

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 31st May, 2012

The House met at 10.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR ELECTION OF EALA MEMBERS

Mr. Deputy Speaker: Hon. Members, before we proceed to conduct elections for Members of the East African Legislative Assembly (EALA), I wish by way of a Communication to announce the procedure that we shall follow. This Special Sitting of the House has been convened for the purpose of electing members of the EALA pursuant to the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012. The election shall be conducted here in the Chamber while the House is Sitting, being a place I have appointed for that purpose under Rule 15(1) of the Rules.

In accordance with Rule 14, Members are informed that all Members of Parliament who are present and voting, except the Speaker and the Attorney-General, will after signing the list of electors with the Clerks-at-the-Table be issued each with one ballot paper, containing names of all duly nominated candidates, clustered under the heading of the names of the respective parties that nominated them (Rule 14(1)).

Each Member, on receiving a ballot paper which has been duly stamped shall proceed to one of the ballot booths and secretly record his/her votes by putting a mark in the space provided on the ballot paper, for recording of a vote against the names of nine candidates as clustered that the voter desires to elect in respective proportions to entitlement of each Parliamentary Party. In respect of KANU cluster, which consists of only one candidate, a voter will be required to vote "Yes", if the voter wishes to elect the candidate; or "No" if the Voter does not wish to elect the candidate. After marking the ballot paper and while still in the booth, a Member must fold his or her ballot paper and proceed to deposit in the ballot box and after bowing to the chair, resume his or her seat. Hon. Members are reminded that Under Rule 15(3), a voter must cast a total of 9 votes, otherwise, the ballot paper of that voter shall be regarded as spoilt. A Member who accidentally spoils a ballot paper while voting is in progress shall, on surrendering the spoilt ballot paper to the Clerks-at-the table, be issued with a replacement by the Returning Officer.

The voting shall take place up to 12.00 p.m. On the closing of the voting, the Speaker will suspend the proceedings of the House for 45 minutes to facilitate the counting of votes. The Returning Officer assisted by Parliamentary Officers shall in the presence of two counting agents and any Member who may wish to witness, count the vote cast on the Dispatch Box. I propose the two Joint Government Whips to act as counting agents for all the candidates. The votes having been counted and the results of the election ascertained, the Clerk, in accordance with

provisions of Rule 17(a), will report to the National Assembly the results of the election together with the number of votes recorded for each candidate under the cluster of each party.

The House will resume at 12.45 p.m. The bell will be rung for eight minutes as in a Division before the resumption of the proceedings. Upon the resumption of the House, the Returning Officer will announce the results of the election in the assembled House and thereafter the Speaker, pursuant to Rule 17(b), announces to the National Assembly results of the election in respect of all candidates and thereafter the House adjourns.

Hon. Members should note that during this exercise the House is fully constituted and all the Rules of Procedures are applicable and will be enforced by the Speaker. In addition, the Rules give Mr. Speaker residual powers for matters specifically not provided for in Rule 23, which *inter alia* states that:-

“If any matter arises which is not specifically provided for in these Rules, the Speaker shall make a ruling directing what is to be done and in making such a ruling, the Speaker shall be guided by the practice and procedure normally followed in similar situations with regard to the conduct of elections in the National Assembly”.

Members may now proceed to vote beginning with those who are seated on the front rows and subsequently the other rows. That is the standard operating procedure. The Clerk will display the boxes to show you that those boxes are, indeed, empty. Could you lift each one of them and show hon. Members on both sides of the divide and then you seal it after that?

(The Clerk-at-the-Table displayed the open and empty voting boxes to hon. Members. He then proceeded to seal them.)

Hon. Members, we want to do it in a fairly orderly manner. That is the other rule I want to tell you. We will start from the beginning of both sides of the front row. So, hon. Haji will start from this side and hon. Konchellah will start from this other side. Indeed, in every case when an hon. Member is given a ballot paper, there are two registers in which the hon. Member has to be marked in both as having voted.

ELECTION OF MEMBERS TO THE EAST AFRICAN LEGISLATIVE ASSEMBLY

(Pursuant to Article 50(1) of the Treaty for the Establishment of the East African Community Act and the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012)

Mr. Deputy Speaker: Hon. Members, there are rectangles that are there in front of every name, if you go out of the rectangle, then you will know that, that has got a problem also. So, you must make sure, as in all voting, your tick is within the rectangle. In every case, every ballot paper is supposed to be stamped. So, if your ballot paper is not stamped, make sure that it is stamped before you cast it.

The hon. Members at the Bar may walk in.

(Hon. Members at the Bar walked in)

Hon. Members, be slightly patient. As much as I do understand that some hon. Members have some very important engagements, could we hurry up?

The two Whips are supposed to be agents and to observe as every ballot is being cast on both sides. Clerks-at-the-Table, make sure that all ballot papers are stamped as you issue them.

(Loud consultations)

(Hon. Members proceeded to vote one by one)

Order! Order, hon. Members! Hon. Members, as every hon. Member votes, you must make sure that the name of the hon. Member is ticked on both registers with both clerks. So, in the case of hon. Keynan, when he picks his, make sure that it is also ticked on your registers. You should do that progressively.

(Loud consultations)

Order! Hon. Members, the voting is supposed to continue until midday; so, you have ample time. The same rules of elections also apply in the Chambers.

The media should not beam on the secret ballot castings by hon. Members. If any media does that, you will have to face the full wrath of the Standing Orders of the House. It is called “secret ballot”.

(Applause)

Hon. Members, when you are voting, you are not allowed to go with the ballot papers to the seats. Pick the ballot paper, stay in the queue, go to the booth to select your choice, then you proceed and vote. You are not allowed to go with the ballot papers to the seats.

Hon. Members, once you have voted, you have two choices either to go out and mind your other business or sit on the benches to allow the Members who have not voted to have the space. In any case, campaigning, like it is in election rules, is not done at the ballot place or polling station. So, complete your business of voting and then give chance to the others.

Mr. Outa: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: There are no points of order allowed! If you have a serious matter of order, approach the Chair and draw his attention to that serious point of order. However, there are no points of order!

(Mr. Outa approached the Deputy Speaker)

Hon. Members, if you cast less than nine votes, your ballot will be spoilt. If you also cast more than nine votes, it will also be spoilt. That means that you have to do it in the manner they are and you have to cast nine votes. “Less” means “a spoilt ballot” and “more” means “a spoilt ballot”. So, you must look at it with a lot of attention when you are voting.

[Mr. Deputy Speaker left the Chair]

[Mr. Speaker took the Chair]

Mr. Speaker: Order, hon. Members! Voting is by secret ballot. So, you must vote in that manner, secretly. Do not show your colleague how you are voting. The lobbying may go on, but away from the booth. At the booth, each hon. Member must be alone.

Order, hon. Members! In conformity with the Election Rules as promulgated by the House and the directions made by the Speaker yesterday, the voting will now close and we will suspend the sitting so as to enable the Returning Officer to count and tally the votes as cast and we will resume the sitting at 12.45 p.m. The bell will be rung because we have been and continue to be in a division. The bell will ring for eight minutes and we will resume the sitting at roughly 1.00 p.m. It is so ordered!

*(The sitting of the House was suspended at 12.02 p.m.
to allow for the counting of votes)*

(Suspension of counting of votes)

Mr. Speaker: Serjeant-At-Arms, do not worry about the Mace for the moment. Hon. Members, I have received a report of the progress made in the counting and it is apparent that more time is required from where we are. So, I will extend the suspension of the sitting by another 55 minutes so that it will end at five minutes to two O'clock when the sitting will resume.

(Resumption of counting of votes)

(Loud consultations)

(The Sitting of the House resumed)

ANNOUNCEMENT OF THE RESULTS OF THE EALA ELECTION

Mr. Speaker: Order, hon. Members! I call the House to order. Please, resume your seats.

The election has come to an end. The counting has been done as well as the tallying. So, in compliance with the rules, we will now want to hear the results from the Returning Officer.

The Clerk of the National Assembly (Mr. P.G. Gichohi): Thank you, Mr. Speaker, Sir. These are the results of the elections: - The total votes cast were 140; valid votes, 130 and spoilt votes, 10.

Hon. Members: Aaaaah!

The Clerk of the National Assembly (Mr. P.G. Gichohi): Mr. Speaker, Sir, the details of the results are as follows. For KANU, Bonaya Talaso Sarah, Yes - 125 votes and No - 5 votes. For NARC-Kenya: Juma Ramadhani Tawhida - 14 votes; Kimura Catherine Ngima - 58 votes; Ogle Abubakar D. Abdi - 58 votes. For Party of National Unity (PNU): Adan Mohamed Sheikh - 20 votes; Ewol Charles Lokioto - 43 votes; Nkanae Saoli ole - 67 votes.

(Applause)

Mr. Speaker, Sir, for the Wiper Democratic Party, Masisi Jenifer Chepkemboi – 52 votes; Peter Mutuku Mathuki – 58 votes; Talib Abubakar Ahmed – 20 votes.

(Applause)

Mr. Speaker, Sir, for Orange Democratic Movement (ODM) party: Abisai Nancy Kabayeka Lung’ahi – 106 votes; Abubakar Zein Abubakar – 70 votes; Imana Immanuel Ichor – 62 votes; Mohamed Junet Sheikh Nuh – 62 votes; Ng’aru Mumbi Agnes – 76 votes; Ng’eny Ronald – 67 votes; Peter Odoyo – 22 votes ; Ombasa Joseph Kiangoi – 108 votes and Pareno Judith Nayiai – 76 votes.

(Applause)

These results have been certified by the Returning Officer, witnessed by the Chief Whips, hon. Midiwo and hon. Muthama.

(Applause)

DECLARATION OF THE OUTCOME OF THE EALA ELECTION

Mr. Speaker: Order, hon. Members! Hon. Members, the election has been completed and the returning officer has announced the results and submitted them to me. I am, therefore, able to make the final declaration with respect to the outcome of the election.

As, indeed, hon. Members, I am satisfied that the election has complied with the Constitution of Kenya. It has complied with the Treaty establishing the East African Community (EAC) and in particular, Article 50. I am further satisfied that the election has been held and conducted within the parameters of the Enabling Rules as enacted by this House. So, hon. Members, that being the position, I will proceed to declare that with respect to the first cluster, KANU, Bonaya Talaso Sarah is duly elected, garnering a total vote of 125. With respect to the second cluster, there is a tie between Kimura Catherine Ngima and Abubakar D. Abdi Ogle. The two of them garnered 58 votes each. There being a tie, Rule 23 of the Enabling Rules vests in the Speaker the power to determine how we shall proceed, and I want to read that Rule. *In extenso*, it reads:-

“If any matter arises, which is not specifically provided for in these rules, the Speaker shall make a ruling directing what is to be done and in making such a ruling the Speaker shall be guided by the practice and procedure normally followed in similar situations with regard to the conduct of elections in the National Assembly.”

Hon. Members, you may be aware that we conduct elections in the National Assembly, more so at the beginning of every Parliament after elections. That election is such that it is not concluded until a winner emerges, and that is the election of the Speaker or the Deputy Speaker. So, a tie is not admitted as giving you a satisfactory outcome unlike in the cases of a division where we are passing a piece of legislation such as a Bill. In those cases, the Speaker will have a casting vote. In these circumstances, the Speaker will not have a casting vote because it is an election in the National Assembly.

(Applause)

So, we further want to follow the precedent set in the country pertaining to elections and coming to mind very quickly is a case as occurred in the year 2007 following the elections with respect to the Wajir North Constituency, where hon. Dr. Ali and Mr. Gabbow who currently sit and serve in the House tied and no winner was declared prompting a by-election following which hon. Gabbow was elected.

We will follow that precedent and in compliance, therefore, with the rules, I will direct that fresh elections be held with respect to the cluster relating to NARC-Kenya – a fresh election which is tantamount to a by-election and I direct that this takes place at 4.00 p.m. today in the House. I am informed that because of certain technical details and logistics, we may need a further half hour and so, it will be held at 4.30 p.m. today in the House.

Hon. Members, we will then proceed to the next cluster which is that of the Party of National Unity (PNU). In this cluster, I declare Nkanae Saoli Ole duly elected, garnering 67 votes.

(Applause)

Hon. Members, the next cluster is Wiper Democratic Party and here I declare Mathuki Peter Mutuku duly elected, garnering 58 votes.

(Applause)

Hon. Members, the last cluster is the Orange Democratic Movement (ODM) party. In this cluster, I first declare duly elected, Ombasa Joseph Kiangoi, after garnering 108 votes.

(Applause)

Next, I declare Abisai Nancy Kabayeka Lung'ahi elected after garnering 106 votes.

(Applause)

Next, I declare Ng'aru Mumbi Agnes duly elected after garnering 76 votes and next at number four, I declare Pareno Judith Naiyai duly elected after garnering 76 votes.

(Applause)

Finally, in that cluster, I declare Abubakar, Zein Abubakar duly elected after garnering 70 votes.

(Applause)

That is the outcome of the elections and the candidates who have won have been duly declared. Congratulations to those who have won.

(Applause)

(The Clerk consulted with the Speaker)

Mr. Speaker: Order, hon. Members! The election in Cluster No.2 will take place and only two candidates are eligible, namely; Kimura Catherine Ngima and Ogle Abubakar D. Abdi. It is these two who have tied at 58. So, the contest is restricted to those two. Following the precedent which I have cited to you, that has to be the position because it is the practice and it is the law.

TRANSITION TO AFTERNOON SITTING

Hon. Members, if you look at the clock, we are well into where today's afternoon second sitting should start. So, I will direct that the bell be rung for ten minutes. Those hon. Members who may want to have a gulp of fresh air will do so as the bell rings and we will go into the second sitting today as soon as the bell finishes ringing.

(The Division bell was rung at 2.40 p.m.)