



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - (THIRD SESSION)
THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

_____ (No. 21 of 2024) _____

ON

**NOTICE OF MOTION FOR DISMISSAL OF HON. FRANKLIN MITHIKA
LINTURI, CABINET SECRETARY FOR AGRICULTURE AND LIVESTOCK
DEVELOPMENT**

Honourable Members,

1. I wish to notify you that pursuant to Article 152(6) of the Constitution and Standing Orders 64 and 66, I am in receipt of a Notice of a Special Motion, dated 24th April, 2024 from the Member for Bumula Constituency, the Hon. Jack Wanami Wamboka, M.P. The Hon. Member seeks a resolution of the House for the dismissal of the Hon. Franklin Mithika Linturi as the Cabinet Secretary for Agriculture and Livestock Development on **grounds of gross violation of the Constitution or of any other law; serious reasons to believe that the Cabinet Secretary has committed a crime under national law; and gross misconduct.**
2. **Honourable Members,** Standing Order 66(1) provides that before giving notice of a Motion under Article 152(6) of the Constitution, a Member shall deliver to the Clerk a copy of the proposed Motion in writing.

3. Whereas Standing Order 66(1) is silent on the timeline within which the Clerk is required to consider the proposed Motion and advise the Speaker, it must be noted that a Motion for dismissal of a Cabinet Secretary is a Special Motion under Standing Order 61 which ought to be disposed of in expeditiously. Consequently, the Clerk is required to consider the proposed Motion and advise the Speaker without unnecessary delay. Further, in the case of the Speaker, Standing Orders 64 and 66 provide that a proposed Motion shall be disposed of by the Speaker **within three days of receipt of notice by a Member.**

4. **Honourable Members,** this strict timeline of three days is intended to allow the Speaker to examine the proposed Motion and any evidence attached to it and determine whether the proposed Motion meets the procedural requirements outlined in the Standing Orders. In this regard, I note that the Member for Bumula Constituency submitted the proposed Motion to my office **last week on Wednesday, 24th April, 2024.**

5. Article 259(5) of the Constitution provides for the manner of computation of time. It guides that where time is expressed as days, **the day on which the first event occurs is to be excluded, and the day by which the last event may occur is to be included** when computing time. Consequently, the period of three days that applies to the Speaker in respect of the proposed Motion started running **from Thursday 25th April, 2024. The three days expired on Saturday, 27th April, 2024.** As such, the earliest available opportunity for the Speaker to notify the House on the admissibility of the proposed Special Motion is today, being the nearest available sitting of the House since receipt of the proposed Motion.

6. **Honourable Members,** allow me to highlight the legal and procedural requirements that guide the process of dismissing a Cabinet Secretary.

7. Article 152(6) of the Constitution provides that ***"a member of the National Assembly, supported by at least one quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary-***

(a) on the ground of a gross violation of a provision of the Constitution or of any other law;

(b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or

(c) for gross misconduct.

8. Procedurally, Standing Order 66(1) provides that ***"before giving notice of motion under Article 152(6) of the Constitution, a Member shall deliver to the Clerk a copy of the proposed motion in writing—***

(a) stating the grounds and particulars in terms of Article 152(6) of the Constitution upon which the proposed motion is made;

(b) signed by the Member; and

(c) signed in support by at least one-quarter of all the Members of the Assembly.

9. **Honourable Members**, additionally, Standing Order 64(1A) provides as follows on the admissibility of grounds for removal from office:

(1A) The grounds specified in a motion under this Standing Order shall be admissible if—

(a) framed clearly to particularize and disclose a gross violation of the Constitution or other written law, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal;

(b)stating with precision, the provisions of the Constitution or other written law that are alleged to have been grossly violated, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal; and

(c)accompanied by necessary evidence, including annexures or sworn testimonies in respect of the allegations.

10. Honourable Members, it is worth noting that Standing Orders 64(1A) and 66 as presently couched find their basis from the practice of the House in the 11th and 12th Parliament where Notices of Motion were submitted by Members for dismissal of various Cabinet Secretaries. These include the Notice of Motion for dismissal of the then Cabinet Secretary for Devolution, Hon. Anne Waiguru; the Notice of Motion for dismissal of the then Cabinet Secretary for Transport, Mr. James Macharia; and the Notice of Motion for the dismissal of the then Cabinet Secretary for Education, Prof. Jacob Kaimenyi.

11. My predecessor, the Hon. Speaker Justin Muturi has had occasion to guide the House on the manner of considering a Special Motion such as the one proposed by the Honourable Member for Bumula. In a Communication issued on **22nd October, 2015 on the *Processing of Special Motions on Removal of State Officers***, the Hon. Speaker guided as follows:

(1) That all Special Motions brought before the House under Article 152(6) of the Constitution should comply with thresholds established by the courts of law as to what constitutes gross violation of the Constitution or gross misconduct under the Constitution.

(2) That the question of determining what constitutes gross violation of the Constitution or gross misconduct is one that clings and hangs on the impeachable authority of the House and is exercisable in two instances – firstly, at the point of the approval of the Special Motion for impeachment or dismissal by the Speaker pursuant to Standing Order 47(3)(b) and (e) which requires the Speaker to be satisfied of the constitutional and evidential propriety of the Special Motions.

Secondly, at the point of investigations conducted by the relevant Select Committee or tribunal, pursuant to the provisions of the relevant Article of the Constitution.

(3)Averments made in the Special Motions should be accompanied by the necessary evidence including annexures and sworn testimonies in respect of the allegation as may be necessary.

- 12. Honourable Members,** our courts have also grappled with the question of the threshold for admissibility of impeachment motions. This has led them to set a standard for determining what constitutes “gross violation of the law” or “gross misconduct” in impeachment processes through a number of precedent-setting cases.
- 13. Notably, the High Court of Kenya, in *Martin Nyaga Wambora and 30 Others versus the County Assembly of Embu and 4 others* (Embu Constitutional Petition Nos. 7 and 8 of 2014),** considered the issue of the required threshold for determining what amounts to a gross violation of the Constitution and gross misconduct in impeachment processes.

14. With regard to what constitutes gross violation of the Constitution, the Court observed that ***"The charges framed against the governor and the particulars thereof must disclose a gross violation of the Constitution or any other written law; and the charges as framed must state with degree of precision the Article(s) or even sub-Article(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated"***.

15. Honourable Members, the Court further gave examples of constitutional provisions whose violation would constitute gross violation of the Constitution. According to the Court, these include—

- (1) Chapter 1- On the sovereignty of the people and supremacy of the Constitution more specifically Articles 1, 2, and 3(2) of the Constitution;**
- (2) Chapter 2 - Article 4 that establishes Kenya as a sovereign multi-party Republic & Article 6 that establishes devolution and access to services;**
- (3) Article 10- on national values and principles of good governance;**
- (4) Chapter 4- on the Bill of Rights;**
- (5) Chapter 6 - Articles 73 to 78 on leadership and integrity;**
- (6) Chapter 12 - Article 201 on principles of public finance;**
- (7) Chapter 13 - Article 232 on values and principles of public service; and**
- (8) Chapter 14 - Article 238 on principles of national security, among other constitutional provisions.**

- 16.** Further, in respect of what constitutes gross misconduct, the Court observed that ***"whether a conduct is gross or not will depend on the matter as exposed by the facts. It cannot be determined in a vacuum but in relation to the facts of the case and the law policing the facts. Gross misconduct is defined as a grave violation or breach of the provisions of the Constitution; and a misconduct of such nature as amounts in the opinion of the House of Assembly to gross misconduct"***.
- 17. Honourable Members,** drawing from the foregoing, the House amended its Standing Orders at the end of the 11th Parliament to comply with the prescribed thresholds.
- 18.** Presently, our Standing Orders 64 and 66 incorporate the pronouncements of the Court on the threshold for admissibility of grounds for removal of a Cabinet Secretary by requiring that ***grounds in a motion must be framed clearly to particularize and disclose a gross violation of the Constitution or other written law;*** and that such grounds ***must also state with precision, the provisions of the Constitution or other written law that are alleged to have been grossly violated.***
- 19. Honourable Members,** having examined the legal and procedural requirements of processing Special Motions for the removal of persons from office, permit me now to determine whether the proposed Special Motion by the Member for Bumula Constituency is admissible.
- 20. Honourable Members,** it is worth noting that Standing Order 47(3)(b) and (e) places an obligation on the Honourable Speaker to make a determination on whether any proposed Motion is contrary to the Constitution or contains allegations which the mover cannot substantiate.

21. As noted earlier, the question of determining what constitutes gross violation of the Constitution or gross misconduct is one that clings and hangs on the impeachable authority of the House and is exercisable in two instances; **firstly, at the point of the approval of the Special Motion for impeachment by the Speaker and secondly, at the point of investigations conducted by the relevant Select Committee.**
22. **Honourable Members,** In determining the admissibility of the Motion proposed by the Member for Bumula. I am required to examine two key issues.
23. The **first issue is whether the proposed motion meets the requirements of the Constitution and Standing Orders as to form and the threshold required to move such a motion. The second issue is whether the grounds as contained in the proposed Motion are admissible.**
24. **Honourable Members, on the First Issue,** I note that from a reading of Article 152(6) of the Constitution and Standing Order 66, a proposed Motion by a Member for the dismissal of a Cabinet Secretary must be supported by at least one-quarter **of all the members of the Assembly. A quarter of all the members of the Assembly is 87.25. In parliamentary practice, a decimal point is rounded off to a whole Member.** Consequently, the threshold for **initiating** a motion for the dismissal of a Cabinet Secretary is **88 Members of this House.**
25. Secondly, Standing Order 66 provides that—
- (a) **the proposed motion should be in writing;**
 - (b) **the proposed motion should state the grounds and particulars in terms of Article 152(6) of the Constitution upon which the proposed motion is made;**
 - (c) **the proposed motion should be signed by the Member; and**

(d) signed in support by at least one-quarter of all the Members of the Assembly.

26. Honourable Members, looking at the proposed Motion by the Member for Bumula, I note that pursuant to Article 152(6) of the Constitution and Standing Order 66, the Member has stated the grounds and given the particulars upon which he proposes the dismissal of the Cabinet Secretary.

27. Additionally, pursuant to Standing Order 66, the proposed Motion is also in writing and signed by the Hon. Member. Further, under Article 152(6) of the Constitution and Standing Order 66, the Honourable Member has attached a list of the signatures of **110 Members of the National Assembly who have signed the Motion in support.**

28. Honourable Members, consequently, I find that the proposed Motion by the Member for Bumula, meets the requirements of Article 152(6) of the Constitution and Standing Order 66 as to form and the threshold required for a Member to move a motion for dismissal of a Cabinet Secretary. This settles the First Issue.

29. Honourable Members, moving to the **Second Issue** on the admissibility of the grounds specified in the Motion. Under Standing Orders 64(1A) and 66, grounds cited in a Special Motion are admissible if—

(a) framed clearly to particularize and disclose a gross violation of the Constitution or other written law, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal;

(b) they state, with precision, the provisions of the Constitution or other written law that are alleged to have been grossly violated, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal; and

(c) accompanied by necessary evidence, including annexures or sworn testimonies in respect of the allegations.

30. Honourable Members, Article 152(6) of the Constitution provides for three grounds for which a Cabinet Secretary may be removed from office. These are **gross violation of the Constitution or of any other law; serious reasons to believe that the Cabinet Secretary has committed a crime under national law; and gross misconduct.** Permit me now to highlight the grounds specified in the Motion for dismissal of the Cabinet Secretary for Agriculture and Livestock Development.

31. Honourable Members, on the ground of gross violation of the Constitution, the Member for Bumula Constituency has stated as follows in the proposed Motion—

- (a) That, the Cabinet Secretary has grossly violated the Constitution in particular **Articles 2 and 10(1)(c) of the Constitution** on national values and good governance for failure to undertake public participation with relevant stakeholders in the implementation of a far-reaching policy decision on the procurement and distribution of fertilizer.
- (b) That, the conduct of the Cabinet Secretary of approving procurement and distribution of fake fertilizer by the NCPB disclose a gross violation of national values and principles of good governance contrary **to Article 10(1)(b) of the Constitution.**
- (c) That, the conduct of the Cabinet Secretary of approving the procurement and distribution of fake fertilizer discloses a gross violation of the Constitution by infringing **Article 46 of the Constitution on consumers rights** to goods and services of reasonable quality and their protection of health, safety and economic interests.

- (d) That, the conduct of the Cabinet Secretary of approving the procurement and distribution of fake fertilizer amounts to gross violation of public trust and the Cabinet Secretary failed to demonstrate respect for the people, bring honour to the nation and dignity to the office and promote public confidence and integrity of the office **contrary to Article 73(1) of the Constitution.**
- (e) That, the conduct of the Cabinet Secretary of approving the procurement and distribution of fake fertilizer amounts to gross violation of the principles of public finance **contrary to Article 201 of the Constitution** as public money was not applied in a prudent and responsible way.
- (f) That, the conduct of the Cabinet Secretary in which he submitted to the Departmental Committee on Agriculture that NCPB signed an agency agreement with 51 Capital Africa Diatomite Industries for supply and distribution of GPC diatomaceous for its commercial function and that the product was not sold as a chemical fertilizer but a soil conditioner **was in gross violation of Article 152(5)(a) and (e), (6), (7), (8), (9) and (10) of the Constitution.**
- (g) That, the conduct of the Cabinet Secretary of overseeing the implementation of the budgets of the NCPB under his control for the procurement and distribution of fake fertilizer is a gross violation of values and principles of public service on use of resources efficiently, effectively and economically.

32. Honourable Members, the proposed Motion also seeks the dismissal of the Cabinet Secretary for Agriculture on the ground of serious reasons for believing that he has committed a crime under national law.

33. To this end, the Member for Bumula Constituency has stated as follows in the proposed Motion as follows—

- (a) That, the conduct of the Cabinet Secretary discloses grounds that there are serious reasons for believing that the Cabinet secretary has committed a crime under national law involving offences relating to abuse of office and false claims **contrary to sections 100 and 101 of the Penal Code.**
- (b) That, the conduct of the Cabinet Secretary discloses grounds that there are serious reasons for believing that the Cabinet secretary has committed a crime under national law relating to forgery, uttering false documents and procuring execution of documents by false pretenses contrary to **sections 353 and 355 of the Penal Code.** The Member further avers that the Cabinet Secretary is currently under investigation by DCI following the findings of the court *in FML versus DPP and 3 Others: Registrar of Companies and 10 Others 2021 eKLR* and is further facing arrest and prosecution in six pending civil, commercial and family suits.

34. Honourable Members, finally on the **third ground**, the Member for Bumula Constituency seeks the dismissal of the Cabinet Secretary for Agriculture and Livestock Development **on the ground of gross misconduct** and states as follows—

- (a) That, the conduct of the Cabinet Secretary of getting into public spats with journalists who unearthed the distribution of the fake fertilizer discloses the ground of gross misconduct in so far as a state officer he has failed to demonstrate professionalism in carrying out duties of the office and in a manner that maintains public confidence in the integrity of the office **contrary to section 11(a) of the Leadership and Integrity Act, Cap. 185C.**
- (b) That, the conduct of the Cabinet Secretary of storming into manufacturing plants and purporting to be revoking licenses without conducting investigations amounts to gross misconduct in so far as a state officer, he has failed to demonstrate professionalism in carrying out duties of the office and in a manner that maintains public confidence in the integrity of the office manner **contrary to section 11(a) of the Leadership and Integrity Act, Cap. 185C.**
- (c) That, the conduct of the Cabinet Secretary of approving procurement and distribution of fake fertilizer in so far as a state officer he has failed to exercise public trust in the best interests of the people of Kenya amounts to gross misconduct **contrary to section 8 of the Leadership and Integrity Act, Cap. 185C.**
- (d) That, the conduct of the Cabinet Secretary of approving procurement and distribution of fake fertilizer in so far as a state officer he has failed to exercise his duties to the best of his ability and to carry out the duties efficiently and honestly and in a transparent and accountable manner amounts to gross misconduct **contrary to section 10(a) and (b) of the Leadership and Integrity Act, Cap. 185C.**

- (e) That, the conduct of the Cabinet Secretary of approving the procurement and distribution of fake fertilizer by NCPB discloses the ground of gross misconduct in so far as a State officer he has failed to demonstrate professionalism in carrying out duties of the office in a manner that maintains public confidence in the integrity of the office **contrary to section 11(a) of the Leadership and Integrity Act, Cap. 185C.**
- (f) That, the conduct of the Cabinet Secretary of approving the procurement and distribution of fake fertilizer by NCPB and misleading the public by giving false information to the Departmental Committee on Agriculture that GPC diatomaceous was distributed as a soil conditioner and not fertilizer amounts to gross misconduct **contrary to section 29 of the Leadership and Integrity Act, Cap. 185C.**

35. Honourable Members, in addition to the three grounds that I have just highlighted, the Member for Bumula Constituency has attached additional background information to further substantiate his stated grounds. Additionally, the Hon. Member has attached a **sworn statement** in which he avers that all the information stated in the proposed Motion is true and correct to the best of his knowledge.

36. Notably, the Honourable Member has also annexed to the proposed Motion evidence and supporting documents contained in **five (5) Annexes.**

37. These include the response by the Cabinet Secretary to the Departmental Committee on Agriculture and Livestock, correspondences, statements, a court judgment (Hon. *FML versus DPP and 3 Others: Registrar of Companies and 10 Others 2021 eKLR*), and submissions by the Kenya Bureau of Standards (KEBS) to the Departmental Committee on Agriculture and call logs, among other documents.

38. Honourable Members, in light of the foregoing and pursuant to Standing Orders 64 and 66, I am of the considered opinion that the grounds specified for the dismissal of the Cabinet Secretary for Agriculture and Livestock Development as contained in the proposed Motion—

- (a) are framed clearly to particularize and disclose a gross violation of the Constitution or other written law in this case being the Penal Code and the Leadership and Integrity Act; and**
- (b) state, with precision, the provisions of the Constitution or other written law in this case the Penal Code and the Leadership and Integrity Act that are alleged to have been grossly violated; and**
- (c) are accompanied by necessary evidence, including annexures or sworn testimonies in respect of the allegations.**

39. Consequently, the grounds for dismissal of the Cabinet Secretary for Agriculture and Livestock Development as contained in the proposed Motion comply with the requirements of Standing Orders 64(1A) and 66. This settles the Second Issue.

40. Honourable Members, in view of the foregoing, I find that the proposed special Motion meets the applicable procedural requirements for it to be admitted to the next stage. In this regard, I note that Standing Order 47(4A), provides that a Member shall give Notice of Motion in the House within **three sitting days following approval by the Speaker.**

41. In the circumstances, following my approval of the proposed Motion, I will allow the Member for Bumula Constituency to give the Notice of Motion for dismissal of the Cabinet Secretary for Agriculture and Livestock Development this afternoon under Order No. 6 on Notices of Motions. Once the Honourable Member gives the Notice of the Motion under Standing Order 47(4A), the Motion shall proceed to the next stage.

42. Honourable Members, I will now highlight a summary of what is expected of the House, once the Member for Bumula Constituency gives the Notice of his Motion. In terms of timeline, pursuant to Standing Orders 64 and 66, the **House is required to dispose of the Motion within seven days of the Member giving notice** under Standing Order 47. In the event the House does not adhere to the timeline, the Motion shall be deemed to have been withdrawn and shall not be moved again in the same Session, except with the leave of the Speaker.

43. Consequently, if the Member for Bumula Constituency gives notice this afternoon, the House has until **next week Tuesday, 7th May, 2024** to dispose of the Motion. However, noting the House is scheduled to proceed on a one-month recess as from Friday, 3rd May, 2024, it is advisable that the House disposes of the Motion by **Thursday, 2nd May, 2024. This shall allow the House to become seized of the matter before proceeding on recess.**

44. Honourable Members, Under Article 152(7) of the Constitution. The House becomes properly seized of the matter if the Motion is **supported by one-third of the Members of the National Assembly.**

- 45. Upon approval of the Motion, the House is required to appoint a select committee of 11 Members to investigate the matter.**
- 46.** A third of all the Members of the National Assembly is 116.3. Rounded off to a whole Member, the Motion shall require the support of 117 Members for it to be referred to a Select Committee for investigations.
- 47.** With regard to the timeline applicable to the Committee, Standing Order 66(5) provides that **the select committee shall, within ten (10) days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.** If the select committee report finds that the allegations are unsubstantiated, no further proceedings are to be taken. **However**, if the select committee report finds that the allegations are substantiated, the House is required to afford the Cabinet Secretary an opportunity to be heard; and vote whether to approve the resolution requiring dismissal of the Cabinet Secretary.
- 48.** Pursuant to Article 152(10) of the Constitution, a resolution requiring the President to dismiss a Cabinet Secretary **must be supported by a majority of the Members of the National Assembly which is 175 Members.** A resolution that achieves the required support must be promptly delivered to the President and is bound to dismiss the Cabinet Secretary in question.
- 49. Honourable Members,** from the foregoing, you will agree me with me that once the Member for Bumula Constituency gives the Notice of Motion, the stage shall be set for the House to commence the consideration of the Motion. To this end, Members should take cognizance of the constitutional and procedural requirements, the thresholds and prescribed timelines at different stages of consideration of the Motion that I have just highlighted.

50. Honourable Members, in summary therefore, I wish to guide the House as follows:

- (1) THAT, the proposed Motion by the Member for Bumula Constituency, meets the applicable procedural requirements of Standing Orders 64 and 66 for it to be admitted and considered by the House.**
- (2) THAT, consequently, upon the reading of Order No. 6 this afternoon, I will permit the Member for Bumula Constituency to give Notice of Motion for the dismissal of the Cabinet Secretary for Agriculture and Livestock Development in accordance with the requirements of Standing Order 47(4A).**
- (3) THAT, since today is not a day for debate, in giving Notice of the Special Motion the Member for Bumula Constituency shall limit himself to a summary of its the content; state the grounds upon which the Special Motion has been made and the names of the Members who have appended their signatures in support of the Special Motion as required under Article 152 of the Constitution and Standing Order 66.**
- (4) THAT, the Clerk is hereby directed to publish the Special Motion for the dismissal of the Cabinet Secretary for Agriculture and Livestock Development in the Order Paper for Thursday, 2nd May, 2024 in the manner contemplated under Standing Oder 66(3), for consideration by the House during the morning sitting of that day, which has been agreed to by the House Business Committee.**

The House is accordingly guided.

I thank you!


THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, 30th April, 2024