

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 31st March, 2004

The House met at 9.00 a.m.

[Mr. Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

APPOINTMENT OF HOUSE BUSINESS COMMITTEE

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

Mr. Speaker: Order! Order! Sorry, Mr. Awori. This does not require notice. You just move the Procedural Motion. I beg your pardon, sorry, you give the notice on the Motion of the House Business Committee.

The Vice President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the following Members be appointed as Members of the House Business Committee:-

The Hon. Moody A. Awori, MP (Chairman)
 The Hon. (Prof.) George Saitoti, MP
 The Hon. (Dr.) Chris Murungaru, MP
 The Hon. S. Kalonzo Musyoka, MP
 The Hon. Daudi Mwiraria, MP
 The Hon. Raila Odinga, MP
 The Hon. Charity Ngilu, MP
 The Hon. Martha W. Karua, MP
 The Hon. Kipruto arap Kirwa, MP
 The Hon. Musikari Kombo, MP
 The Hon. Moses Wetangula, MP
 The Hon. Norman M.G.K. Nyagah, MP
 The Hon. Uhuru Kenyatta, MP
 The Hon. (Dr.) Godana Bonaya, MP
 The Hon. Nicholas K.K. Biwott, MP
 The Hon. Justin Muturi, MP
 The Hon. William Ruto, MP
 The Hon. Mutula Kilonzo, MP
 The Hon. Simeon Nyachae, MP
 The Hon. Henry Obwocha, MP

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM PROVISIONS OF STANDING ORDER No.33

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, this House orders that the business appearing on today's Order Paper be exempted from the provisions of Standing Order No.33, being a Wednesday morning, a day allocated for Private Members' Motions.

Mr. Speaker, Sir, as we know, we only opened Parliament yesterday, and no hon. Members have yet brought in Motions. This is the reason why we would like to exempt today's business so that we can now move on and discuss His Excellency the President's Speech.

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Speaker, Sir, I beg to second the Motion.

(Question proposed)

Dr. Godana: Mr. Speaker, Sir, we understand obviously there are no Motions ready for Private Members' mornings, but it was also our understanding that the House was to adjourn after this for the House Business Committee to plan the week's business. Do I understand that the Vice-President is proposing that we actually move on to debate the President's Speech? I hope not.

Mr. Speaker: No!

Dr. Godana: With that clarification, I support.

Mr. Speaker: I want to make it absolutely clear. We will go by the Order Paper, and when we go through this Order No.7, we will go to Order No.8 which is the appointment of the hon. Members of the House Business Committee, and after that there is no further business. If there is no further business, the House will adjourn. If the House does appoint hon. Members of the House Business Committee, immediately the House rises, the hon. Members so appointed by the House will proceed immediately to Room No.7 for the first meeting of the House Business Committee. I will then put the Question, there appearing not to be any interest in further discussion of this Procedural Motion.

1. *(Question put and agreed to)*

2. MOTION

3. APPOINTMENT OF THE HOUSE

4. BUSINESS COMMITTEE

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, the following Members be appointed as Members of the House Business Committee:-

The Hon. Moody A. Awori, MP (Chairman)

The Hon. (Prof.) George Saitoti, MP

The Hon. (Dr.) Chris Murungaru, MP

The Hon. S. Kalonzo Musyoka, MP

The Hon. Daudi Mwiraria, MP

The Hon. Raila Odinga, MP

The Hon. Charity Ngilu, MP

The Hon. Martha W. Karua, MP

The Hon. Kipruto arap Kirwa, MP

The Hon. Musikari Kombo, MP

The Hon. Moses Wetangula, MP

The Hon. Norman M.G.K. Nyagah, MP

The Hon. Uhuru Kenyatta, MP

The Hon. (Dr.) Godana Bonaya, MP
The Hon. Nicholas K.K. Biwott, MP
The Hon. Justin Muturi, MP
The Hon. William Ruto, MP
The Hon. Mutula Kilonzo, MP
The Hon. Simeon Nyachae, MP
The Hon. Henry Obwocha, MP

The Minister for Education, Science and Technology (Prof. Saitoti) seconded.

(Question proposed)

Mr. Oloo-Aringo: Mr. Speaker, Sir, while I support this Motion, I would like to ask the Government to read the signs of the time. The signs of the time are that there is more democratisation in the country. The people are demanding for democratisation and, therefore, when this Committee is being appointed, we must also reflect the vast majority in this House, who are Back-benchers.

(Applause)

Mr. Speaker, Sir, if you look at the Government side, it is represented by Ministers only. The Back Bench want to have a say in the running of the Business of this House. In fact, I suggest that we should meet as soon as possible and look at our Standing Orders and reflect the democratisation and devolution in our Standing Orders, so that the House Business Committee should actually be chaired by Back-bench Members of Parliament. I will, for the time being, concede that this arrangement is proper under the present Constitution. But I would also suggest and request the Leader of Government Business--- He is very popular with us! I think he should make a new start by deleting some names of the Ministers and putting Back-bench Members from this side of the House, so that we can truly be a Parliament in charge.

(Applause)

Mr. Speaker: Order! Just for correction purposes, there is no Standing Order that says that the composition of the House Business Committee on the Government side shall be Ministers. In fact, the whole idea of having this Motion is for the House to appoint. If you want to change it, you are at liberty to do so.

Mr. Angwenyi: Mr. Speaker, Sir, thank you for giving me a chance to air my views on this issue. I beg to support the statement expressed by my colleague, Mr. Oloo-Aringo, that the House Business Committee is not a Government Business Committee. We should have Ministers in that Committee as well as Shadow Ministers from this side. I would like to propose that, maybe, we may have to elect the people who represent us in this Committee.

(Applause)

Mr. Speaker, Sir, Ministers, and even Shadow Ministers are very busy people to deal with the policy of the Government and nation. The business of the House should be handled by the Back-benchers with a small input from the Front Bench.

With those few remarks, I beg to support the views expressed by Mr. Oloo-Aringo.

Dr. Godana: Mr. Speaker, Sir, I stand to support the Motion. I note that the views expressed, in particular, from the NARC Back Bench do create some food for thought for all of us, particularly for those who will be dealing with the Standing Orders of the House.

Therefore, at the moment, I stand to support the Motion.

Mr. Speaker: Any other interest? Mr. Bahari!

Mr. Bahari: Mr. Speaker, Sir, as has been noted by Mr. Oloo-Aringo, I would like to bring to your attention that almost 95 per cent of proposed Members of the House Business Committee are those who have been in this House before. The young generation has been neglected completely! How are they expected to learn about business matters of this House when they have been completely neglected?

Mr. Omingo: Mr. Speaker, Sir, thank you for giving me a chance to contribute. I wholly support the sentiments expressed by all the Members who have spoken this morning. On Thursday evening, if you stood outside the Ministers' parking, you would have found seven flags out there! That means they only come for that purpose, give us business and disappear. Therefore, I beg to support the sentiments expressed by Mr. Oloo-Aringo.

Mr. Speaker: Very well! I think we have ventilated enough. This Motion comes to the House to actually give it an opportunity to amend that list. Since there is no Motion to amend; and since there is no basic opposition to the Motion, I will now put the Question.

(Loud consultations)

Order!, Mr. Boit! You must relax completely. The rule is: When the Chair is on its feet, every Member will keep quiet.

Today is the first day, hon. Members! Can we, please, have some decorum? Please, let us have some order! You will have an opportunity to vote.

(Question put and negatived)

(Applause)

COMMUNICATION FROM THE CHAIR

RESOLVED MOTION CAN ONLY
BE REINTRODUCED IF HOUSE
RESCINDS DECISION

Mr. Speaker: Order, hon. Members! I think, hon. Members, you have put yourselves in a very difficult position. As you know, when a Motion has been rejected by the House, it will not come back for the next six months! That, therefore, means that, by your decision, there will not be a House Business Committee for the next six months. So, deal with it. There will not be a House Business Committee for six months.

Order! Hon. Members, it must dawn upon you that when you do vote, know the consequences of your vote. You could have amended the Motion to remove the names that you did not want.

(Loud consultations)

Order! What you have done is that you have defeated the whole Motion and that is very serious. Order! Those Members who think heckling has come back to this House will be told that heckling went out of fashion long a time ago.

So, I think the best thing for the House, because we cannot honestly proceed without a House Business Committee for six months, is if any Member of this House were to move a Motion to rescind the decision of the House, so that, maybe, after that decision has been made, and maybe, then, another Motion can be brought. But as it is, your decision will stand for six months; that there will not be a House Business Committee. Hon. Musyoka?

The Minister for Foreign Affairs (Mr. Musyoka): Thank you, Mr. Speaker, Sir. In view of the seriousness---

(Loud consultations)

Mr. Speaker: Order! Order Members! Can we hear hon. Kalonzo Musyoka because the matter before us is grave? Unless we get a way out of this issue, we will not have any business to transact, including this afternoon, and possibly in the future. Proceed.

**MOTION UNDER STANDING
ORDER NO.42**

RESCINDMENT OF RESOLUTION NOT TO
APPOINT HOUSE BUSINESS COMMITTEE

The Minister for Foreign Affairs (Mr. Musyoka): Thank you, Mr. Speaker, Sir. In view of the seriousness of this matter, and taking into account the ruling by the Chair, and further, taking into account that this list was in the first place agreed to by the party whips, I wish to move a Motion that the House doth rescind its decision. Thank you.

Mr. Speaker: Do you have any Seconder? Mr. Wetangula?

The Assistant Minister for Foreign Affairs (Mr. Wetangula) seconded.

(Question proposed)

Dr. Godana: Thank you, Mr. Speaker, Sir. This is the first day of this Session of Parliament and on the first kick-off, this Government has performed a disgraceful act.

(Applause)

It is on the Government side that the position to embarrass the House started. It is our responsibility as the Opposition to actually lead them into the traps. As a long standing Member of this House, I actually stood up to support the Motion. When the question was put, the Chair interpreted the voice vote correctly. But this Government, composed of many hon. Members on the Front Benches who know the rules of the House, had an opportunity to save the House embarrassment by standing up. They only needed 15 Members to stand up and force a vote, and surely, common sense would have prevailed.

In the circumstances, I grudgingly support the Motion moved by the Minister.

Mr. Speaker: Order! Just for the record, the Motion moved by hon. Musyoka is under Standing Order No.42.

Mr. Oloo-Aringo: Mr. Speaker, Sir, there is absolutely no embarrassment in telling this country that the Back Bench majority in this House must participate in making decisions in this country.

(Applause)

And I want to congratulate the Back-benchers, that this is a good example of what you can do with your power. But it is also a message to the Government that they must incorporate Back-benchers in decision-making. This is just one example. The Back Bench can run the House Business Committee. Indeed, it is not a joke when I say that the Chairperson of the House Business Committee should be a Back Bench Member of Parliament.

(Applause)

I am prepared, therefore, to suggest that this is simply a sign of the times. I still oppose the Motion and, in fact, I will plead with the Chair to use his powers under Standing Order No.1 not to rescind the decision we have made.

With those remarks, I oppose the Motion. But I request the Chair to use Standing Order NO.1 to find a way forward.

(Applause)

Mr. Speaker: Order! Order, Members. I think my patience is now running out. Please, relax. I think this is a grievous matter. Hon. Members, whether you are a new or old Member, you must be attentive enough to know the way out. I think we should sit quietly and learn the rules and mechanics of it. It is not easy. Now, I am being asked by hon. Oloo-Aringo to use Standing Order No.1 to circumvent this issue. Obviously, no. This is a matter that is provided for and there is a mechanism to reverse the decision of the House, which is Standing Order No.42, which hon. Musyoka used. So, it is right. When you rescind that decision, it means, therefore, that the `no' becomes `yes'. That is what it--- Order! That is the law. It is not my making. When you rescind, it means you negate what you first said and the negative of `no' is obviously, `yes'. It cannot be anything else.

Mr. Angwenyi: Thank you, Mr. Speaker, Sir. You have delivered a message. Since we all agree that we actually love our Vice-President, who is the Leader of Government Business in the House--- We love that gentleman. Since this is the first Motion to constitute the House Business Committee, I would like us to give him a reprieve. I would seek the indulgence of my colleagues here that we give a reprieve to the Vice-President on condition that in the future, he will have to include Members of the Back Bench.

(Loud consultations)

Mr. Speaker, Sir, this is a democratic House. Can I have my say?

Mr. Speaker: Order, Members! Now, this House, from this moment, is going to be orderly. Who is that Member? Mr. Nderitu, next time you are out. This House is going to be orderly from now on. So, can we now begin to understand that we are sitting in Parliament and it has its own rules? The hon. Angwenyi has to be heard.

Mr. Cheboi: On a point of order, Mr. Speaker, Sir. Is it in order for an hon. Member to speak on behalf of others in this House? He should say "I" and not "we". We are independent hon. Members in this House. He is speaking on his own.

Mr. Speaker: Order! I think that is semantics.

Mr. Angwenyi: Mr. Speaker, Sir, there is one thing which has been demonstrated through this action today; that we have not been properly trained in the rules of this House. I believe that if we knew the consequence of our no decision; that we would not have a House Business Committee for the next six months, some of us would not have voted the way we did.

This House has been charged with the responsibility of making legislation for this country, and we cannot legislate without having orderly business of the House. We cannot have that orderly business of the House unless we have a House Business Committee. I am saying that we have sent a message with the decision we made in this House. Therefore, could we, please, and I am begging my colleagues, give the Leader of Government Business in the House a chance to correct himself the next time?

With those few remarks, I support the Motion moved by Mr. Musyoka.

Mr. Osundwa: On a point of order, Mr. Speaker, Sir.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! What is it, Mr. Osundwa?

Mr. Osundwa: Mr. Speaker, Sir, the reason why we are in this problem is because we are not happy with some names in this list. Could you guide this House on the best way of amending this list?

Mr. Speaker: Order! Ordinarily, the Chair does not get involved in the creation and composition of Committees of the House. It is, indeed, the business of party whips and party leaders to agree as to the composition.

(Mr. N. Nyagah stood up in his place)

Order, Mr. N. Nyagah! You are the whip and you should relax. I am very constrained today on the first Session to send any hon. Member out but if I am forced to, I will do it because that is what I am paid to do.

(Mr. Ojode stood up in his place)

Order, Mr. Ojode! Please, relax. Hon. Members, that consultation must begin from the party itself. The party whip is supposed to consult his own membership and after that consultation, consult with the other party whips and bring an agreed list.

I will suggest the following: First of all, let us deal with the grave matter of reinstating the Committee and then after that, I think the party whips and party leaders have got the message and they may in their wisdom, make replacements of certain names and bring them to the House for adoption by the House, either later today or tomorrow.

(Applause)

And if there are hon. Members who insist that we should stay the way we voted, the Chair will be quite happy to go to the Chamber and do the normal office work and there will not be parliamentary business for six months. It is really up to you, but much more important is the consultation between the parties and intra-party consultations in which I have no role at all. Mr. Raila, you had something to say?

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Speaker, Sir, it is important for hon. Members to be properly informed about the provisions of the Standing Orders. Standing Order No.42 says:

"No Motion may be moved which is the same in substance as any question which has been resolved (in the affirmative or in the negative) during the preceding six months in the same Session; provided that a Motion to rescind the decision of such a question may be moved with the permission of the Speaker."

Mr. Speaker, Sir, the Motion which has been moved by Mr. Musyoka should be moved under this Standing Order. My understanding of this provision is that if the House then resolves to rescind the decision which has been taken before, then the *status quo* anti is restored. This means that, therefore, the House is then at liberty to bring amendments to the Motion which was brought by Mr. Awori. I think that is the actual situation.

(Applause)

Mr. Speaker: Order, hon. Members! We had dealt with that Motion and what happened is that we put a vote and it was rejected. The whole Motion was rejected and the names read were also rejected. The decision was no; that there will not be a House Business Committee and the names that were listed would not be there. What we want to rescind is the decision; the vote and not the Motion. The vote to change it from no to yes.

(Mr. Sungu stood up in his place)

Order, Mr. Sungu! It does help for hon. Members to understand. I am saying that we are rescinding the decision to refuse the Motion which was moved. We voted and the vote was that there will not be a House Business Committee, and the names listed therein will not be there. I have already given a suggestion and I think the House is well advised to take it; that we reverse this decision, and you are at liberty to affirm it. The whips and the party leaders have heard this House very clearly. The message is clear; that they need some adjustments in the list presented to the House.

(Applause)

If I were them, I would then consult the membership of my party and listen to their grievances and bring to the House a revised list; maybe to drop a few names and add a few. This has no technical problem; it has been done in the past. Hon. Members of various Committees have been replaced with due information to the House. So, let us first of all deal with the more difficult issue; how do we get out of the quagmire in which we have put ourselves?

(Loud consultations)

Order! I will listen to one or two hon. members and then I will put the vote.

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Speaker, Sir, I believe that we are saying the same thing in different words.

What I am trying to say is that the House is in the mood to rescind the decision. The Motion is already before the House to have the decision which was taken rescinded. I am trying to suggest that if that decision is rescinded by the House, then the *status quo*, which prevailed before the vote was taken, be established. This means, therefore, that hon. Members are at liberty to move an amendment to the Motion before the House. Then we can go and change the names.

Mr. Speaker: I am sorry, Mr. Raila. You are wrong! The matter was concluded. The House has already taken a vote. You are, therefore, reversing the result of the vote. You cannot reopen debate on that issue.

(Several hon. Members stood up in their places)

Order, hon. Members! Shall I hear one or two hon. Members before I put the Question? Proceed, Mr. N. Nyagah.

Mr. N. Nyagah: Mr. Speaker, Sir, while supporting this Motion, I want to thank the House for using its wisdom to see the kind of problems that do exist. From the onset, the credibility of Whips, to a certain extent, is at stake. The highest organ in this House is called the Parliamentary Service Commission (PSC). There is only one Minister who sits in the PSC. Therefore, the membership of the House has a lot to do with the decision made by Back-Benchers. Secondly, the Ministers do not play any part at all in the major Committees of this House. I want to appeal to this House, which has worked very closely with us, that since we cannot change the names of membership to the Departmental Committees, unless if a Member resigns; but we can change the membership of any other Committee at any time that this House wishes, that we do approve the names as listed on this Order Paper. Having said so, I want to appeal more---

Mr. Speaker: Order, Mr. N. Nyagah! The issue before the House is: Shall we reverse the decision or not? We [**Mr. Speaker**] will not discuss the merits. I will give a chance to Mr. Awori and put the Question, to be decided one way or the other.

(Loud consultations)

Order, hon. Members! Now, let us listen and talk to one another and not at one another. So, please, listen to Mr. Awori.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, we already have a Motion by Mr. Kalonzo Musyoka. Is it in order for me to request that you put the Question so that we deal with the matter?

(Dr. Godana stood up in his place)

Mr. Speaker: Order! I think the House will make the decision now. What is it Dr. Godana?

Dr. Godana: Mr. Speaker, Sir, I think before you put the question, hon. Members will need to know exactly what is the consequence of their vote. It is not that simple. The Motion is to rescind the decision. What does "rescinding the decision" mean? The Chair has to give clear guidance to hon. Members. Does it mean a new Motion has to be brought, or does it mean we go back to reopen the old Motion? That has to be clarified.

Mr. Speaker: Order! I thought I had already explained what the Motion before the House is all about. It is to rescind the decision. The House's decision was that there will not be a House Business Committee. As it has been read to you, under the relevant Standing Order, if the decision remains that way, a Motion in similar terms cannot be brought in the next six months.

Now, what you are being asked under the Motion brought by Mr. Musyoka is to rescind the vote, which is a "No" to a "Yes".

(Mr. Sirma consulted loudly)

Order! Mr. Sirma, you must now go out! You will be the first to go out, please. You cannot speak when the Speaker is speaking. So, please, go out!

(Mr. Sirma withdrew from the Chamber)

Order! I think we must now be serious. We can never communicate if we cannot listen. So, I will put the Question.

(Question put and agreed to)

*(The Resolution of the House
was rescinded)*

(Applause)

COMMUNICATION FROM THE CHAIR

HOUSE LEADERS AND WHIPS
SHOULD TAKE MEMBERS' SENTIMENTS
INTO ACCOUNT

Mr. Speaker: Order, hon. Members! I do make a plea to the Leader of Government Business, together with the Leader of the Official Opposition and their Whips, to take into account the sentiments expressed by the House. You are at liberty, and the Chair will agree to any further amendments to that list that you may wish to bring.

Hon. Members appointed for the time being to the House Business Committee will proceed to room No.7.

ADJOURNMENT

Mr. Speaker: Hon. Members, that concludes the business of the day. The House is, therefore, adjourned until this afternoon, at 2.30 p.m.

The House rose at 9.50 a.m.