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WHY PARLIAMENT CANNOT BUILD WITHOUT THE PEOPLE

Amid the ongoing tensions between Governors and the Senate, someone remarked almost in passing that such conflicts are not unusual. The National Assembly of Kenya and the Senate of Kenya have always clashed over laws requiring the concurrence of both Houses. The Constitution, they said, already provides a remedy: mediation.

That remark sparked a deeper question. If mediation happens behind closed doors, what ensures that the final law still reflects what the public was invited to scrutinize?

The Constitution anticipates these deadlocks. Under Article 110, both Houses must agree on Bills affecting counties. When they cannot, Article 112 establishes a Mediation Committee composed equally from both sides. From the moment the Committee holds its first meeting, the Constitution gives them exactly thirty days to agree. If they succeed, the mediated Bill returns to both Houses for approval. If they fail, the Bill lapses.

But mediation does not place Parliament above the people. In disputes over the Finance Act 2023, though not a product of mediation, the High Court of Kenya and the Supreme Court of Kenya affirmed the “traceability” principle.

Parliament cannot introduce entirely new provisions that were never subjected to public participation. However, amendments made directly in response to public input do not require a fresh round of participation. Only when changes fundamentally alter the character or scope of a Bill must Parliament return to the people.

The lessons drawn from court are unmistakable.

First, mediation exists to resolve disagreement between the National Assembly of Kenya and the Senate of Kenya, not to override public authority. It is a constitutional bridge between institutions, not a door closed to citizens.

Second, your attendance and voice during public participation are not the end of your civic duty. They are the beginning of your oversight. Citizens, institutions, and businesses have the right to track Bills, scrutinise amendments, and ensure that what becomes law remains faithful to the Constitution and to the views submitted. Where that fidelity is broken, constitutional remedies remain available through the Judiciary of Kenya

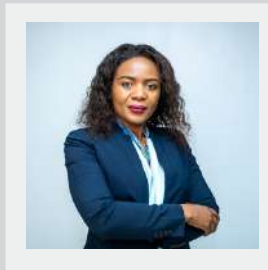


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