

NATIONAL ASSEMBLY

**MOTION TO DEBATE THE CONSTITUTIONAL PROVISIONS OF ARTICLE 47 (1) (E) (F)
AND (B)**

MOTION TO DEBATE THE CONSTITUTIONAL PROVISIONS OF ARTICLE 47 (1) (e) (f) and (b) OF THE NAMIBIAN CONSTITUTION AS IT CLEARLY DISAFRANCHISE AND DISCRIMINATE AGAINST REGIONAL COUNCIL AND LOCAL AUTHORITIES EMPLOYEES AS WELL AS CIVIL SERVANTS TO PARTICIPATE FREELY IN PARLIAMENTARY ELECTIONS.

Hon Speaker

I hereby take the floor to motivate this further timely and important motion. I beg this house to listen attentively to my submission, so that when one takes the floor, one will be in a position to debunk or to differ with me, purely on legal points and sound legal arguments as opposed to emotional outburst.

What is of cordial important to state is the fact that this motion cut across all political parties, all are affected equally and it is up to us to treat this motion as our own and not a Kauandenge or a NUDO motion

Hon Speaker

It is important to note that the right to participate in political life by citizens is a well-established principle of International Human Rights Law, as set out in Article 25 of the Universal Declaration of Human Rights (UDHR) and this aspect is further elaborated in Article 25 of the International Covenant on Civil and political Rights (ICCPR), which guarantees to all citizens the right and the opportunity, without unreasonable restrictions, to take part in the conduct of public affairs directly or through freely chosen representatives, to vote and be elected at genuine periodic elections.

Having quoted the above it is very clear that NAMIBIA cannot exist in isolation and being a co-signatory to this International Instruments our country domestic laws must be in line with international norms and standards as well.

Hon Speaker it is my submission that informed by the Preamble of our Constitution, our founding mothers and fathers I believe did not intent to prevent or discriminate against some members of our society, by inserting a clause in our constitution that prevents them to freely participate in National Elections.

Hon Speaker in an Interview that was done asking many members of the Constituent Assembly their views on the process of the Constitutional Drafting, you stated and I quote **“ The writing of our Constitution was based on consensus building amongst former enemies, the Constitution is not written for a particular generation, it has to serve Namibia through the ages and it must be accepted by the country as a whole “end of the quote** this you said at the time when you were Swapo Party Chief Whip, the book was written by Graham Hopwood.

In the same book that interviewed most of the living Founding fathers and Mothers Dr. Libertine Amadhila stated and I quote **“ You don’t amend the constitution every year, but after 20 years with experience particularly in the area of regional governance and so on, we are busy with some small amendments” end of quote**

Having read this various comments in this book by our founding fathers and mothers of our constitution, it was evident that even they realized that in some instances the constitution needs amendments as it is a living document, particularly those amendments that seek to improve the living standards of our people and not those self-serving, and fellow members of parliament I believe that the time has come for us raise above party politics and amend the constitutional provision of Article 47 sub article 1 (e) and (f) and sub article 2:

We can engage in a scholarly discussions on the fundamentals of a constitution or perhaps on the principles and concepts of a constitution. But to me that will be merely an academic discussion that will not help to arrive at the exit point of this whole discussion.

What we should also take into account is the fact that any student of constitutional law will tell you that we have different types of constitutions around the world. Amongst them are the following types of constitutions

- 1) Codified
- 2) Uncodified
- 3) Flexible
- 4) Monarchical
- 5) Republican

It is therefore my submission that we have a mixed legal system of uncodified civil law based on Roman-Dutch law and customary law.

Let's now turn to our constitution and read what it says about the subject matter at hand

Article 47 which deals with disqualifications of Members of the National Assembly, states the following:

1. No person may become members of the National Assembly if they

(e) Are remunerated members of the public service of Namibia or

(f) Are members of the National Council, Regional Council and Local Authorities.

This Article Hon Speaker, Hon Members are in direct conflict with the International Human Rights Law I quoted above and all International instruments of citizens' rights at the international level, but more importantly it is in conflict with our constitutional provisions as it goes against Article 17 (2) that states clearly and without any self-contradiction that :

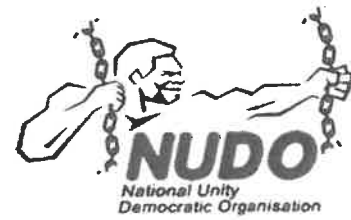
Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty one (21) to be elected to public office.

Hon Speaker it is a given fact that on any rainy, hot or cold day should anyone take Article 47 on review to the Supreme Court, that this Article will be declared unconstitutional. Furthermore any student of law will bet his or her money that the Supreme Court will not come to any other conclusion than to declare that provision unconstitutional.

Because the framers and drafters our constitution could not possibly have deliberately inserted that provisions under that Article to discriminate against a particular section of our citizens and took away their inalienable rights to freely participate in the process of elections, to be elected to public office.

This will even be self-contradictory further with the ideals, hopes and aspiration of this Nation, in our Preamble that states, that:

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Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace.

Whereas the said rights are most effectively maintained and protected in a democratic society.

This is the dream our forefathers and mothers had at the dawn of our independence, nothing less nothing more and we as leaders must strive at all times to make sure that this noble dream is manifested and protected now and tomorrow.

Hon speaker I had the unfortunate opportunity to feel how this Article can really discriminate against some Namibians, when I was forced to resign as a Councilor of the City of Windhoek in 2019, for me to be able to stand as a candidate on the party parliamentary list.

There were others capable Namibians across the political divide and all parties were affected, where competent members who could have been elected and who could have served this parliament with distinction, had to withdraw their names from the list, while others took a gamble and resigned from their positions.

Unfortunately as things are in the university some like me who took that gamble succeeded while others were less fortunate and they lost their livelihood because of this provision, as after they resigned from their jobs they ended up being unemployed as they did not make it to parliament.

Hon Speaker the question I have to this House is ,are we supposed to wait until next year again 2024 when we are about to go to the Parliamentary Elections to be confronted with this draconian, inhuman and unconstitutional provision right before parties are to nominate and submit their parliamentary list again?

Should we as elected representatives of the people of this country, deliberately turn a blind eye on this provision in our constitution that is clearly defective or should we address it and rectify it?

Should we wait for someone to challenge this Article in court and once it is declared unconstitutional, then only should we act while we know that to act now is the right thing to do?

I'm of the opinion that this issue calls for unity of purpose across all political parties, and that we are all affected by this provision that is unconstitutional.

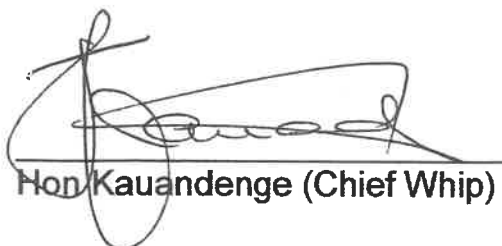
Therefore I believe that we must amend that provision to read "Upon being sworn in as Members of the National Assembly, members who are remunerated as members of the Public Service, Regional Council, and Local Authorities, must immediately resign from their respective positions with immediate effect.

It is only when we amend Article 47 that we will reflect the spirit and intention of our founding fathers and mothers, when drafting this constitution to be aligned with Article 17 of the said constitution.

Hon speaker it is my firm believe that we will not take months to debate this motion, thereby wasting precious time to do what is right and amend this Article.

It is my submission that this issue affect all political parties and it is in our best interest and for the protection of fellow Namibians rights that we move with precision and adopt this Motion, so that the line Minister can introduce a Bill in this parliament in order to amend that Article forthwith

I so Move.



Hon Kauandenge (Chief Whip)

NUDO
12 SEP 2023
PARLIAMENTARY OFFICE