

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday 21<sup>st</sup> June 2018

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]*

PRAYERS

PETITION

### IRREGULARITIES IN DISPOSAL OF TATU ESTATE LAND

**Hon. Jude Njomo** (Kiambu, JP): Thank you, Hon. Speaker.

I, the undersigned, on behalf of the residents of Kiambu County, draw the attention of the House to the following:

THAT, Tatu Estate and Kofinaf Company Limited comprise of land estimated to be more than 10,000 acres located in Kiambu County with proposed mixed-use development which will consist of residential areas and public utilities;

THAT, the land to which Tatu City is proposed to be established is owned by Tatu City Limited and Kofinaf Company Limited;

THAT, on diverse dates in 2007, the residents of Kiambu County were invited to acquire and own land in the industrial park through the form of acquisition of shares with the belief and knowledge that the shares would eventually translate into ownership of the land equivalent to the shares being acquired;

THAT, the private placement and arrangement of acquisition of shares was eventually withdrawn for unclear reasons and the residents of Kiambu County were informed of the proposed establishment of a special purpose vehicle in the form of a limited liability company through which residents of Kiambu County would eventually acquire shares;

THAT, over 2,000 people in the local communities where the land is situated proceeded to set aside their hard-earned money to acquire the shares;

THAT, thereafter, the Tatu Estate and Kofinaf Company Limited were taken over by foreigners and the two companies have to date been illegally disposing off land owned by the local residents to unknown persons with the help of public officers in the Ministry of Lands;

THAT, the two companies, through their directors, have also been engaging in tax evasion in form of stamp duty which stands at an estimated Kshs185,287,002 and income tax which stands at an estimated Kshs1,389,652, 512, further defrauding Kenyans of their revenue;

THAT, the two companies have also hired foreigners with not only questionable work permits, but also in total disregard of the local labour market;

THAT, the continued disposal of land of the two companies to unknown persons is with a view of diluting and negating the shares held by local residents of Kiambu County;

THAT, there have been efforts made to have the matters raised in this Petition addressed by relevant bodies including the Ethics and Anti-Corruption Commission (EACC) and the Office of the Director of Criminal Investigation (DCI) in terms of inquiring into the matters raised in this Petition, including investigation into the alleged violation of rights to property of residents of Kiambu County who own land in the Estate;

THAT, despite the efforts to have the matter addressed by the relevant bodies, this has not borne fruits and there have been inordinate delays by the relevant bodies and the matter to date remains unresolved;

THAT, the local shareholders have also attempted to have the matters raised in this Petition resolved in terms of approaching the majority shareholders through their local foreign agents with no success;

THAT, to date, the two companies have not complied save for the winding up Petition No.29 of 2010, whose subject differs materially from the contents and prayers of this Petition;

THAT, the matters raised in this Petition are not pending before a court of law;

THAT, in 2016 a multi-agency taskforce comprising of representation from the EACC, the DCI, the Office of the Director of Public Prosecutions, amongst others, was formed to investigate the matter but the report of its findings is yet to be made public or even availed to the genuine owners of part of the land;

THAT, the foreign interests who own part of the land and who have been using clandestine and illegal means to dispossess the citizens of the Republic of Kenya of their rightful ownership have, through unknown means, been using police officers to intimidate local owners;

THAT, the Petitioners are fearful and conscious that part of the foreign interests in the Tatu Estate located in Kiambu County have been part of fraudsters targeting large chunks of land in African countries, given their similar trends in Congo, Nigeria, Zambia and Ghana.

The Petitioners, therefore, pray that pursuant to Standing Order No.216(5)(a), the relevant Committees of the House investigate and inquire into all the matters raised in this Petition with a view of:

1. Lawfully assisting the genuine citizens of the Republic of Kenya who own part of the land to resolve the falsified intrigues on the land which are largely and deliberately perpetrated and financed by foreign interests;
2. Resolving issues and intrigues and ensuring that the genuine land owners take possession and control of their land situated at Tatu City;
3. Causing the relevant State agencies particularly, the Directorate of Public Prosecutions (DPP) to make public or avail the report of the multi-agency investigation taskforce on the said subject matter;
4. Investigating the tax evasion issues and immigration status of the foreign interests in this land; and,
5. That, pursuant to Standing Order No.216 (5)(a), the relevant committees of the House make the appropriate recommendations thereof.

**Hon. Speaker:** Which Committee are you directing your Petition to? Is it the Departmental Committee on Lands?

**Hon. Jude Njomo** (Kiambu, JP): Hon. Speaker, I was leaving that to you because there are several matters. There are land matters, tax evasion matters and matters being investigated by the Directorate of Public Prosecutions and the DCI. I would like you to advise us on this.

**Hon. Speaker:** One Committee should take the lead. In any event, the matters touch on land. All those issues can be unearthed by the Departmental Committee on Lands.

**Hon. Jude Njomo** (Kiambu, JP): I agree with you.

**Hon. Speaker:** What is your point of order, Hon. Shamalla?

**Hon. (Ms.) Jennifer Shamalla** (Nominated, JP): Hon. Speaker, the Hon. Member has stated that this matter is currently not in a court of law. It is in the public domain that there are several suits and applications currently in the courts of law on matters touching on Tatu City.

**Hon. Speaker:** Is it specifically on this matter?

**Hon. (Ms.) Jennifer Shamalla** (Nominated, JP): It is in the public domain. There are several matters touching on Tatu City that are currently in the courts of law. In fact, the lawyers on record on both sides are Nelson Havi and Senior Counsel Ahmednassir.

**Hon. Speaker:** Yes, Hon. Jude Njomo?

**Hon. Jude Njomo** (Kiambu, JP): Madam Speaker, sorry, Mr. Speaker...

*(Laughter)*

I was just...

**Hon. Speaker:** Proceed.

**Hon. Jude Njomo** (Kiambu, JP): Hon. Speaker, I was just promoting the Hon. Member into a Speaker but now that she is not very happy about it, I think I will demote her. I am not aware of this matter being in court. The matter that was in court was concluded and I have quoted it here. I am not interested in other matters concerning Tatu City. I am interested in Tatu Estate. Tatu Estate and Tatu City are two different things. The land owners do not own the City. They own Tatu Estate not Tatu City. That is a different business. That is somebody who has bought land and is building a city. There is Tatu Estate that is owned by local owners in Kiambu. Those are people who have bought shares in a company, bought the land and, maybe, they have sold it to others who are in Tatu City. I am not interested in what Tatu City is doing. I am interested in Tatu Estate and Kofinaf Company Limited. Those are the firms that I am talking about. I am not talking about Tatu City.

**Hon. Speaker:** Very well. The Member for Makueni intends to comment.

**Hon. Daniel Maanzo** (Makueni, WDM – K): Thank you, Hon. Speaker for giving me this opportunity. The matter of Tatu Estate has been on for quite a while. The proof of ownership of land is the person who is actually registered under that land. If it is a land company, the people involved have to be indicated. The Constitution is clear on what should happen if foreigners are interested in land in Kenya. It is also clear on what should happen if it is a free-hold or a leasehold.

Anybody alleging that there is a matter pending in court should table documents for Parliament to see whether it touches in any way on what the Petition is presenting. I believe the matter can be directed to a relevant Committee, probably the Departmental Committee on Lands. Should matters be then presented, at that particular moment, the Committee can report back to you and then we will now have proper evidence that the matter is pending before court.

**Hon. Speaker:** Without even allowing a lot of comments on this...

**Hon. Members:** One more!

**Hon. Speaker:** Which one more again? The Chairman of the Budget and Appropriations Committee says it is about Tatu Estate.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. Tatu Estate is in Kiambu and many of the private investors are residents of our county. It is not just Kiambu Constituency. It is from Thika stretching all the way to Kikuyu, Kabete, Limuru and Lari. Therefore, it is a matter that is very sensitive to the people of Kiambu. Being the bedroom of Nairobi, Kiambu County has become one of the areas that prospective land grabbers and so-called private investors target.

This matter of Tatu City is very sensitive. Many of the people being swindled of their land are very hardworking peasants who were made to believe that, because of the colour of somebody's skin, those were serious private investors and, therefore, invested in what was sold as a multi-faceted housing and industrial park. People believed that there was an investment that these so-called private investors were coming to inject capital into. So far, other than speculating on land, they are now selling the land to other third parties, disenfranchising and stealing it from the original investors in the project - people who were made to believe that there were houses and industries that would be built.

Across the country today, if you want to make money, you just have to sell a concept on paper but never do anything on the ground. That is what is happening in Tatu City. These are not small people. Yesterday, we were talking about cartels in the sugar industry. Today, there being no coffee anymore in Kiambu because we have cut it down and are now "planting" houses, the cartels are now in the land industry. The Thika and Kiambu land registries are areas where corruption is very rife. In terms of the corruption index of the country, if you were to grade, the only county that would compete with Kiambu and Thika land registries would only be Kajiado County because there is a lot of land fraud there.

**Hon. Speaker:** Just a second. Before you proceed, let me recognise the presence of students and pupils from the following institutions:

1. Uthiru Genesis, Kikuyu Constituency, Kiambu County.
2. St. Canisius, Chesumei Constituency, Nandi County.
3. Kabirer High School, Nandi Hills Constituency, Nandi County.
4. St. Barnabas High School, Mbooni East Constituency, Makeni County.
5. Stella Marice, Imenti South Constituency, Meru County.
6. Gede Boys High School, Kilifi North Constituency, Kilifi County and,
7. St. Mary's Kababii, Mosop Constituency, Nandi County.

They are welcome to observe proceedings in the National Assembly.

*(Applause)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you Hon. Speaker for cutting me short. I noticed that the school that you have mentioned as coming from my constituency covers two constituencies in Kikuyu and Kabete. They have a school in Uthiru and another one in Thogoto area in my constituency. What you may not know is that my ancestral home is in Nandi County. My mother was born in Kipchabo Tea Estate in Nandi Hills Constituency.

*(Laughter)*

I, therefore, take this opportunity to welcome all those children. I must commend the DCI, EACC and the DPP for their renewed vigour in fighting corruption. If we do not deal with land injustices which affect very poor peasant farmers who invest their hard earnings, we can never fight corruption meaningfully in this country. People are made to believe that they will own a quarter or a half an acre where they can build their houses. It is very young Kenyans who invested in this land, Hon. Speaker. They saw people whom they believed were private investors and even believed that they would add value to the land. The question that Hon. Jude Njomo should also ask the Committee is to check the value that those private investors added to the land, even as they sell it to other people. It is not just a question of coming to this country and registering companies in some havens outside the country in Mauritius and elsewhere, and then you sell the land and take off with expatriates' profits from our own land.

The only reason the people of Kiambu fought the white man during the colonial time was for disinheriting them. Therefore, I want to ask the DCI and DPP, since they had started investigations on this matter, to give those reports to the committee that you will give this work, so that our people do not lose their ancestral land to crooks and criminals who masquerade as private investors.

With those few remarks, I beg that it is not only this land in Ruiru which has been taken by private investors but all over... In my constituency, over 1,000 acres of land in Nachu were set aside to settle squatters...

**Hon. Speaker:** That lengthy submission will be very useful before the Committee.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, I am well informed. I will table a report before the Departmental Committee on Lands on other parcels of land in Kiambu County, especially in Kikuyu and Thogoto which were set aside to settle squatters. They are 1,000 acres. It is being sold by the National Land Commission (NLC) and crooks in this town. It is only this House and the investigating agencies that can save the people of Kiambu from being disinherited from their little pieces of land. We do not have a lot of land. Let them go to Kajiado County and other areas where there is expansive land.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Suna East, I can see that you want to make a comment.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker. I stand to support the Petition which has been brought by Hon. Jude Njomo. This issue of Tatu Estate and Kofinaf Company Limited has been ongoing for the last four years. The issue of land in this country needs to be discussed in this House as a matter of national importance; like the way we discussed sugar. The biggest problem which this country faces is land. It is a big issue. The way Hon. Ichung'wah talked confirmed to me that he is not the son of a homeguard, but a peasant. He did not talk like somebody who owns land somewhere in Thogoto. He is a peasant farmer.

*(Laughter)*

I agree with the Member that even though those matters are before the courts and investigatory agencies of the Government, this House has a role to play to maintain the sanctity of ownership of land in this country. It is not the courts only that should do that. We represent the interest of the people of this country. So, if peasant farmers are deprived of their rights in Kiambu County, the same thing will happen to peasant farmers in Migori. I support the Petition. Anybody who has lengthy contribution to make like Hon. Ichung'wah should appear before the Committee. We

need to discuss land in this House. I will take the responsibility to bring a Motion for Adjournment to discuss how we will face the land issues. The Chairman of NLC is accused of many things every day. He is in the news every day for the wrong reasons like railway plots and others. As a House, we must come to terms that we have to address this issue of land once and for all.

Thank you, Hon. Speaker.

**Hon. Speaker:** Nobody will comment for more than one minute. Member for Githunguri.

**Hon. Gabriel Mukuha** (Githunguri, JP): Thank you very much, Hon. Speaker, for giving me this chance to comment on this matter. The Tatu Estate and Kofinaf Company Limited land is very expansive. It stretches from Kiambu Constituency all the way to Githunguri Constituency.

The shareholders who are from the local community were denied their rights by the foreigners who purport to be the owners of Tatu Estate and Kofinaf Company Limited. The whole country and world saw demonstrations by people of Githunguri Constituency recently, simply because they paid money. They bought shares and expected to be given land. However, they were denied their rights. When I represented my people from Githunguri Constituency, I was gagged.

**Hon. Speaker:** Member for Juja.

**Hon. Francis Waititu** (Juja, JP): Thank you, Hon. Speaker. It is a good that Hon. Jude Njomo has brought this Petition because there is a time I was a manager in those coffee farms while he was an electrician. He went round the coffee farms installing electricity.

*(Laughter)*

Apart from Tatu Estate and Kofinaf Company Limited, Mbo-i-Kamiti Company has not allocated land to people. I stay next to Jomo Kenyatta University of Agriculture and Technology but I do not have a title deed. It is good that he has brought this Petition, so that when we go to the Committee we raise those issues, so that people in Kiambu County can get title deeds.

**Hon. Speaker:** Member for Igembe North.

**Hon. Richard Maore** (Igembe North, JP): Thank you, Hon. Speaker. I want to support the Petition. I come from an area which has been doing adjudication for 52 years. The land officer inherits the corruption network and it goes on throughout. I wish to state that this is the time we should get the title deeds which the Government promised. This Petition has come at the right time, so that we can name those cartels which have been messing up the whole country.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kiminini.

**Hon. Chrisantus Wakhungu** (Kiminini, FORD-K): Thank you, Hon. Speaker. The Departmental Committee on Lands should move with speed, so that we do not waste a lot of time. The issue of land is not only in Kiambu County. It is also in the area where I come from, Trans-Nzoia County. We have a lot of issues in Meso Farm, Chepchoina Farm and Tawai Farm. We are requesting the Departmental Committee on Lands to go countrywide, so that we can resolve this matter once and for all.

Thank you, Hon. Speaker.

**Hon. Speaker:** Members, do not bother to come to check when you will contribute. If you have put in your intervention, I will give you an opportunity to contribute. We have agreed that you will contribute for one minute. Member for Kilifi North.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Speaker. I would like to contribute on this issue of land. Apart from those estates which are coming up in every place, the NLC and the Ministry of Lands are renewing expired leases secretly. Therefore, they are denying the people an opportunity to own the land on which leases have expired. That is why I want to support what the Member for Suna East has said. We need an elaborate debate on land in this House, so that we can look at those issues. For example, huge chunks of land in my constituency which leases have expired have been extended without any consultation at all by the Ministry of Lands and NLC. It is important that we bring a Motion to discuss this issue of land and expired leases in this country.

Thank you, Hon. Speaker.

**Hon. Speaker:** You should not bring a Motion for Adjournment. It should be a Motion that should have a resolution which is aimed to get the House to resolve in a particular direction. If you bring a Motion for Adjournment, the Question is not put. The time ends and the Members walk out. Whereas it is perfectly within your right, think of a Motion, its intention and what resolution you want the House to pass. Member for Suba South.

**Hon. John Ng'ongo** (Suba South, ODM): Thank you very much, Hon. Speaker. I want to contribute very quickly because you warned us that we should take only one minute. As I support the Petition, I ask myself why we always want to reinvent the wheel. Apart from handling this matter, the Departmental Committee on Lands should take all the previous reports on land grabbing in this country, illegal land acquisition, Ndung'u Report and Truth, Justice and Reconciliation Report.

Hon. Speaker, our reluctance as a nation to discuss these matters and agree is what is causing the problems. It will not spare any region, any community or any group. For the first time, I am hearing Kimani Ichung'wah talking about land injustices. It is something that he could not say a few months ago. I am shocked and impressed because, at least, as a country...

**Hon. Speaker:** Member for Endebess.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. The issue of land can be traced back to historical injustices. The Ndung'u Report has never been discussed. Even the historical land injustices and the Bethuel Kiplagat Report that was supposed to be tabled in this House have not been tabled. I support this. I hope it will look at issues of land injustices all over the country because that is the key area that we need to look at. If possible, we need to bring a Bill in this House to look into these issues, especially on land historical injustices.

Thank you.

**Hon. Speaker:** Member for Turkana Central

**Hon. John Nakara** (Turkana Central, ODM): Thank you, Hon. Speaker. I plead with this House to help us in Turkana County because the railway line and the pipeline are coming, but we do not have title deeds. Our land will go for free. I plead with the Departmental Committee on Lands to make sure that the people in Turkana County get title deeds so that they can benefit from land compensation.

Thank you.

**Hon. Speaker:** Member for Kangundo.

**Hon. Fabian Muli** (Kangundo, Muungano): Thank you, Hon. Speaker, for giving me the opportunity to contribute to this Petition. I rise to support it. The issue of Tatu City is common and widespread within the Kenyan jurisdiction. It is high time we fast-tracked these issues and

made laws that will progressively resolve the land issues. The issue of Tatu City, if tackled appropriately, will set a precedent to solve land injustices in this country.

Thank you.

**Hon. Speaker:** Very well. Of course, you know there is a chapter on land and environment in the Constitution. It is good to invite everybody to familiarise themselves with that Chapter and see what laws have been passed since the promulgation of the new Constitution, and what could be the *lacunas* pending. The Committee on the Implementation of the Constitution (CIOC) should also look at what challenges there may be in implementing the various provisions of the Constitution.

Next Order.

### PAPERS LAID

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2017, and the certificates therein:

- (i) State Department of Housing and Urban Development;
- (ii) State Department of Public Works (Vote 1095);
- (iii) The Receiver of Revenue - State Department of Housing and Urban Development;
- (iv) Office of the Controller of Budget;
- (v) Kenya Urban Roads Authority;
- (vi) National Authority for the Campaign against Alcohol and Drug Abuse (NACADA);
- (vii) NGOs Coordination Board;
- (viii) Western Kenya Rice Mills Limited; and,
- (ix) Stores and Service Fund.

The Annual Report and Financial Statements of the State Department of East African Community Integration for the financial year ended 30<sup>th</sup> June 2017.

The Report of the Auditor-General and Financial Statements of the Kenyatta International Convention Centre for the year ended 30<sup>th</sup> June 2016, and the certificate therein.

The Report of the Auditor-General and Financial Statements of Hamisi Constituency for the year ended 30<sup>th</sup> June 2016, and the certificate therein.

**Hon. Speaker:** Leader of Delegation, Hon. Shakeel Shabbir.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Parliament of Kenya Delegation to the African Parliamentarians Network Against Corruption (APNAC) Biennial General Meeting Held in Accra, Ghana from 17<sup>th</sup>-18<sup>th</sup> March 2018.

I am proud to say that our Hon. Speaker was unanimously elected as the President of APNAC. I take this opportunity to congratulate him and offer him our full support.

Thank you.

**Hon. Speaker:** Next Order.



## STATEMENTS

BUSINESS FOR WEEK COMMENCING 26<sup>TH</sup> TO 28<sup>TH</sup> JUNE 2018

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. Pursuant to the provisions of Standing Order No.44(2)(a), I rise to give the following statement on behalf of the House Business Committee:

The Committee met this week at the rise of the House to prioritise business for consideration. Members will recall that last week, we passed the Budget Estimates in the Committee of Supply. In this regard, the Chairperson, Budget and Appropriations Committee, has confirmed that the Appropriations Bill, 2018 will be published this weekend. The Bill will give legal effect to the resolutions made on the Budget Estimates, 2018/2019. Therefore, we shall consider all stages of the Appropriations Bill, 2018 on Tuesday next week.

As Members may be aware, failure to pass the Appropriations Bill by Wednesday next week will occasion this House to pass a Vote on Account, pursuant to the provisions of Standing Order 242 as read together with Article 222 of the Constitution. This is meant to allow the national Government to spend no more than a half of the Estimates tabled in the National Assembly until passage and assent of the Appropriations Bill.

In the same week, the House will also consider the Tax Laws (Amendment) Bill, 2018 and the Copyright (Amendment) Bill, 2017 in the Committee of the whole House. We shall also consider the following Bills in Second Reading:

- (i) The County Governments' Retirement Scheme Bill, 2018;
- (ii) The Land Value Index Laws (Amendment) Bill, 2018;
- (iii) The Health Laws (Amendment) Bill, 2018;
- (iv) The Warehouse Receipts System Bill, 2018;
- (v) The Saco Societies (Amendment) Bill, 2018; and,
- (vi) The Statute Law (Miscellaneous Amendments) Bill, 2018.

Hon. Speaker, on Questions before Committees, I wish to remind Members that CSs are scheduled to appear before Committees on Tuesday 26<sup>th</sup> June 2018. That will be next week on Tuesday.

(i) The Cabinet Secretary for Interior and Coordination of National Government will appear before the Departmental Committee on Administration and National Security to answer questions from Hon. Didmus Wekesa, MP, Hon. Martha Wangari, MP, Hon. Muturi Kigano, MP, Hon. Mohamed Duale, MP, Hon. Janet Ong'era, MP, Hon. Omboko Milemba, MP and Hon. Jeremiah Lomorukai, MP in the Main Chamber, Parliament Buildings at 10.00 a.m.

**Hon. Richard Maore** (Igembe North, JP): Hon. Speaker, if you can remember the last time we had this presentation, you advised that the Leader of the Majority Party or whoever is representing him reads the Questions so that we can see whether we are interested and so that somebody does not ask a similar question the following week or the same day and miss this presentation. It is not about Standing Orders. The Speaker guided, unless he withdraws.

**Hon. Speaker:** We have sat as the House Business Committee (HBC). Therefore the Leader of the Minority Party is absolutely right that it is just a technical issue. The Committee on House Rules and Procedure is meeting on Tuesday to do this work. It is only that the Report will not be ready by 26<sup>th</sup>.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. I would like to continue.

(ii) The Cabinet Secretary for Lands and Physical Planning will come on Tuesday before the Departmental Committee on Lands to answer Questions from Hon. Olago Aluoch, MP and Hon. Godfrey Osotsi MP in the Mini-Chamber of County Hall at 10.00 a.m.

(iii) The Cabinet Secretary for Education, Science and Technology will appear before the Departmental Committee on Education and Research to answer Questions from Hon. Rashid Kassim, MP, Hon. Gathoni Wamuchomba, MP, Hon. Kimani Kuria, MP and Hon. Godfrey Osotsi, MP in the Mini-Chamber of County Hall at 11.00 a.m.

Finally, the HBC will reconvene on Tuesday, 26<sup>th</sup> June 2018 at the rise of the House to consider the business for the coming week.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Ruweida, the Member for Lamu.

#### CHALLENGES FACING WILDLIFE SECTOR

**Hon. (Ms.) Ruweida Obo** (Lamu CWR, JP): Thank you, Hon. Speaker.

Hon. Speaker, pursuant to Standing Order No. 43, I wish to make a Statement regarding the challenges currently facing the Kenya Wildlife Service. Hon. Speaker, the socio-economic importance of the wildlife sector remains central to the economic sustainability of our country. For instance, besides being a major foreign exchange earner through various products, the wildlife sector, contributes to the positive growth of the hotel industry, curio, transport industry and other inter-linking private service sectors thereby acting as a direct source of employment opportunities for thousands of Kenyans.

It is worrying that despite the many benefits we get from the wildlife sector, it is currently facing many challenges due to mismanagement of the service by the policy makers and implementers. Corruption and interference arising from some of the NGO sector brokers, low morale amongst its workers leading to a high rate of exodus of staff to seek greener pastures, coupled with conflicts with rural committees having failed to protect people and their property against wildlife attacks are some of the challenges.

These challenges have largely been associated with inadequate facilitation of KWS at country and county wildlife conservation and compensation committees hence decision-making over key matters such as financial and procurement are centralised at the national level without the input of crucial service providers at the counties and sub counties, thus hampering efficient service delivery.

Hon. Speaker, even after the Wildlife Conservation and Management Act, 2013 came into force, wildlife sector management functions are still over-centralised at the national level with its authority and operational resources still retained at the Lang'ata headquarters, greatly hampering service delivery in the counties. Arising from this, there is an urgent need for the National Assembly to expeditiously intervene in addressing the challenges facing KWS with a view to restoring it to its lost glory.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Butere, Hon. Tindi Mwale.

#### SUSPENSION OF CHIEF EXECUTIVE OFFICER OF MUMIAS SUGAR COMPANY

**Hon. Nicholas Mwale** (Butere, ANC): Thank you, Hon. Speaker.

Hon. Speaker, pursuant to Standing Order No. 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Agriculture and Livestock regarding the suspension of the CEO of Mumias Sugar Company Limited. On 5<sup>th</sup> June 2018, the Board of Directors of Mumias Sugar Company Limited, through a special board meeting, resolved to suspend Mr. Nahashon Aseka, the CEO of the company, with immediate effect under unclear and suspicious circumstances. Later, the board appointed an acting CEO from within the company who is supposed to act in the position until further notice.

Hon. Speaker, Article 41(1) of the Constitution guarantees every Kenyan the right to fair labour practices. It is against this background that I seek a Statement from the Chairperson of the said Committee. In the Statement, the Chairperson should address the following concerns:

1. The circumstances under which the CEO was suspended.
2. The length of period the CEO will stand suspended as the Board did not give any indications.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, of course, I appreciate the fact that, as a Member of the area, you have a right to raise the matter here. But, I thought it would have been a lot easier if the affected person went before the Employment and Labour Relations Court because he could get faster remedies. I do not know how long this will take. The Chairperson, Departmental Committee on Agriculture and Livestock, how long do you think this will take you?

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Speaker. We have noted the concerns of the Hon. Member. As it were and as directed yesterday, the Committee is already dealing with an issue of national importance; the issue of sugar laced with mercury. So, we have only 10 days to report the progress of the Committee. What I suggest and request is that we handle this case one week after we do our report on the sugar. So, a week after, we will finish with the issue of the sacked CEO.

**Hon. Speaker:** Hon. Mwale, what the Chairperson says is absolutely correct. Right now, you may not want to veer into other matters which would have been handled faster in the labour courts. Anyway, you chose this route. It is the wearer of the shoe who knows where it pinches most. Or you are just doing a representative role for 'bonga points' Even that is valid.

**Hon. Nicholas Mwale** (Butere, ANC): Thank you, Hon. Speaker. The economy of my constituents is based on sugar plantations. Mr. Nahashon Aseka was running the sugar factory very well and, in fact, Mumias Sugar was recovering. So, when I saw them suspending him without any viable reason, I got concerned, and that is why I have come to raise the issue on the Floor of the House. I am elected by the people and the people are suffering and I am supposed to represent them.

**Hon. Speaker:** I am not saying that you have done any mistake to raise the point, but the Chairperson of the Departmental Committee on Agriculture and Livestock as you know and as we directed yesterday, is currently engaged in that other exercise and he has said they will only be able to look at this one alongside other matters which are before them. I do not know where this one falls in the list of priorities, but it will somehow be considered whenever they have the time to consider it. You have raised it and so 'bonga points' are there. You have done well. You have represented the people.

**Hon. Nicholas Mwale** (Butere, ANC): Thank you, Hon. Speaker. Is it possible I change it to the Departmental Committee on Labour and Social Welfare? We can pursue both avenues. We can be here and also go to the labour courts. It is better that way. I suggest that we commit it to the Departmental Committee on Labour and Social Welfare.

**Hon. Speaker:** I think it is a lot faster. You see even now you wanted it to be considered by two committees; the Departmental Committee on Agriculture and Livestock and the Departmental Committee on Labour and Social Welfare. You advised and I believe correctly so; let it be committed to the Departmental Committee on Agriculture and Livestock. They will look at it sometime in the future. That does not deny you or your constituent the right to seek other remedies elsewhere. Hon. Washiali, do you want to come to his aid?

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. What Hon. Tindi Mwale is raising is known to me. The decision of the board was made when they were in the process of negotiating for funding for Mumias. As the people from this region, we feel that someone is trying to play games so that Mumias is not supported by this Government. He is the one who wrote the proposal that he is currently defending. This matter requires some urgency and we are requesting the following: Now that the Departmental Committee on Agriculture and Livestock is busy with the issue of sugar, if you could redirect this to go to the Departmental Committee on Labour and Social Welfare since they are not as busy as the Departmental Committee on Agriculture and Livestock, they can quickly look into that matter and have it resolved.

**Hon. Speaker:** Why did you say that they are not as busy? Who is the Chairperson of the Departmental Committee on Labour and Social Welfare? Hon. Pukose, you want to respond?

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, I am not responding but I am looking at the urgency of this matter. I am also from that region in western Kenya. Hon. Mwale being a Member of my Committee on Energy, I know this is a matter that requires urgent attention of this House. As much as the Departmental Committee on Agriculture and Livestock is busy, it does not prevent them from writing to the Cabinet Secretary in charge of the Ministry of Agriculture and Livestock to respond to this matter even in the course of next week. We expect them to table their Report within 10 days and the counting started yesterday. The Clerk can still write a letter to the Cabinet Secretary in charge of Agriculture to respond to this matter and a date can be set for the Cabinet Secretary to appear before the Committee in Parliament and address this matter.

The CEO who was suspended should be given a fair chance to present his case before the Committee. We are the peoples' representatives. Article 95 of the Constitution gives us the power of representation. Therefore, Hon. Tindi Mwale is in order to represent his constituents on this important matter that will also save the people of Mumias region and the people of western Kenyan on the issue of sugar. Sugar is a very emotive issue in this country. We need to give him the necessary assistance as a House.

**Hon. Speaker:** Fortunately, Hon. (Dr.) Pukose was in the 11<sup>th</sup> Parliament and he remembers very well some of the reasons we did away with the procedure of Cabinet Secretaries writing to the Chairperson. The Member would start shooting supplementary questions to the Chairperson and the Chairperson would say: "You said we write and he has written to us this!" The issues he wants to be dealt with are the circumstances under which the CEO was suspended. If you go that route, you will get a very simple letter. The length of period the CEO was suspended... the Chairman will not own anything that will come from the Cabinet Secretary in that kind of response if you go that route. It would better...

The Committee is still doing that other work. Hon. Tindi Mwale, is it your request that this matter be directed to the Departmental Committee on Labour and Social Welfare?

Hon. Tindi Mwale, among other things, notes Article 41(1) of the Constitution guarantees every Kenyan the right to fair labour practices. That is why I am wondering, having

acknowledged this, what is this route you have chosen? The people to determine whether there is breach of this is the Judiciary?

**Hon. Nicholas Mwale** (Butere, ANC): I concur that we take it to the Departmental Committee on Labour and Social Welfare. The matter is very serious.

**Hon. Speaker:** Nobody is saying it is not serious. In fact, I am wondering: You say he was suspended on 5<sup>th</sup> of June and today is 21<sup>st</sup>. It does not appear like you took it seriously. Hon. Shollei can confirm this. Delay defeats equity. You sat on your rights for too long. This is a matter that you should have actually come to seek intervention on before.

**Hon. Nicholas Mwale** (Butere, ANC): I agree with you, but I was in the constituency performing some duties there. That is why I took some time to come. I am pleading with you Hon. Speaker.

**Hon. Speaker:** So, we direct this Statement to the Departmental Committee on Labour and Social Welfare?

**Hon. Nicholas Mwale** (Butere, ANC): Yes. Thank you, Hon. Speaker.

**Hon. Speaker:** Is the Chair or the Vice Chair here?

**Hon. (Ms.) Joyce Korir** (Bomet, JP): Thank you very much Hon. Speaker. I can confirm to this House that we have a very able Committee headed by Hon. Wario. If given the chance to handle the issue, I can confirm to this House that we can give a very comprehensive report on the same.

**Hon. Speaker:** Perfect. Maybe now, Hon. Tindi Mwale, the ‘*bonga points*’ are increasing. It is so ordered that the statement be sought from the Labour and Social Welfare Committee.

**Hon. Nicholas Mwale** (Butere, ANC): Thank you, Hon. Speaker.

**Hon. Speaker:** Perfect. Hon. Junet, have you put an intervention?

## POINT OF ORDER

### INDEPENDENCE OF THE LEGISLATURE

**Hon. Junet Nuh** (Suna East, ODM): Yes, Hon. Speaker. I have an issue to raise on a point of order. I want to raise an issue that I want to address to you as the Speaker and the Chairman of the Parliamentary Service Commission (PSC); an issue that is of great importance to the House.

Under the Constitution, there is the doctrine of separation of powers, where we have three arms of the Government - the Executive, Legislature and Judiciary. It is very dangerous when one arm of the Government decides or intends to overlap the other arm of Government.

I am privy - not reliably though - that there is an appeal at the Court of Appeal, but it is an issue of concern to me as a legislator. A High Court ruled that someone who is under investigation or someone who is appearing before a committee or, for that matter, proceedings of the House, can be enjoined through a court order. There is a ruling that is in the public domain that happened when we were on recess. We did not get an opportunity to raise it on the Floor.

The Constitutional Court ruled that anybody can go to court and get an order and enjoin the proceedings of a committee of the House, without putting into consideration the fact that the committee is working on behalf of the plenary where we are seated today.

Secondly, whenever we want to discuss issues that are before the court, we are always told it is *sub judice*; that we cannot discuss the matter as it is before a court of law. Why is it that

the Judiciary now wants to participate in the functions of the Legislature, when they say that we cannot discuss matters before them? This contravenes the Constitution. This is an affront to the independence of Parliament. We have a responsibility to defend the Constitution. When we swore here before the Clerk, we took an oath to defend the Constitution.

In the Constitution, Parliament has powers like the High Court to summon anybody to appear before it. For example, before the Committees on Agriculture and Livestock, there is this serious matter of contraband sugar that is before them. What happens if owners of that sugar go to court tomorrow and get orders stopping the committees from investigating? Is that the kind of Parliament that this country wants to have under this Constitution? We must tell the Judiciary, in no uncertain terms, that they are intruding into other arms of government's business.

It is our responsibility as Members of this House to protect and defend authorities that have been conferred by the Constitution to this House. And we derive our authority from the people. It is in the Constitution. We legislate on behalf of the people of this Republic. So, when a judge sits and writes a long judgment that makes the whole House malfunction... The committees of the House cannot function. Very soon they are even going to say we cannot sit. A judge might order that Parliament should sit only once a week. Or when he knows that we are going to discuss issues that are very important, he can just injunct you and tell you: Speaker, you cannot convene the sitting of the House this Tuesday until the court order is suspended. This is misuse of the powers of the Judiciary.

We respect the Judiciary. We normally allocate enough funds. We have very cordial relationship with the Judiciary. The Budget Committee normally gives them the money that they request for. But we cannot watch as the Judiciary becomes rogue. We cannot allow one arm of the Government to become rogue. Even when we pass Bills here and they are assented to by the President, they are taken to them. They are the ones who interpret. They have suspended many Acts that we have passed here. They suspended the Security Laws (Amendment) Act and the Computer and Cybercrime Act. We have never complained. We keep quiet and say: Let the Judiciary interpret the law as we have passed it. If there is any mistake made, we can amend and rectify. But when it is our turn to do our business, I do not know whether they want to protect cartels which are supposed to appear before those committees. I am foreseeing a scenario where some of those people who are being called before committees of the House will end up going to court and getting orders gagging the committees from hearing them. We cannot allow an arm of Government to become a refuge for cartels and criminals.

I do not want to belabour the matter. This House must stand up and defend the Constitution. We are not going to be the last parliamentarians. Parliament existed before us, since Independence, and it is going to be there after us. So, if we allow this Parliament to be mutilated through the Judiciary, it is us as Members of the 12<sup>th</sup> Parliament who are going to be held responsible. You are a renowned lawyer, Hon. Speaker. You should have been the Chief Justice if you were not here. Defend the Constitution. As the Chairman of PSC, do not allow that kind of thing to happen. Otherwise, you will go down in history as the Chairman of PSC who allowed Parliament to be gagged by courts and magistrates. Very soon, we shall get gag orders even from tribunals, like the rent tribunal that we have not paid rent for one of the houses here.

Hon. Speaker, I request that you allow a few Members to comment on it. The issue is so important to the House. Allow a few Members to speak to it. Thank you so much, Hon. Speaker.

**Hon. Speaker:** The Member for Kiminini, is it about this?

**Hon. Chrisantus Wakhungu** (Kiminini, FORD-K): Hon. Speaker, this is a serious matter. For heaven's sake, the Speaker of the National Assembly, by all chances, is senior than

the CJ. The Constitution is very clear: In the absence of the President, the Deputy President takes charge. In case the DP is incapacitated in one way or another, the person who becomes the Commander-in-Chief is none other than the Speaker of the National Assembly. So, you do not have to be the CJ of the Judiciary.

*(Applause)*

We do know very well that the three arms of the Government are guided by the principle of separation of powers. I think Hon. Junet was referring to this matter which was taken to court by Apollo Mboya and there are some specific clauses, particularly of the Parliamentary Powers and Privileges Act, which were set aside. It is similar to what happened to a Bill that was brought here in the 11<sup>th</sup> Parliament by Hon. Kaluma. The core business of the court is to interpret the law. We are here to enact law. The Executive is there to implement law.

Sometimes back, in the spirit of the handshake, we had said that the heads of the three arms of Government must meet in one way or another: His Excellency the President who heads the Executive, Hon. Speaker of the Legislature and the CJ of the Judiciary so that you can iron out these petty issues. As Hon. Junet has clearly put it, we do not want to be handicapped. This is something which is very serious. I think it is the highest time that Parliament woke up to be counted so that we can defend our space.

I thank you, Hon. Speaker.

**Hon. Speaker:** Leader of the Minority Party.

**Hon. John Ng'ongo** (Suba South, ODM): Thank you, Hon. Speaker. The issue that my Whip, Hon. Junet Mohamed, has raised is very fundamental and goes to the core and heart of the Constitution. The people of Kenya, while enacting this Constitution in 2010, decided to delegate their sovereign power to three arms of Government: the Executive, Judiciary and Legislature. And it was for good reason. In fact, it may not sound so prominent, but I would say that look at Article 1(3) where the sovereign power is delegated. The first delegation is given to Parliament and the legislative assemblies, meaning that the people of Kenya want Parliament to have the first delegated authority. We are the ones who represent the people. We represent them directly. Then the power is delegated to others such as the national Executive and their structures in the counties and finally to the Judiciary and independent tribunals.

So, the three arms of Government are exercising delegated authority or sovereignty of the people. More fundamentally is that each arm of Government is supposed to enjoy some level of independence if we are to operate in a democratic society. We need to be allowed to exercise independence. It would not make sense if the National Assembly is going to prescribe into details what the Judiciary and/or Executive is supposed to do. It is equally expected that both the Executive and the Judiciary would also respect the independence of Parliament, so that Parliament is not controlled from elsewhere. We have protected and protested when the power of the Judiciary is undermined through disobedience of court orders.

Equally, we also want to ask the Judiciary to be careful so that they do not infringe and interfere with other organs of Parliament, especially where the interference is in direct violation of the Constitution.

Hon. Speaker, I want to quickly mention some Articles of the Constitution which I feel are in order, if at all an order was issued by the Judge. I think it is where there is interference with our independence.

I want to start with the provisions of Article 117 of Powers, Privileges and Immunities, of the Constitution. It states:

There shall be freedom of speech and debate in Parliament. Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and Members.

So, Hon. Speaker, we are allowed to enact law to provide for our freedom of speech, freedom of debate and even immunities. That is why the Powers and Privileges Act became necessary. We are allowed to create rules through the Standing Orders. I am sure we are all aware of this. Articles 124 and 125 of the Constitution create the avenue for us to come up with Standing Orders to guide our operations. This is important because we have already been given the powers, as a Parliament, to control ourselves and debate in this House. When the Judiciary dictates to Parliament on what we can say, the bottom line is this: It is going to interfere with the freedom of speech in this Parliament and debate. Members are going to be afraid. They would not know how to express themselves because you do not know when you are violating the order that is purportedly issued by the Judiciary.

I do not even think you should pronounce yourself on this. What is there to pronounce yourself on? It is clear in law and it is in the Constitution. You have spoken about it before. Even your predecessors have spoken to it. Hon. Junet is reminding me that you are the Chairman of the Parliamentary Service Commission. Yes you are and can pronounce yourself on this, but you are just going to re-emphasize what is provided in law.

Probably what we need is some kind of high level engagement with the Judiciary because we do not want those unnecessary fights between two arms of Government. We need to engage with the Judiciary. If the Chief Justice is listening, I know he does not have direct control over the judges on what they rule on. But when they hold their meeting - I do not know what kind of meetings they hold - they should be advised on what kind of orders they can give. Some of those orders look ridiculous and give credence to some people who are saying that the Judiciary has been infiltrated by activists and activism. Whereas people like us do not mind about activism, extreme activism may destroy institutions. So, if at all there are some judges - and I do not know how many are there - who are being guided by activism, I just want to urge caution that they must understand that they hold an important office and discharge important functions that we must protect. The first House which should protect the independence of the Judiciary is Parliament and so, we equally do not want the Judiciary to interfere and weaken Parliament.

Thank you, Hon. Speaker

**Hon. Speaker:** The business appearing as No.8 is threatened. Just as Hon. John Mbadi has said, when the people of Kenya gave themselves this Constitution, it starts by saying: "We the people..."

They also stated in Article 121 about the quorum. If you look at the Order Paper, we may not transact that Order No.8. The intention of the House Business Committee was that this should be done away with today so that we can proceed in Committee next week. I do not mind Members commenting on the issue save to say that I hope even as you comment, you know that the impugned sections of the new Powers and Privileges Act were only sections 3, 7 and 11, not all. Indeed, for one of them, even the House had agreed that we needed to make some



adjustments. But the issue of the privileges of Members is obviously a sensitive one. Let us have Hon. Maore.

**Hon. Richard Maore** (Igembe North JP): Hon. Speaker, I wanted to reinforce what Hon. Junet was raising that we needed a statement from you. I know it is not the first, second or third time that the Speaker has joined in this kind of discourse. You recall quotes of Martin Luther King Junior. In one of his speeches he said:

“No man can ride on your back unless you bend it.”

For that reason, we invite you to give a ruling which will explain and give proper interpretation that it is inappropriate for the Judiciary to purport to interfere with the legislative powers. That is to mistake the independence of Parliament as if it is subservient to the whims of the Judiciary, which is very wrong. They should differentiate between the interpretation of the laws and interference with the legislative work of Parliament. So, when giving that ruling to us, we would wish that you protect the powers, privileges and immunities that have existed for parliamentary work. MPs should operate freely without fear of any consequences from any human being from the things or words that they utter before this august House. So, it is not something that can be wished away. There will always be conflict between the Legislature, the Executive and the Judiciary. It calls upon you to use your seat and remind the rogue judges who do not do their homework properly that they cannot injunct Parliament. It does not matter how careless or courageous they are. They should do their work of interpreting the law. After it has been passed, they should not interfere with the process of passing those laws as a good Judiciary.

Hon. Speaker, for that reason, we plead with you to take enough time to give a reasonable ruling. There has always been conflict between all jurisdictions and Parliament. Therefore, we indulge you to give a ruling. Also ask Members of Parliament not to listen to some of those rulings especially if they are touching on Parliament. We should ignore them with the contempt they deserve.

Thank you.

**Hon. Speaker:** Hon. Members, I can see a number of Members want to comment on this. Even though, Hon. Junet did not specially say what he wants me to do, let me just do this for the...I am not cutting out Members from contributing to this. I can see the Member for Suba North has placed an intervention and she appears to be smiling.

Hon. Members, I rearrange business and go to Order No.8.

## BILL

### *Second Reading*

#### THE TAX LAWS (AMENDMENT) BILL

*(Hon. (Ms.) Cecily Mbarire on 14.6.2018)*

*(Debate concluded on 20.6.2018)*

**Hon. Speaker:** Hon. Members, I confirm debate was concluded. So, I will put the Question.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

Hon. Members, I know Hon. Gladys Shollei is very keen to move her Motion. She has a balance of 55 minutes. Yes! Have you forgotten your own Standing Orders and the various Motions that you passed in February? Before we go to the next Order, I will allow a few more comments on this. Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker for giving me a chance. I want to agree with Hon. Mbadi that you have pronounced yourself on this issue before. But, that does not stop you from pronouncing yourself again, especially because of the decisions that have emanated from the courts of late.

I am saying this because coming from a civil society background I defend the rights of the Judiciary and in equal measure, defend the rights of the Legislature. When we talk about separation of powers, it is not powers that lean on one side. We have three arms of Government and each should do its work without interference. If after undertaking the work, one arm feels the other has undertaken excesses, then they can challenge the work of that other arm. For instance, what has happened in the Judiciary in the past is, upon our passing laws, they have declared sections of those laws unconstitutional. It is unheard of for any Judiciary to interfere with the workings of Parliament and injunct either a Committee or Parliament as a whole. I do not know in which jurisdiction this happens. Even though you pronounced yourself on this, maybe, we need a more reasoned argument that borrows from other jurisdictions so that the Judiciary can also understand that both in law and practice, you cannot injunct Parliament.

If they do not like what we are doing as the Legislature, then they should wait and when we are done with our work, whatever laws we pass, they can declare them unconstitutional. But, they cannot injunct us. In fact, what Hon. Junet has said is utterly ridiculous and can happen if we allowed it. Somebody can injunct Parliament from sitting. What would happen in the country especially at a time when we have something as critical as the budget? Right now, our Constitution has so many freedoms; including the right for public participation which I support. Somebody can go and say because he/she did not participate, Parliament should then not pass the budget. That is how ridiculous it can get.

I want to agree with the issue of injuncting Parliament. I do not want to comment on the one on privileges especially because you have already said you are seized of the matter. I wanted to speak specially on this issue because I have been supporting and defending the Judiciary. But, they must equally respect our role as MPs, they cannot just injunct us.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well spoken. Of course, Parliament works through Committees and so, when the Judiciary purports to injunct Committees of the House, what Hon. Millie Odhiambo has said is correct. This is because even the Budget and Appropriations Committee can be injuncted. What would that mean? Hon. Mbadi was suggesting that this is a matter that needs some discussion elsewhere. The Member for Kisii County.

**Hon. (Ms.) Janet Ong'era** (Kisii CWR, ODM): Thank you, Hon. Speaker for giving me an opportunity to contribute to this matter. First of all, this is a very weighty matter and I want to thank Hon. Junet for bringing it up. A time has come where we need to pronounce ourselves in

this Parliament. This is a matter that weighs on the doctrine of separation of powers and we must stand and protect our turf.

The Judiciary is interfering with our internal arrangements, how we deal with one another here in Parliament, our internal processes and procedures in committees. This means that the Judiciary has lost track. As I can rightly recall, in the 11<sup>th</sup> Parliament, the Judiciary even went to an extent of interfering when the two sister Houses were squabbling. We know very well that the Constitution provides for mediation when the two houses squabble. The Judiciary went ahead and made pronouncements. As I can remember at that time, I used to sit on the other side but, as a lawyer, I felt that was an interference of our turf.

Hon. Speaker, we urge you and it behoves upon you as the number three man in this country to make another pronouncement. It does not matter how many pronouncements you make, but I think it is important for the Judiciary to respect our turf. I thank Hon. Junet for bringing this up and I support him.

Thank you.

**Hon. Speaker:** I am always fascinated by the fact that parliamentary privileges have always been under attack but, historically, not from the Judiciary. If you recall the events, I keep reminding you about 4<sup>th</sup> January 1642. It was the King himself, who walked into the Chamber and took the Speaker's Chair demanding to be shown the five Members whom he referred to as rogue and were opposed to his taxation measures. That is when Speaker Lenthall came up with the famous words that in his place, he had no eyes to see or tongue to speak, except as directed by the House whose servant he was.

So, this House can direct me. We will not take anything that purports to injunct the House or its committees if the House so resolves. I hear what you are saying but sometimes you cannot always say you are blaming the Chief Justice. He does not tell judges what to do. Of course, there is the process of appeal. Maybe, perhaps, it may call to question as to whether the power to interpret the Constitution, which is provided for in Article 165, or indeed even to declare laws unconstitutional or illegal, should actually vest in the High Court or in the highest court. This is because you are dealing with three arms. Perhaps that power needs to be seated somewhere else because then there would be respect.

Hon. Millie Odhiambo, this is just food for thought. Yes, at the highest level, the Supreme Court, I do not think whether you will find that kind of interference. There will be time taken to look through. Sometimes there are laws that have been passed by both Houses. We have staff who do a lot of research work, including Members who also do research. Some of the Bills would also have received some very serious expert and professional advice from other quarters, may be even from the Executive. Is it right, within the context of separation of powers, that a single judge just goes and says what you have been doing is hogwash? That is food for thought. Maybe, it is high time you started looking at whether you should not cede that particular power and function in Article 163 of the Constitution, which gives functions of the Supreme Court and perhaps indeed even reduce the power of the Supreme Court to deal with appeals so that they can concentrate on matters constitutional and legality of laws and advising the Government as provided for within Article 163 on giving advisory opinions. Then there will be a little bit of respect, but now you give that power to the High Court. So, a single judge just goes and says what you have been doing is all nonsense and then you are told you can appeal. The Supreme Court goes to say: "No, what the Legislature has done was correct." This is actually what we want as a country. That is food for thought, Hon. Junet, but I agree it is a matter that, perhaps, we need to discuss elsewhere.

I agree also there is no harm in making further pronouncement that indeed we will look with disfavour, attempts at derailing the institution of the Legislature. When you injunct a committee of the House, essentially you are telling the House not to work because the House works through committees. It is committees that generate business. All Bills go through committees and committees bring their reports here. If you are not happy, as Hon. Millie Odhiambo has said, you can go and make whatever interpretation of what is the final product because to purport to injunct a committee, which is a creature of the House, is indeed telling the House: “You might as well pack and go home until such time as we will show you or tell you when to sit.”

Petitions have been brought here. Just now, Hon. Tindi Mwale and Hon. Jude Njomo brought petitions and then somebody goes and says “stop”. Another one goes and again says “stop”. So, of what use is it to provide, in Article 119 of the Constitution, that any Kenyan can petition Parliament? We might as well do away with Article 119. Article 165 is about the High Court.

Many of you who were in 11<sup>th</sup> Parliament would recall the good work which had been done by Hon. Peter Opondo Kaluma touching on Article 165. You remember this House managed to get two-thirds majority to pass those proposals which he had. The intention was to secure firmly and provide that there can never be any judicial intervention on a matter, consideration of which is provided for by the Legislature or its committees. Period! Maybe we could revisit. Hon. Mbui, I think you remember that very good Bill by Hon. Kaluma. That is history. Can we go to the business? We will address this matter, Hon. Junet.

Next Order!

## MOTIONS

### REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON THE COMMUNITY LAND REGULATIONS, 2017

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Community Land Regulations, 2017, laid on the Table of the House on Thursday, 26<sup>th</sup> April 2018 and pursuant to the provisions of Section 15 of the Statutory Instruments Act and Standing Order 210(4)(b), annuls Regulations 23 and 24 of the said Regulations.

*(Hon. (Ms.) Gladys Boss Shollei on 20.6.2018)*

*(Resumption of Debate interrupted on 20.6.2018 – Afternoon sitting)*

**Hon. Speaker:** Hon. Shollei, remember on each of these three Motions, you have a maximum of one hour. So, if all of them are to be passed, you are likely to speak for three hours. But that is not to say that Hon. Shollei wants to speak for three hours. So, do not get scared.

**Hon. Gladys Boss Shollei** (Uasin Gishu CWR, JP): Hon. Speaker, I do not think I will take that long.

The Committee on Delegated Legislation is empowered, under Standing Order No. 210, to scrutinise all regulations that are published by regulatory bodies. The Committee’s job is to ensure that all the laws comply with the Constitution and also all the applicable laws of Kenya.

So, in exercise of the powers conferred by Section 88 of the Community Land Act 2016, the Cabinet Secretary for Lands and Physical Planning published the Community Lands Regulations 2017 on 24<sup>th</sup> November 2017 via Legal Notice No. 279 of 2017.

Following this publication, the CS complied generally with Section 11(1) of the Statutory Instruments Act. However, the Committee noted that two regulations did not comply with the law. If we look back, and the Committee reviewed this; the purpose of the Community Land Act is to provide for recognition, protection and registration of community land rights. It is also supposed to ensure and protect the management and administration of community land. The Regulations further set out the role of the county governments in relation to unregistered community land. These regulations under the Community Land Act are extremely important to communities because they ensure that there is a procedure for settlement of disputes relating to community land registration. It also sets out procedures and the manner in which a community can be able to register itself and claim interest in certain land as community land. It also ensures that adjudication of land rights is done efficiently.

The Committee had several sittings to consider this. They had several meetings also with the Ministry of Lands and Physical Planning. The finding of the Committee is that the regulations which were among the many that came before the Committee comply with the law apart from two parts: Regulation 23 and Regulation 24. Regulation 23 deals with payment of royalties, rents, compensation and other payments in respect of exploration of natural resources on any particular community land. It contravenes Section 13 of the Statutory Instruments Act which requires that the regulation should not contain matters which, in the opinion of the Committee, should be properly dealt with by an Act of Parliament. It attempts to make laws or regulations that should be in an Act of Parliament. In the opinion of the Committee, the matter of royalties, rents, compensation and other payments in respect of natural resources are addressed in a better way in ministries. There are ministries that deal with natural resources, minerals, oil and gas. Therefore, it is not within the ambit of the Ministry of Lands and Physical Planning. Hence, the Committee found that Regulation 23 is an illegality.

The other regulation was Regulation 24 which seeks to regulate the prospect of mining on community land. It contravenes Section 13 which requires that instruments should not make some unusual or unexpected use of powers that are conferred by the Constitution or an Act of Parliament to a different body. Therefore, the Committee observed that Regulation 24 goes beyond the mandate of the Lands Act and matters that deal with community land. It ventures into the regime of natural resources which is outside its mandate. Having considered the above issues, the Committee recommends that pursuant to Standing Order No. 210(4)(b) and Section 15(1) of the Statutory Instruments Act, Regulations 23 and 24 of the Community Land Regulations 2017, be annulled for contravening Section 13 of the Statutory Instruments Act.

As I conclude, I wish to thank the Members of my Committee for their very hard work and exceptional commitment. I wish to confirm that my Committee has no backlog despite inheriting 28 pieces of legislation from the 11<sup>th</sup> Parliament. We have been able to keep up to date with all the pending regulations.

I beg to move this brief Motion. I would like to kindly request Hon. Daniel Maanzo who is a Member of the Committee on Delegated Legislation to second the Motion. Thank you, Hon. Speaker.

**Hon. Speaker:** I hope Members can appreciate these regulations. There are reasons which have been advanced. We were talking about land matters but I can see everybody has left the Chamber. The Members will then complain today and tomorrow about land matters but this

is when you should do the business. When you contributed the other time, it was other discussions but not business. Hon. Maanzo.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker, for giving me an opportunity to second this Motion. Without belabouring the point, it is crucial to note that natural resources do not lie within the ambit of the county governments. This is in Article 62 and the Fourth Schedule of the Constitution.

We respect and appreciate the communities and their rights to resources. There are traditional rights and all others in these communities. However, when it goes to mining or minerals, you find that there is a Mining Act. When you go to petroleum, there is the Petroleum (Exploration, Development and Production) Act. Therefore, the Cabinet Secretary overstepped his mandate by making these regulations which were already covered in other areas. It contravenes the Statutory Instruments Act. Therefore, the Committee annulled the regulations for those reasons. It is very clear in the Mining Act No. 12 of 2016.

Hon. Speaker, I second.

*(Question proposed)*

**Hon. Members:** Put the Question.

**Hon. Speaker:** Unfortunately, I cannot put the Question because there is no quorum. On the request form, the first one is Hon. (Dr.) Pukose. The next ones are Hon. Kipyegon Ng'eno and Hon. Baya but they are not in the Chamber. The next one is Hon. Robert Mbui.

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Speaker, for giving me this opportunity to contribute. It is good because you have realised that I am a serious Member who does not put his card in the intervention slot and disappear.

I want to declare that I am a Member of the Committee on Delegated Legislation which has the mandate to ensure that all regulations made in this country by the bodies that are allowed to make them conform to the Statutory Instruments Act. I want to thank the Committee Members for the work which they did very seriously under the able leadership of our Chair, Hon. Gladys Boss Shollei, the Vice Chair and a very active secretariat. This Committee faces several challenges. There are two things which I have noted about regulations that come to this House. Remember that the purpose of the Committee is to actualise every law that passes from this House. Regulations have to be made so that those laws can be actualised. One of the problems we face is timely avoidance. The other one is legislation by the Executive through the backdoor.

On the issue of timely avoidance, you notice that the Statutory Instruments Act has set a certain amount of time within which the Committee must receive the regulations, go through them and then give a report to the House. Normally, the report would be to annul or accept a regulation in its entirety because the Committee has no jurisdiction to make any amendments. I have noted severally that when the House is about to go for recess, that is when some of the regulations are brought to the House. Because of the fact that there is a certain period of time within which the regulations have to be considered and the House is on recess, some of them lapse and then they take the full force of law. As we move forward, it is important we figure out whether we can make some changes to that Act, so that we can allow a longer period to handle every regulation. Any regulation should not be administered before this House pronounces itself on it.

The other one is legislation by the people who are given that mandate to make regulations. You have seen that the CS is given an opportunity to make regulations many times,

but he or she makes those ones that go outside the principal Act which he or she is supposed to follow. These Community Land Regulations are basically one of those ones that go against the Statutory Instruments Act. Our able Chair has pointed out where we have a problem in the two sections. Regulations 23 and 24 talk about the exploration of natural resources within the community land.

The Statutory Instruments Act, Clause 13(c) says that we should not handle matters which can be resolved using an Act of Parliament. Some of these ones require an Act of Parliament. If the Act that we have passed does not specifically refer to some of those issues, I do not think the CS has any ability to come and create new things because they will be going beyond the mandate that is given under this Act.

The second part is that the regulations should not make some unusual and unexpected use of the powers conferred to it by the Constitution or the Act. In this case, you notice that the Ministry of Lands is trying to create regulations to do with issues of natural resources. These are things that could be handled under the Ministry of Petroleum and Mining and Ministry of Environment and Forestry. To be honest, everything that we do is on land. Housing and even schools are on land but you cannot say that because everything is on land you can legislate for everything. It is important that we annul this so that the Ministry can note and the National Land Commission (NLC) can also note their mandate and constrain themselves to things that are in their mandate.

With those few words, I support the Committee's recommendation to annul these regulations in totality and hope that they would be brought back with those changes already appearing in them.

Thank you.

**Hon. Speaker:** If that is what is purported to be done, it even offends Article 94 of the Constitution that says that no person, body or authority has power to make provisions having the force of law in Kenya except Parliament. You have raised a good point, Hon. Mbuyi. The next one on the list is Wambugu.

**Hon. John Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Motion. First, I confirm that I am a proud Member of this Committee led by our able Chairman. Time has come when all the regulation-making bodies should realise that the current Committee is very keen and thorough. We normally go through these regulations section by section and rule by rule so that we make sure that whatever comes out is something well-reasoned.

I share the sentiments of Hon. Mbuyi that these regulations were in order apart from Regulations 23 and 24 for obvious reasons. The same has been clearly said by the honourable Members who have spoken before me. The bottom line was that matters of royalties, rates and compensation are not matters to be dealt by the Ministry of Lands. These are issues that can be well captured by the Acts of Parliament like what we did recently on the Bill on petroleum about how the oil proceeds were to be shared.

With those few remarks, I beg to support.

**Hon. Speaker:** The next one is Hon. Seroney.

**Hon. Sammy Seroney** (Nominated, WDM-K): Thank you, Hon. Speaker. I was preparing for the next agenda on the same delegated legislation Motion. Thank you.

**Hon. Speaker:** Hon. Wanyonyi.

**Hon. Timothy Wetangula** (Westlands, ODM): Thank you, Hon. Speaker. I support the annulment of these regulations. I want to declare that I am Member of this Committee. We took

our time to go through these regulations –the process of preparing them and the mandate given to the CS to make regulations. As the Chairman has ably observed, it exceeded the mandate given in the Act. We found this a gross contravention of the legislation. As you also observed, that is the mandate of this august House. The CS can only make regulations as provided in the Act. So, anything that is done outside the parent Act contravenes the law. That is why we decided to annul them. There are Cabinet Secretaries who are given mandate to make regulations and they take it seriously; they do their homework very well. When they come to do the presentation, you can see they have understood the mandate given to them. I have even looked at the other pieces of legislation. Everything comes in focus. So, when we are looking at it, we look at it wholesomely including other pieces of legislation that could be offended by the regulations.

I support the annulment. They can be given another chance to go through the regulations and come back to present them afresh. Thank you.

**Hon. Speaker:** I must thank the current Committee. They have put a lot in the report. Is there somebody desirous of contributing to this? Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. To start with, I must congratulate the Committee. For the first time, I have seen a very clear report on regulations which has been well summarised telling us exactly where they have made changes. For example, they have annulled this one for very good reasons.

The other comment that I must make is that they have looked at the relationship between the county and the national Government. That is a very important point in this country because we are going through a period where things are settling. Therefore, if the Cabinet Secretaries scrutinise and this Committee then scrutinise it, then we will avoid a lot of wrangles that will come between the two governments.

With that, I support the Report.

**Hon. Speaker:** There being no other person to contribute, I call upon the Mover to reply.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Hon. Speaker, I thank the Members who have contributed to this Motion. I also appreciate the support that they have given the Motion. It goes to say that Members of my Committee have looked thoroughly at this legislation. We do not take our work lightly. We have made sure that the regulation-making authorities follow the Constitution and also take seriously the parent statutes that make them.

With that, I beg to reply.

**Hon. Speaker:** Very well. Just to note that indeed this Committee's origin was the institution that we were discussing earlier in the day called the Commonwealth Parliamentary Association (CPA). We never used to have it. I can see this is a committee that is doing very good work. In the 11<sup>th</sup> Parliament, Members forgot what this Committee was all about.

I am not surprised that Hon. Nyikal has made the kind of comment that he has about this Committee. Several regulations in the last Parliament went unconsidered. I must commend Members of this Committee.

Because of the reasons provided by Article 121, we will not do what we should do. So, we move to the next Order.

*(Putting of the Question deferred)*

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON THE PUBLIC  
FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2018



**Hon. Speaker:** The Chairperson of the Committee on Delegated Legislation.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Senate Monitoring and Evaluation) Regulations 2018, laid on the Table of the House on Thursday, 26<sup>th</sup> April 26 2018, and pursuant to the provisions of Section 18 of the Statutory Instruments Act and Standing Order 210 (4)(b), annuls in entirety the said Regulations.

As already indicated, the Committee undertook its task as provided for in Standing Order No. 210. It is important for this House to note that if the Committee considers the Regulations brought before it and it does not allow them or consider them within the stipulated time, they have the effect of law. Therefore, the Committee has been working extremely hard to ensure that we do not get regulations become effective by default. These Regulations on this item were published in exercise of the powers conferred by Section 24 of the Public Finance Management (PFM) Act, 2012. These regulations were published by the Parliamentary Service Commission (PSC). They were published and named “the Public Finance Management (Senate Monitoring and Evaluation) Regulations 2018” under Legal Notice No. 71 of 2018. Following the publication of these Regulations, they were tabled in the House on 27<sup>th</sup> March 2018 and were immediately committed to the Committee on Delegated Legislation for scrutiny to ensure that they comply with the Constitution and the Public Finance Management (PFM) Act.

The purpose of these regulations was to provide for establishment and operationalisation of the Fund in exercise of the Senate’s oversight function over county governments.

The Committee considered the Regulations in its sitting that they held on 21<sup>st</sup> April 2018. Once they did so, the Committee looked at the Regulations against provisions of Article 94(6) of the Constitution, the Public Finance Management (PFM) Act, 2012 and the Statutory Instruments Act No. 23 of 2013. It also reviewed the Regulations against the interpretation of the General Provisions Act Chapter 2 in which the regulatory-making body must ensure that those regulations do not offend any of these Acts of Parliament.

*Prima facie*, the PSC complied with Section 11(1) and actually submitted the Regulations to the Committee within the stipulated period. We cannot fault them along that. However, the Regulations are inconsistent with Section 205 of the Public Finance Management Act 2012. This section empowers the Cabinet Secretary to make regulations pursuant to the PFM Act. Therefore, the PSC cannot make regulations pursuant to the PFM Act as it lacks the power to do so.

To this end, the Regulations therefore, were contrary to Section 24 of the Statutory Instruments Act which provides that the statutory instruments cannot be inconsistent with the provisions of enabling statute, on this case, the PFM Act. We note that in publishing these Regulations, the PSC relied on Section 24 of the PFM Act. It is of importance to note that this Section only gives the PSC the mandate to monitor the funds but does not donate any regulatory-making authority on the PSC. That is a very important point that we would like noted. I know that the Committee has had a lot of difficulties with these Regulations. I know there was a bit of unpleasantries that were exchanged with Members of the Senate who felt that the National Assembly is being unfair to the Senate by not providing the funds to them to undertake activities in the counties.

But, I must say, for the record, that the Committee has no vendetta with the Senate, whatsoever. I know that some Members of the Senate even said to me “forget the law. You do not need to follow the law all the time. We need this Fund done.” What I said to most of them is that, first and foremost, I am an officer of the court. I am a lawyer of many years standing. I know *Mheshimiwa* Daniel Maanzo was my student at the university. Very prominently, the Leader of the Majority Party at the Senate, Hon. Murkomen, was my student also. I said to myself that I cannot, sitting as a Chair, commit an illegality. What will I tell my students? What will I tell people who know me as a renowned lawyer? I have a reputation beyond Parliament. I have a reputation with universities where I am a guest lecturer. It is very important that I do not just do something for expediency, as a Member of Parliament. I must do it for my general reputation.

The Committee on Delegated Legislation has many distinguished lawyers. There is Hon. Alice Wahome, Hon. Shamallah, Hon. Mariru, Hon. Daniel Maanzo – there are many senior lawyers within that Committee. I do not think any of them could dare taint their reputation by allowing regulations that definitely offend the Constitution and the PFM Act. It is about the rule of law. We need that to be set on the record so that it is not felt that we are not doing what the 11<sup>th</sup> Parliament did which was not to approve funds for the Senate. A majority of the members of the Committee were not in the 11<sup>th</sup> Parliament. I do not think they have that memory of what transpired.

So, that was one reason the Regulations were found to be contrary to the Constitution. Clearly, there was confusion when these Regulations were published by the PSC. What we have asked the Senate to do is to let this go back to the CS of the National Treasury to publish the Regulations. We said to them and I said this many times that it is safer for us to nullify the Regulations here than for us to approve it then Omtatah or someone will go to court and they will be declared unconstitutional and the matter will be locked in the courts for the next four years or so. It is safer we nullify the Regulations so that they can be brought back and resubmitted to the Committee taking into account that they obey the PFM Act.

There was also another reason the Committee nullified these Regulations. It was clear that there was inadequate public participation as required by Articles 10 and 118 of the Constitution and pronouncements that have been made by the courts that it is necessary for public participation to be undertaken before any regulations are published. We clearly looked at the Explanatory Memoranda which was submitted alongside the Regulations and noted that the National Treasury, the Parliamentary Budget Office and Senators were the only people consulted on these Regulations; even Members of the National Assembly were not consulted. The county governments were not consulted. Therefore, that is the second reason these regulations must fail.

*[The Speaker (Hon. Justin Muturi) left the Chair]*

*[The Deputy Speaker (Hon. Moses Cheboi) took the Chair]*

The third point is that Members also found that these Regulations were discriminatory to the extent that they do not provide for facilitation of all Members of Parliament to undertake monitoring and evaluation as envisaged in Section 24 of the PFM Act. Article 93 of the Constitution of Kenya establishes Parliament – that is both the National Assembly and the Senate. Therefore, they should get equal treatment.

The Public Finance Management (PFM) Regulations seek to establish monitoring and evaluation funds specific to the Senate thereby excluding Members of the National Assembly who require similar facilitation to effectively undertake their oversight role. It is therefore the recommendation of the Committee that pursuant to Standing Order No.210(4)(b) and Section 15 of the Statutory Instruments Act, the PFM Regulations and the Senate Monitoring Evaluation Regulations be annulled in its entirety for the aforementioned reasons. I would like to point out that the nullification of the proposed regulations does not prevent the Senate from resubmitting the same regulations but ensuring that the shortcomings are rectified. The Committee on Delegated Legislation is ready to review and scrutinise the regulations once they resubmit them. These shortcomings are extremely serious considering that we have expanded freedom among members of the public. If the Committee had approved these regulations, they could have been taken to court in order to test them against the constitutionality and compliance.

As Parliament, we know there was a case of the Constituency Development Fund which was declared unconstitutional and was struck out by the courts in 2015. We also had the situation where we had the National Government Affirmative Action Fund Regulations which were also challenged in court. Therefore, we have not taken the fact that we are nullifying these regulations lightly because we have looked against history, and what the courts have said before. Therefore the Committee felt that a stitch in time saves nine. In this case, it saved us many court cases and therefore, it was more efficient and prudent to nullify the regulations.

As I conclude, I want to acknowledge the hard work that my Committee has dedicated itself to. Hon. Deputy Speaker, I can repeat this again because you have taken the Chair: Our Committee does not have any backlog despite inheriting 28 pieces of legislation, we are up to date and there are no pending regulations before us. This is because my Committee is extremely dedicated and I want to appreciate them for that.

With those few remarks, I beg to move and request Hon. Wambugu Munene, Member for Kirinyaga Central and who is also a Member of the Committee to kindly second.

**Hon. John Wambugu** (Kirinyaga Central, JP): Thank you very much, Hon. Temporary Deputy Speaker for giving me this chance to second this Motion. At the outset, I must say that the Committee on the Delegated Legislation agonised over these regulations before the Committee's decision to annul them. As the Chair pointed out, this is the Committee that was made up of quite a number of good lawyers. The Chair forgot to say that I was their student. When you look at these regulations, the enabling provision was Section 205 of the PFM Act of 2012. Clearly, that section gives the mandate only to the Cabinet Secretary. These regulations were made by the Parliamentary Service Commissions which clearly did not have the powers to do those regulations. All is not lost. As it has been said by the Chair, the PSC can always request the Cabinet Secretary to do the right thing and republish these regulations after also considering the shortcomings which we have found in the Regulations. I remember there was a heated debate in the room because of that regulation. We had to take time out because there was a lot of pressure especially from the Senate but we could not save these Regulations, much as we wanted. We have nothing against the Senate; they are our brothers and sisters. We want them to be enabled and to get the money to at least monitor what is happening in the county. But of course we must follow the law. As if that was not enough, we noted that when these Regulations were being made, there was no adequate public participation. We all know that without adequate public participation which is mandatory under Article 10 and Article 111 of the Constitution, regulations or any Act of Parliament cannot go far. We noted from the memorandum that only three institutions were consulted. That is the National Treasury, Parliamentary Budget Office and

the Senators. Members of the National Assembly were not consulted. We believe that before these Regulations were published, Members of the National Assembly need to be consulted and their views taken.

Last but not least, we noted that these regulations are discriminatory in nature in view of the fact that they are only providing for the Senate when the law is very clear that Parliament consists of both the National Assembly and the Senate. By providing money for monitoring and evaluation to the Senate alone, we felt that it was discriminatory. Considering that Members of the National Assembly oversee 85 per cent of the Budget when the Members of the Senate only oversee 15 per cent, we felt that there was discrimination. There is a false belief that the monitoring aspect of NG-CDF Act belongs to the Members of the National Assembly. That is not true. There is no money provided for the Members of the National Assembly in discharging the mandate of overseeing the activities of the national Government.

With those few remarks, I second.

**Hon. Deputy Speaker:** Even before I put the Question obviously, I have to commend the Committee because it is one of the most efficient committees of the House. I hope you are dealing with the other one on the Chairman's manual in your other subcommittee with the same vigour.

*(Question proposed)*

I will give the first shot to the leadership of the Minority Party, Hon. Junet.

Sorry, I did notice that you have the Deputy Minority Leader, obviously, he would be the one to take over in the absence of the Leader of the Minority Party. You are lucky and for other reasons I can see your card is being used elsewhere, let us proceed.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Deputy Speaker. First and foremost, I would like to thank the Chair of the Committee and the Committee for doing a very good job. This is one of the most important committees. The Chair has shown serious competence. This is the importance of electing learned people to the House. You benefit from their experience, competence and skills. I am very much impressed by the good work the Committee has done.

**Hon. Deputy Speaker:** You said you are impressed by the competence?

**Hon. Junet Nuh** (Suna East, ODM): Yes. Not anything else, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That is okay. Proceed.

**Hon. Junet Nuh** (Suna East, ODM): On anything else, I reserve my comments for later outside the Chambers.

The matter is very clear. I do not know whether the Senate is operating within the precincts of Parliament or from outside. The PFM Act is very clear that it is only the CS that can publish regulations. They cannot just sit down in one corner of Parliament Buildings and come up with their own regulations. These are people who have gone to school. There are lawyers in that House. I used to know it is a House of old men and women, but I knew they are also learned. Even when you retire, you retire with the knowledge you acquired in school. You do not leave it outside. You cannot just sit in a room and do your own regulations and expect the National Assembly to pass them. This is a serious House. They cannot pass anything that is contrary to the law. It is only the CS for National Treasury, Henry Rotich, who can publish those regulations, then they come here, we take them to the committee, and they look at them to see whether they

are in conformity with the Constitution. From there, we can think about whether to pass them or not.

Having said that, I do not see why we should give money to the Senate. Money for monitoring what? These people earn salaries and allowances like us. They have mileage allowances. We use our mileage allowance to go to our constituencies every weekend and do monitoring. In the last one week, Hon. Deputy Speaker, I have not seen you in the House. You must have traversed the whole of Olenguruone and everywhere that I cannot pronounce their names with your own allowance.

There is a misplaced conception on the functions of the Senate. If you go to Article 95 of the Constitution, which covers the National Assembly, it says that the National Assembly oversees state organs. The Senate oversees revenues allocated to county governments. Then you find one day on TV the Senate summoning NCPB and EACC. Those are State organs that are supposed to be overseen by the National Assembly. The Senate has no mandate in this Constitution to call NLC, EACC, NCPB. Those are State organs under this Constitution. They are not county organs. Those are not markets that are found in villages that you need to call the market inspector to ask him how much revenue he has collected or not collected. The Senate must know their role. I know the Constitution was new but now it is no longer new. The Constitution is almost 10 years old. We are even thinking of amending it so that we can make it better. If up to now they cannot understand their role, their mandate...

I am told that these Regulations are supposed to give every Senator Kshs3 million. It cannot happen. I can tell you for free that it will not happen and it cannot happen. Every Senator should get Kshs3 million per constituency to oversee what? So, if I have eight constituencies in my county, that means Kshs24 million per year? That is so much money. They are thinking that because the National Assembly has the National Government Constituencies Development Fund (NG-CDF), they should also have some money. The NG-CDF is not our money. You know the way the courts and civil society activists fought us. We left it to a committee on the ground. They sit on their own. Actually, a Member of Parliament is not allowed to take NG-CDF proposals to the board. He will be chased away. They will tell you: "We can only receive proposals from the chairman and the fund manager." Chairmen of NG-CDF are now so powerful that they do not even want to talk to Members of Parliament anymore. He can decide anything to do with that money. Here, they think because National Assembly has NG-CDF then they must get some money to loiter around the counties. We cannot allocate funds for '*tangatangaring*'. We can only allocate money for the purposes of doing good for the public and the country.

They even went further and said that it is the National Assembly... We cannot deny our colleagues in the same Parliament funds, but those funds must be processed in accordance with the law and the Constitution.

Hon. Deputy Speaker, I totally agree with what the Committee has recommended; that we should annul these Regulations because they are contrary to the law, the Constitution and the statutes. Senate can do better than that. They should stop calling organs of the national government. They should deal with county government issues. They have no business calling organs whose oversight mandate has been given to the National Assembly by the Constitution.

With those remarks, I support.

**Hon. Deputy Speaker:** If you speak briefly like that, we probably will have many Members speaking on this Motion. Let me go to this other side. By the way, I am not governed by the Standing Orders, because the people who are recognised and whom you voted to give priority are the Leader of the Majority Party and the Leader of the Minority Party. The deputies,

unless with written permission, I will give them opportunity. They are almost on top of the list anyway. They are doing very well on the list. I will give Hon. Cecily Mbarire on this side and then I will proceed to this other side. Luckily, the leadership is also at the top of the list of requests.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Deputy Speaker, I rise to support this Motion by the Committee on Delegated Legislation and first begin by thanking them for a job well done. Just to note that the Chair of the Committee has told us that they have no backlog at all. When they took over, they had 28 pieces of legislation waiting on the table; their in-tray was full but now it is empty. That shows this is a Committee that is committed, but also has a great leadership in the name of Hon. Gladys Shollei. I am proud that the women we have elected to these committees are doing a good job. That is something that everyone else should follow, both men and women that are leading various committees.

**Hon. Kathuri Murungi** (South Imenti, Independent): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Kathuri Murungi, what is your point of order? What is out of order? Is it that Hon. Cecily Mbarire talked about some good leadership in a committee?

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Deputy Speaker. You know Kenyans out there might think that men came to this House to sleep. Since you are the chair of the Liaison Committee, can you also table names of male chairs, including Hon. Kathuri and Hon. Opiyo Wandayi, who are also doing equally well in the committees that they chair so that Kenyans can judge us objectively?

**Hon. Deputy Speaker:** You see, on this particular one, Hon. Kathuri, I am only governed by rules of relevance. True, you are doing such a great job at the Liaison Committee and elsewhere. In fact, there are also other chairs who are doing very well. But on this particular one, what Hon. Cecily Mbarire is doing is simply appreciating a specific committee for a specific job that they have done. When you will bring a report, Hon. Member for South Imenti, you will be applauded if you are doing well and I think you are. In my opinion, I know you are giving your best shot. Being an Independent Member and you also took up the chairmanship of an independent committee and I know you are doing very well. You will be appreciated very strongly when you bring a report. Hon. Cecily Mbarire, please proceed.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Deputy Speaker, I urge the Hon. Member, my brother Kathuri not to get jittery about these great hard working ladies because we are also waiting to hear your report. We will give you the same accolades.

**Hon. Deputy Speaker:** Hon. Cecily, it is a lady that you are talking about and not ladies. I know there are other ladies who are doing well, including you.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Thank you, Hon. Deputy Speaker. Clearly these regulations were not meant to be. To begin with, the Chair has told us that it was in the finding of the Committee that the PSC has no powers at all to come up with any regulations. So, we were wrong from day one that we allow PSC to come up with regulations when we know they should not come up with regulations of any sort.

Also, very worrying is the fact that there was no public participation. They came up with regulations where they found it fit to consult the Senators and the Ministry of Finance but they did not consult the National Assembly and county governments. That in itself was a big oversight on their part. They need to know that ours is not the fact that we have any issues with them. We have issues with them not following the law and the Constitution. So, to the extent that

we are told of the inconsistencies that are found in the entire regulation, we therefore say: “No” and nullify.

We are having a problem where every Member, when they realise they do not have some money to control, they want to have a little money to control. There is no one monitoring and evaluating the Senate. They just want to monitor and evaluate but there is no one who is going to oversee that process. We know very well today the National Government Constituencies Development Fund (NG-CDF) even County Assemblies Forum (CAF) is subject to audit by the Auditor General. Reports come to Parliament and we look at them. Who is going to oversee that monitoring and evaluation? What structure have they put in place and in motion to oversee that monitoring and evaluation and how regular is that monitoring and evaluation? What mechanism have they put in place to ensure that this monitoring and Evaluation actually takes place? Giving one Senator Kshs3 million per constituency for one year is money that would dig a borehole, do a road or even build a dispensary. Let them monitor from here. They have reports of the Auditor-General from the counties and we need to see them more active looking at those reports.

They can go as committees and each committee is in charge of a particular ministry. They can go to the counties and look at the work that is going on. Besides, they are only monitoring between 15 to 30 per cent of the entire Budget. So, while this House is in charge of close to 80 per cent of the Budget and we are not asking for the same...

May I also remind them, looking at the National Government Constituencies Development Fund Act, only 3 per cent of the money allocated per constituency goes to monitoring and evaluation. This amount here is a lot. It is not 3 per cent and we need to put money into right use. Although they have been told by the Chair that they can relook at those regulations, they have to convince this House that surely, they are deserving of this money. We are not giving the money to go and keep campaigning on the ground, give handouts to people going for meetings and calling them monitoring and evaluation forums.

We must put money into good use.

With those remarks, I beg to support.

**Hon. Deputy Speaker:** Very well. Let us have the Hon. Deputy Leader of the Minority Party

**Hon. Robert Mbui** (Kathiani, WDM – K): Thank you, Hon. Deputy Speaker for this opportunity. I am a Member of this hardworking Committee that has been praised a lot. I rise to support the decision by this Committee to annul these regulations that were brought to this House by the Senate. Before I mention my points, I support with a heavy heart when I listened to my Chair and the seconder standing up to say that this Committee is made up of senior lawyers who have reputations to guard. I begin to wonder whether I am in the wrong committee because I am not a lawyer.

It is important that even our input in committees is recognised because we play a role and were part of this journey all the way from the beginning. The purpose of this Senate Monitoring and Evaluation Regulations is to give money to Senators so that they can purport to do monitoring and evaluation of county governments. This is about Kshs2million a month to the Senator to go around and look at what the governor is doing. This is supposed to be coming from a common kitty of PSC, a kitty which is for the whole of Parliament including the National Assembly. This was a little selfish of the Senate to come up with such a regulation that favours only them yet this is Parliament with both Houses.

When all is said and done, it is important to compare the responsibilities of this National Assembly and the Senate. The Constitution says that county governments will be given a

minimum of 15 per cent of the revenue. We have done very well and gone beyond 15 per cent but we are still not yet even near 50 per cent. Therefore, the National Assembly is obviously going to oversee the difference which is 85 per cent. It is interesting that the Senators felt that it is important for them to have the funds to evaluate and check the governors despite the fact that they know that we also oversee the national Government and we are not facilitated the way they want to be facilitated. The Constitution gives the responsibility of overseeing county governments to the county assemblies. They have a Public Accounts Committee in every single county. They also have departmental committees at the county assemblies who have the responsibility of ensuring that they check what the governors are doing. Already we know governors are being overseen by county assemblies. Now the Senate wants to also oversee and wants to take a huge chunk of PSC budget to do that. That is unfair and we felt that it was uncalled for. Other than the technical issues that have been said, they are trying to bite off a huge chunk of the budget that is for a Parliament that comprises of two Houses.

So, I support the position to annul in totality the said regulations and hope that the Senate can find it fit to present regulations that can be discussed by all of us. They should ensure that in the public participation they involve everyone including this House because we are major stakeholders in the budget of the PSC.

With those few remarks, I support.

**Hon. Deputy Speaker:** I am trying to balance both sides and I see to my left there is quite a lot of interest. I might be tempted to give two of them before going to my right. Let us have Hon. Seroney Kipkorir.

**Hon. Sammy Seroney** (Nominated, WDM – K): Thank you, Hon. Deputy Speaker for giving me this opportunity to make few remarks on these regulations. I am a Member of this Committee. When Hon. Mbarire applauded our hard work and you did the same, I must admit that the Committee on Delegated Legislation worked tirelessly.

As you have heard we had 28 Regulations pending from the previous Parliament. Therefore we worked extra hard and I want to thank the Committee.

Most of the issues I wanted to raise have already been raised by the other Hon. Members. I want to state clearly to the regulation-making authority that the current Committee on Delegated Legislation is not a rubber stamp. Prepare your regulations properly because we will scrutinise and annul them. The Senate brought those regulations but the issue is we are Parliament. Therefore, whatever amendments they will make should come back with a title “Parliament” and not “The Senate”.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** I have to balance both sides, so let me give Hon. Kimunya. A few Members like Hon. Waruguru have removed their cards. I do not know whether it is by mistake. Proceed.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Deputy Speaker. I rise to support the Report by this very hardworking Committee because I do not think they have any pending business. At least from the information that I have this means they have burnt the midnight oil to clear all legislation that has been placed before them.

Most importantly, this raises some more fundamental issues. We are seeing contradiction regarding the work of the Senate *vis-à-vis* the work of the Members of the County Assemblies and this House. This is bringing out a fundamental issue about the implementation of the new Constitution. For some of us who were in Bomas there was clamour for a Senate, but what



everyone thought was that it would be an upper House for revision and where national issues would be discussed.

Obviously, we all know what happened after a bicameral system was designed. When the issues were taken to Naivasha, our representatives in the Committee who were predominantly Members of this House, because there was no Senate then, in their wisdom decided to create a House that would not compete with this one, not knowing it was also going to be a House of Parliament. Fortunately, some of them are now in the Senate and they see the frustration of working in a House without a defined role. Hence, they try to look for work to fill the space because work will always expand to fill the space and time allocated for its completion.

That is what the Senate is trying to do through oversight which is a duplication of the MCAs' role. First of all, that idea should not be entertained, they should not go there to spend time duplicating the work of county assemblies. We have given county assemblies money to oversee governors. Let the Senate redefine itself and the core job it was left to do after the law was turned upside down to make it a lower House subordinate to the National Assembly. This was a first in this world, because it happened in Kenya. When that happened the only thing they were left to do is basically to impeach the President or to protect devolution, not to oversee or promote, so that we do not pass a law here which kills devolution. That is why every law passed here which has an impact on counties has to go to them.

That experiment seems to have failed and I believe it is high time this House took advantage of the Constitutional Implementation Oversight Committee (CIOOC) which is active to look at some of these things. For example, how the implementation of this experiment called the Senate is doing and what needs to be done. Is it still a sustainable experiment or something which should be remolded to make it relevant, so that we stop the kind of things they are trying to do? As you know we usually call the Cabinet Secretaries for questioning. We can invite a CS to the Departmental Committee on Education and Research, and then we find that he has also been invited to the Senate Committee of Education.

The Senate is supposed to oversee and protect education at the Early Childhood Development Education (ECDE) level. We are seated here worrying about education at the university level; we cannot do the ECDE work. I think it is time we seriously thought about this model and our Committee should take it up. The substantive Speaker is also the Chair of Liaison Committee. Maybe, he can help us because coordinating committee work is becoming a problem due to interference from the Senate because they are idle and want some work to do.

Their work should be defined and they should let the National Assembly do its work, so that Kenyans can get value for money. The fight against corruption is not just about the issues we are hearing out there. Misuse of public funds through doing the wrong job is also part of corruption. We need to fight this holistically and part of this is defining roles clearly. This is a good eye opener. I am glad that the Committee has seen it fit to annul all the Regulations in entirety. Any attempt to reintroduce them in whatever form should suffer the same fate.

With those words, I request that this matter be taken a notch higher and we define the role of Senate. I would rather we have a referendum to have a Senate that works and we sort out the bilateral workings of these Houses. I beg to support.

**Hon. Deputy Speaker:** Let us have the Member for Butula, Hon. Oyula Maero.

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Deputy Speaker for giving me this chance to comment on this Motion. I want to commend the Committee for the work well done. It made a good decision to annul the entire Regulations which were brought to this House.

Making of financial regulations is not an easy job. Whoever comes up with regulations must comply with the relevant laws and the Constitution. The Committee has done the best thing because Parliament cannot just rubber stamp any regulations brought to this House. I therefore commend the Committee for working hard and going through all the regulations and making a commendable decision. All the Committees should carefully look at any regulations brought to this House and particularly financial ones. If we relax on these regulations we open up a gap for manipulation and misappropriation at a later date. So, I think what this Committee has done is commendable and I support their decision.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Very well. Next, I give Hon. Akinyi Ochang' Buyu.

**Hon. (Ms.) Rozah Buyu** (Kisumu CWR, ODM): Thank you, Hon. Deputy Speaker for giving me this opportunity. I would like to join my colleagues in commending the Committee on Delegated Legislation for the job well done. We listened to the Chairperson say that she was under duress with people trying to plead with her to actually go against the law and pass the Regulations. I would like to commend them because Parliament is a House that is supposed to be the custodian of the laws since we make the laws. Under no circumstance should Parliament actually be seen to go against the very laws that it makes. I just like to say that we seem to misunderstand the role of oversight as given in the Constitution.

The role of oversight is not to individual Members of Parliament. That is a collective role that should be undertaken within committees. When you begin to give individuals Kshs3 million per constituency on their individual basis to go and do oversight, that is a recipe for conflict within our counties. The money will not find its way into doing oversight because that role is already being undertaken by the members of county assemblies. This would enhance conflict between the Senators and governors and for the better part of the years, there would be no work going on within the counties.

We also know that the Constitution stresses on public participation because through public participation, stakeholders are able to partake and are also able to have their interest taken into the laws that we come up with. When there is no proper public participation, that law or that regulation must not be allowed to see the light of day. I also want to say that the role of Parliament, especially in an economy like ours where we are already overburdened by debt, is we should not be seen to be duplicating roles. Oversight of the governors in the county governments is a role that is already being undertaken by the county assembly. Why then should we give Senators money? Why then should Senators be granted money to go and do the exact role that is already being carried out by somebody else, especially in an economy that is so overburdened by debt? I think that money, like Hon. Mbarire said, should find its proper use to other areas which will actually impact positively on the lives of Kenyans.

With those remarks, I support the Motion.

**Hon. Deputy Speaker:** Let us have Hon. Wanjiku Waruguru.

**Hon. (Ms.) Catherine Waruguru** (Laikipia CWR, JP): Thank you, Hon. Deputy Speaker, for giving me this moment to contribute. I will be very brief. We are very anxious about the upcoming report from the Departmental Committee on Lands in regard to the Ruaraka land scandal. However, I must say a good job has been done by the Committee on Delegated Legislation. I must commend them for remaining very firm and not allowing themselves to be swindled by the Senate. It must be very clear that there must be guidelines. In my case as a woman representative, there is a committee which sits and decides the purpose intended for the monies allocated to Laikipia for the National Government Affirmative Action Fund. In this case

the Senators need to give us regulations and tell us who are going to manage this money and what this money is meant for because they do not have an agenda which is based on the Constitution in regard to implementation. This is because the role of oversight is clearly bestowed on the county assemblies. We have very vibrant public investments committees and public accounts committees in the county assemblies. It would only mean this would be duplication.

I must share my frustration as a member of the Departmental Committee on Lands. Anytime we want to do an inquiry or investigation, by the time we are calling the Principal Secretaries and the Cabinet Secretaries, they are already dashing to some committees in the Senate. Therefore, the duplication of roles between committees in the National Assembly and committees in the Senate must be clearly defined. What is the role of a senator? What is this Bill or policy that they can pass which does not necessarily need the National Assembly? We have usually been kind enough to pass the revenue bill for the counties. So, in this case, I must say the Senate must stay clear and put. From the outset, upon the promulgation of the Constitution of Kenya 2010, I must say as a House there was a mistake. This is the time we should have streamlined clearly the roles of the committees in the National Assembly and the roles of committees in the Senate.

Therefore, in this case, I also say I oppose them. I support them in opposing this fund and I want to pre-empt that in the next supplementary budget, this money should be given to these legislators so that they can take to many emerging issues and matters which are riding on our backs as Members of the National Assembly. In regard to that, I want to say that county assembly members should not be intimidated. Nobody should look at them as if they do not know their work. They are ready to serve and that they should wait for their guests, who are the governors, to appear before committees and not them looking for governors in their kitchens and wardrobes because this will only bring conflict of interest. I am looking forward to hear them table before us audit reports for the first governors, which they have not yet completed. We do not understand it. Our good brothers in the other House must stay put and you remain in your territory. Even as a wife, you really know what your duties are. There are duties of a man, those of a woman and those of everybody, including the children. They are our elder brothers. So, we what to tell them let them remain clear. Please maintain your roles and do what is needful.

Thank you, Hon. Deputy Speaker and Hon. Junet, please, hold your horses and wait.

**Hon. Deputy Speaker:** Let us have the honourable member for Emurua Dikirr.

**Hon. Johana Kipyegon** (Emurua Dikirr, KANU): Thank you, Hon. Deputy Speaker. I also wish to support this Motion. I also wish to state categorically that roles which were stated by the Constitution must be adhered to. The functions that the Constitution put upon us must be followed. You cannot purport to be doing that which is not provided for by the Constitution. If some of the Senators would want to feel like they want to participate in matters which concern the national Government they have freedom to come back to this House. For those of us who would want to have interest in doing things that concern counties, we have the freedom of moving to the other House.

Where I want to differ with Members is that we must also understand that Senators are idle people and we need to give them more responsibilities. We need to make them move around the counties even if it is to oversee the MCAs or the governors. This is because they are very idle people. Otherwise, our interest will be in conflict with theirs. You hear them every other day summoning the Vice Chancellor of the University of Nairobi and you wonder what that has to do with the county governments. You will hear them summoning the CS for Foreign Affairs. We do

not have ambassadors representing counties in this country. So, what do they have to do with them? So, I think we need to be fair enough to allocate them some money so that instead of being idle in Nairobi, they should go idling in the counties which they are supposed to be taking care of.

I just want us to sit one day and make sure that we also look at how these people should be working because we also do not want them to be earning a lot of money and do nothing. We want them to be functional and working. Of course, you know, like my brother here was telling me, governors feel prejudiced when they appear before the MCAs. They would want to feel big when they appear before the Senators. So, I think there is something that needs to be changed so that they can also feel comfortable appearing before Senators. Then let us do that so that we can make people comfortable, but what we want is proper representation. If Senators are representing counties, we also want value for the money which is sent to the counties. That one we need not to compromise. So, if this will allow them to make sure that governors work properly, then let us allocate them something small to go round to enable them be mobile in the counties.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Next we will go to Hon. Wetangula.

**Hon. Timothy Wetangula** (Westlands, ODM): Thank you, Hon. Deputy Speaker. First, I want to declare that I am a member of the Committee on Delegated Legislation. I can assure you this is a very serious Committee and even when you look at the attendance, normally it is almost 100 per cent and we look at these documents with a lot of finesse. We make sure that we give value to our work.

One of the issues that came up is about public participation. Public participation is a constitutional provision. Looking at the Regulations, whenever there is a violation of that provision, we can annul the entire Regulations, even at that point, because there is no need for us to go further to look at them. It is very serious and should be taken seriously by all the regulation-making authorities.

The other thing is that the Parliamentary Service Commission had no mandate to make those Regulations. Only the Cabinet Secretary of the National Treasury has the mandate. Maybe they should have asked him to do it on their behalf. That is why when we looked at them, we saw a glaring violation of the law and had to deal with that seriously by recommending an annulment.

Most of our brothers in the Senate were in this House when they passed the Constitution. They wanted a weak Senate. Immediately after the 2013 Elections, they realised that they ended up in that House and wanted to allocate some powers to themselves which was outside the law. That is why they are struggling to be relevant. I also encourage them to benchmark. Maybe they should go and look at how the House of Lords works. It does not sit every day. They only sit when there is need. I do not think the Senate has so much work that they should sit every day. They can be sitting only when there is need and they want to perform their oversight role. To perform that role, they can just move around and I am sure the Senate has a big enough budget to facilitate that.

Annulment of these Regulations will give the CS another chance to relook at it and then we can look at it again. We are just trying to assert our authority as the National Assembly. We are sending a signal that we will not be a House that rubberstamps everything that is brought before it but are taking matters very seriously.

**Hon. Deputy Speaker:** Let us have Hon. Osotsi. He is absent. Let us have Hon. Rachael Nyamai.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Deputy Speaker. I would like to support this Report by the Committee on Delegated Legislation. It makes one wonder what activities the Senators will be doing at the counties. As many Hon. Members have said, this is a duplication of the work that is already being done by the Members of County Assemblies.

Secondly, there is already a lot of work that Senators are supposed to be doing in overseeing governors. So far, we hear many complaints in public rallies and funerals on how money is being misused at the county level. Have they exhausted the work that they are supposed to do for them to be making trips and spending Kshs2 million or Kshs3 million per month, depending on the county where you come from? From the County of Kitui, this will amount to Kshs2 million per month for the Senator to move around to do the same work that is being done in the county assemblies. I would like to support this Report. Do we have lawyers and advocates who are supposed to advise the PSC? Did they seek support before they came up with those Regulations?

As I support the Committee and agree with the other Hon. Members that they are doing a very good job, I would like to say that it seems that there is a problem. Even when we were investigating the matter of land in Nairobi, we realised that even after this House had taken up the matter, the Senate was also investigating the same. Is it that they do not have enough work to do? As Hon. Kimunya said, does it now call for a referendum for us to see whether it is important to still have the Senate or do we change the roles that the Senate should undertake?

I would like to join my colleague, Hon. Waruguru, in saying that the Departmental Committee on Lands is looking forward to moving a Motion on that matter of Ruaraka land.

I support the Motion.

**Hon. Deputy Speaker:** Let us have the Member for Njoro.

**Hon. (Ms.) Charity Chepkwony** (Njoro, JP): Thank you very much, Hon. Deputy Speaker. Let me start by congratulating the Committee which came up with those Regulations. Mine is very simple. The question I would like to raise is: What is the best mechanism if it was to be implemented? Would it bring some conflicts and duplication of work which is done by others? Where does the process start and end?

When I was trying to do some small mathematics, I realised that we would be talking of Kshs70 or 80 million per year. That is just for oversight. I found it to be a very large amount of money. If it is calculated per month, I realised that someone will be using kshs250,000. When I check that amount of money I found it to be very high especially considering the challenges some of us are facing. Like in my constituency of Njoro, when I was trying to give out the bursary I realised that I did a good job but there are still some people I could have considered. When I check this amount of money, I find it to be very high. Probably, it should be rechecked. It is very high. Therefore, it might bring some duplication of work in the counties. It might also result in conflict. As the Members of Parliament who make laws, we should have serious policies which will ensure that we are doing the right thing. This was good work done by the Committee which we really appreciate.

**Hon. Deputy Speaker:** Let us have Hon. Oduol Adhiambo.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Deputy Speaker. From the outset, I would like to appreciate the extremely meticulous work that has truly indicated that the National Assembly is taking very seriously its role as defined in the Constitution and expected by the people.

Given the comments that have been made by a lot of colleagues with which I concur, I wanted to mention or weigh in a little bit on how we need to look at the functional placement and to see the extent to which we can make good use of the roles as currently defined. Article 96 of the Constitution gives the Senate the responsibility to protect the interests of the counties, as has been mentioned by Hon. Kimunya.

On social media, there was information that indicated that the County Assembly of Kisii seemed to have arrogated itself some role and was determined to come up with some legislation that would prevent the nominated female legislators from participating in legitimate roles. Instead, what they should be carrying out at the county assembly would be legislation, oversight and representation. I mentioned this because as I indicated, this was on social media. We are aware that the social media, in quite a number of times, seems to capture the temperature and mood of the country and calls for follow-up. The same seems to be there in Vihiga County Assembly. The women Members of the County Assembly who are largely nominated were also facing this kind of threat or dilemma. There was only one woman who was elected.

Hon. Deputy Speaker, we have numerous cases. It is not just in the 12<sup>th</sup> Parliament, but also in the 11<sup>th</sup> Parliament where this kind of ignorance and sometimes blatant failure to follow the law has led to this kind of situation. Notwithstanding what Article 96 of the Constitution says, we want clarity on these Regulations. I believe the Senate can do a lot more by looking at the interest of the counties and protect them. The Transition Authority (TA) did its work of setting up systems, which enabled the counties to work effectively. However, it did not finish its work. I would like to indicate that it would be useful if the Senate performs the very important role of monitoring and evaluation. They can begin by looking at the existing challenges that are sticking out.

**Hon. Deputy Speaker:** Sorry. Is the lady walking into the Chamber a Member? I recognise her now. Members have changed. Let us proceed and finalise.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Deputy Speaker. As I conclude, the Minority Party Chief Whip, Hon. Junet, referred to age and indicated that when we look at the Senate, we tend to see them as being on the old angle. Article 11 of the Constitution talks about culture, while Article 10 talks about national values. Because of experience and a lot of learning, there is a sense in which the old people are; they have wisdom which can be useful. As we look at this matter, I hope we will not necessarily imply that the Senators do not execute their mandate because of their age. A number of us will find out that when we get to that level.

With those remarks, I support the Motion.

**Hon. Deputy Speaker:** Your time is over because the Motion was supposed to be discussed for one hour, which is ending at 5.43 p.m. So, it is now time for the Mover to reply. It is, unfortunate that the Leader of the Minority Party did not contribute. You will contribute to the next Order. You will be the first one.

**Hon. John Ng'ongo** (Suba South, ODM): *(Inaudible)*

**Hon. Deputy Speaker:** Let me give only two minutes to the Leader of the Minority Party. It is not normal for me to bend the rules, but I have used Standing Order No. 1.

**Hon. John Ng'ongo** (Suba South, ODM): Thank you, Hon. Deputy Speaker. I want to thank you for indulging me. My colleagues have said a lot. I want our colleagues in the Senate to understand that the objection to these Regulations is not because we do not want them to perform their functions. Some of us may find ourselves in the Senate soon.

I want to address one issue. Members have been asking what this money is meant for. The objective of the Fund is to facilitate a Senator to carry out monitoring and evaluation activities in exercise of the Senate's oversight role. They will also undertake county expenditure tracking surveys. The Controller of Budget tracks the expenditure and gives it to the county assemblies and the Senate. The Senate should look at those reports instead of asking for more funds. The funds will also help them to promote citizen engagement on issues which affect the counties by undertaking civic education and community sensitisation. This is basically holding public *barazas* and paying people sitting allowance. It is like giving handouts.

The time is short. I thought I would have enough time. I heard Members talking about Ksh3 million per constituency. I do not know where they got that from. This is how it is. The nominated Senators will get 6 per cent of the Fund. 1 per cent will go to administration of the Fund and another 1 per cent to the board. Ninety-two per cent of the Fund will go to the elected Senators, who are 47. If you allocate them Kshs1 billion, each senator will have Ksh1, 631, 206 per month to hold meetings and track expenditure. Let us be serious here. If we allocate them Kshs2 billion as they had proposed earlier, each elected Senator will get Kshs3, 262,411 per month. The nominated Senators will be allocated 6 per cent of the Fund. The amount which we have allocated in the Budget will still give them Kshs815, 602 per month. They can use that money to track expenditure, hold meetings and educate people on devolution. Who is educating the people on the national Government's NG-CDF funds? Do we also give money to Members of the National Assembly to hold meetings? Where will it end? The MCAs will also demand money to educate people.

This is my last word. If Senators feel, for good reasons, that they have a large geographical area to monitor, let them just come and tell us that the money we are allocating for constituency office is not enough and we increase it for them. We should also give the women representatives more money because they have a big geographical area.

*(Applause)*

I want to put it clearly even without looking at those reasons. Senators need to sit down with us and explain what this money is meant for. I said in the Budget and Appropriations Committee meeting that they were asking us to give them Kshs3 million per month for pocket money to go and give people in the villages. That is what they will use it for. You cannot use this money to track expenditure. There is already a system which tracks expenditure. It is even published in the Gazette by the Controller of Budget. They will use the money to hold public *barazas* and give people pocket money. Members of the National Assembly will be seen as mean people because they have no money to give. If we give this money to the Senators, people will not be coming for our meetings because when the Senator calls them, he will be giving them handouts, for example Kshs1000. When you call people for meetings and then you do not give them some money, who will be coming to your meeting?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** I call upon Hon. Maanzo to reply in one minute.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Deputy Speaker. On behalf of the Chair of the Committee on Delegated Legislation, Hon. Gladys Shollei, who is attending a meeting of the Departmental Committee on Justice and Legal Affairs, I would like to thank the Members of the Committee on Delegated Legislation and the Members who have contributed to this Motion. I believe that the deliberations were exhaustive.

Hon. Deputy Speaker, I wish to reply.

*[The Deputy Speaker  
(Hon. Moses Cheboi) left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) took the Chair]*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Junet, you have the microphone.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Temporary Deputy Speaker. I wanted to draw your attention before you move to the next Order. We are at Order No. 10 and then we will move to Order No. 11. There is Order No. 12, which is on the Report of the Committee on the Departmental Committee on Lands on the inquiry into alleged land irregularities, which is the famous Ruaraka land issue.

Hon. Temporary Deputy Speaker, this is a very important national matter. Considering the mood of the House and the number of the Members who are in the House, I am requesting that this matter be stepped down to be the first item on Tuesday. It requires a lot of attention. That is my proposal so that we have enough time to debate it. As it is now, five Members will speak on it then the Question will be put. That will be the end of the story.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Junet, I have heard you. Please note that the regulations we are dealing with, particularly in the next Order in our Order Paper, have timeliness. They have to be dealt with within certain timelines. So, if we do not deal with them now, then we may run into trouble. I ask Members to deal with the next Order as fast as possible so that we can get to the other one.

Hon. Junet, your suggestion was that we step down what appears as Order 12. Is that so?

**Hon. Junet Nuh** (Suna East, ODM): Yes.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Chair of Departmental Committee on Lands is here. Are you ready, Chair?

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): I am ready.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Junet, there is an item before her and your proposal is to take it out. Probably, if we deal with the next item, we might not even reach this other one or we deal with it and carry it over to Tuesday.

This has generated a lot of concern among the general public. We shall not put the Question on what we have just finished on Order No. 10 because of quorum reasons. I direct that we move to the next Order.

*(Putting of the Question deferred)*

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON THE  
CIVIL AVIATION (REMOTE PILOTED AIRCRAFT SYSTEMS) REGULATIONS, 2017

**Hon. Daniel Maanzo:** Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on the Civil Aviation (Remote Piloted Aircraft Systems) Regulations,



2017, laid on the Table of the House on Wednesday, 6<sup>th</sup> June 2018, and pursuant to the provisions of Section 15 of the Statutory Instruments Act and Standing Order 210(4)(b), annuls in entirety the said Regulations.

In exercise of powers conferred to Section 82 of the Civil Aviation Act, 2013, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development published the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017 on 6<sup>th</sup> October 2017 vide Legal Notice No.259/2017. Following the publication, the CS, in compliance with Section 11(1) of the Statutory Instruments Act, submitted the Regulations to the National Assembly on 21<sup>st</sup> November 2017 to the Select Committee on Delegated Legislation pursuant to Statutory Instruments Act 2013, and Standing Order 210 of the National Assembly Standing Orders.

The Committee extensively considered the Regulations in several sittings between January 2018 and 15<sup>th</sup> May 2018, when the decision to annul the regulations was made. In considering the Regulations, the Committee conferred with the Kenya Civil Aviation Authority (KCAA) pursuant to Section 16 of the Statutory Instruments Act 2013, both at Parliament Buildings and their office headquarters in Embakasi, Nairobi.

The Remote Piloted Aircraft System commonly referred to as drone or unmanned aerial vehicle is an emerging issue in Kenya. Although the technology has been in existence in other parts of the world for decades, drones were first introduced in 1849 by Austrians who sent unmanned bomb-filled balloons to attack Venice. Various conventions have since addressed the drone issues; that is, Paris Convention of 1919 and the Chicago Convention on Civil Aviation in 1944. The Chicago Convention specified high level requirements for contracting states. Articles 3 and 8 of the Convention relate to operation of the drones.

International standards that regulate certain aspects of drone operation are currently being considered by the International Civil Aviation Organisation (ICAO). There is a manual on remote piloted aircraft system of 2010. A drone is simply defined as aircraft without human pilot aboard.

The flight of drones may operate with various degrees of autonomy either remote controlled, by human operator, autonomously or on-board computers. The Committee noted that compared to manned aircraft, drones were originally used for missions considered too dangerous for humans. Drones were originally used for military application. However, they are used and rapidly expanding to commercial, scientific, recreational, agricultural and the other applications such as policing, peacekeeping and surveillance of products, deliveries, aerial photography, agricultural, smuggling, and drone racing.

Civilian drones now vastly outnumber military drones with estimates of millions currently in operation. The advancement in technology has resulted in sudden increase of interest in the use of drones for various applications and has put immense pressure on government regulatory authorities to establish proper regulatory controls to ensure safe, harmonised, seamless integration of drones into the aviation system.

The increased use of drones for civilian application has presented many countries with regulatory challenges. Such challenges include the need to ensure that drones are operated safely without harming public and national security and in a way that will protect areas of national, historical and natural importance. In considering the regulations, the Committee noted and found out that there was an influx of drones into the country and that Kenya is yet to develop a regulatory framework.

The Committee was not convinced that the provisions in the regulations as published by the Cabinet Secretary for Transport, adequately addressed safety concerns and privacy of persons and property.

The Committee found that there is need for further improvement of the Regulations. The Statutory Instruments Act and Article 118 of the Constitution provide that stakeholder consultation be undertaken, especially among the industry players, for example, the Ministry of Defence; Ministry of Interior and Coordination of National Government and the media.

However, the Committee observed that the Regulations were not adequately subjected to public scrutiny especially at the county level. The authority sought to conduct a public sensitisation of the drone regulations and establish linkages with the county governments and the media industry. The Committee also observed that licence fees to register drones are prohibitive, hefty and out to discriminate on non-classification use of drones. Kshs200,000 was deemed too hefty especially for Small and Medium Enterprises (SMEs) for example, photographers. The KCAA also reported that they have received similar complaints and are working on reviewing the fees.

The Committee also learnt that KCAA plans to procure surveillance equipment at the cost of US\$50 million to enhance border protection especially in detecting illegal drones. The Members raised concerns on the cost-effectiveness of the proposed acquisition of the equipment and the returns on investment. There is need for solid legislative guidelines before any investment is made on the drones' surveillance. Having considered the said Regulations pursuant to provisions of Article 94(6) of the Constitution, the Civil Aviation Act, 2013, the Statutory Instruments Act No. 23 of 2013, the Interpretation and General Provisions Act Chapter 2 which regulate the making, scrutiny and publication of the regulations, the Committee observed that the Statutory Instruments Act says that regulations cannot prescribe penalties exceeding those provided by the parent legislation.

Therefore, the penalty imposed by Regulation 56 of Kshs5 million or six months imprisonment or both contravenes Section 82 of the Civil Aviation Act No. 21 of 2013 which allows for the imposition of a fine not exceeding Kshs2 million or three years imprisonment. Regulations cannot prescribe beyond the substantive statute. The regulation-making authority did not undertake adequate public participation as required by the Statutory Instruments Act and Articles 10 and 118 of the Constitution on public participation, read together with Section 5 and Section 11(2) of the Statutory Instruments Act.

In addition, pursuant to Section 13(q) of the Statutory Instruments Act, the Committee raised constitutional concerns regarding the issue of safety, security and infringement of rights to personal privacy and the Bill of Rights which implied but not a *prima facie* latent on the regulations. They were not sufficiently addressed by the regulation-making authority during their elucidation hence contravening Article 24 of the Constitution and Section 13(h) of the Statutory Instruments Act.

It has also been found that drones can be used to drop bombs, drugs and also biological weapons. They can also be used to commit assassinations. The Regulations as published require further amendments to address various pertinent issues including reviewing of licensing fees and privacy concerns among others.

Having considered the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017... *(Off-record)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): What is happening to Hon. Maanzo's microphone? It is on and we cannot hear him. Very well, proceed.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker.

Having considered the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017 and the Interpretation and the General Provisions Act, Chapter 2 which regulate the making, scrutiny and publication of regulations and, having extensively conferred with the regulation-making authority, the Committee recommends that pursuant to Standing Order No. 210(4)(b) and Section 15(1) of the Statutory Instruments Act, the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017, be annulled in entirety for the aforementioned reasons.

As I conclude, allow me to acknowledge the tireless efforts of the Members of the Committee on Delegated Legislation for exceptional commitment to serve in ensuring the Committee delivers on its mandate. I must add that the Committee has no pending legislation before it despite having inherited 28 pieces of legislations from the 11<sup>th</sup> Parliament. On behalf of the Committee I wish to thank you for the support accorded to the Committee in discharge of its mandate. Our appreciation also goes to the Clerk of the National Assembly and the supporting directorates for providing necessary technical support. Part of what happened when we visited the Authority, we were shown a video where an aircraft collided with a drone. The passengers escaped death narrowly; a huge aircraft in one of the parts of the country. We also noted that, upon checking with other countries on what is happening, drones are used for security installations exclusively. They are used for medical purposes in Rwanda – to transport blood from hospital to hospital. Largely, there are very many drones which have been apprehended at the airport by the authorities. We also noted that the security systems installation in this country were not very well represented. This is a very big security issue. One of our Members here was being surveyed by drones while going through the last campaigns, from her house. A drone can be sent, photograph and monitor your movement. Some drones are as small as a bird. You can think it is a bird flying only to realise that it is a weapon.

For those reasons, we annul that. I beg to move and request Hon. Seroney who is also a member of the Committee on Delegated Legislation to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Seroney.

**Hon. Sammy Seroney** (Nominated, WDM-K): Thank you, Hon. Temporary Deputy Speaker.

As I stand here to support the Motion on drones, I am a member of this Committee. I have attended all the meetings of this the Committee on Delegated Legislation on the regulations we had. Having considered the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017 against the Constitution of Kenya, the Civil Aviation Act, 2013, the Statutory Instruments Act No. 23 of 2013 and the Interpretation and General Provisions Act Chapter 2 which regulate the making, scrutiny and publication of regulations and, having extensively conferred with the regulation-making authority, the Committee recommended that, pursuant to Standing Order No. 210(4)(b) and Section 15(1) of the Statutory Instruments Act, the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017, be annulled in entirety.

Hon. Temporary Deputy Speaker, the reason among others why we annul these regulations was that there was no public participation. When we visited the KCAA, they confirmed to us that they did not have public participation. Any regulation that is brought to the House without public participation will not be allowed to go. It is mandatory through our Constitution that all regulations must face public participation.

There are several other issues the citizens must be involved in and participate at various stages of the legislative process. It makes Government more responsive and responsible. Further,

it is worth noting that legal counsel that advise various Government agencies in the Executive are not apprised of the Statutory Instruments Act. These regulations are in outright violation of the Act that governs the making and scrutiny of delegated legislation.

*(Loud consultations)*

I request you to protect me. There is too high consultation around here.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Yes. Definitely, you must be protected. The Hon. Member has just walked in, he knows the regulations. You cannot stand between the Speaker and the Member contributing.

**Hon. Sammy Seroney** (Nominated, WDM-K): Thank you, Hon. Temporary Deputy Speaker for that protection.

In the same regulations, the fine which was imposed was exceeding Kshs1 million; the statutory instrument which provides a maximum a Kshs 20,000 was violated. Maybe, I can give an overview about these drones. In October 2017, the Cable News Network (CNN) reported that a drone had crashed into a commercial airplane in Canada. The first time such an incident had occurred in the country, the Government said. As reported in the American Press, on 16<sup>th</sup> February 2018, a helicopter crash-landed in South Carolina, and many have been triggered by a civilian drone which would make it the first drone-related crash of an aircraft in the US.

In the United States of America, two men in Maryland were sentenced to 13 years imprisonment in 2016 for smuggling contraband into a maximum security prison last year. Sixteen people in Georgia were indicted on drug and firearm trafficking charges, including allegations that they used drones to drop cell phones into prisons that were then used to coordinate unlawful activity. Furthermore, it is not absurd to imagine that our privacy shall be no more and that drones will enter our personal spaces literally in private compounds. A police officer in Georgia in 2015 lost his job after being charged with eavesdropping after flying a drone over his neighbour's property. A man was arrested in Oslo, New York, in 2014 for flying a drone too close to a hospital window.

There are currently no petrol-driven drones. There are only a few issues that I may ask as a country. There are so many drones which are at loose. There are so many drones in this country which cannot be accounted for. There are so many drones which are being flown in functions and yet these drones are not registered and cannot be accounted for. How safe is our country and our space? How are we safe as Kenyans when these drones are being flown all over and yet they can carry dangerous weapons? It can even carry dangerous chemicals. I would like to point out that the countries that are producing these drones have limited their usage; for example, China, USA and Israel.

Last month, when I was in the US, I managed to converse with delegates attending different conferences from various states in the US. We had a discussion on drones. I discovered that in the US, drones are controlled and they are very few. It is only military installations that can use drones. The Kenya Wildlife Service and security personnel generally can use drones, so that they are able to be controlled. Therefore, I urge the Executive not to allow drones. Kenya is not a dumping ground for anything that can be manufactured anywhere without considering our security.

Hon. Temporary Deputy Speaker, I second the nullification of this regulation.

Thank you.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): I will give the first opportunity to Hon. Wanyonyi, Member for Westlands.

**Hon. Timothy Wetangula** (Westlands, ODM): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to also contribute to this Motion on the report of the Committee on Delegated Legislation. I am a Member of this Committee and I can attest that whatever is presented here is accurate. This is what we discussed and it is what the Committee recommended. I support the annulment in its entirety. When you look at these regulations, the penalty imposed is excessive and it goes against the limitation set out in Section 24(5) of the Statutory Instruments Act, which provides a maximum fine of Kshs20,000. Here, the regulations impose a fine of Kshs5 million or a sentence of six months which is excessive and it goes beyond the mandate given to the regulation-making authority.

The other thing we looked at as a Committee is the issue of public participation. We emphasise on this because it is a constitutional requirement. We have seen that most of these regulation-making authorities just decide to do boardroom meetings and then they write minutes indicating that they have done public participation. This is an issue that is touching on national security and the constitutional rights of the citizens. It is something that requires expert opinion. We have seen drones flying around in our political rallies. Sometimes we used to wonder what these things that look like insects were. They fly and take pictures. A drone is a very small gadget that can even be smuggled into the country without the authorities noticing. Somebody can pack it in their briefcase or suitcase. This is something that we need to inquire into. We are looking at how we can do further amendments to address the issue of security and safety of these gadgets.

I have seen them in other jurisdictions being used as ambulances to fly a doctor's prescription and saving lives. But we need a lot of information on the operation of these drones and the safety of our airspace and our security. It will be violating our privacy. Your neighbour can just decide to sneak into your compound with a drone and take pictures. We thought that when certain provisions of the law are violated, we do not even consider other issues like public participation. It is a mandatory requirement and we have been emphasising that. Before we proceed further, we should look at that. If it is not clear, then we do not deal with the regulation. I think it will also be an opportunity for the regulation-making authority to re-look at these regulations and come up proper ones. It should consider the recommendations that the Committee has given, the amendments proposed, and look at other pieces of legislation that govern security and safety of our country, so that we can now deal with the regulations.

I can also attest that the Committee on Delegated Legislation is one of the most serious committees. I am sitting in this Committee for the second term and, this time round we are more serious. In the last Parliament, we had a lot of backlog issues because our role was undermined by some issues that were beyond our control. This time round, the membership of this Committee is very effective and you could see the seriousness when discussing issues. We will not allow anybody to come and think that they can just throw regulations at us. We must also ensure that our authority is felt and we must assert ourselves and approve only regulations that will add value to our existence.

I support the annulment of these regulations. Thank you for the chance to speak on this.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well, Hon. Wanyonyi. It is good when we hear that a committee is confident in performing and executing their mandate the way your Committee has done. That is good for the House.

We shall have Hon. Rindikiri Murwithania, Member for Buuri.

**Hon. Mugambi Rindikiri** (Buuri, JP): Thank you, Hon. Deputy Speaker. I rise to support the annulment of these regulations. First, if we have such instruments operating in this country, then it is illegal because there has never been any legislation or regulations governing the commencement of these operations, either by the military, civilian or for fun. So ultimately we are in a situation in which somebody saw a business opportunity and tried to sneak in such items into our air space.

It is true this is a very serious and very sensitive instrument to have in our country. All of us see the way we do some things in Kenya is not the way they are done out there. In the civilised world like America and Canada, they know the dangers of these and they have tried to come up with serious legislation and controls. Why is it that Kenya, without any regulations, allows such things to happen? This is an indication of a lapse in our governance structures. Even the Kenya Civil Aviation Authority, in conjunction with other departments, are not aware of the existence of this kind of activity. So outright, what we are seeing is a business opportunity being sneaked in but with the wrong intentions, because nobody has said the intentions of this. That is why that Committee has done a good job to say we cannot support this kind of thing. Privacy must be obeyed by whomever. If my privacy is being violated by legislation, then that is proper. If the security of this country and citizens is being interfered with by something that they are not aware of then the Government needs to be very careful on how they deal with this situation.

I know for a fact we have to put limitations. What limitations has the Government put in place? Anybody can import. *Al Shabaab* can import. A Member of Parliament, like Mugambi, can import as a business opportunity, but how am I going to use it. The other key thing is safety. It has come out in the Committee's report that it has caused aircraft accident. We cannot have legislation that allows the use of an instrument which we know is going to have safety problems.

Through this Committee or any other committee, I will ask Members we find out who authorised, because there are many of them being used here. You have heard Members saying some of them are being secretly monitored by the drones. Who authorised the drones? How did they come into being? Many things are wrong in the country. What this Committee has done is to ensure we cannot continue to perpetuate such acts. So I support the annulment of these Regulations. Public participation is a constitutional requirement. We cannot sit here and spend a lot of time, because the person who brought it up did not follow the Constitution and the right regulations. So we support the annulment and ask the concerned - the Government, KCAA, the military - to be brought together to map out the way forward, whether drones are necessary in Kenya or not. I would emphasise that if there are such operating, it is the high time the Government took a stand and told Kenyans how the drones found themselves in the country without proper legislation having been put in place. So I support the annulment.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Oundo Ojiambo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, thanks a lot for this opportunity. I must declare my interest: I am a member of the Committee on Delegated Legislation. As my colleague Hon. Mbui has said, we might not have legal background but we are lawmakers and our contribution towards the making of these regulations should not be underrated.

I was personally involved in the various discussions with the regulation-making authority, that is, KCAA. I happen to have visited their offices when they presented a demonstration and then we went through the various sections of the regulations. One matter came out very clearly: They admitted that the regulations were hurriedly prepared in order to contain the increasing number of requests or applications they were having for licensing of drones to undertake various actions and services in the country. They obviously did not match international standards and we asked them where they ever benchmarked. Indeed, they admitted they sat on their desks, Wikipedia, downloads here and there, patched up documents that were incoherent, badly drafted even to a layman. A first-year law student at the University of Nairobi would have done a better job than what they had done.

Nevertheless, we cannot wish away drones. That is a fact. The drones have been used in many jurisdictions, even though with very strict regulations and rules. In Kenya, we need drones for mapping. In view of the very low rates of demarcation and mapping in this country, we must find ways and means of hastening mapping to ensure that all lands in this country are titled. We need drones to monitor wildlife movements to avoid poaching. The examples why we need drones are endless. But drones come with two serious challenges that as a country we must address.

The first one is the issue of privacy. Due to the small nature and being remote controlled, we fear they could easily infringe on personal privacy. I remember a hilarious case was presented that a drone can actually come and literally Hoover around your bedroom window and listen to all activities that you are undertaking, whether they are good or bad, and generally damage your reputation. It could even be used for spying. You are seated having a drink somewhere and it hovers around and sends all the images of what you are doing to unauthorised persons, generally endangering personal relationships wherever they are.

Most importantly is how we manage to prevent drones from gathering intelligence information on our security system and military operations and relaying the same to enemies of the state. Consequently, we advised the KCAA to thoroughly tighten the regulations and probably seek a case where we restrict the use of drones to the military and other security agencies, as well as to recognised research institutions and mapping organisations that can be trusted, to ensure that whatever they do is for the benefit of the country and nothing else will harm the security of our country.

The gist of much legislation is in the regulations. I urge all members of our Committee and other committees to take adequate care on the regulations. That is where the details are and if you are not keen, many regulation-making authorities or state departments might contravene the provisions of the parent Act by sneaking in clauses or requirements in the regulations that will tend to hurt ordinary Kenyans.

As much as we have annulled these Regulations, we told them to go back and do a thorough job. Once they are ready, they can bring back a new set of regulations for our consideration. We will review them together with them because they have very many pending applications. It is also a good avenue to make some little money so that we do not complain of cash-flow challenges. Indeed, we have so many pending assignments that need to be done that could be done by drones. It is upon them now to move with speed to ensure that they revise the same and align them with the international standards as they take care of our national security and personal privacy.

With those few remarks, I support the Motion to annul the Regulations in entirety.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Oundo, I hear you echoing the great Lord Denning, Master of records, that great judge from England who once said that whatever a man and or a woman gets up to in a bedroom is entirely their business and must remain in the realm of the private.

I hear you protecting that. Thank you very much.

We shall have Hon. Tuitoek Kamuren, Member for Mogotio.

**Hon. Daniel Tuitoek** (Mogotio, JP): Hon. Temporary Deputy Speaker, I support the Motion.

As it has been mentioned, the use of drones or remotely piloted aircraft systems is a very vital new technology. The uses of this particular aircraft system vary but I think drones are good. We need to use them for various purposes. Security has been emphasised. It is now widely used in photography, experiences that we are seeing in places like Rwanda, where they are used to carry medicines to far-flung places. That underlies the importance of this equipment. As outlined by the Mover of the Motion, whereas we admit that this instrument is good we should know that there is need to use it within certain regulations. Having looked at issues carefully, we realised that there is need to involve all stakeholders so that we come up with the right regulations. We need to get input from the media, the national Government and the county governments so that we can have regulations which can be implemented.

Sometimes we can be so reactive and put in excessive penalties when these instruments are used. The Committee came up with the idea that better regulations may be needed. So, the annulment of these regulations is acceptable because proper consultation on the scope and use of this equipment is vital. We want to ensure that their use in Kenya does not compromise national security or infringe on people's privacy. We also want to ensure that these instruments are used by licensed people, who must know the extent to which the instruments need to be used safely.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Member for Kathiani, Hon. Mbui. Hon. Wamunyinyi, I see you shaking your head. Just hold your horses a little bit. You will have an opportunity.

Hon. Mbui, please proceed.

**Hon. Robert Mbui** (Kathiani, WDM-K). Thank you, Hon. Temporary Deputy Speaker for this opportunity. I congratulate the Committee for a job-well-done. It is proving to be a non-sense Committee. We have seen regulations that have come here and all of them are being annulled in their entirety. I want to request hon. members not to brand the Committee "annulling Committee." The reason why they have to annul is because the only options given to this Committee, under the Statutory Instruments Act, is to either allow in full or annul in entirety. There are no amendments allowed to be proposed by this Committee.

Drones are not bad. There are many uses of drones, as mentioned by Members. In some war-torn countries, the media uses drones to record videos clips of the public to know what is going on. As mentioned by some of my colleagues, drones can be used to transport medicines to places where the land terrain is hostile to people. Drones can be used for security surveillance. They can be used as toys. Smaller drones are toys for children and so they are not necessarily bad.

The problem we have is in the Regulations. Parts of those Regulations are also good. For example, registration of drones will enable the KCAA to be aware of who has a drone and where it is operating from. Also, as owners of drones register them, they will pay some fee, which will form part of Government. There are also regulations to guide operations of drones.



However, we are tied to the regulations that are contained in the Statutory Instruments Act. The challenges I talked about previously, one of which is legislation through the backdoor, can be seen within these Regulations. The regulation-making authorities must confine themselves to the parent Act – in this case, the Civil Aviation Act of 2013 – which provides for a maximum penalty of Kshs2 million or three years imprisonment. However, these Regulations purport to impose a penalty of Ksh5 million. That is ridiculous, unacceptable and impossible. That means this House can make laws here and when those laws go to the regulation-making authorities, they amend them and introduce new laws. There are limitations as to what a regulation-making authority can do. It must confine itself to what is given in the parent Act. As a result of that, as a Committee, there was no way we could have accepted these Regulations. There is also another mandatory requirement under the Statutory Instruments Act; that is, public participation. In this case, the regulation-making authorities have come up with licensing fees for running a drone in the country, but there has been no public participation. No one was called upon to give their views. Even the key players that would be expected to participate in management of drones were never consulted.

This was hurriedly done because there were many applications and they wanted to be given money. I think it is important for them to realise that the law must be followed to the letter. This is a no nonsense Committee which will continue scrutinising all regulations. Every time they go against the Statutory Instruments Act, we will just annul in entirety because we cannot amend or assist them in doing their work. I also want to ask the regulation-making authorities to consult with this Committee. This is allowed to ensure that by the time they print and gazette the regulations there is no conflict and therefore they safely pass through.

There is also the issue of safety. This country has been hit by terrorists in the past. Looking at the drones they can easily be used by terrorists either to carry war chemicals or even bombs. When we looked at these Regulations we did not see clear direction on the operation of drones. I feel that we may allow them and they jeopardise the security of this country. We should not forget like my friends have said about fundamental freedoms like privacy. How can a drone hover around your compound when you are having a cup of tea or a bottle of whisky outside? Everyone needs privacy and safety.

It is unfortunate to imagine a situation where you are in your compound and somebody somewhere is watching what you are doing, saying, behaving or walking. I think it is important that we protect the fundamental rights which are enshrined in the Bill of Rights in our Constitution by ensuring that even if these Regulations will ever come back they must fit within the confines of the law and be acceptable.

As I finish, I want to say, it is unfortunate that these Regulations have good things but we have no other option but to annul them in entirety. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well spoken Hon. Mbui. I think you have covered the matter quite well and also baptized this Committee as the “no nonsense Committee.” That is on a light note. Hon. Thuddeus you have just come in. Hon. Munene Wambugu and even Hon. Mutembi have been seated here. So you will have to wait a little bit. Oh! You had gone for a short call. You will get an opportunity. Hon. Munene.

**Hon. John Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to add my voice to this Motion. I appreciate you have noticed that I have been waiting and given me an opportunity to talk before my colleague.

I want to confirm that I am a proud Member of this Committee which is doing a very good job. We will continue doing the good work until we bring sanity in the regulation-making

bodies. They need to get this clearly because they have been escaping with so many bad regulations which when enforced have affected the people who elected us to represent them in this august House.

I remember clearly when we visited the Kenya Civil Authority building they literally admitted in their presentation that there was no adequate public participation. These Regulations were hardly made and in the process there were so many lacunas. Also as Hon. Mbui has said because of the many lacunas, we did not have an option as a Committee but to annul these Regulations. It also came out very clearly that drones are a good technology which has recently come and we must embrace it. However, there are serious issues. I remember the Managing Director (MD) confessing that one of the countries that produces drones en masse Israel, does not allow them to be used within their soil.

In as much as we have good use for drones there can also be very bad uses. You know as a matter of public domain that drones have been used by the *Al Shabaab* to kill people. That is why we need to tighten these Regulations to ensure that the security of this country is not compromised by having bad regulations which if we allow can be easily manipulated and we find drones in the wrong hands.

Another issue which came out very clearly is about privacy. Drones are very intrusive. They can intrude on your privacy in your house or wherever you are if not checked. That is why the Committee thought that security regulations need to be tightened so that Kenyans' rights are safeguarded. Of importance is that there was a regulation which purported to enhance the fine from Ksh2 million to Ksh5 million. Yet, the parent Act is very clear that the maximum fine is Ksh2 million. Therefore, the Regulation was being brought through the backdoor and this is against the parent Act and the Statutory Instruments Act.

As I conclude, there was also a serious feeling by the Members that the licence fee is excessive. I remember somebody who I will not mention conceded during the meeting that he also thought so, but they were told to put this figure to see the reaction. Someone gets the feeling that this was deliberately done so that small traders cannot get licences for drones. I wonder whether that was the intention. I think the figure was about Ksh200,000 and we all know there are many types of drones including toys and small ones. Why would you charge a Kenyan that kind of money yet, there was no adequate public participation?

With those few remarks, I beg to support and urge the Hon. Members who are yet to contribute to support this Motion and annul these Regulations. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wamunyinyi and Hon. Thuddeus, you seem to be in a hurry.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to speak. I am not in a hurry. I join my colleagues in strongly congratulating this Committee. It has come up with recommendations which we all support. These Regulations ought to be annulled and rejected so that better ones are developed for use in civil aviation.

In normal circumstances regulations are expected to give clarity and remove ambiguity where any exists and ensure that there is order in the operations of any industry. Regulations are such an important instrument which must be given good thought at all times. However, it is important to also note that any regulations made must be consistent with the law in force, the enabling Act or Statutory instruments and the Constitution. As clearly pointed out by Members of the Committee, particularly the Mover, you will notice that they are contraventions to the enabling Act and to the Constitution, which should not be allowed to go through. Therefore, the

Committee did a good job to point out all these contradictions and contraventions of the existing law and we need to support it.

There is the component of security and safety of the people of Kenya, which has been pointed out. The drones are used by the military and they are quite sophisticated, of course, with the technology that we are moving towards. They fly very high and they even take clear pictures even if it is at night. They have night vision power that they get you wherever you are from very far in the sky. So, these are very powerful instruments which, if are to be used, we must have good regulations when they can be used and for what purpose. There must be a monitoring mechanism. How do you monitor them? These drones are flown and operated by someone at his own time and place. Unless you know that it is going to take place, they will move at your house and take pictures of what you will be doing in the bedroom and even some other place. Of course, this privacy is necessary for all of us.

Also, I am not sure why the regulations we talk about, which have not been done properly, are pushed. They are regulations that we have been calling for over the years for the sugarcane subsector. We have said that there is a lot of disorder, which has been seen, in the sugar subsector. There is poaching, theft and people fighting and importing and causing problems for the farmers. Regulations are not there. Then you bring wrong regulations for another industry when there is no reason for it to be given priority. I appeal to those concerned to come up with regulations for the sugar subsector to ensure that people are not fighting for cane. As things stand now, even if many factories are opened, there is no sugarcane. People have been fighting left and right and going everywhere to steal what is not theirs. A company invests in development of a farm and then another one comes to harvest. This has caused problems in the country. That is why I am commending this Committee's decision to come up with recommendations that we annul these regulations because they are inconsistent. This is very important and I would like the ministry concerned to come up with the regulations for the sugarcane subsector in our country so that you guide the operations and you put order in the industry for the benefit of our people. We all have condemned those who brought in sugar that is poisonous and which is killing our people. I am told we have to follow up some cases where people have died as a result of consuming the sugar. Now that there is evidence, those concerned in fact should be charged for murder. What do you think, Hon. Temporary Deputy Speaker? They should be charged for murder.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wamunyinyi, do you want the Speaker's opinion? You know the law, Hon. Wamunyinyi.

*(Laughter)*

Anyway, we have heard you

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Temporary Deputy Speaker, I have had the privilege of serving in the African Union (AU) when I was the head of the mission in Mogadishu. Some of the experiences we had was the use of drones and they were just then introduced. They had not even been used in Kenya save for a few by the military. There is a lot that the drones can do if not properly controlled, monitored and regulated.

I would like to conclude by saying that while we are opposed to the current set of regulations and are, of course, obviously going to annul them, it is necessary because the era we are moving towards is that of technology and the use of things like drones. So, it is important that the civil aviation sits down again, follows the procedures and develops regulations which are

acceptable, which will be consistent with the law, the enabling Act and the Constitution and should be put in use to regulate and control the usage of drones.

With those few remarks, I beg to support the Committee's recommendations.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): We shall have Hon. Mutemi. Hon. Mutemi, I think you have spoken to amongst yourselves. You know what we need to do. We are running short of time but I would like all of you to have some voice on this.

Proceed, Hon. Mutemi.

**Hon. Gideon Mulyungi** (Mwingi Central, (WDM-K): Thank you, Hon. Temporary Deputy Speaker. I actually call myself Mulyungi. I did not know it was me. I rise to support the Report by the Committee on Delegated Legislation on the annulment of the drone Regulations 2017. I also join my colleagues in congratulating this Committee for a job well done. I have heard that this is the only Committee which is always full house and has completed all the matters on its table.

Drones cannot be allowed to fly unmanned because they can be used for the wrong reasons, like my colleagues have said, especially breach of privacy, theft and even terrorist attacks. Recently, we witnessed an aircraft that crashed in the Aberdares and many others which have happened in the past. It still remains a mystery on how this has happened. In my view, therefore, drones will not only escalate crime but cause more air accidents if allowed to operate. Drones will, therefore, be dangerous death traps if not properly regulated and controlled. In this era of traffic jams, if drones are allowed without proper regulations, each one of us will leave their cars at home and fly drones to work and even to political rallies.

I, therefore, support the Committee's decisions to only use drones for security operations. I support this Motion to annul the Regulations.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us now have Hon. Nzambia. Hon. Mulyungi, but Mutemi is also your name. Is it not? Alright, but you prefer Hon. Mulyungi. Very well, I will take note of that next time.

**Hon. Thuddeus Nzambia** (Kilome, WDM-K): Thank you, Hon. Temporary Deputy Speaker. Let me take this opportunity first to congratulate this Committee which seems to be very much dedicated in discharging its duties. I will just be very straight to the point that it is not that drones are bad. They are good but there must be a way of regulating their use. When it comes to security, it is very important and paramount to put security measures for our people. We cannot just allow drones to be moved anyway and anywhere without any regulation. We even call for the registration of the same so that we can actually be specific with the purpose of the drones.

We give the Committee full support. They should keep on scrutinising the issue so that we get the best out of their works. Lastly, we need the Kenya Civil Aviation Authority to do public participation and enough consultations for the same so that we have the best for our people and the country at large.

I support the Motion and encourage the Committee to keep up its spirit of doing the best.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Joshua Kimilu, Member for Kaiti.

**Hon. Joshua Kimilu** (Kaiti, WDM – K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I want to take this chance to join my colleagues in congratulating the Committee for the good job they are doing.

We need good regulations and laws for doing things. Drones are good. I remember sometime back I went to China and bought very good drones for the entertainment of my children. I was not allowed to pass through the airport with the drones due to lack of proper regulations in this country. I take this chance to support the Committee and say that we need regulations in this country. I positively support it. For security purposes, regulations are important. I remember sometimes back in my village, there was a function going on and the media people were using drones. They drew the attention of the function. It could not even go on because there is no awareness about drones. We need to do public participation. People have to be given a chance to know more about the drones. As we also allow drones, people need to have the know-how about them.

I support the Motion and congratulate the Committee.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): There being no other Member interested in speaking to this, I will, therefore, call upon the Mover to reply.

**Hon. Daniel Maanzo** (Makueni, WDM – K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to reply. I thank all the Members who have contributed to this important issue and also thank the Members of the Committee on Delegated Legislation.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Members, for obvious reasons I will not proceed to do the next action that is necessary. We will defer it to the next time the matter is in the House.

*(Putting of the Question deferred)*

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Tuesday, 26<sup>th</sup> June 2018 at 2.30 p.m.

The House rose at 7.00 p.m.