

**CONSTITUTION OF KENYA REVIEW COMMISSION
(CKRC)**

**NATIONAL CONSTITUTIONAL CONFERENCE
(NCC)**

Verbatim Report of

**THE PLENARY PROCEEDINGS HELD AT THE PLENARY HALL,
BOMAS OF KENYA.**

ON

12.02.2004

CONSTITUTION OF KENYA REVIEW COMMISSION

**NCC - PLENARY PROCEEDINGS, HELD AT THE PLENARY HALL, BOMAS OF KENYA
ON 12.02.2004.**

Present

Hon. Delegate Joyce Umbima - **Chairman**
Hon. Mwalimu Digore - **Vice Chair**

Secretariat Staff in attendance

Ann Kiama - **Verbatim Recorder**

The meeting started at 9.15 a.m with Honourable Delegate Joyce Umbima in the Chair.

Session started with traditional dances from the Borana and the Luhya Community presented by dancers from the Bomas of Kenya.

Hon Delegate Joyce Umbima: Good morning everybody. May I call the meeting to order and before I do that my name is Joyce Umbima, Delegate 466, representing the NGO sector. For purposes of this meeting I shall be your Chairperson and I will be assisted by my colleague who is Delegate 231, Mwalimu Kitambi Digore. For purposes of this morning we shall be your Chairpersons.

Shall we all stand up for prayers and I would like to call upon the following persons who will lead us in Prayers, Badawy, Shitemi, Mwaringa, thank you lets all stand up.

Hon. Delegate Badawy Ahmed: *Bismillahi Rahmani Rahim. Ee Mola mwenye jinsi ya sifa njema, Mwenye wingi wa rehema na Mwenye wingi wa huruma. Wewe peke Yako twakuabudu na Wewe peke Yako twataka msaada.*

Ewe Mola muumba mbingu na nchi, na muumba viumbe vyote, tumesimama mbele yako hapa, hakuna wa kuombwa ila ni Wewe. Kwa kazi hii kubwa ambayo kwamba tumeachiwa sisi na wananchi wote wa Kenya. Huu ni mzigo mkubwa kabisa, hakuna mwenye kuongoza mzigo huu ukafika bandarini kwa salama na amani ila ni Wewe.

Ewe Mola kuna wengi ambao kwamba wanataka mzigo huu usifike vile wananchi wanavyotaka. Wanataka mzigo huu, uwe ni mzigo wa kutunga maslahi ya watu fulani ndani yake. Uwe ni mzigo ambao kwamba wengi wasipate faida ndani yake. Basi ewe Mola, wale ambao kwamba kati yetu wenye fikira kama hiyo ndani ya nchi hii, uongoze na uwape moyo wa kusimama pamoja nasisi kwa kushirikiana ili mzigo huu wa kutengeneza Katiba, uwe utakamilika. Hakuna mwenye kufanya kazi kama hiyo ya kutimiza mzigo huu na kutimiza jambo hili na kuitimiza Katiba yetu ambayo kwamba ni matakwa ya wananchi wote wa nchi hii ila ni Wewe. Amin.

Hon Delegate Simeon Shitemi: Our Heavenly Father, we thank you and worship You, we surrender our wills before You, You who created us in the first place. We request Father for the Holy Spirit to guide our efforts here. That our efforts may be directed in glorifying Your worthy Name, that our efforts maybe guided only by the desire to glorify Your worthy Name. You created this world, You know its beginning You know its end, and we Your creatures ask that we may not get lost, that You may embrace us all from all sides with Your love, with Your wisdom, with Your health as we draw close to the end of our exercise.

We thank You Lord for the Spirit of reconciliation that is self evident among us. We ask you Father that that Spirit maybe intensified that we may have no enemy among us, that we may have out stretched hands of friendship, understanding and reconciliation. All this I ask in the precious name of the Lord Jesus Christ. Amen.

Hon. Delegate Beatrice Mwaka Mwaringa: *Baba katika jina la Yesu tunasema ni ahsante asubuhi ya leo kwa sababu tulilala usingizi jana na hatukuweza kujua kwamba tuta amuka leo, lakini Baba wema wako tumeuona nasi tumeona hii asubuhi ya leo. Ni ahsante Baba kwasababu wengi waliotamani kuiona hii siku ya leo lakini hawakuweza, sio kwamba wao walikuwa hawana haki mbele zako mbali sisi ume tuweka kwa lengo. Basi Mungu tunaomba lengo ambalo umetuwekea siku hii ya*

leo Bwana litimie. Tuna hakika ya kwamba lengo lile ambalo umetuwekea ni kwamba sisi tume chaguliwa ili kufanya kazi ya Nchi hii, Nawe Baba uko pamoja nasi katika hiyo kazi maana hata ingawa kuna hivi na hivi lakini Mungu tunajua kwamba Wewe ulileta msaada hapa, roho wako Mtakatifu, maana Yesu uliposema unaenda ulisema utatuletea msaada. Msaada wetu ni Roho Mtakatifu, ambaye huyo ana uwezo wa kila kitu. Bwana tunaomba huyo roho Mtakatifu atembelee katika kila mwoyo wa mwanadamu aliyeko hapa leo ili Bwana ajuwe ya kwamba hakuna msaada mwingine ila ni wewe. Shetani anakanyaga chini katika jina Lako. Basi Baba tuongoze katika kufanya shughuli hii zaidi sana tunaomba upendo Wako uingie katikati yetu maana bila upendo hakuna lolote ambalo linawezekana. Nasi tunajua ya kwamba wewe umesema yakwamba tupendane sisi kwa sisi ili kama vile ambavyo wewe ulitupenda.

Mfano wako tunataka kufuata asubuhi ya leo na mchana huu wa leo tunauweka mikononi mwako nasi tunahakika ya kwamba ikiwa kuna upendo kila jambo litaendelea bila chuki wala matatizo yoyote nasi tunajua mkono wako utazunguka katika boma hili popote pale kila moja wetu yuko ili utushike mkono. Tushike mkono Bwana tunahitaji usaidizi wako katika kazi hii, sisi wenyewe hatuwezi, nasi tuna amini ya kwamba ukiwa katikati yetu kila kitu kitafanyika na kwa hakika kitafanyika. Katiba hii itafanyika kwa nguvu zako Bwana, kwa sababu hakuna mwingine Mungu ambaye ana msaada kushinda wewe. Nasi tunaamini ya kwamba wewe ndiwe Mungu wa kweli, Mungu wa kufuatwa, Mungu ambaye uliwachukua watoto wa Israeli kutoka jangwani ukawafikisha kule inchi ambayo uliwaahidi nasi tunajua ya kwamba umetuwahidi Katiba hii ya Kenya na kwa hakika tutaipata kwa sababu wewe ahadi zako ni za sawa. Bwana kafanya yote tukiongozwa na wewe, nasi tunajua ya kwamba mkono wako utakuwa nasi katika mchana huu. Ni katika jina la Yesu Kristo ambaye ni Bwana na Mkombozi wetu tumeomba na na kuamini. Amen.

(National Anthem)

Hon. Delegate Joyce Umbima: Thank you. I would like to draw your attention to the program of today which has already been circulated. As you will recall –

(mummers on the floor).

Hon. Delegate Joyce Umbima: -- the program has been circulated.

Hon. Delegates: No!

Hon. Delegate Joyce Umbima: Okay I have been informed the one of yesterday is the same that has been re-circulated today. Therefore if you have the program of yesterday it is still the same program. We are all together now?

Hon. Delegates: Yes!

Hon. Delegate Joyce Umbima: Okay. If we are all together, yesterday you recall we spent most of our time in our Technical Committees, on various Committees going over the issues of how we shall undertake our last stages of our deliberation, that reconsideration stage for contentious issues discussions in our Committees. Today we are going to continue on the same line and in the various Committees that we were in yesterday. For purposes of clarity I would like to ask my co – Chair just to read it over again so that those who may have missed yesterday will be brought on board so that we are all together.

Hon. Delegate Mwalimu Digore: Morning Honourable Delegates. The program for today, February 11th- February 12th Wednesday or is it Thursday? The program circulated here reads Wednesday so I am sorry- -

Hon. Delegate Joyce Umbima: No, Thursday. Thursday but these Committees remain the same.

Hon. Delegate Mwalimu Digore: - - so Thursday February, this morning the summary reads we are on the continuation of the rules and procedures for the consideration stage that we started on Monday February the 9th, which involves both Plenary discussions and group training and assimilation sessions facilitated by Parliamentary Clerks as follows: -

- Group I, the session Facilitator shall be Mr. Patrick Gichohi, and the members of that group shall be the Committees A, B, and C, who shall sit at Tent G, which is the Devolution Tent.

- Group II, the session Facilitator shall be Mr. Andrew Mwendwa, members of that group comprise the Committees F, D, and E, and they shall sit at Tent D, which is the Executive Tent.
- Group III, the session Facilitator shall be Mr. J. M. Mwangi, members of that group include Committees G, H, and I, and they shall be located at Tent J, that is the Land and Environment Tent.
- Group IV, the session Facilitator shall be Mr. P.C. Omollo, members of that group bring in together Committees J, K, L, and M and these shall be located here at the Plenary Hall.

That is the brief program we have for today and it is a continuation of what we have had for the last two days so there is nothing very new. Thank you.

Hon. Delegate Joyce Umbima: Just before we break into our groups are there any feedbacks you would like to give us so that the groups can have some considerations and discussions, so we spent about five minutes just recapping on what happened yesterday and what you think about your groups and how we can improve on those groups? I can see Delegate 447.

Hon. Delegate Kennedy Kiliku: Chairperson, my name is Kennedy Kiliku, 447. Last week this Conference was told that those Delegates who were in Mombasa will report on Wednesday. Yesterday we were given to understand that they were coming last night. Could you please Chairperson give us as to the progress of the work in Mombasa, whether they are coming this week or not, or whether they have taken another Bomas II or Bomas III there, and then we are waiting without knowing what is happening there. We want to know the progress. (*Clapping*).

Hon. Delegate Joyce Umbima: Okay. Any other comment then we can respond to all of them. 586.

Hon. Delegate George Mwaura Mburu: Thank you. I am Mwaura Mburu, number 586. *Swali yangu ni moja tuu. Kama tunaendelea na kawaida with the Order Paper? Shauri nili file a Motion on Tuesday, I have not seen it.*

Hon. Delegate Joyce Umbima: What!

Hon. Delegate George Mwaura Mburu: *Ninauliza swali, kama Conference inaendelea kawaida, sauri kila asubuhi tunatakiwa tuwe na Order Paper. Niliweka Motion on Tuesday I have not seen it so I am wondering kutoka kwa Mwenye Kiti kama mambo inaenda kawaida tu kama zamani, au kumekuwa na mageuzi?*

(Consultations at the “high” table)

Hon. Delegate Joyce Umbima: Another one, any other comment? I see no any other comments. May I start y responding to the issue of the group that went to Mombasa. We have been informed that they have completed their work and some of them have arrived this morning. Others because of flight difficulties they will be coming a little later. So, I would like again to refer this matter to the Chair of the Conference who will respond to it – who will address us tomorrow morning to tell us how far they have gone in terms of progress. But, my understanding is actually difficulties related to traveling, but otherwise they have completed their work.

The other question, which was concerned about a Delegate, who has not reported I am not sure I could not understand your question. Let my colleague respond to it.

Hon. Delegate Mwalimu Digore: Thank you if I got Honourable Delegate 586 right, he must have presented a Motion, which has not according to him found its way to the Plenary. When a Motion is presented, as the Honourable Delegate will be aware, it goes through the Steering Committee, and then the Steering Committee allows it here. That Motion, I being a member of the Steering Committee has not been considered even at the Steering Committee. Simply because the programs that we have for this week as you will appreciate are of the technical nature and your Motion will come when time is due I hope and you will be patient enough so that you can present your Motion hopefully by next week. Thank you.

Hon. Delegate Joyce Umbima: Any other concerns? 433, is it a Point of Order?

Hon. Delegate David Marcos Rakamba: Yah! Thank you the Chair. Delegate 433, David Marcos. The Chair we have the regulations that we adopted in this floor and that I think are actually governing

this Conference. The Chair, you note that the regulations state clearly that once a Motion has been filed it is to be communicated to the person who has filed the Motion within 24 hours. This has not been done since it was filed I therefore think the point that is been raised by the owner, Honourable Chair, there is actually a violation of regulation governing this floor and therefore misleading this House. Can the Honourable Chair retract his answer because it is misleading this House Mr. Chair. Thank you.

Hon. Delegate Joyce Umbima: Your point has been taken the matter will be referred again to the Steering and we will see how best to deal with it. 361.

Hon. Delegate William Salaon Ole Yiaile: Madam Chair, there was this debate which was discussed here yesterday -

Hon. Delegate Joyce Umbima: The?

Hon. Delegate William Salaon Ole Yiaile: -- *tuliongea hapa mambo yaku-visit magadi Soda, na mkasema mtapeleka katika Steering Committee. Tunangojea leo asubuhi, ni lini tutaenda Conference mzima na tumengojea husemi chochote, hebu sema tusikie dakika hii hapa tena sasa. (Laughter).*

Hon. Delegate Joyce Umbima: Thank you. Any other concerns I would like to take a little bit – 376.

Hon. Delegate Chesmei Wambulwa Mafunga: Than you Chairman. I have only two comments to make on this question of going to Magadi. Magadi comes under the Lands and the Natural and the investment chapter, which we have discussed, and my colleague, the last speaker has been in that Committee. We have already discussed and set up views on how the new law should take on the natural resources and environment. And when this matter comes up and when you have looked at the whole thing then that is when you will see whether we have left out a number of things, which can now be debated here and be ratified. So, I do not see the idea of going to Magadi being of much, much importance than from our going on with this, that is one.

The second thing I want to mention is that as the way I look at this whole Conference is that the Chairmen are the ones who are delaying the process of this thing, because you seat in one place, for

example yesterday, somebody started here and he took almost ten or four people there. If it is five minutes that is about over twenty-five minutes. He moved then to the other end and again taking another four people there, that is another same time. *Katikati hapa hapakukua na watu*, and I do not know that is the way we are going to do. So when you start that way go straight and finish up over there. If you - -

Hon. Delegate Joyce Umbima: Thank you.

Hon. Delegate Chesmei Wambulwa Mafunga: - - start on the left then go on left and finish, because you are going – and you keep people repeating what is not necessary. You are supposed to be there and in the chair to see whether one is repeating himself or if the matter has already been spoken and tell him no, do not continue you are repeating, you are doing this but you are leaving us go on repeating, go on what not, taking the same people and leaving all the others. Yet everybody here is here to air his view, so this is what I am saying that the Chair-people must be careful, all these people are raising their hands. Pick one here, pick one hand there go round, but if - -*(Heckling)*

Hon. Delegate Joyce Umbima: Thank you. Thank you for your comments I am going to take two more people.

Hon. Delegate Chesmei Wambulwa Mafunga: - - that is all I can say, I think you have heard me everybody wants to talk. Thank you.

Hon. Delegate Joyce Umbima: Thank you order, order. There is a Point of Order I would like to take before I can take more delegates - -

Hon. Delegate Rita Katamu: Point of Order.

Hon. Delegate Joyce Umbima: - - yes 381, what is your Point of Order?

Hon. Delegate Rita Katamu: Katamu standing on Point of Order. Honourable Chair, we need your guidance. You have explained to us what we are supposed to do. Why are you asking each of us to

give our problems why can't you tell us to go to our Technical groups and continue, will you solve all our problems here? (*Clapping*)

Hon. Delegate Joyce Umbima: Thank you we are just coming back to that in a few minutes. I thought that if we took a few minutes just to recap over what we did yesterday it would be useful - -

Hon. Delegates: No! No!

Hon. Delegate Joyce Umbima: - -but if it is the interest of the House that we break to our Committees then we will be doing that just in a few minutes. But before we do that I would like to respond maybe to one thing, that was about the issue of Magadi Soda, the visit to Magadi Soda. That matter is still being considered the Secretary will be coming to make the announcements as soon as possible.

Hon. Delegates: Point of Order.

Hon. Delegate Joyce Umbima: The last part of it, please before we take any more Points of Order, (*Heckling*) excuses me, excuse just give me a minute I will come to you, I see you, I recognize you and I will come back to you. Before we do that let us just go over one more thing before we take any Points of Order and then we will make a decision whether to go to our groups right now or a little later. Let me ask my colleague to respond to one announcement to make be made before we proceed.

Hon. Delegate Mwalimu Digore: Honourable delegates there are those Honourable Delegates who have either misplaced their placards or they left them home I maybe one of them, you are being asked to please give notice to your ushers as you come in so that fresh placards can be prepared for you in preparation for the Plenary next week. Thank you.

Hon. Delegate Joyce Umbima: You still have a Point of Order 386, yes you do still have a Point of Order. I will take that Point of Order and then we will make a decision on how we proceed. 368 your Point of Order, please be brief so that we can proceed.

