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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - SECOND SESSION (2014)

THE SELECT COMMITTEE ON DELEGATED LEGISLATION

REPORT

ON THE NATIONAL CONSTRUCTION AUTHORITY REGULATIONS,
2014

Clerk's Chambers,
Parliament Buildings,
NAIROBI
JULY, 2014

*Paper laid
By the Hon William
Chughtai, Chair on
June 24/7/14
WJ*

1.0 PREFACE

Mr. Speaker,

On behalf of the Members of the Select Committee on Delegated Legislation, and pursuant to Standing Order No.199, it is my pleasure and duty to present to the House the Committee's Report on the Child Welfare Society of Kenya Order, 2014.

1.1 Committee Membership

The Committee on Delegated Legislation was constituted by the House on 21st May, 2013 and is comprised of the following members;-

Hon. William Cheptumo, MP – **Co-Chairperson**
 Hon. Joseph Gitari, MP – **Vice Chairperson**
 Hon. Mohamed Haji, MP
 Hon. Peter Kaluma, MP
 Hon. Alfred Keter, MP
 Hon. Hassan Aden Osman, MP
 Hon. Timothy W. Wetangula, MP
 Hon. George Theuri, MP
 Hon. Elisha K. Busienei, MP
 Hon. Eng. Shadrack Manga, MP
 Hon. Yusuf Hassan Abdi, MP
 Hon. Michael Kisoi, MP
 Hon. Mohamed Adan Huka, MP
 Hon. John M. Waiganjo, MP
 Hon. Paul K. Bii, MP
 Hon. Charles Gimose, MP
 Hon. T. J. Kajwang, MP
 Hon. Simba Arati, MP
 Hon. Rachael A. Amolo, MP
 Hon. Vincent Musau, MP
 Hon. William Kisang, MP
 Hon. Neto Agostinho, MP
 Hon. Abdikadir Ore, MP
 Hon. Paul Koinange, MP
 Hon. Ibrahim Abdi Saney, MP
 Hon. Eusilah Ngeny, MP
 Hon. Zainabu K. Chidzuga, MP
 Hon. Nicholas Ngi'kor Nixon, MP

Hon. Benard Shinali, MP
 Hon. Kabando wa Kabando, MP
 The Hon. Marcus Mutua Muluvi, MP

1.2 Mandate of the Committee

The Committee on Delegated Legislation is a Select Committee established pursuant to provisions of the Standing Order No. 210 whose mandate is to consider in respect of any statutory instrument whether it:-

- a. Is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- b. Infringes on fundamental rights and freedoms of the public;
- c. Contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- d. Contains imposition of Taxation;
- e. Directly or indirectly bars the jurisdiction of the court;
- f. Gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
- g. Involves expenditure from the consolidated fund or other public revenues;
- h. Is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- i. Appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- j. Appears to have had unjustifiable delay in its publication or laying before Parliament;
- k. Makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- l. Makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- m. Inappropriately delegates legislative powers;

- n. Imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- o. Appears for any reason to infringe on the rule of law;
- p. Inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,
- q. Accords to any other reason that the Committee considers fit to examine.

Standing Order No. 210(4) provides that if the Committee-

- a. Resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument.
- b. Does not accede to the statutory instrument, the Committee may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled.
- c. The Clerk shall submit the resolution under paragraph 4(b) above to the relevant state department or the authority that published the statutory instrument.

1.3 National Construction Authority Regulations, 2014

Pursuant to the National Construction Authority Act, the Cabinet Secretary for Lands, Housing and Urban Development, on 18th June, 2014, submitted to the Clerk of the National Assembly, the National Construction Authority Regulations, 2014 for scrutiny.

The Regulations were referred to the Select Committee on Delegated Legislation, by the Hon. Speaker for review and scrutiny pursuant to section 12(1) of the Statutory Instruments Act (Act No. 23 of 2012), Standing Order 210 of the National Assembly.

1.4 Committee Meetings

Mr. Speaker,

The Committee held a number of sittings to scrutinize the Regulations pursuant to the relevant provisions of the Constitution, the Statutory Instruments Act, and Standing Order No. 210 and other relevant written laws. The Committee had prior consultations with the regulatory-making authority in which proposals by the Committee were considered.

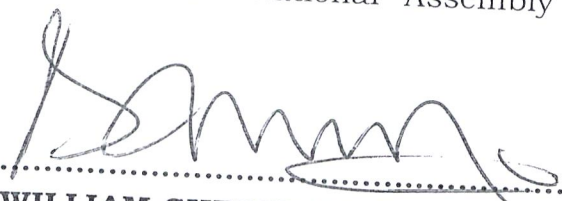
During the Sittings, it was observed that except for Regulation No.24 (2), the regulations as published complies with the requirements of section 13 and other enabling sections of the Statutory Instruments Act and the Standing Orders of the National of the National Assembly. Regulation 24(2) contravenes section 24(5) of the Statutory Instruments Act. The Regulation seeks to impose a higher penalty of ksh.50, 000) than the maximum penalty of Ksh.20, 000 as provided for under section 24 (5) of the Act.

In view of the foregoing and Pursuant to provisions of section 13 and other provisions of the Statutory Instruments Act and Standing Order 210(4) (b), the Committee recommends to the House that regulation 24(2) be annulled.

1.5 Acknowledgement

- a. The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate;
- b. The Chairperson of the Committee take this opportunity to thank all the Members of the Committee for their useful and immense contribution in enriching the National Construction Authority Regulations, 2014;
- c. The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

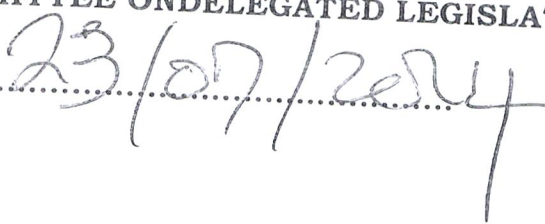
d. Finally, it is now my pleasant duty, on behalf of the Committee, to recommend this Report to the House pursuant to the provisions of Standing Orders of the National Assembly for adoption and passage.

SIGNED.....

HON. WILLIAM CHEPTUMO, MP

(CHAIRPERSON)

SELECT COMMITTEE ON DELEGATED LEGISLATION

DATE.....

2.0 THE COMMITTEE'S CONSIDERATION AND OBSERVATIONS ON THE NATIONAL CONSTRUCTION AUTHORITY REGULATIONS, 2014

The Committee on Delegated Legislation scrutinized the National Construction Regulations, 2014 and noted that;

1. Except for Regulation 24 (2) the Regulations as published accords with the provisions of the Constitution, the Act pursuant to which it is made, the Statutory Instruments Act, Standing orders 210 (3) and other relevant written laws.
2. Regulation 24 (2) providing for a penalty of Ksh.50,000/= is contrary to section 24 (5) of the Statutory Instruments Act which provides for a penalty not exceeding Ksh.20,000/=. Regulation 24 (2) is therefore *ultra vires* the provisions of the Act.

3.0 COMMITTEE'S RECOMMENDATION

In view of the Committee's considerations and observations under 2.0 above, and pursuant to the provisions of section 13 and other relevant provisions of the Statutory Instruments Act (No.23 of 2013) and Standing Order No.210, the Committee hereby recommends to the House that Regulation 24 (2) of The National Construction Authority Regulations, 2014 be annulled.

.....END.....