Minority Party can be a member of Wiper Democratic Movement-Kenya (WDM-K).

We also want to understand the rights of movement and association. Article 36(2) of the Constitution guarantees the right of association. If I want to move from one coalition or party to another, do I shift with my voting right or do I get to leave my voting right where I signed an agreement before? Article 38 of the Constitution provides for party membership. A member of my party can shift to another political party.

*(Laughter)*

Hon. Speaker, the noise cannot stop me from pursuing my case. If today a Member moves from UDA to ODM party, does he leave behind his voting right?

**Hon. Speaker:** Your time is up. Member for Dagoretti South.

**Hon. John Kiarie** (Dagoretti South, UDA): Thank you very much, Hon. Speaker. There are quite a number of issues that I wanted to raise on this matter. However, because I have only three minutes, I think it will be in order for me to frame the issues for you as you retreat to determine this matter. There will be a number of issues that you shall consider.

Firstly, you shall consider the pre-election and post-election contracts that were entered into. We have heard this afternoon that contracts were obtained under duress, coercion and intimidation. This is a matter that you will need to apply your mind to.

**Hon. Speaker:** There is a point of order, Hon. KJ.

**Hon. Junet Mohamed** (Suna East, ODM): With all due respect, issues of coercion and intimidation have been raised a lot in this House. Do you have any expertise to know whether there was coercion, intimidation or duress? Do you have that knowledge, Hon. Speaker? Just the way you dismissed my document, can you clear that matter now? Do you have capacity to know whether there was coercion, intimidation or duress?

**Hon. Speaker:** I can assure you, Hon. Junet, that I will only consider material facts.

**Hon. John Kiarie** (Dagoretti South, UDA): I ask the Clerks-at-the-Table to recover my lost time.

The second issue you shall apply your mind to when you retreat is the issue of freedom of association. Is anyone bound to be in a place where they do not wish to be? I shall not spend more time on that. The most important issue that I think you should consider is that this matter is of great public interest. How you determine this matter will determine whether this House shall apply itself to the mandate it is given by the Constitution. As we speak, this House has business to transact. We might not even afford time to waste as we determine such issues that are as clear as day and night. It is important for us to remind ourselves of that Sunday when we, as members of the

Departmental Committee on Justice and Legal Affairs, were recalled from recess to come and prosecute this matter. If you look at the broadcast tapes, the Member talking about duress is the one who uprooted the Speaker on that fateful night, as I was trying to warn him that this is a law that would bite. I think it will be upon you to determine this matter and it shall be clear that there is a coalition party, a coalition of political parties and a party. When you consider all this, it shall be found that Kenya Kwanza is actually the majority.

**Hon. Speaker:** The Member for Embakasi South.

**Hon. Julius Mawathe** (Embakasi South, WDM): Thank you, Hon. Speaker, for giving me this opportunity to contribute. Let me start by thanking the people of Embakasi South for having seen it fit for me to serve them for a second term.

The law is very clear. The only person to determine which coalition a party belongs to is the Registrar of Political Parties. She has expressed herself and indicated the coalitions to which parties belong. She has also indicated that the earliest the parties can exit is 9<sup>th</sup> November 2022. As we sit here today, they all belong to Azimio. Some of the parties went to court and were advised that they must adhere to the regulations that they appended their signatures to. So, any ruling that is contrary to the advice of the only person that is allowed to register political parties and coalitions would be unconstitutional.

Thank you.

**Hon. Speaker:** The Member for Kiminini.

**Hon. Bisau Kakai** (Kiminini, DAP-K): Thank you, Hon. Speaker, and congratulations on being elected Speaker. I take this opportunity to thank the Almighty and the great people of Kiminini for getting me to this august House.

Back to the debate, numbers do not lie. After elections, the Azimio coalition had 173 Members and Kenya Kwanza had 164 Members. There are 12 Independent Members. After the announcement of the Kenya Kwanza candidate as the President—as they always say, ‘success has many mothers and fathers’—there was a shift. Constitutionally, if you look at the Political Parties Act of 2011, a political party can only enter into a new coalition agreement after finally exiting an existing one. Our brothers who moved to Kenya Kwanza have shown intention to move. Constitutionally, as much as we really respect our Article 36 of the Constitution on the freedom of association, at the same time, it should exist within the legalities. What we know is that within that agreement, there were some parameters. We do not live in a legal vacuum. There were timelines.

Hon. Speaker, I noted this afternoon that even a simple movement from that side of the aisle to this side, you have to walk out and bow before you cross. I do not see why such a weighty matter cannot be worked on within the legalities. My humble submission is that Kenyans and the world are watching. Your known legal expertise and acumen are now under test. Your illustrious career in both Houses, Senate and the National Assembly, counts.

With all due respect, our expectation is to see your brilliance through a fair ruling. I am asking myself a very simple question: When the books of history will be written and we will talk about the ruling in the 13<sup>th</sup> Parliament by Hon. Speaker, Moses Wetang’ula, which part of the ruling would you want to be: a progressive or retrogressive one?

Finally, allow me to quote Ms. Shirin Ebadi, but not John Mbadi, who is an Iranian woman. She was the first one to get a Nobel Peace Prize in 2003. She said,

“If you want to raise a crop for one year, plant corn. If you want to raise a crop for decades, plant trees. If you want to raise a crop for centuries, raise men. If you want to plant a crop for eternities, raise democracies”

Hon. Speaker, we count on your experiences and acumen. Thank you very much.

(Applause)

**Hon. Speaker:** The Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker, for this chance and congratulations. I also want to thank the people of Emuhaya for giving me a chance to represent them again in this second term.

When you retire to your table to make a decision, what will really count will be Article 2 of the Constitution. It pronounces itself on the superiority of the Constitution. It really brings out the idea and fact that any other agreements made must be constitutional.

If there are any agreements that last for two or one month and they are not constitutional or they block certain rights as stipulated in Articles 36 and 38 of the Constitution, then those will be null and void. You do not have to avoid that one. Another thing, and I heard a few speakers almost threatening you about the history that you will make, is that do not be worried. It seems that every Hon. Speaker who comes here has to make a tough decision. This is yours.

Finally, you have to make a decision on whether these coalitions that we are talking about are determined pre-election or post-election. That is the decision that will help us move forward into posterity.

One speaker alluded to the American case and how the Government may not have the majority. However, the best case study is in Europe, especially in France and Germany, where coalitions are the order of the day. You will notice that most of those decisions are made after elections. Post-election agreements are the ones that really make decisions in those two dominions or countries on which side holds the Government and the majority.

A better case study can be found in Europe but not in the United States of America (USA). Article 36 of the Constitution is so serious. However, it has been spoken on by many speakers. The rights of the individual or party are very important. If we shall curtail the rights of people for several months because we signed some agreements or documents, honestly, we shall just be progressing slavery. Hon. Mbadi should surrender this matter once and for all.

As I conclude, I want to remind you that when we were making this law, Hon. Bunyasi tried to assist you but, Hon. Junet almost beat that Member. I want to protect him with my broken arm. Remember Hon. Bunyasi's amendment. You are roasted.

Thank you, Hon. Speaker.

(Laughter)

**Hon. Speaker:** Hon. Murugara

**Hon. George Gitonga** (Tharaka, UDA): Thank you, Hon. Speaker. Because I have only three minutes, I will congratulate you and thank the people of Tharaka tomorrow, when I have 10 minutes.

(Laughter)

When you retire to make this decision, your wisdom will revolve around the following points: The Azimio la Umoja-One Kenya Coalition agreement that we are talking about is a contract like any other. It cannot be vitiated by the well donned principles of law where all contracts are vitiated when they are either *void ab initio* or voidable. For every intent with the facts



that we are getting, this contract may actually be void. Most importantly, it is being voided by the parties that got into it.

Hon. Speaker, you will determine for us whether you can actually curtail the freedom of association as enunciated in Articles 36 and 38 of the Constitution. Are you able to tether these Members to a coalition where they do not feel that they actually fit? I do not think that you can do it. You will extend your wisdom.

One of the speakers alluded to the fact that those who signed this agreement, including those who are now vitiating it, maybe have been ignorant. A contract is not law. Therefore, we cannot apply the maxim of ignorance of law. A contract is a matter of fact. It does not matter whether you are ignorant or not. The fact remains. You will look at whether the deed that we are talking about is by these parties. They are actually expressing the maxim that this is not their deed. It is *non est factum* plea in Latin. It means that this is not our deed. Therefore, we only signed things that may have been fraudulent and coercive which are now null and void. By doing so, it will come out clearly that these parties are entitled to move. By that movement, Kenya Kwanza Coalition actually has the majority. So, do find like that for us.

Thank you.

**Hon. Speaker:** Member for Dagoretti South, Hon. Beatrice Elachi. Sorry, it is the Member for Dagoretti North. Sorry, Hon. Elachi.

**Hon. Beatrice Elachi** (Dagoretti North, ODM): Thank you, Hon. Speaker.

First, I want to thank the people of Dagoretti North and to congratulate you. I want to say in two words that indeed if we knew the majority coalition today, we would not be debating. If it was Kenya Kwanza, we would not be debating. Because we do not know and they know very well they do not have the numbers, we have come here now to ask for your wisdom, in terms of how we will move on in this House.

Having said that, it was very clear after the elections that the Azimio la Umoja-One Kenya Coalition was the majority. The reasons it remained as a corporate coalition was for purposes of knowing very well that you are supposed to come in the House to form the committees and the majority of this House.

The Constitution is also very clear that indeed you can have an Executive without the legislative arm. Therefore, there are two things that you will look at. We have parties that have gone to court. They are part of those agreements. We must ask ourselves whether they knew that this House would not give them the agreements that they wanted. That is why they went to court. So, we cannot come here again, wait and give them the right in this House, when they knew very well that they wanted to go to court to have their rights there.

As we move on, there is the second thing that we have to ask ourselves. Do they have a right to move to any coalition that they wish? Indeed, it is important for posterity to know which side was the majority and which one was the minority during the 13<sup>th</sup> Parliament. Ensure in your ruling that we will respect the rules and the Political Parties Act that you gave us. If you knew that it was a bad law, you would have rushed to court even before we went to the elections, the way we did in the 11<sup>th</sup> Parliament when we were pouring water on the Security Laws (Amendment) Bill. It is the same thing. I therefore urge that we move on first then come back in November and discuss this matter again.

Thank you, Hon. Speaker.

**Hon. Speaker:** Order, Hon. Members.

I want to sincerely thank you for the tremendous decorum and industry in prosecuting this matter before the House. No Member has veered off the beaten track. You have all treated each

other with absolute dignity and, going forward, this is how we should conduct ourselves even in most animated situations. Respect for our Standing Orders is sacrosanct. I will consider the matters that you have prosecuted before the House and I will give you a reasoned ruling touching on the facts, the jurisprudence, the constitutionality of the issues, and any other matters that is canvassed on Thursday, 6<sup>th</sup> October 2022 at 2.30 p.m.

### ADJOURNMENT

**Hon. Speaker:** Hon. Members, it is now 7.00 p.m. The House stands adjourned until tomorrow, Wednesday, 5<sup>th</sup> October 2022, at 9.30 a.m.

The House rose at 7.00 p.m.

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