

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 5<sup>th</sup> July 2018

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

**Hon. Speaker:** Hon. Members, I have Communication No.031/2018. Sorry, Members. This will be delivered a lot later. A Notice of Motion needs to be given but there is Communication which I have just approved.

Let us move to the next Order.

### MESSAGES

#### NOMINATION OF PERSONS FOR APPOINTMENT TO THE PUBLIC SERVICE COMMISSION AND THE NATIONAL GENDER AND EQUALITY COMMISSION

**Hon. Speaker:** Hon. Members, I have two Messages. One is on the nomination of persons for appointment as Chairperson of the Public Service Commission (PSC) and Chairperson and members of the National Gender and Equality Commission.

Pursuant to the provisions of Standing Order No.42, I wish to convey the following two Messages from His Excellency the President, relating to the nomination of persons for appointment to the offices of the Chairperson of the Public Service Commission, the Chairperson of the National Gender and Equality Commission and Members of the National Gender and Equality Commission.

In the first Message, His Excellency the President conveys that, in exercise of powers conferred by Article 233(2) of the Constitution, Paragraph 3 of the First Schedule to the Public Service Commission Act (No.10 of 2017), as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, he nominates Mr. Stephen K. Kirogo for appointment as the Chairperson of the Public Service Commission.

In the second Message, His Excellency the President conveys that, in exercise of powers conferred by Article 250(2)(b) of the Constitution and Section 11 (6) of the National Gender and Equality Commission Act (No.15 of 2011), as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act (No.33 of 2011), he nominates the following persons for appointment to the respective offices in the National Gender and Equality Commission:

1. Dr. Joyce Mwikali Mutinda as the Chairperson of the National Gender and Equality Commission;

2. Hon. (Ms.) Priscilla Nyokabi Kanyua as Member of the National Gender and Equality Commission; and
3. Mr. Murithi J. Chomba Munyi, a person with disability as Member of the National Gender and Equality Commission.

Hon. Members, His Excellency the President, therefore, seeks the approval of this House on the nominees for appointment to the aforementioned positions. Standing Order No.45 requires that upon receipt of notification of nomination for appointment, such nomination shall stand committed to the relevant Departmental Committee of the House for consideration. Pursuant to the provisions of the said Standing Order, therefore, and paragraph (3) of Standing Order No.42 relating to Messages from the President, I hereby refer the same Message relating to appointment of persons to the offices in the National Gender and Equality Commission to the Departmental Committee on Labour and Social Welfare to undertake the necessary approval hearings, while the nomination of the Chairperson to the Public Service Commission will stand referred to the Departmental Committee on Administration and National Security.

Paragraph 4(1) of the First Schedule of the Public Service Commission Act, 2017 and Section 11(7) on the National Gender and Equality Commission Act, 2011 requires the National Assembly to either approve or reject the nominees to the respective positions within 14 days and 21 days respectively. In this regard, I wish to guide the two departmental committees and the House as follows:

1. The Committees should notify the nominee and the general public of the time and place for holding the approval hearings in good time. The notification should therefore be made on Friday, July 6<sup>th</sup> 2018; and
2. The Committees should thereafter commence the necessary approval hearings and submit their respective reports to the House within the statutory timelines.

Following the resolution of the House on Tuesday, 26<sup>th</sup> June 2018 to alter the Calendar of the House, so that the House proceeds on recess on 6<sup>th</sup> July 2018, the period set by law for approval hearings will lapse while the House is on recess. The committees are, therefore, at liberty to seek extension of the approval hearings from the House this afternoon.

The next Message is from the Senate.

#### PASSAGE OF VARIOUS BILLS BY THE SENATE

Hon. Members, Standing Order No. 41(4) requires the Speaker to report to the House any Message(s) received from the Senate at the first convenient opportunity. In this regard, I wish to report to the House that on Wednesday, 4<sup>th</sup> July 2018, I received three Messages from the Senate regarding passage of various Bills on Thursday, 21<sup>st</sup> June 2018.

The first Message relates to the passage of the County Governments (Amendment) (No.2) Bill (Senate Bill No. 7 of 2017). Among other objectives, the Bill seeks to provide for the procedure for the disposal of a report of a Commission of Inquiry established under Article 192(2) of the Constitution as read together with Section 123(4) of the County Governments Act, and to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution.

The second Message conveys the passage of the National Flag, Emblems and Names (Amendment) Bill (Senate Bill No. 8 of 2017). The Bill seeks to amend the National Flag, Emblems and Names Act to allow members of the public to fly the National Flag in their places of residence, work and business.

The last Message is on the passage of the Assumption of Office of the County Governor Bill (Senate Bill No.1 of 2018). The Message states in part: “The Assumption of Office of the County Governor Bill (Senate Bill No. 1 of 2018) was published to provide for the procedure and ceremony for the assumption of the Office of Governor by the Governor-elect.”

Standing Order No. 143(1) requires the Speaker to cause a Bill received from the Senate to be read a First Time, upon conveyance of a Message from the Senate referring Bills to the National Assembly. Accordingly, I direct that the three Bills be read a First Time at the next Sitting.

Paragraph (2) of Standing Order 143 provides that:

Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114 (2) of the Constitution.

The opinion envisioned under Standing Order No. 143(2) is a pronouncement by the Speaker as to whether a Bill originating in the Senate is a ‘Money Bill’ in terms of Article 114 of the Constitution. In this regard, I have examined the three Bills, in addition to the Urban Areas and Cities (Amendment) Bill (Senate Bill No. 4 of 2017), which was read a First Time on 19<sup>th</sup> April 2018, and determined that they are not Money Bills. The House shall, therefore, proceed with the consideration of the said Bills from the Senate in accordance with Standing Order No. 143(3).

## PETITIONS

### VARIATION OF THE BOUNDARIES OF MT. ELGON FOREST RESERVE

**Hon. Speaker:** If the Members making their way in could, please, take their seats.

Hon. Members, Standing Order No. 225(2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member.

I, therefore, wish to convey to the House that my office has received a Petition regarding the variation of boundaries of Mt. Elgon Forest Reserve. The Petition is signed by Mr. Keriako Tobiko, the Cabinet Secretary for Environment and Forestry, and Ms. Farida Karoney, the Cabinet Secretary for Lands and Physical Planning, on behalf of the Executive. The Executive seeks the approval of the National Assembly for the alteration of the boundaries of Mt. Elgon Forest Reserve, pursuant to provisions of Section 34 of the Forest Conservation and Management Act, 2016.

Section 34(1) of the aforementioned Act states:

“34. (1) Any person may petition the National Assembly or the Senate, for the variation of boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest.”

Section 34 (5) and (6) further states:

“(5) If the relevant Committee, reports that it finds that the petition—

(a) does not disclose a ground for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, no further proceedings shall be taken; or

(b) discloses a ground for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, the

National Assembly or the Senate shall vote on whether to approve the recommendation.

(6) If the resolution under Subsection (5)(b) is supported by a majority of the Members of the National Assembly or the Senate, present and voting, the Cabinet Secretary shall publish a notice in the Gazette.”

The two State Departments seek parliamentary approval for degazettement of 4,607 hectares comprising of Phases II and III of the Chepyuk Settlement Scheme in the Mt. Elgon Forest Reserve within Cheptais Forest Station in Bungoma County. The purpose of the degazettement is to resettle the Soy (Sabaot) and Dorobo (Mosop) communities in the area to resolve historical land injustices, reduce security conflicts and spur local development.

In this regard, the two State Departments pray that:

- (i) The National Assembly resolves that this Petition discloses a ground for the variation of the boundaries of a public forest; and
- (ii) The National Assembly approves the alteration of the boundaries of Mt. Elgon Forest Reserve to allow for resettlement on Phase II and III of Chepyuk Settlement Scheme.

A Petition of this nature is new to the House, being one that emanates from the Executive having been approved by the Cabinet.

Allow me therefore, to guide the House that, pursuant to provisions of Standing Orders No. 227(1) this Petition stands committed to the Departmental Committees on Environment and Natural Resources and Lands for joint consideration. The Committees should guide the House by way of a Report on whether the Petition satisfies the requirements of Section 34 of the Forest Conservation and Land Management Act, 2016, relating to the grounds for variation of the boundaries of a public forest, having ensured sufficient public participation with relevant stakeholders as required by the law.

The Joint Committee have 60 days within which to submit their report for consideration and decision by the House as required under Section 34(5) of the Forest Conservation and Management Act and Standing Order No.227(2) thereof.

Thank you.

Hon. Members, there are other Petitions which will be taken in the following order: The first one is by Hon. George Murugara, Member for Tharaka.

#### NON-PAYMENT OF HARDSHIP ALLOWANCE TO PUBLIC SERVANTS

**Hon. George Murugara** (Tharaka, DP): Thank you, Hon. Speaker. I, the undersigned, on behalf of members of the Union of Kenya Civil Servants of Tharaka Nithi County draw the attention of the House to the following:

THAT, Public Service Policy stipulates that public servants working in hardship areas are entitled to hardship allowances;

THAT, in 1997, the then Minister for Education Gazetted Tharaka District as a hardship area following a Collective Bargaining Agreement (CBA) signed between the Teachers Service Commission and the Kenya National Union of Teachers (KNUT);

THAT, in the year 2000, the Government reviewed all hardship areas and declared Tharaka District (as it then was) as one of the hardship areas, and that consequently, all public servants in Tharaka South and Tharaka North Districts (as they then were) were paid hardship allowances for two (2) months after which the hardship allowances were stopped and subsequently scrapped, no attendant reason was given for this;

THAT, employees of the Judicial Service Commission and the Teachers Service Commission stationed in Tharaka South District (now Tharaka South Sub-County), Tharaka North District (now Tharaka North Sub-County) and IgambaNg'ombe Sub-County still get paid hardship allowances despite the scrapping of the hardship allowance; and this disadvantaged civil servants working in other sectors in those sub-counties;

THAT, there is growing discontent among the civil servants working in these areas because of the disparity in payment of the hardship allowances;

THAT, efforts to resolve the matters with the Salaries and Remuneration Commission have been fruitless;

THAT, the matter presented in this Petition is not pending before any court of law, constitutional or legal body;

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Labour and Social Welfare: -

- (i) Investigates the circumstances under which there are disparities in payment of hardship allowances for public servants in Tharaka South Sub-County, Tharaka North Sub-County and Igambang'ombe Sub-County;
- (ii) Recommends that the Salaries and Remuneration Commission harmonizes payment of hardship allowances for public servants in the three sub-counties;
- (iii) Recommends that the Public Service Commission pays hardship allowances arrears to public servants stationed in Tharaka South Sub-County, Tharaka North Sub-County and IgambaNg'ombe Sub-County as necessary; and
- (iv) Makes any other direction that it deems fit in the circumstances of the case for the benefit of the public servants in the three sub-counties aforesaid.

And your Petitioners will ever pray.

**Hon. Speaker:** The next Petition will be presented by the Member for Kikuyu Constituency.

#### GRIEVANCES OVER LAND OWNERSHIP IN NACHU WARD

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I, the undersigned, on behalf of a resident of Kikuyu Constituency, Kiambu County, draw the attention of the House to the following:

THAT, one Mr. Evans Wangendo, purchased a quarter acre piece of land, plot number T.152 in Ruthigiti Sub-location in 1986 from the original owner of the land, a Mr. Mbuti Mungai, who is now deceased;

THAT, this land was part of a settlement scheme in a former colonial village which was allocated to individuals who were living there at the time, including the Mungai family who sold the land to Mr Wangendo without objection;

THAT, some of the residents of the scheme received allotment letters for their plots while others balloted for allocation but their titles were never processed by the defunct County Council of Kiambu;

THAT, in 1995, Mr. Wangendo was confronted by an individual claiming to have a title deed to the said land, asking him to vacate the property;

THAT, several other plot owners in Nachu and Karai wards have also faced similar circumstances of non-residents showing up with titles claiming their land, affecting locals who have been in residence there for over thirty (30) years;

THAT, efforts to have our grievances addressed by the relevant government institutions have not yielded any fruit; and

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or legal body.

Therefore, humble petitioner prays that the National Assembly, through the Departmental Committee on Lands:-

- (i) Intervenes to have the Ministry of Lands & Physical Planning and the National Land Commission look into this matter and make the necessary restitution to the rightful owners of the land; and,
- (ii) Makes any other further order(s) deemed fit in the circumstances of the petitioner.

And your humble Petitioner will ever pray.

**Hon. Speaker:** The next Petition is by the Member for Starehe Constituency who had requested to be given some little time which I have acceded to. You know we operate by rules. I have another request which will come at the appropriate time. The Member will be allowed to present his Petition as soon as he arrives because he had given quite valid reasons.

Hon. Members, there is quite some heavy business. Since, it is not a matter for the House I will exercise my discretion under Standing Order 226 not to allow any comments or clarifications on the two Petitions. So, we can move with speed to the next business before the House. Before that, allow me to recognise the presence of students and pupils from the following institutions: In the Speaker's Gallery, Kiserian Junior Seminary High School, Kajiado West Constituency, Kajiado County; St. Monica Munyaka Girls Secondary School, Kieni East Constituency, Nyeri County; Yumbisye High School, Kitui Central Constituency, Kitui County; Kanyariri High School, Kikuyu Constituency, Kiambu County. In the Public Gallery, students from Kambiti Primary School, Tharaka Constituency, Tharaka Nithi County; Imara Primary School, Embakasi Central, Nairobi County; Itivanzou Primary School, Mwingi North Constituency, Kitui County; Iriani Primary School, South Imenti Constituency, Meru County, Kathiga Gacheru Secondary School, Mbeere North Constituency, Embu County. They are all welcome to observe the proceedings of the National Assembly this afternoon.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order, Hon. Ichung'wah?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, Hon. Sankok behind me is asking whether the Speaker is out of order and he surely knows the Speaker can never be out of order.

**Hon. Speaker:** What is your point of order? I think these days we have too many... Do not comment on what you are hearing. Those are gossips and whispers. Never be moved by them. Those are whispers and people speaking behind and below the chair and in gangways. Those are just whispers and the House does not conduct business through whispers.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. Even for the sake of the records of the House and to avoid future disputes between our constituency boundaries, it is good to correct that Kanyariri High School, as much as we welcome them, is in Kabete Constituency and not in Kikuyu Constituency. The Member for Kabete might assume I have taken over part of his constituency. Therefore, it is just for the record.

**Hon. Speaker:** Indeed, I think it is important that the staff – and I think the Clerk will be doing this – who record where various institutions are located to take great caution not to make mistakes. Indeed, yesterday, there was a school that was said to be from Kibwezi Constituency. There is no such constituency. There is Kibwezi East and Kibwezi West. So, the staff are accordingly warned that they must get the records very straight. Proceed.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I think it is good for the record. My point of order was in relation to the Communication you have just given on the Petition by the Member for Starehe Constituency on the...

**Hon. Speaker:** You know you cannot comment on something that is not before the House.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, I was seeking your guidance because there were traders yesterday who had staged demonstrations outside.

**Hon. Speaker:** We do not know the nature of the Petition which has been approved by the Speaker. So, wait for the Petition to be before the House.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): I am well guided, Hon. Speaker.

**Hon. Speaker:** Indeed, since the Member for Starehe has now arrived, I will allow him to present his Petition. Proceed.

**Hon. Charles Njagua** (Starehe, JP): Thank you, Hon. Speaker.

I, the undersigned, on behalf of traders of Nairobi Importers and Traders Association within Starehe Constituency, draw the attention of the House to the following:

THAT, aware that the Nairobi Importers and Traders Association comprises of traders carrying out business at Nyamakima, Kirinyaga Road, Kamukunji, Gikomba, Accra Road, Lithuli Avenue, Dubois and Tom Mboya streets, areas all within Starehe Constituency;

THAT, there has been rampart harassment of traders by government;

*(Hon. Kimani Ichung'wah and Hon. Junet Nuh consulted loudly)*

**Hon. Speaker:** Hon. Junet and Hon. Kimani Ichung'wah, you cannot be communicating to each other from both sides of the aisle. You can walk round and go to where the other is. Please, allow us to listen to the Petition.

**Hon. Charles Njagua** (Starehe, JP): I, the undersigned, on behalf of traders of Nairobi Importers and Traders Association within Starehe Constituency, draw the attention of the House to the following:

THAT, aware that the Nairobi Importers and Traders Association comprises of traders carrying out business at Nyamakima, Kirinyaga Road, Kamukunji, Gikomba, Accra Road, Luthuli Avenue, Dubois and Tom Mboya streets, areas all within Starehe Constituency;

THAT, there has been rampant harassment of traders by Government officials from the Anti-Counterfeit Agency (ACA) and the Kenya Bureau of Standards (KEBS) under the guise of fighting contraband and counterfeit goods;

THAT, the traders carry out fully registered and legitimate business and are in full support of...

*(Loud consultations)*

**Hon. Speaker:** Order, Hon. Members. Have you read your Standing Order No.103, particularly sub-section (2)? As you do your business, look at the Member speaking and the Speaker. All of you are just standing here. I do not even know whether the Member is crying as he is seeking this. Please, I need to hear what the Member is saying.

Proceed from where you have reached.

**Hon. Charles Njagua** (Starehe, JP):

THAT, the traders carry out fully registered and legitimate business and are in full support of the Government's effort on the fight against counterfeit and contraband goods; THAT, while efforts by the Government to fight contraband and counterfeit goods must be supported, this should not be used to infringe on the rights of the legitimate traders; THAT, there has been no protection by the Government to legitimate business people from extortion by corrupt officials, who demand bribes from the traders or otherwise face harassment;

THAT, the Anti-Counterfeit Agency and the Kenya Bureau of Standards have not been carrying out inspection of goods at the entry points but carry out raids in shops with the help of the police and other unknown persons;

THAT, the Government has been implementing blanket destruction of imported goods in the port when contraband/counterfeit goods are found in a container which belongs to different traders in a situation where it does not warrant destruction of all the goods in the container;

THAT, most goods are not cleared on time making the traders run into losses as they use bank loans to finance businesses and further when the goods stay for a period of more than four months at the port, it leads to bad debts, auction and closure of businesses;

THAT, the long period of clearing goods attracts demurrages which is passed on to the small traders thus increasing the overall cost of doing business;

THAT, the Government gets rid of cartels purporting to be agents strategically stationed in Mombasa and whose main business is to buy auctioned good at the port at cheap prices;

THAT, the Government should offer the traders a one-year grace period before the implementation of new policies governing importation of goods;

THAT, the Government should offer amnesty and release goods in the port of Mombasa for those traders whose goods have been impounded; and,

THAT, there are no clear policies in place to guide the operations of informal traders.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Industry, Trade and Co-operatives:

- (i) Carries out and recommends immediate investigations by the relevant authorities into the matter to ascertain harassment and recommend appropriate actions against the perpetrators;
- (ii) Recommends for amnesty for release of goods from the port of Mombasa for legitimate traders whose goods have been impounded;
- (iii) That the authorities carry out public participation and involve the traders in rebuilding their businesses;
- (iv) Ensures that the Petitioners' plight is addressed; and,
- (v) Makes any other order or direction that it deems fit in the circumstances of the matter.

And your Petitioners will ever pray.

**Hon. Speaker:** Hon. Members, remember I have already ruled that I am not allowing comments on any of the petitions because there is a lot of other business and the House is due to go on recess later today. Remember that is in your own Standing Orders. Just look at it. You provided that the Speaker may, and not shall, for a period of not exceeding 30 minutes. So, because of the business that is before the House, I have already told you that I have exercised my discretion and determined that there shall be no comments or clarifications on any of those petitions. Obviously, I am alive to the seriousness of the petitions that I read out. I am sure Hon. Pukose would have wanted to speak for not less 35 minutes. That would have exceeded the time allowed for all petitions. So, please, there are no comments. I have looked through all those petitions and approved them, after due consideration, because every one of you, in terms of Article 95(1) represents the people. So, the people you represent can bring all manner of issues to you. They need to hear that you heard them and you brought it. As to the merits and demerits, that will now be determined when the relevant committee brings a report. I think it is at that time that various comments will be entertained. So, let us not go there.

Let us go to the next Order.

### PAPERS LAID

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

Bi-Annual Report of the Commission on Administrative Justice for the period starting June to December, 2017.

Report of the Auditor General and Financial Statements of the Moi Teaching and Referral Hospital for the year ended 30<sup>th</sup> June 2017.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Deputy Speaker.

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Speaker, this is a very important Paper for Members like Hon. Pukose, who are used to saying that we put the Question. This is about the real questions that will come to the House.

I beg to lay the following Paper on the Table of the House:

The Second Report of the Procedure and House Rules Committee on consideration of amendments to the Standing Orders.

I thank you.

**Hon. Alfred Masadia** (Sabatia, ANC): *(Inaudible)*

**Hon. Speaker:** Hon. Agoi, Member for Sabatia, who is the leader of the delegation. I hope that the Clerk and his team have noticed that some of the microphones are not functioning. Even as you embark on the task of fitting other gadgets, our technical staff must work round the clock to ensure that each microphone is functioning. It is not the fault of Hon. Agoi that he could not be heard.

Proceed Hon. Agoi.

**Hon. Alfred Masadia** (Sabatia, ANC): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Report of the Special Funds Account Committee to the Third Annual Institute of Certified Public Accountants of Kenya (ICPAK) Chapter Seminar held in Johannesburg, South Africa, from 8<sup>th</sup> to 12<sup>th</sup> May 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Cheptumo.

**Hon. William Cheptumo** (Baringo North, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Report of the Departmental Committee on Justice and Legal Affairs on consideration of the following Petitions:

(i) Petition for introduction of retirement age limit of 70 years for persons desirous to contest for presidential elections by Hon. Mohamud Sheikh.

(ii) Petition for change of the Constitution to allow for equitable representation of electoral electorate and fulfilment of gender parity in legislature by Mr. Ezekiel Njeru Namu, and,

(iii) Petition to amend the Kenya School of Law Act, 2012, Second Schedule, by Mr. Peter Gathaiga Munyeki.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, I can see that there is some little bit of excitement by way of expectation. I have received communication and requests from the Joint Committee of the Departmental Committee on Agriculture and Livestock, and the Departmental Committee on Trade, Industry and Cooperatives. They are just tidying up their progress Report, which they are due to table before this House today. I have acceded to their request that they bring that Report not later than 4.00 p.m. today because the House needs to know what they have been doing.

Hon. Members, let us proceed to the next Order.

## NOTICES OF MOTIONS

### ADOPTION OF REPORT ON AMENDMENT OF NATIONAL ASSEMBLY STANDING ORDERS

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT this House adopts the Second Report of the Procedure and House Rules Committee on the consideration of amendments to the Standing Orders, laid on the Table of the House on Thursday, 5<sup>th</sup> July 2018.

Thank you.

### EXTENSION OF PERIOD FOR CONSIDERATION OF

## NOMINEES FOR APPOINTMENT AS CHAIR OF THE PUBLIC SERVICE COMMISSION

**Hon. Speaker:** Chair of Departmental Committee on Administration and National Security.

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011 relating to extension of period for consideration of nominees for appointment to public office and paragraph 6 (1) in the First Schedule to the Public Service Commission Act, this House resolves to extend the period for consideration of the nominees submitted by His Excellency the President for appointment to the Office of the Chairperson of the Public Service Commission by a further period of 14 days from 19<sup>th</sup> July 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Vice Chair, Departmental Committee on Labour and Social Welfare, Hon. Joyce Korir.

EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEES  
FOR APPOINTMENT TO THE OFFICE OF NATIONAL GENDER AND EQUALITY COMMISSION

**Hon. (Ms.) Joyce Korir** (Bomet, JP): Hon. Speaker, on behalf of the Chairperson of the Departmental Committee on Labour and Social Welfare, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011 relating to extension of period for its consideration of nominees for appointment to public office, and Section 11(6) of the National Gender and Equality Commission Act, this House resolves to extend the period for consideration of the nominees who were submitted by His Excellency the President for appointment to the Office of the Chairperson and members of the National Gender and Equality Commission by a further period of 14 days from 26<sup>th</sup> July 2018.

## COMMUNICATION FROM THE CHAIR

## REPORT OF PROCEDURE AND HOUSE RULES COMMITTEE

**Hon. Speaker:** This is the Communication I had indicated I would give at some time later. The Report of the Procedure and House Rules Committee that has just been tabled by the Deputy Speaker contains proposed amendments relating to questions ordinarily answered by Cabinet Secretaries before departmental committees.

The procedure proposed by the Committee is not very different from the procedure obtaining now save to state that in the procedure proposed, Members will have an opportunity to ask their Questions on the Floor of the House but the replies will be given by particular Cabinet Secretaries in respective committees. In this regard, I invite all Members to familiarise themselves with the contents of the Report during the recess period in readiness for the actualisation of the new procedure. The Procedure and House Rules Committee is convinced that

the process is expected to increase the visibility of the House in addition to allowing Members to play their oversight and deliberative roles more effectively as envisaged in Article 95 of the Constitution.

I have also been notified by the Chairperson of the Liaison Committee who is also the Deputy Speaker, that chairpersons of departmental committees together with the leadership of the House, House Business Committee and, indeed, the Procedure and House Rules Committee will be retreating on or around 26<sup>th</sup> July 2018 to discuss the operationalization of the new process and related matters. I have also requested the Clerk of the National Assembly to put in place necessary and administrative structures to facilitate smooth actualisation of the new procedure in anticipation that the House will approve the proposed amendments to the Standing Orders.

Thank you Hon. Members.

**Hon. Speaker:** The Chairperson, Departmental Committee on Trade or the Chairperson, Departmental Committee on Agriculture to lay your preliminary report as I directed. Which one of you is going to do that?

### STATEMENT

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

#### BUSINESS FOR THE WEEK COMMENCING 24<sup>TH</sup> TO 26<sup>TH</sup> JULY 2018

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, as I read the Statement, the two Chairs can tell us whether there is mercury in the sugar we consume.

Hon. Speaker, pursuant to the provisions of Standing Order 44(2) (a), I rise to give the following Statement on behalf of the House Business Committee (HBC) that sat on Tuesday this week at the rise of the House to give priority for business for the remaining part of the week.

I wish to remind Members that the House is scheduled to proceed on a short recess commencing tomorrow in accordance with the resolution passed on Thursday last week regarding the alteration of the Calendar of the House. As a result of this, the HBC has not scheduled any business for next week.

Upon resumption from the short recess, the following Bills will be given priority at the Second Reading stage: the Warehouse Receipts System Bill, the Sacco Societies (Amendment) Bill, the Statute Law (Miscellaneous Amendments) Bill No.12 of 2018, the Health Laws (Amendment) Bill, 2018 and the Finance Bill. We will also consider in the Committee of the whole House the Public Private Partnership (Amendment) Bill, 2017. I, therefore, urge all chairs of the departmental committees of the various Bills that have been sent to them to expedite consideration of those Bills and table any pending reports when we resume. In addition, I encourage all Members with amendments to the said Bills to submit them to the Office of the Clerk for consideration before the Bills are scheduled for the Committee of the whole House.

Also prioritised for debate after the recess is the Report of the Departmental Committee on Justice and Legal Affairs regarding consideration of the nominee for appointment to the Office of the Chairperson and Members of the Commission on Administrative Justice. We will also consider the Report of the Departmental Committee on Finance and National Planning on the nominee for appointment as Chairperson of Salaries and Remuneration Commission. The

relevant committees should expedite the vetting process so as to allow the House time to consider them within the stipulated timelines.

In regard to the anticipated Motion on the changes of committee membership, the party Whips had a meeting this morning and they will conclude the process of allocating committees some of our colleagues who do not have committees at the moment during the recess period and submit to the Committee on Selection before consideration by the House on the first week upon our return.

On the Questions before committees, the following Cabinet Secretaries are scheduled to appear on Tuesday 24<sup>th</sup> July 2018: The Cabinet Secretary for Education 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, Hon. Godfrey Osotsi, MP, Hon. Omboko Milemba, MP, Hon. Mwashako Mwakuwona, MP, and Hon. Bernard Shinali, MP, all will take place in the main Chamber, Parliament Buildings at 10.00 a.m.

The next will be the Cabinet Secretary for Environment and Forestry who will appear before the Departmental Committee on Environment and Natural Resources to answer questions from Hon. Martin Peter Owino, MP, Hon. Malulu Injendi, MP and Hon. Christopher Nakuleu, MP. This will take place at the County Hall Chamber at 11.00 a.m.

Finally, the Attorney-General of the Republic of Kenya will appear before the Departmental Committee on Justice and Legal Affairs to answer questions from Hon. Ndindi Nyoro, MP, in the main Chamber County Hall at midday.

The HBC will reconvene on Tuesday 24<sup>th</sup> July 2018, *Inshallah*, at the rise of the House to consider business for the coming week.

I beg to lay the Statement of the House. Thank Hon. Speaker.

**Hon. Speaker:** Hon. Samwel Gachobe.

## PERSONAL STATEMENT

### DELAYED COMPENSATION OF VICTIMS OF SOLAI DAM TRAGEDY

**Hon. Samuel Gachobe** (Subukia, JP): Thank you, Hon. Speaker. Pursuant to Standing Order 84, I wish to make a personal statement regarding late compensation of the victims of the Solai Dam tragedy by the management of Patel Farm in conjunction with the Office of the County commissioner, Nakuru County that appeared in sections of print and social media.

It is alleged that the said management in consultation with the local leaders has concluded the plans to compensate the affected families. I wish to offer a public explanation that the alleged involvement of local leaders is a lie as such a programme was conducted by other leaders purporting to represent my constituents. As an elected Member for Subukia Constituency in which the very incident happened, I wish to categorically clarify that I was not involved neither was I aware of the said arrangement. They have even intended to petition this House over the matter but I was advised by the leadership to hold the petition pending the outcome of the investigations by the relevant committee of this House and the investigation agencies.

On that note, I wish to welcome the recommendation by the Director of Public Prosecutions (DPP) on this matter. I take this opportunity to urge my constituents to remain calm and peaceful as we pursue this matter in the best of their interest. I also wish to caution my colleagues from the neighbouring constituencies to refrain from interfering with the affairs of Subukia Constituency, particularly on the matter bordering on Solai Dam tragedy. The people of

Subukia who elected me to this House did so in full confidence that I will represent their interests.

Finally, I wish to express my sincere thanks to all Kenyans of goodwill for their overwhelming support to the victims of Solai tragedy.

Thank you.

**Hon. Speaker:** Hon. Beatrice Adagala, County Member for Vihiga County.

## STATEMENTS

### EFFECTS OF ROAD CONSTRUCTION ON RESIDENTS OF MWOKI MASANA AREA

**Hon. (Ms.) Beatrice Adagala** (Vihiga CWR, ANC): Thank you, Hon. Speaker. Pursuant to Standing Order 44(2)(c), I wish to request for a statement from the Chairperson, Departmental Committee on Transport, Public Works and Housing regarding detrimental effects of road construction on residents of Mwoki Masana area in Vihiga County. The Chinese are currently constructing the Kisumu-Kakamega Road and they are acquiring building materials from Mwoki Masana area in Vihiga County. The said construction has had detrimental effects to the residents living in Mwoki Masana area and its neighbourhood ranging from water and air pollution resulting to respiratory infections, to accidents due to open caves left by the excavators among others.

It is against this background that I seek a statement from the Chair of the committee on the following: One, mechanism that needs to be put in place to ensure safety of the residents and, two, compensation of the affected people by the relevant Ministry.

Thank you.

**Hon. Speaker:** The Chair, Departmental Committee on Transport, Public Works and Housing, you are expected to give a response to that because it is not a petition. So, there is no much inquiry required. Give the statement on Thursday, the week after the House resumes. That should be 26<sup>th</sup> of July.

Hon. Rashid Kassim, Member for Wajir East.

### EXTRAJUDICIAL KILLING IN WAJIR COUNTY

**Hon. Rashid Amin** (Wajir East, WDM-K): Thank you, Hon. Speaker. Pursuant to Standing Order 44(2)(c), I wish to request a statement from the Chairperson, Departmental Committee on Administration and National Security on extrajudicial killing in Wajir County. Four persons were picked up by security officers from their shops in Konton and Khorof Harara areas in ongoing operations in Tarbaj and Wajir East sub counties. Recently, in the last week of June 2018, two bodies were found in a shallow grave by herders. Among the four persons picked and identified are Adan Dabra Abdi and Abdi Jimalle. The whereabouts of the two other missing residents namely Mr. Yusuf Ibrahim Osman and Mr. Mohammed Abdi are unknown and they may face the same fate as the ones found dead.

It is against this background that I seek a statement from the Chairperson, Departmental Committee on Administration and National Security on the following: One, regarding the killings of Mr. Adan Dabra Abdi and Mr. Abdi Jimalle and action taken against those involved in such atrocious activities. Two, regarding whereabouts of Mr. Yusuf Ibrahim Osman and Mr. Hussein Mohammed Abdi.

Thank you.

**Hon. Speaker:** Chair of Departmental Committee on Administration and National Security, you can prepare a statement. We need to differentiate between statements and petitions. These requests for statements are not in the same category as petitions. So, even if the Chair of the committee goes and gets an answer from wherever, the answer will be given so that you can also learn to differentiate between making casual requests and bringing petitions. The Chair can even bring the statement on Wednesday, 25<sup>th</sup> July when we resume.

Finally, Hon. William Kamket, Member for Tiaty.

**Hon. William Kamket** (Tiaty, KANU): Thank you, Hon. Speaker. This is something very serious. I would like you to...

**Hon. Speaker:** You begin telling me about seriousness, all the others are serious. If you think it is serious... Look at the time. I am allowing you to seek statements. If you look at Standing Order 44, it is not later than 3 p.m. Instead of going to your statement, you are telling me how serious it is. I am not interested in that. The House will not even be interested in that. Seek your statement.

#### INVESTIGATIONS INTO ABDUCTION OF SILALE MCA IN TIATY

**Hon. William Kamket** (Tiaty, KANU): I stand guided, Hon. Speaker. I was saying so because it is a matter of life and death. It is a death situation. As this House is fully aware, on Sunday 1<sup>st</sup> July the Member of County Assembly (MCA) for Silale was abducted by unknown people in my constituency. Later on, he was dropped somewhere in a bush in Nakuru. The intention of the abductors is not known. We have had such situations before where the MCA for Churo Amaiya, the late Minito, was abducted from a hotel in Kabarnet and later his body was found dumped somewhere in Ol Donyo Sabuk. We have had 15 cases of citizens who have been abducted and later on their bodies found dumped.

I wanted to request the Chairperson of the Departmental Committee on Administration and National Security to look into this matter because we have given the police everything that they need to have. We have given them the number plate of the vehicle that was used to abduct the MCA and up to now there have been no arrests yet all the details of the vehicles are with the police. Could the Chair if possible, find a way of summoning the Inspector-General (IG) to come and shed light on why the MCA was abducted and if indeed there was a crime committed by the MCA, why was he not arrested like anybody else would be, in a normal manner?

Thank you, Hon. Speaker.

**Hon. Speaker:** As you may have heard, first of all the request is two-fold. The Chairperson to look into that matter, and if possible, also invite the IG and see whether the MCA concerned had committed a crime. It is an extremely easy task that the Chairperson has been given by Hon. Kamket. This is the reason I always insist that you put your thoughts down with a pen and paper and have it approved. But because of the reasons that the Hon. Kamket indicated, we allowed him to seek a statement, but you can see how well the statement has been sought. Chairperson, Departmental Committee on Administration and National Security do as requested, look into and if possible also invite the IG to tell you. That is how the Statement has been put. Obviously, I believe I have gotten the Member in the way he has put his request. The Chairperson can use his naked eyes if he so desires to look into the matter and if possible invite the IG and ask him whether the MCA had committed a crime. If the MCA had committed a crime, the IG needs to say why he was not arrested. That is what Hon. Kamket has sought.

Hon. Members, we will end that session with that request and before we move to the next Order, I want to recognise the presence of students from St. Ann Gituba Secondary School, Gichugu Constituency, Kirinyaga County, St. Teresa Girls Kimangao, Mwingi Constituency, Kitui County and those from Mt. Kenya Academy, Nyeri Town Constituency, Nyeri County in the Speaker's Gallery. They are all welcome to observe the proceedings of the National Assembly this afternoon.

Hon. Members, before we move to the next Order at this point either the Chair of the Departmental Committee on Trade, Industry and Cooperatives or the Chair of the Departmental Committee on Agriculture and Livestock is to give the House a preliminary report, which report must also be tabled. There may be no time to debate it, but it must be tabled so that it becomes the property of the House. Which of you is doing this? Hon. Kanini Kega, are you the one?

#### PRELIMINARY REPORT ON IMPORTATION OF CONTRABAND SUGAR

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker for this opportunity. I am giving a preliminary report on the Statement that was sought by Hon. Lesuada.

We are basically apprising Members on the progress we have made in the inquiry on the big sugar in the country, whether it has mercury or not. Before I say whether it has mercury or not, it is good to bring to speed Members so as to make sure that they understand the background.

The Joint Committee on Trade, Industry and Cooperatives and that of Agriculture and Livestock, inquired into the alleged importation of contraband sugar in to the country following the directive of the Speaker of the National Assembly in his ruling dated Wednesday 20<sup>th</sup> June 2018. The Committee was guided by the issue raised in the request for Statement by Hon. Naisula Lesuada, MP and subsequently other matters that arose during debate on the alleged presence of contaminated sugar in the country.

To address this critical aspect and pursuant to the provisions of Article 95(2) of the Constitution, which clearly mandate that the National Assembly shall deliberate on and resolve issues of concern to the people, further the Speaker directed the Joint Committee to "investigate, inquire into and report within 10 days on the alleged importation of contraband sugar into the country."

The Committee commenced its inquiry on the 22<sup>nd</sup> June 2018 by understanding the operations in the sugar industry while appreciating the role of each stakeholder in the sugar production and eco-system.

The Committee noted that there was complicity on the part of the Government agencies including Kenya Bureau of Standards (KBS), Kenya Revenue Authority (KRA), Anti-Counterfeit Authority (ACA), Agriculture and Food Authority(AFA) and the Ministry of Agriculture and Livestock, Ministry of Trade, Industry and Cooperatives, the National Treasury and planning in performance of the respective duties and responsibilities as provided in the law and regulations governing sugar importation and handling and storage of food items.

To specifically respond to concerns raised by Hon. Naisula Lesuada, the Committee purposed to develop operational terms of reference and guidelines to be followed in the investigations. The terms include the following: To determine-

- (i) Whether the imported sugar is unfit for human consumption as it contains mercury and copper that are believed to have adverse effects on human health;
- (ii) The origins of the contraband sugar;

- (iii) Whether the laid down procedures were followed in the importation of sugar and how it was cleared at the point of entry in to the country;
- (iv) Whether there are disposal plans of contraband sugar and measures in place to ensure the disposal mechanism is not hazardous to the environment and human health;
- (v) If there are measures in place to ensure that the sugar in the market is safe for human consumption and if there is any arrests that have been made to the people who are behind this illicit trade.

During the inquiry, the Joint Committee held 12 sittings and received submissions from ministries, agencies and other stakeholders.

Further, to apprise itself with activities of the multiagency team and understand the gravity of the matter, the Committee undertook targeted inspection visits, to warehouses, where the seized sugar was stored as well as the port of Mombasa. The inspection visit reports to Mombasa, Nakuru, Kakamega and Webuye, identified major concerns on storage and handling of imported sugar.

The Committee received oral and written submissions from the following: The Cabinet Secretaries in the Ministry of Agriculture, Livestock, Fisheries and Irrigation, National Treasury and Planning, Trade Industry and Cooperatives, Interior and Coordination of National Government, KBS, KRA, Hydery (P) LTD, Diamond Wholesalers LTD., West Kenya Sugar Company LTD., SGS Limited, SONY commonly referred to as South Nyanza Sugar Company. So far and this is very important, from the preliminary laboratory test and ongoing analysis, no traces of mercury have been found. However, investigations on the same and different samples are ongoing.

The Committee was informed by the Cabinet Secretary of the Ministry of Trade Industry and Cooperatives an analysis of copper and lead indicate that the samples seized from Eastleigh and Paleah Stores Ruiru failed with lead at 0.35 ml/kg against a requirement of 0.05 ml/kg whereas copper was at 20.7 ml/kg against the required standard of 0.2ml/kg.

The Committee also noted that the Ministry of Health submitted that a laboratory analysis of samples collected from sugar across the country, undertaken as of 23<sup>rd</sup> June 2018 indicated that copper, lead and arsenic contaminants are within the standard specification but had a high moisture content beyond the standards, whereas, the analysis of the mercury contamination is ongoing.

The Committee also noted that the Ministry of Health submitted laboratory analysis of samples collected from seized sugar across the country undertaken as of 23<sup>rd</sup> June indicated that copper, lead and arsenic contaminants are within the standard specifications but had high moisture content beyond the standards, whereas the analysis of mercury contamination is ongoing.

A key finding throughout the investigation was that there was failure within the Government agencies that were concerned with regulation and inspection of imported sugar. It was apparent that there was unregulated importation of sugar following *Gazette Notice No.4536* dated 11<sup>th</sup> May 2017 on importation of sugar and milk powder duty free. To avert similar challenges occurring in the future, it is the recommendation of the Joint Committee that Government agencies in the sugar sector perform their duties diligently, especially the Ministry of Agriculture, Livestock and Fisheries through AFA, the National Treasury and Planning, the Kenya Revenue Authority and Ministry of Trade through the Kenya Bureau of Standards (KEBS) and the Anti-Counterfeit Agency (ACA).

It is equally important that the Government agencies take the reports of Parliament seriously since if recommendations in a report by the Departmental Committee on Agriculture,

Livestock and Cooperatives in the 11<sup>th</sup> Parliament on the crisis facing the country in the sugar industry were implemented, some of these current problems could have been avoided.

In 2017, the country was hit by drought and famine that led to lack of food and escalation of food prices. As one of the initiatives to mitigate the phenomenon, the President declared drought a national disaster on 10<sup>th</sup> February 2017, through Executive Order number 1 of 2017 and directed all relevant ministries to take immediate and necessary action to ensure that there was enough supplies of essential food commodities in the country to alleviate the adverse effects of the drought. Upon Cabinet approval on 5<sup>th</sup> May 2017, the Cabinet Secretary for National Treasury and Planning was requested to publish a *Gazette Notice* to allow importation of sugar and milk duty free for purposes of stabilising the prices of the said commodities.

Subsequently, the Cabinet Secretary issued *Gazette Notice No.4536* of 11<sup>th</sup> May 2017 on importation of sugar and milk duty free between 12<sup>th</sup> May 2017 and 31<sup>st</sup> August 2017. The importation of the said sugar reduced retail prices of sugar from an average price of Kshs175 per kilogramme to Kshs123 per kilogramme. By the expiry of the *Gazette Notice*, the Ministry of Agriculture, in their supply/demand analysis, observed that:

- (a) There was 50 per cent deficit on domestic production, leading to overall national deficit of 50 per cent of sugar;
- (b) Sugar millers were facing under-utilisation of domestic factories due to the shortage of sugarcane as a raw material; and,
- (c) The high sugar prices persisted.

The Ministry of Agriculture, therefore, recommended that sugar millers be granted permission to import duty-free sugar up to December 2017, also considering that there was another *Gazette Notice*. The Cabinet Secretary for National Treasury, following the advice from the Cabinet Secretary for Agriculture, through *Gazette Notice No.9801* allowed local sugar millers to import sugar between 1<sup>st</sup> September 2017 and 31<sup>st</sup> December 2017.

On 10<sup>th</sup> October 2017, following a further analysis of the sugar situation in the country, the Ministry of Agriculture advised that the sugar was reasonably sufficient and there was no need for more sugar importation, hence the need to revoke *Gazette Notice No.9804* of 2017. Consequently, the Cabinet Secretary of National Treasury, through *Gazette Notice No.10149* of 13<sup>th</sup> October 2017, moved the deadline for duty-free importation from 31<sup>st</sup> December 2017 to 13<sup>th</sup> October 2017.

Ninety five per cent of the sugar that came to the country came through the port of Mombasa and each consignment of sugar imported came with a certificate of conformity (COC), proving tests and conformity to international standards. On arrival to the Kenyan port of entry, the same was tested for compliance with Kenyan standards by KEBS before clearance into the country.

The Cabinet Secretary for Interior and Coordination of National Government informed the Committee that illicit trade from the Port of Kismayu in Somalia was a big threat with ramifications including terrorism, money laundering and movement of small arms.

He further stated that Kenya has approximately 700 kilometres of porous borders and the government is investing heavily to secure it through heightened border control. It is only 95 per cent that came through the Port of Mombasa. Another 5 per cent of the sugar that came into the country came through the porous border that we have.

It is also important to note the Cabinet Secretary for Interior informed that his communication to the public on the presence of heavy metal in some products in the market was

a cautionary statement. Investigations are ongoing to establish the presence and quantities, if any, in the various commodities seized by the multi-agency across the country.

As I conclude, the Committee observed that 95 per cent of imported sugar during the duty-free window was brought through the Port of Mombasa and was cleared by various relevant agencies, and the remaining 5 per cent found its way through our porous border.

Some few recommendations:

- (a) The Committee recommends that the multi-agency team should expedite their investigations into the matter and provide conclusive evidence on the same.
- (b) The Committee recommends that the border management committee be reconstituted to provide sufficient safeguards.
- (c) The Committee further recommends that border surveillance team be facilitated to enable them conduct their work effectively.

The process of clearing sugar is done by six bodies: KRA, for them to collect tax; KEBS, for quality; Port Health, for food safety; Sugar Directorate, on licensing; Radiation Protection Board, for safety; and the Kenya Ports Authority (KPA), for logistics. The KEBS issued the following conditions to regulate the importation of bulk sugar, because the issue that we have in the country is about bulk sugar. The conditions were that the sugar was to be bagged at the point of entry in marked bags and transported to the factories for further processing before repacking for retail. The Committee observed that certain companies failed to comply with the outlined conditions by transporting sugar in open trucks, storing the sugar under unhygienic conditions, and exposing the sugar to contamination by handling it using machinery used for other industrial purposes.

In conclusion, these matters are under investigations and releasing some of the names might jeopardise the investigations. The sugar imported is pre-inspected by KEBS-appointed agents and issued with COCs into the country. The Committee also observed that all sugar imported legally within the duty free importation window had the requisite clearance from the country of origin and KEBS.

Due to poor handling and storage conditions, the sugar is likely to be contaminated due to its hygroscopic nature. The Committee further received presentation from the Ministry of Health indicating that some of the samples did not meet the national standard of moisture content. The Ministry assured the Committee that the contaminated lots are under seizure pending destruction. However, the Committee cannot make a conclusive determination on the issue of the level of contamination of sugar in the country since analysis of samples collected by Kenya Bureau of Standards (KBS) is still ongoing.

Meanwhile, we made the following preliminary conclusions:

- (i) Preliminary laboratory tests and ongoing analysis show no traces of mercury, however, investigations are ongoing;
- (ii) Kenya Bureau of Standards should coordinate with other relevant Government agencies to ensure that the raw sugar that was imported during the duty exemption window is reprocessed by all importers;
- (iii) All sugar imported, bagged or bulk, should undergo fresh tests and if found unsuitable for human consumption be destroyed by the multi-agency team;
- (iv) The Kenya Revenue Authority should recover duty lost from importers who imported sugar outside the duty free window;
- (v) The Kenya Revenue Authority should recover the applicable duty from any entity that imported industrial sugar during the duty free window;

- (vi) The Government should ban importation of raw and bulk sugar; and,
  - (vii) Millers be investigated for any misconduct in the importation of sugar during the duty exempt period as provided for in the Gazette Notice No. 4536 considering that SONY Sugar was adversely mentioned.
- Hon. Speaker, that is the humble submission from the Joint Committee.

*(Loud consultations)*

Hon. Speaker, it is important to note that we had sought extension for us to conclusively deal with this issue. We did not even interrogate all the importers. However, with that interim Report we are hoping that in a fortnight, we will Table the entire document. For today it was purely to apprise the House on the progress that we have so far.

Hon. Speaker, you also remember the challenges that the friends of the Committee subjected us to. In some cases the friends of the Committee were more than the Members of the Committee. We went through a lot of challenges. However, through it all we navigated and gave a document to the Kenyan people to show that something is being done and within 14 days Table the complete report.

Thank you, Hon. Speaker and I table.

**Hon. Speaker:** First, before I allow very few comments, we must remember that it is the House that demanded a progress report within the period that the House was going to be sitting.

The House having altered the Calendar last week so that it goes to recess at the rise of the House today, you must also bear the consequences of every decision that you take. You have been given the progress report. It is up to you to make what you may of it but remember it is just a progress report which you demanded.

Let us have the Hon. Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, yesterday morning at the time of the Private Members, we urged Members that we should stop this idea of bringing Motions that urge and replace it with the Motion that says: "The House resolves"

Hon. Speaker, I am a very sad man. A joint committee has used public resources for over two weeks and the kind of recommendations I am seeing here, even some county assemblies cannot make such recommendations. This afternoon at least we expected one definite answer from this Committee, that the sugar that Kenyans are consuming has no mercury. Just that!

*(Loud consultations)*

Hon. Speaker, Please protect me.

Let me read that recommendation that people are shouting about. It states thus:

"So far from the preliminary laboratory test and ongoing analysis no traces of mercury have been found. However..."

Hon. Speaker, we have gone to school.

"However, investigations on the same are ongoing."

That is not conclusive. The moment you say: "However investigations on the same are ongoing." the question as to whether mercury is found in the sugar in the market is not conclusive.

Hon. Speaker, under your leadership we owe our allegiance under the Constitution, Articles 94, 95 and 96 to the people of Kenya.

First, the citizens are in limbo. They do not know what to consume. The importers who have put their money in sugar do not know what is going to happen to their investment. This House cannot take this kind of decision. I have nothing personal. Hon. Lesuuda asked a specific question. Members should be given the statement sought by the Member. She asked a definite question: “Is the sugar in the market safe?” Fifteen days down the line, the sugar is “However...”

Secondly, there is a recommendation here that all the sugar in the market, even the one that Hon. Duale’s mother has in the House must undergo tests. It is ridiculous. It cannot happen that every kilo of sugar in our country must undergo tests. Parliament does not act in vain. It has the teeth to bite. If revenue was not collected by KRA, you have the gazette notice and know when the window was closing. If importer “X” and “Y” imported sugar outside the window period, this Committee must say it clearly that so and so did not pay duty. This is the amount and he must pay it.

**Hon. Speaker:** Just a minute, the Hon. Leader of the Majority Party, also try to take as little time as possible. You can see there are so many people. I am not able to tell whether they are standing because of the effects of what they may be consuming or not. Be that as it may, please...

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I have raised two issues and I am sure my colleagues will also have a chance to raise their questions. It is sad that this afternoon we do not have a definite answer whether the sugar we consume has mercury or not.

Secondly, we have not confirmed and we have no definite answer whether there was tax evasion and if so, who evaded.

**Hon. Speaker:** Hon. Members, I will limit the time because we have not resolved on the amount of time each Member should take. So, two minutes for each Member because there is a lot of business.

**Hon. John Ng’ongo** (Suba South, ODM): Thank you, Hon. Speaker, I hope Members will be quiet so that I can utilise my two minutes. First of all, it should be understood that the sugar industry has employed thousands of Kenyans. When I went to the village last weekend people were asking me whether they should take sugar or not.

The economic implication of this is that many people are not buying sugar as we speak. Those of us who come from sugar belt areas are not happy. I have two things to say. This matter did not come out of the blue; there are Kenyans who told us there is mercury in sugar. The Committee was to zero-in on these people and ask them where the sugar containing mercury was and they were to avail it. After which, the Committee was to determine whether it contained mercury or not. That is the Report we expected here today.

This Committee should have asked for extension of time so as to investigate beyond what was presented to them. After listening to the Committee Report it is a joke of the highest order. The Committee even talks about re-processing sugar and those who imported it during the window given by the CS should pay taxes. How, and the CS exempted sugar from taxes? To be honest there is no need of giving this Committee extra time. This work has defeated them. Let us either rely on other investigative organs or we create an ad-hoc Committee of this House to deal with this matter.

Thank you.

**Hon. Speaker:** Hon. Naisula Lesuuda, can you retrace your statement. Do you have it? Just read it out, so that we do not comment out of context.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Thank you, Hon. Speaker. To save on time, I will read the Statement.

“Hon. Speaker, it is alleged that the sugar is unfit for human consumption as it contains mercury and copper which are believed to have adverse effects on the human health.” It is no wonder that even the rising cases of cancer should be attributed to this. The killer trade is not only dangerous to the health of many Kenyans who are already victims but also impacting negatively on our economy through loss of millions of shillings and evasion of the Kenya Revenue Authority taxes by the owners of the illicit trade.

It is against this background that I seek a Statement from the Chairs of the said Committees on where the contraband sugar is coming from; how it has been cleared at the ports of entry; who is the importer and whether the sugar was inspected prior to consumption; how the packager of the contraband sugar acquired the Kenya Bureau of Standards stickers given that most shopkeepers still have this contraband sugar in their possession; what are the disposal plans if any and measures in place to ensure the disposal mechanism is not hazardous to the environment and human health; what measures are in place to ensure that the foodstuff in the market is safe for human consumption and whether there is any arrest that was made to those behind this illicit trade.”

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, the question sought by Hon. Lesuuda has many faces. Members have said it cannot go to one Committee because it almost touches five or so Committees. We determine that in any event, even if it went to 10 Committees, we are not taking the expert advice of Hon. Pukose or Nyikal. No Member can examine or taste it like I have heard others saying. We should zero-in on the two Committees and agree so that they can respond to the issues raised by Hon. Lesuuda, which are quite a number. More importantly, is whether the commodity in the market is safe for human consumption. This is the primary concern as many of you have contributed.

**Hon. David ole Sankok** (Nominated, JP): Point of information.

**Hon. Speaker:** Hon. Sankok, you cannot inform me, you have no capacity. Just relax. Hon. Members, we have listened to both the Leader of the Majority Party and the Leader of the Minority Party, on what has been submitted today. The Report states that the tests so far conducted show no trace of mercury. However, there are ongoing investigations. I do not understand how long it takes to do these tests? If it takes this long, for the concerned agencies to give conclusive information, this points to incompetence. I wonder whether they have capacity to test and clear it at the port of entry because it comes in tonnes.

Hon. Kanini Kega and the Chair of the Departmental Committee on Agriculture and livestock when you say, however, there are some ongoing tests or investigations, what do you mean? We need to know because you can go ahead and deal with other matters but the issue of health is important. This House and the country should know about the health aspect. Then you can deal with those other issues of tax evasion, contraband and others. Let us have the Chair of the Departmental Committee on Agriculture and Livestock. This is important we need to get it.

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Speaker. I want to reinforce what my Co-Chair has presented to this House. With all due respect to the Leader of the Majority Party and those with dissenting voices, I think you should have listened carefully to the Report.

**Hon. Members:** We have.

**Hon. Ali Adan** (Mandera South, JP): After which they can make their valuable comments. The issue of whether the sugar in the country is laced with mercury or not has been answered in our Report. However, the issue is the many samples which are continuously being taken to KEBS laboratories for testing. Therefore, we cannot conclusively answer because we

are not sure about them. Testing of the samples is ongoing. Every day, there is a plethora of samples which were getting into the laboratories of KEBS and we cannot effectively conclude about test results which we do not have. We are telling Kenyans that so far the samples that have been tested do not manifest traces of mercury in them. That is what we are basically saying.

We have also, in the body of the Report... Hon. Members, I think you need time to scrutinise our Report before pre-empting what it is saying because...

**Hon. Speaker:** Hon. Members, the Co-Chairs have availed sufficient copies of the Report so that every Member commenting is commenting on the basis of having read it. The way you have been conducting the affairs of those joint committees some of you claiming to be friends... Remember it was said yesterday that instead of going there to do parliamentary work you have been hugging.

*(Laughter)*

Yes! You know parliamentary work is not done that way. It is not through hugs and kisses. No! Let me just allow Hon. Lesuuda to raise an issue because she is the one who sought the statement. Even as many of you want to say what you want to say, she is the one who sought the statement.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Thank you, Hon. Speaker. I just want to bring to the attention of the House – and you have also reiterated the same – that I believe what we really want to hear as a House and as Kenyans is whether the sugar that is out in the market is safe. I want to read what they have said in the Report because we have moved from mercury to copper to lead and now to moisture. I do not know we will move to what next.

**Hon. Speaker:** Alcohol.

*(Laughter)*

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): So, Hon. Speaker, I want to read what they have said.

**Hon. Speaker:** Yes, it could be alcohol or tobacco. You never know. Anyway, proceed, Hon. Lesuuda.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): And then later come and tell us it was just cautionary. We were just cautioning you that now it is moisture.

However, most importantly, in one of the conclusions, the Committees said this:

“The Committee received presentations from the Ministry of Health indicating that from a sample size of 174 collected across the country 60 per cent did not meet the national standard on moisture content hence not fit for human consumption. The Ministry of Health assured the Committee that the contaminated lots are under seizure pending destruction.”

Now I have a further request as they go to do their final Report. For sure you have said 60 per cent of the sugar is not safe. A question that I also asked the relevant authorities when I went to sit with the Committees and we still need an answer for it is: Apart from the sugar which they have only sampled at the warehouses in bulk, can the relevant authorities find out about the sugar on our shelves in our supermarkets and tell us whether it is safe? It is just out there in warehouses. What about the sugar that already left the warehouses and came to our shelves which we are now consuming as Kenyans in our houses? We need that answer as a further answer to what they have said it is not fit for consumption.

**Hon. Speaker:** The question has been asked to them. Can you respond?

**Hon. Kanini Kega** (Kieni, JP): Hon. Speaker, it is really sad, very unfortunate and very unfair to us. I stood here on this Floor and I requested for about 30 days for us to conclusively bring a report. The Leader of the Majority Party is the one who said: “No, we cannot give you more time. You have to bring a report by Thursday.” We are relying on other agencies to provide information to us. Unless you are looking for a specific answer or you have certain interest, it is very unfair to even condemn and say that this Report does not even qualify to belong to a county assembly. I think the Leader of the Majority Party should actually apologise or even declare the interest that he has in this.

Hon. Speaker, when I was giving this preliminary Report, I said it is just to apprise Members where we are but we are going to give more comprehensive information within two weeks. I do not understand why the Leader of the Majority Party is tearing our Report before we even present the final report. It is very unfortunate and I think he should also apologise.

**Hon. Speaker:** I do not know whether Members really appreciate. A progress report on a day like this is never even material for debate. It is for information.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): *(off record)*

**Hon. Speaker:** Hon. Pukose, you are out of order because you do not even know. It is for information and not for correction as you are saying, because there is information given. The only reason why it is progress is because the Committee is still working. It is work in progress but it is important the Committee also hears the feelings of Members. However, that is not the business for this afternoon. So, I will only allow...

**An Hon. Member:** *(off record)*

**Hon. Speaker:** The moment you start shouting from where you are seated I will, obviously, not even look at you. I will allow the Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. I think we are missing the whole point. There are two main issues here. There is the health aspect of this problem and then there is the trade and taxes and the illicit issues. I voluntarily attended the meetings as a friend of the Committee and I share some of the sentiments that have come here. I came to the conclusion that the important aspect will be lost and it looks like it has been lost.

I say that because the question that Hon. Lesuuda asked is one of the issues I raised when I was there. The figures we are being given are of the sugar that was confiscated. That is totally different from the sugar that is in the shelf. So, I asked this question: Can they tell us that officers have gone out across the country in supermarkets and tested regionally from the time this issue came into being up to now? I do not think that information has come because that is what will tell us what is in the market. Obviously, the sugar that was confiscated and tested is confiscated. It is not in the market. So, it is not our worry. I think the Members that were there when I was there noticed that I did not go back because it did not look to me like I was being very useful. But can we have data from that time on which areas of the country, even if it is sampling month by month or week by week up to today because that is what will give us the answer? I asked that question. I do not know whether that data has arrived.

Two, this is a progress Report but there are things that should not go in the HANSARD. When we are talking of units of measurement of copper and lead, it cannot be “ml” but “mg”.

*(Applause)*

The Committee should check the units of measurements that they gave us. Thirdly and finally, as the Committee progresses with the work, it is better to get a subcommittee which will look into the technical issues of the safety of the sugar and the Ministry of Health should be more involved in this. That is my contribution.

**Hon. Speaker:** In Kiswahili language, they say: *Palipo wazee hapaharibiki neno*. Well spoken, Hon. Nyikal. You lost the plot when you engaged in hugging. You went off tangent. The issue of health appears not to have received sufficient consideration. I am pointing out these issues because I am about to give certain directions about how this matter will be handled. The Committee told us that they are going to factories and godowns. All these activities are not addressing the issue. Even if you go to Namanga border point with your naked eyes, which report will you bring about the health of Kenyans or the suitability of the product? Member for South Imenti, I will not allow the Member for Mumias East who is the Majority Whip to contribute. Please do not ask the reason. Member for Mumias East, you are the Majority Whip. From what I saw on television clips, you should have been the Chair of the Committee or one of the Co-Chairs.

*(Laughter)*

Let me not say the rest. I also receive a lot of reports. Please allow other Members who are not conflicted to contribute. Let me give the opportunity to the Member for South Imenti who appears to be anxious. Is it the sugar which you have consumed or what is it? If it has some of those substances, it can easily cause anxiety.

Proceed Hon. Kathuri.

*(Laughter)*

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Speaker. I stopped taking sugar voluntarily many years back. Maybe I knew there would be such a problem in the future.

I do not want to digress on this health matter. I want to comment on the health issue which Hon. Nyikal has alluded to. The Ministry of Health appeared before the Committee armed with a lot of information. In their submission, they said that they had tested 174 samples of sugar but there were no traces of heavy metals. For those who are not chemists, heavy metals are minerals like lead, mercury, copper and arsenic. They said that the only problem they detected in the 174 samples is the moisture content which was higher than normal. They also said that since the moisture content is higher than usual, that sugar is unfit for human consumption. That is 60 per cent of the 174 samples that they tested. We were very particular on the health issue.

I asked them why they did not tell the public, if they detected it many months ago. This issue was raised by the Cabinet Secretary for Interior and Coordination of National Government. He said that there was mercury in the sugar. The Ministry of Health did not come out with their results that there was no mercury in the sugar. As the Member for South Imenti, I was in pain because they denied Kenyans information. This Committee has really worked hard. Let me commend them. Once a Committee is engaged in investigations, we rely highly on the evidence that we get from our witnesses.

**Hon. Speaker:** Hon. Kathuri, you are still the one on your feet. Try to make Members understand. Is there an indication of how many counties the 174 samples were taken from? It has not come out but it is important. You can comment on that.

**Hon. John Mutunga** (Tigania West, JP): This is the list of the counties.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Mutunga. The 174 samples came from Nakuru County, Bungoma County, Kiambu County, Nairobi County, Trans-Nzoia County, Kakamega County, Kajiado County and Tharaka Nithi County. According to the Ministry of Health, the sugar in Samburu County where Hon. Lesuuda comes from is safe. They also tested samples in Kirinyaga County, Mandera County, Kisii County, Wajir County, Embu County, Uasin Gishu County, Kisumu County, Turkana County and Nyando which is not a county. This reference is from Kisumu Government Chemist in Kisumu. Samples from Nyando and Eldoret were tested in Kisumu Government Chemist. These are 18 counties.

**Hon. Speaker:** The point which was raised by Hon. Nyikal is tied to what I am trying to get the clarification on. They told you that they tested 174 samples. Out of those, 60 per cent had higher moisture content than the normal one. Therefore, they are not fit for human consumption.

**Hon. Kathuri Murungi** (South Imenti, Independent): Yes. They said that they have already seized and locked that sugar. It cannot go out to the shelves. They have already contained that sugar wherever it is. If it is in the houses, it is under lock and key. They are ready to destroy that sugar.

**Hon. Speaker:** Hon. Kathuri, while you are still on your feet, the samples were from 18 counties. The natural question is how about the other counties; did they assume that the sugar is fit for human consumption?

**Hon. Kathuri Murungi** (South Imenti, Independent): The Ministry of Health said that they are still continuing with sampling. They will take samples in all the counties. Their officers are on the ground testing the sugar. They are very busy for 24 hours. They will table all the results in all the counties by next week,

**Hon. Speaker:** That becomes clear.

**Hon. Kathuri Murungi** (South Imenti, Independent): Is there any other issue, Hon. Speaker?

*(Laughter)*

**Hon. Speaker:** I am more concerned about the issue which was raised by Hon. Nyikal because it touches that point. In the normal way of doing things, when you are giving Members an opportunity to contribute, you consider the geographical area. We are about to end this discussion. Member for Wajir North, sugar is consumed in almost every corner of this Republic. It is not about Members from the sugarcane growing areas. That is why I told the Member for Mumias East not to contribute.

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

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Hon. Speaker, I want to remind Hon. Junet that one of the counties which were mentioned was Wajir.

When we have a joint committee, the expectation of the Members is that there will be rich ideas. That is why you find that Members are uncomfortable with the Report. For a fact, the scope of the issues raised by Hon. Lesuuda was big. Based on that, I expected the Members to rank and first ensure that they provide satisfactory answers to some of these issues, the key being the issue of health, as you have correctly put it. Is the sugar fit for human consumption? Once

that is well answered, the rest will be secondary issues that the other report probably can address. We appreciate that the aspect of taxes can come at a later stage. We must have proper priority ranking of our assessment reports such that we can give advice on issues properly.

Hon. Speaker, I appreciate that this a progress report. A progress report is not expected to cover everything. It is only expected to provide preliminary findings. I also appreciate the fact that the Joint Committee Members were not very clear on whether the sugar is fit for human consumption or not.

The deliberations we are having here may send fear to our constituents. We must be very careful when we say, for example, that sugar in Wajir or Mandela is not totally fit for human consumption because of presence of moisture and all that.

I request that we give the Joint Committee some more time to exhaustively engage all the stakeholders and come up with a conclusive report that will give us direction. At this juncture, let us not condemn them but give them more time to share an exhaustive report on the issue.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Mogotio, Hon. Tuitoek.

**Hon. Daniel Tuitoek** (Mogotio, JP): Thank you very much, Hon. Speaker. My name is Dr. Tuitoek, Mogotio, Baringo County. I would like to inform Members here that we are relying on scientific results on the issue of health. We called experts and asked them if we went to the shelves and picked two packets of brown sugar, we have raw sugar and brown sugar, brown sugar is generally the table sugar but you cannot differentiate them using eyes... We rely on Kenya Bureau of Standards and the Government Chemist. They told us that that they are overwhelmed by the number of samples they have.

We imported one billion kilogrammes of sugar. One billion kilogrammes of sugar spread all over the country is massive, including what Hon. Nyikal said we should take from the shelves. We asked them whether they had sampled sugar in the shelves and asked whether they could give us results. They said that they were overwhelmed. We know the issues of KEBS. Members know what happened in KEBS. Some of the staff were arrested and they have less staff there. We ask that KEBS and the Government Chemist be given one or two weeks to conclude the tests and give us more data. We want to give Kenyans actual information based on scientific data. Let us not just use mob psychology here.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, if we proceed this way, we will be here until, as somebody has said, cows or chicken come back home to roost. I see the level of interest. Everybody is giving their opinion. Health should be of concern as first priority. I do not want to hear about sugarcane growing. This is not about sugarcane growing. I see Members from sugarcane growing areas want to contribute. We are not discussing that. Even issues of tax evasion will be dealt with by another committee. Issues where you want to find out whether legal notices or gazette notices were proper or not, are not for the Joint Committee because that is not going to help us. What is important for us and the country is health; the suitability of the sugar in the shelves. If you visit Namanga, Webuye and other places, at the end of the day, you will most likely recommend that a particular agency goes to investigate. Whatever you do, at the end of the day, you can never arrest or prosecute anybody. So, why do we not leave some of those aspects to those who are charged with that responsibility? The oversight committees will take up those matters. Indeed, some of those issues were captured in the Report of the Crisis Facing the Sugar Industry in Kenya which was tabled in the 11<sup>th</sup> Parliament. Again, that is not the responsibility of the Joint Committee. It is the responsibility of the Implementation Committee chaired by Hon.

Moitalel ole Kenta. That is the Committee that should make a follow up on the Report which was adopted by the House.

Can we get the Committee to address the issue of the safety of the sugar in the shelves? Whether the contamination is through moisture content or presence of any substance like tobacco mixing with sand, please, we want to know whether it is safe or not. That is what Kenyans want to know. The moment you get into many of these issues, you get conflicted. Obviously, you will get conflicted and it will be very difficult for you to come up with a report that really addresses the issue of health. According to both Hon. Kanini Kega and Hon. Kathuri Murungi and I think that is the same thing Hon. Tuitoek, Member for Mogotio has been saying, since the sugar that was imported was massive in quantities, then the instruction should be to the relevant ministry to undertake countrywide sampling and report so that when you say 64 per cent of 174, in itself is not enough. The number of counties the samples were taken are only 18. That is a small sample given that sugar is distributed throughout the country.

The membership of the Committee demanded that the Committee gives a progress report. They did not give a complete report. It was never intended to be a complete report today which can form a basis of debate.

I direct that, through the Clerk, instructions be given to the relevant Ministry and/or agencies to provide the Committee with evidence indicating the safety of the sugar being sold throughout the county within the next 10 days.

*(Applause)*

Present that report to the Committee. Even if you call Miwani, SONY Sugar or Mumias factories, some of those other stories that you...It is not going to show safety. Irrespective of where it came, we want to know whether it is safe. In the smallest village, is the sugar there safe? The issues of how it came, the *panya* routes used and those others should come later. That can be dealt with by the security agencies. Maybe the Departmental Committee on Administration and National Security will deal with it. The Public Investments Committee (PIC) obviously, will be interested. Hon. Wandayi's Public Accounts Committee (PAC) will want to know why sufficient taxes were not collected of course using the report from the Auditor-General. Then the Committee on Trade perhaps can deal with the issue of policy – what policy exists in the country with regard to importation of such commodities. It looks like whenever a window of opportunity arises, the country is flooded with all manner of imports. So that we can also be specific in responding to the points raised by Hon. Lesuada...

**An Hon. Member:** *(Inaudible)*

**Hon. Speaker:** You will go to the Committee and inform them since you have been a friend. You also indicated that you realised that your friendship was not useful and you withdrew the friendship. Now, you can reinstate the friendship. I know you will go to offer professional advice. Let the Committee for the time being address that issue of health.

The moment we begin digressing, we will not help Kenyans. The issue of concern under Article 95(2) of the Constitution is the safety of Kenyans. So chairs of the Joint Committee, address the issue of safety. When the House resumes, we want a report that tells us the correct position. Even if it is 60 per cent, give us but from the entire country not from 18 counties. You should not test with your tongues. I know you have not been doing that. At the risk of doing what some other people are said to have done, please take the reports. Question the people providing

you the reports. Test the veracity of those results then give us a report. Take the statement from Hon. Lesuuda, distil it and go to the area that concerns safety.

**Hon. (Dr.) Nyikal** (Seme, ODM): *(Inaudible)*

**Hon. Speaker:** This is the problem. Read you Standing Orders. What is your background?

**Hon. (Dr.) Nyikal** (Seme, ODM): *(Inaudible)*

**Hon. Speaker:** Hon. Nyikal, should you feel that there is an issue that you want to go and share with the Committee, please appear there so that we can put an end to this. There are so many of you who want to speak to this. We cannot do anything else if we just continue with this. The Committee should focus on that and bring a report. Try to distil the issues raised by Hon. Lesuuda. Do you want to say something, Hon. Kanini Kega?

**Hon. Kanini Kega** (Kieni, JP): Hon. Speaker, I stand guided and we will do that. I remember we requested Hon. Lesuuda to be part of the team. We also did the same to the Leader of the Majority Party but none of them came.

**Hon. Aden Duale** (Garissa Township, JP): You did not.

**Hon. Kanini Kega** (Kieni, JP): We did. I remember telling you formally. When I stood here the other time, I was seeking for more time. Once we get that extra time that we want, I can assure this House and the nation that we are going to give a comprehensive report. As we sit here, we are receiving news that other seizures are going on. Yesterday, it was Eastleigh, today, it was Iten. So, this is a continuous process. I want to assure the House that in two weeks, or by the time we resume, definitely, we will have a definite report of this House. We take the business of the House seriously and we are going to provide all the necessary information that is required as per the mandate of this House. We will do that.

Thank you.

**Hon. Speaker:** Very well. The matter is put to rest.

*(Hon. Simba Arati raised his hand)*

This Member who is raising his hand, you cannot do that. Continue sitting and raising your hand. This is the plenary not the Committee. Here, we must follow the rules strictly.

Next Order.

## MOTIONS

### EXTENSION OF PERIOD FOR CONSIDERATION OF

#### NOMINEES FOR APPOINTMENT AS CHAIR OF THE PUBLIC SERVICE COMMISSION

**Hon. Speaker:** Hon. Koinange, be brief.

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011 relating to extension of period for consideration of nominees for appointment to public office and paragraph 6(1) in the First Schedule to the Public Service Commission Act, this House resolves to extend the period for consideration of the nominee submitted by His

Excellency the President for appointment to the Office of Chairperson of the Public Service Commission by a further period of fourteen (14) days from 19<sup>th</sup> July, 2018.

I beg to move and ask Hon. Wachira Kabinga to second.

**Hon. Speaker:** Member for Mwea.

**Hon. Josphat Wachira** (Mwea, JP): Hon. Speaker, I second.

*(Question proposed)*

Hon. Members: Put the Question!

**Hon. Speaker:** Obviously, hon. Members, because you know what is happening at the rise of the House, this is what has necessitated the fast-tracking of this process.

*(Question put and agreed to)*

EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEES  
FOR APPOINTMENT TO THE OFFICE OF NATIONAL GENDER AND EQUALITY COMMISSION

**Hon. Speaker:** Hon. Joyce Korir

**Hon. (Ms.) Joyce Korir** (Bomet, JP): Thank you very much, Hon. Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011 relating to extension of period for consideration of nominees for appointment to a public office and Section 11(6) of the National Gender and Equality Commission Act, this House resolves to extend the period for consideration of the nominees submitted by His Excellency the President for appointment to the offices of Chairperson and Members of the National Gender and Equality Commission by a further period of 14 days from 26<sup>th</sup> July, 2018.

We are asking for this extension because the period will lapse on 26<sup>th</sup> and as you may be aware, the House is due to proceed on recess today. This House being too busy, the Committee has not had a break, we had a vigorous budget process and the Second Supplementary Budget Estimates, 2018. This vetting process requires attention. Let Members proceed on recess and come back fresh to dispense this important matter. The extension will also allow the technical team to carry out proper background checks on the three candidates to enable Members make informed decision after proper analysis of the facts.

I beg to move and request Hon. Sankok to second.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. As I rise to second, we should also be aware that as we chase for the safety of the sugar in the warehouses and shelves, we should also check the sugar...

**Hon. Speaker:** You are out of order. Never be irrelevant. If you do not know the Motion which you have been asked to second, just say you do not know. Hon. Members, let me reinstate, I will administer the Standing Orders quite strictly. You cannot rise in your place and start talking about sugar. This is a Motion on extension of time. Unless you do not know; if you

do not know, just say you have been ambushed or your mind was still with that other issue or you were affected by the... Do you know about this one and the reasons? Proceed.

**Hon. David ole Sankok** (Nominated, JP): Thank you, very much, Hon. Speaker. We need that extension of time so that we can scrutinise the names properly because we need to give proper information to the House.

I second the Motion. Mercury in our bloodstream is very dangerous.

*(Question proposed)*

*(Question put and agreed to)*

### COMMITTEE OF WAYS AND MEANS

#### APPROVAL OF PROVISIONAL TAXATION MEASURES FOR FINANCIAL YEAR 2018/2019

THAT, pursuant to the provisions of Articles 94(5) and 210(1) of the Constitution, this House-

(a) approves the provisional collection of taxes relating to:

(i) Income Tax;

(ii) Value Added Tax;

(iii) Excise Duty;

(iv) Miscellaneous Fees and Levies; and,

(b) resolves that, in accordance with section 3 of the Provisional Collection of Taxes and Duties Act (Cap 415), the collection commences on the dates specified in the Provisional Collection of Taxes and Duties Order, 2018 (*Legal Notice No. 128 of 2018*).

**Hon. Speaker:** Hon. Kajwang' has a point of order.

**Hon. Tom Kajwang'** (Ruaraka, ODM): Hon. Speaker, I have not contributed to anything since the House began because I wanted to use my time properly for the Motion that we are just about to enter into.

I have a point of order in terms of the propriety of this Motion. This Motion perplexes me for so many reasons. For now I do not want to contribute on the merit, but I want to look at the way the Motion has been drafted and brought before us. It is titled, "Committee of Ways and Means." The Question I ask is do we have a Committee of Ways and Means? Committees in this House are governed by Article 124 of the Constitution which says:

"Each House of Parliament will establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including proceedings of the committees."

It presupposes that the committees are in the Standing Orders and the committees that would competently look at a matter in the House whether in plenary or the Committee of the whole House or otherwise, must be found somewhere in the Standing Orders. I am aware that Committee of Ways and Means used to be here up to the 10<sup>th</sup> Parliament.

With the new Constitution, the Committee of Ways and Means effectively became the Committee of Supply or Vote on Account. The Committee of Supply deals with Budget and

Appropriations and the Vote on Account deals with Supplementary Estimates. The Committees of Supply and Vote on Account are found on Standing Orders 240 and 242 respectively. I have served in this Assembly and the last Assembly in the Rules and Procedure Committee and I have never come across a departmental or a House Committee called Ways and Means.

I have also reflected on the law under which this legislation has been brought. One of the issues as I rise on a point of order is: Is this Motion properly before us and can we transact this as a Committee of Ways and Means? If we choose to transact it as the Committee of Ways and Means, would the Speaker be urged to retire from his place to join us in the Committee of the whole House and transact it as a committee?

Two, there is Statutory Instruments Act. I know there are senior Members here beginning with the Leader of the Majority Party and my friend, Hon. Amos Kimunya. Besides me is one of the strongest Members in this House who I want to draw guidance from. I want to be corrected in law. Hon. Speaker I think you are the doyen of these issues as we speak having served in this House for quite some time. I remember that we have had problems with Statutory Instruments in this House. You remember when we transacted Uwezo Fund, a big issue came and it was decided that regulations must be dealt with in accordance with the Statutory Instruments Act. If you look at Statutory Instruments Act, in Section 15, the Committee shall make a Report to Parliament containing only the resolution. This is very important for me, Hon. Speaker. Together with that is Section 18 on annulment, which states that:

When a report on a statutory instrument has been tabled in Parliament, the statutory instrument shall be deemed to be annulled if Parliament passes a resolution to that effect.

In other words, if this Motion came through a committee and if the Committee on Finance and National Planning, whose Report we are yet to debate, was considering this as a matter under the Statutory Instruments Act - which they have the capacity in the law to do - they can bring only one Motion, namely, a Motion to annul that legislation. They do not have to bring a Motion to approve the legislation. That is what we had with the Uwezo Fund Regulations, because then, before we had looked at these issues properly, we were even approving, so that we were helping the CSs in drafting the regulations. And if I check properly, I will see Communication from the Chair. The Chair addressed the matter and said that the only thing that can come as a matter of scrutiny under the Statutory Instruments Act is a Motion to annul. What we have here is a Motion to approve. So, if it is strictly according to the Statutory Instruments Act, would it be in order that such a Motion, which is not to annul, but to approve, can be before us?

Lastly, and everybody knows it, we appropriate through the Finance Bill. What this Motion seems to do is to pull a medieval, colonial legislation. I have looked at the Act. It was passed in 1959 and it was used only in 1960s. The last time it was used in this House was in 1978. I have it here.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker.

**Hon. Tom Kajwang'** (Ruaraka, ODM): I am on a point of order. I have the Act here and I have looked at the summary.

**Hon. Speaker:** Hon. Members, just take note of the issues that Hon. Kajwang' is raising so that those of you who want to contribute to this will have an opportunity to rebut.

**Hon. Tom Kajwang'** (Ruaraka, ODM): Hon. Speaker, I have the Act here. It is a one-page Act. For me as a lawyer, I do not have to get the history. I just look at it and I will see, from the citations, when Acts of Parliament have either annulled or touched on this legislation. The

last time it was touched was when there was Legal Notice No.8 of 1978. The Treasury, being the clever people they are, and trying to raise revenue, which they should, have pulled a legislation which was enacted in 1959 and has never been used since 1978 to try and see how to get money. I have no problem with raising money. The problem I have is the constitutionality by which we raise this money.

So, if this Motion becomes the instrument by which we bring the money, then, what we are doing is that we are using subsidiary legislation to circumvent an Act of Parliament. An Act of Parliament should be what brings us the money under the Finance Bill, but we are using a subsidiary legislation through this Act to spring money. I will contribute if you rule that this Motion is properly before us and requires debate.

The last thing, as I sit down, is that there is no law under the Income Tax Act, the Excise Duty Act, the VAT Act and all those taxation laws for refund of money. So, the question I am asking is: All this money which will be collected in the provisional period - I am thinking of money that will come through *M-Pesa*, our ports and airports - where will it go if it is not going to go into somebody's pocket? I see a big vehicle of corruption that has never been seen using a colonial legislation to try to get money, which cannot be refunded and which will remain in somebody's pocket. I urge that you can rule that this Motion can be debated in some other way, but it is not properly before us in terms of the Constitution.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. John Mbadi, do you want to comment on this?

**Hon. John Ng'ongo** (Suba South, ODM): Yes, Hon. Speaker, I want to also make some comments. I think what Hon. T.J. Kajwang' has raised are two fundamental issues regarding whether it is appropriate to have this Motion before us. He has raised the concern of whether we have a Committee of Ways and Means. The question he is asking is whether we have established the committee as a House. Article 124 of the Constitution clearly says that Parliament has to establish a Committee of Ways and Means. So to me, that is the fundamental question that he is asking.

The second one is asking the constitutionality of the Provisional Collection of Duties and Taxes Act. He is asking whether it is still constitutional, whether the provisions of that Act can still be applied in the current set up. I think those are the two fundamental issues.

**Hon. Speaker:** Chapter 415 was enacted and assented to on 3<sup>rd</sup> November 1959, commenced on 17<sup>th</sup> November 1959 and revised in 2015.

**Hon. John Ng'ongo** (Suba South, ODM): The question is whether it is still relevant in the current Constitution. To address these two issues we will address the issue of the Committee of Ways and Means. We have Hon. Amos Kimunya here, who really interacted a lot with the Committee of Ways and Means in the 10<sup>th</sup> Parliament and before. Hon. Duale and myself also from the back bench. The Committee of Ways and Means was just a committee to allow the then minister to tax Kenyans awaiting the Finance Bill. The rationale behind this was very simple, that if you specifically mentioned a date and Kenyans knew when these taxes would apply, say, on cigarettes, everybody would hoard cigarettes up to that time. So, in the wisdom of the people of Kenya, they decided to allow the minister to charge these taxes. Now the question is: Is this Committee of Ways and Means still valid today in light of those changes that took place in that Act and reading it together with the Sixth Schedule of the Constitution?

There is another issue which I want to raise for your guidance under Standing Order 49 regarding Motions that may not be moved. It says that:

“No Motion may be moved which is the same in substance as any question which has been resolved (either in the affirmative or in the negative) during the preceding six months in the same session”.

Looking at this Motion before us, you can see it will ask us to approve the provisional collection of taxes relating to the Income Tax, the Value Added Tax and the Excise Duty. Just a few days ago, we dealt with the Tax Laws (Amendment) Bill and some of the issues that we resolved are actually captured in the provisions here. I will give you an example of the VAT Act. Under the VAT Act, there were items which were supposed to be brought to exempt. We resolved that they should remain zero-rated. If through this provision of taxes, we decide to approve that KRA will continue collecting taxes, I am bit at a loss. I can see Hon. Kimunya is saying no, but I can read the items that I can see here. We have tax on wheat and maslin seeds, raw material for manufacture of animal feeds. These are now brought to exempt. These are the same items that we removed from exempt to zero-rating.

The Standing Order says “once the House has resolved”. It does not say that the President has assented to it. It says we have resolved affirmative or negative. So, are we going to make another resolution within six months, before the six months end? I know that resolution can occur with the concurrence of the Hon. Speaker. If he gives the go ahead for that to be made, it is fine, but it should be explicitly clear that the National Assembly has expressly allowed this House to make another resolution on the same issue.

So, Hon. Speaker, as you consider the issue of Hon. T.J. Kajwang’ with regard to those two fundamental concerns, I would also urge that that is also incorporated. This is so that we do not have a situation where we are in confusion on which law to apply in the interim period. I know once we deal with the Finance Bill, everything will be clear. We shall sort out this mess that we are in today. This is the price to pay.

As I finish, allow me to say that the National Treasury is also sleeping on the job. It needs to bring some amendments even to the Public Finance Management (PFM) Act. In the PFM Act, Section 6, we have expressly stated that any law that is in conflict with the PFM Act in so far as collection of taxes or expenditure are concerned, the PFM Act overrides any other law.

So, we need to capture some of these things that are not so clear so that the issue Hon. T.J. Kajwang’ has raised would have not come up if these matters were expressly stated in law.

Thank you, Hon. Speaker

**Hon. Speaker:** The Hon. Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. The first fundamental question that I need to answer is whether we have a law called the Provisional Collection of Taxes and Duties as an Act of Parliament. The answer is in Chapter 415 that exists in our law. That is why Cap 415 says:

“An Act of Parliament to give statutory effect for limited periods to orders of the Minister imposing any new tax or duty or rate of tax or duty, or creating any new allowance, or altering or removing any existing tax or duty, or any such rate or allowance”.

That law exists. Hon. T.J. Kajwang’ should have looked for a way to amend that law. If he listens to me and picks the Constitution, that law has been safeguarded in the Sixth Schedule of the Constitution. If you have the Constitution, you just need to go to the existing obligations laws and rights, No.7, which states thus:

“(1) All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.”

So, Hon. T.J. Kajwang' should first have brought an amendment to that section in which the CS is drawing his power from. Section 2 of the Provisional Collection of Taxes and Duties Act, Cap 415 reads:

“If a Bill is published in the Gazette whereby, if such Bill were passed into law, any tax or duty, or any rate, allowance or administrative or general provision in respect thereof, would be imposed, created, altered or removed, the Minister may, subject to this Act and notwithstanding the provisions of any other written law relating to taxes and duties, make an order that all or any specified provisions of the Bill relating to taxes or duties shall have effect as if the Bill were passed into law”.

Hon. Speaker, the gist of the matter is that when the CS came to read the budget highlights and more so the tax raising measures, using this law, he said that before the 90 days which Parliament is given lapse - the National Assembly is given 90 days to pass the Finance Bill - the CS will use this provision in law to collect taxes subject to Parliament. If Parliament decides to do the Finance Bill in two weeks following public participation, it is well and good. He is saying so because this is part of his financing measures in the budget that he presented to the House. Before we conclude on the Finance Bill, I will use this existing law. I have just read for Hon. T.J. Kajwang' the provisions in the Sixth Schedule which has even saved this law. So, this law has been saved.

In Section 2 of the Provisional Collection of Taxes and Duties Act, Cap 415, the emphasis is on the fact that it shall have effect as if the Bill was passed into law. This is the Finance Bill. Those of us who were in the 10<sup>th</sup> Parliament will understand. Unfortunately, Hon. T.J. Kajwang' was not there, but Hon. Amos Kimunya and myself were there. Hon. Sankok was still in college, but the Leader of the Minority Party was in the House. The Committee of Ways and Means was there until the 10<sup>th</sup> Parliament. It was only in the 11<sup>th</sup> Parliament that we did not have the Committee of Ways and Means.

Hon. Speaker, what is the rationale behind the Committee of Ways and Means? I want Hon. T.J. Kajwang' to listen. This Committee gives an opportunity to the House to discuss the Budget Speech. Secondly, it presents the House with an opportunity to approve the provisional collection of taxes and duties awaiting the passage of the Finance Bill. The CS has the powers, but this House is the budget-making legislative Chamber. The CS just needs our concurrence.

So, he is getting the powers from the Constitution and from an Act of Parliament. Hon. Speaker, may I draw your attention to the terminology, “Committee of Ways and Means”. Is it like a Committee of the House as provided in the Standing Orders? Is it a terminology that is used in the Chamber?

Hon. Speaker, I do not think the Committee of Ways and Means can be equated to a departmental committee. We should not go that route. I can remember during that period the publication of the Finance Bill and the Order was done by the then Minister for Finance because he used to be in the House in the 10<sup>th</sup> Parliament. Of course, he used to bring this with other budget-related legislation.

I think the law is very clear that unless this House amends the Act of Parliament Cap 415, that gives the Minister the power, this Motion is in order. So, the CS does not have the powers and the House can agree with him. In fact, what he is asking for in this Motion and the Statutory Instruments Act is also provided for in the Finance Bill. So, the House is only giving him a window within the 90 days period that the House is seized of this matter. That is the reason why the Finance Bill has been given a timeline. It is not an open Bill like any other. It must be done within 90 days, so that the minister cannot abuse the powers given to him over a long period.

The law is there and all you need to tell us is the definition of the Committee of Ways and Means. Hon. T.J. needs to amend this law. Secondly, even the Constitution has safeguarded and protected an Act of Parliament. It is one of the very few sections which have been protected in the whole Constitution.

**Hon. Speaker:** Hon. Kimunya, do you also want to weigh in on this matter?

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I want to thank Hon. Kajwang' for raising this matter because it will open awareness to the wider membership.

Let me state that I agree with the Leader of the Majority Party that, indeed, Cap 415 exists in law. It is not an archaic legislation that is being designed by the National Treasury to circumvent Parliament or divert money into somebody's pocket. Looking at the Motion, it draws its power from Article 94(5) of the Constitution, which says that nobody has the power to enact legislation except Parliament or somebody who has been granted that power by an Act of Parliament. Article 210 also talks about imposition of tax.

This Parliament is guided by traditions, procedures and precedents in addition to the Standing Orders. I am not aware of any Motion that has been brought to this Parliament to remove the Committee of Ways and Means. So, it is within the traditions of Parliament since it was started. We should start with the premise that Parliament has always had this Committee. The fact that there was a lapse between 2013 and 2018 and the Committee of Ways and Means was not put in motion, does not necessarily negate or annul it. It is still in the parliamentary procedures.

Previously, for the benefit of the Members who were not there, ministers used to come to this House. The opening line of the budget speech then was, "Mr. Speaker, I beg to move that Mr. Speaker, do now leave the Chair". The minister would stand and move a Motion during the budget speech saying that the House resolves that Mr. Speaker leaves the Chair. Then, the whole House would convert itself into a Committee of Supply and Committee of Ways and Means. The Committee of Supply was to approve the estimates and the Committee of Ways and Means to provide the means for financing those supplies. By approving the budget speech, then the House would constitute itself into a Committee of the whole House. This was not a specific committee like a departmental committee, but the entire House constituting itself into a committee.

Come the year 2010, the CS for the National Treasury is an outsider. So, we have an issue because he cannot address Parliament as a Member or move a Motion. The only thing we can do is to reconstitute ourselves and the Chair of the Departmental Committee on Finance and National Planning moves a Motion. So, we can take that opportunity to approve the prayers of the CS, who can only communicate through the Provisional Collection of Taxes and Duties Order.

For Hon. Kajwang' and the others, the issue of the Provisional Collection of Taxes and Duties Order is the reverse of the Supplementary Estimates. It is used where the Government spends money after certain issues arise and then comes back for approval in Parliament. The reverse is the Government saying how it wants to spend money and finance the budget. Between these pronouncements and Parliament confirming the estimates by passage of the Finance Bill, there has to be some legal framework through which Kenyans pay taxes. You cannot pay tax unless it has been approved. This is a tradition in the entire Commonwealth. Parliament in its own wisdom, way back in 1959, gave that power through Cap 415 to the Minister for Finance. It was defined in law that he would use Cap 415 on all the taxes levied on Kenyans up to six months while waiting for the Finance Bill to be approved.

Once the Finance Bill is approved, the Provisional Collection of Taxes and Duties Order collapses. It is basically an instrument used to facilitate the collection of taxes. Whether this Order needs to be discussed in this House or not, Parliament has already donated that power to the CS. However, for a good Order and for purposes of the House moving with the CS, it should be debated as part of the budget speech. At the end of the budget speech, then the House can go into the Committee of Ways of Means and approve all the taxes so that they can be levied on Kenyans until the Finance Bill is finalised. Basically, this will be lively in the House. Hon. Kajwang', you do not need to panic over it. I know it is a strange tradition because it has not been there, but it is good for Parliament to be at par with all other Parliaments on how we do business.

There might have been a lapse. It is only this year that we have dealt with the Committee of Supply. I am surprised there was no debate when it was reinstated. In terms of getting Committee Members to discuss, the Committee of Supply and its passage was done differently this year. So, this is a development that needs to be nurtured. I know there is some tidying up to be done on how to integrate this with the Public Finance Management (PFM) Act and the new Constitution. I hope the Constitutional Implementation Oversight Committee will pick this up and help in mainstreaming so as to sort this out.

Just this afternoon, the Procedure and House Rules Committee brought to this House a change in the way we ask questions, so that Members can talk to their constituents. This is a gradual change on how we reinforce the House and participate in oversight. So, it will not be the CS making the Order, but he will be getting the blessing of the House. That is why the CS comes to address the House. He could have issued that Order from the Treasury building, but he comes to the House because it is recognised that we are the representatives of the people and we are speaking for the people. We are saying, on the behalf of the people, that we accept to pay those taxes until we finalise the individual items within the Finance Bill. However, in totality, we are happy with you levying the taxes for the period between your pronouncement and the time we give you the formal approval through the Finance Act.

Basically, that is it and I do not think there should be any mischief to be read into this thing and that it is being introduced for anything. It is for good order and for facilitating this House's participation in the collection of taxes. I hope I have clarified a number of the things. I needed to say that the Committee of Ways and Means, which the Member asked about, is a committee of the whole House. They are only two and it is within the Commonwealth system that we have a Committee of Supply, which deals with the estimates on the expenditure side, and the Committee of Ways and Means, which then provides the ways and means of financing those expenditures. *Tosha. Asante!*

**Hon. Speaker:** You know it is not complicated. It is not. That is why you see I am well armed. This is the authority throughout the entire Commonwealth. You can see it is not complicated, but if you just want to discuss because it is fashionable, of course, as parliamentarians to discuss, you needed to make some resolution because the title is 'Committee of Ways and Means'. This is the issue Hon. Kajwang' has raised, but you know the Motion could still read 'Approval of Provisional Taxation Measures for the Financial Year 2018/2019'. It will still be a valid Motion without the title 'Committee of Ways and Means'. It is true that Hon. Kajwang' says that is not in the Standing Orders, specifically Standing Order No.236. We have made reference to the Committee of Supply as being a committee of the whole House. What the Leader of the Majority Party and Hon. Kimunya have said is true. Even the Motion "Mr. Speaker do now leave the Chair" does not result in the Speaker leaving the Chair at all for those of you

who may not have witnessed that. It was just to allow us to do exactly what Hon. Kimunya has explained used to happen.

Of course, there may be some other issues that would require some technical comments because your House Business Committee (HBC) noticed the lacuna that has been there over the last five years. In fact, perhaps, those of you like Hon. T.J. Kajwang', Hon. Makali Mulu, Hon. Kimani Ichung'wah, Hon. Jude Njomo, Hon. Washiali, Hon. Waluke, Hon. Ng'eno, Hon. Soipan, Hon. Wamalwa and others who were in the 11<sup>th</sup> Parliament, I think we should all now be asking ourselves: What used to happen? How did it go? What your HBC has insisted this financial year is for the CS for the National Treasury to bring those instruments. We want them to be considered by the House. But since everybody is now learning and realising that there is something that happened without being intended, how then do we correct this situation? Indeed, the question that we should ask is: Should the various legal notices that the CS for the National Treasury has issued be delivered to the Committee on Delegated Legislation? For me, the answer should be 'No'. These instruments should be considered alongside the Finance Bill by the Departmental Committee on Finance and National Planning because it is then that we will get a proper answer. There are a number of measures that the CS has spelt out in his budget highlights, some of which he is trying to implement through those instruments using the authority of the Provisional Collection of Taxes and Duties Act, which is saved in Section 7 of the Sixth Schedule. So, there is no anomaly with that.

However, Hon. Kajwang' also is right on what he raises with regard to the issue of Article 124 of the Constitution. You create Standing Orders. So, we mentioned the Committee of Supply in Standing Order No.236. It is not a committee like other committees. That has been explained by the Leader of the Majority Party and Hon. Kimunya. It is not a committee that you can say that the Chair of the Committee on Selection, who is the Leader of the Majority Party together with his counterpart, the Leader of the Minority Party, sit and appoint members. This is because it is the entire House, indeed. So, obviously, this titling may have been an oversight even within our Standing Orders. I like what Hon. Kimunya has said about the need to keep revising our Standing Orders. However, for me, if you go back to what you call the colour of the goat and the skin and something like that, you remember some story like that in the past. Obviously, the title, to the extent that it is referred in the Standing Orders, would appear to offend the requirements in Article 124 of the Constitution. Therefore, to that extent, Hon. Kajwang' is right but strictly speaking, what is the approval of this provisional collection of taxes and duties? In reality, it is approving the ways and means. That is what it means; ways of raising taxes and the means. It is here. It is here in the authority by Erskine May, Parliamentary Practice 24<sup>th</sup> Edition as revised in 2011. So, the issue that we need to... I agree with Hon. Kajwang'.

Hon. Members, there is also another fundamental point. Article 94(5) of the Constitution says:

No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.

That is the reason why the CS has to table his instruments, which he has. This financial year we insisted. I want those of you who were in the 11<sup>th</sup> Parliament to jog your memories. It never happened. So, we might also be accused of having slept. Not just might. Actually, I think to be fair, we did not. These things keep coming up and even the Treasury itself has been caught unawares because they thought it is their prerogative to just do it because they are financial instruments. Obviously, Parliament and Judiciary need money. So, who can question this? But

we are saying: 'No'. We want to follow the Constitution. Those provisions and instruments have the effect of the force of law. Therefore, without the sanction of this House, they will then be offending Article 94(5) of the Constitution. Then you move from that one and go to Article 210(1) on taxation. It must be sanctioned by the Constitution or legislation. What does the HBC come up with now to give effect to that? The House must claw back what appears to have been taken away by some other people. We must look for a mechanism of bringing this to the House. Let us have Hon. Makali Mulu. We can try to rationalise this because the title is not the issue. We can agree with the fact that the title is not the issue. We know the net effect of what this Motion seeks to achieve.

**Hon. Benson Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I must admit that the point of order raised by Hon. Kajwang' is quite in order. I am sure majority of us have learnt something from the debate. When you look at what used to happen before the new Constitution and what has happened after, in terms of public finance management, this law was enacted quite a long time ago. In the spirit of harmonising all the laws with the new Constitution, it would be important that a provision like what is required here be factored into the PFM Act, 2012, so that it is a straightforward matter. That would help this country.

As you were saying, during the 11<sup>th</sup> Parliament, we never heard of the Committee of Supply or the Committee of Ways and Means. But now that they seem to be really important and are adding value to our work, we need to take up this challenge and make the necessary amendments so that even as we do this next year, in terms of the constitutional requirement, it will be in order. For those of us who served in the 11<sup>th</sup> Parliament, the most important law in terms of raising resources - ways and means - was the Finance Act. We did not hear of those other Acts. We are all learning. Let us take up that challenge. Since we amend all the laws ourselves and are also in the process of amending the Public Finance Management Act, we can take advantage of that opportunity and make sure that this kind of gap can easily be captured and we move forward.

**Hon. Speaker:** Let us have the Chair of the Budget and Appropriations Committee.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I do not want to belabour the point. I can see Hon. T.J. Kajwang' was listening very keenly to the former Minister for Finance, Hon. Kimunya, who has clearly articulated the rationale behind such a Motion. More importantly, I wanted to point out that even with the review of the Constitution of Kenya, 2010, issues to do with public participation came in with the Constitution. This Motion gives Members of this House and the public - through their Members of Parliament - a very good opportunity to interrogate the revenue-raising measures through taxation that the CS proposed during his revenue-raising measures statement which he read in this House. It gives us an opportunity to now start speaking the feelings of the people out there.

For instance, I have heard very many concerns with the additional charges on *M-pesa*, RTGS transactions and all the other revenue-raising measures that impact on our taxes, including some issues on the VAT. We are being afforded an opportunity. I agree with Hon. Kimunya and the Leader of the Majority Party. I wish this Motion had been tabled earlier and not at a time like this when we are about to go on recess. You can see that there are no Members in the House. It is a very good opportunity for Member and the public to understand what provisions the CS is proposing in terms of taxes that will affect the lives of Kenyans.

One old man back in London once said that a country that is trying to grow into prosperity by overtaxing itself is equivalent to somebody standing inside a bucket and trying to lift himself using the handle of that bucket. It would be a very good opportunity for us as

Members and the public to clearly interrogate the tax-raising measures that the CS has proposed, so that even way before the Chair of the Departmental Committee on Finance and National Planning tables his report on the Finance Bill, we would have engaged the members of the public. Even as we go on recess, we will get the feelings of Kenyans on issues that affect them on matters to do with taxation.

Secondly, the most important thing is that the Act speaks about just a short period of time, up to the time the Finance Bill is enacted into law. When we passed the Budgets Estimates a few weeks ago, we need to remember that we did so on the basis that it will be financed through certain tax measures. If we do not allow the CS to have those tax measures to raise the revenue to finance that budget, then, as Hon. Speaker says, the Judiciary, Parliament, the Executive and everybody in the Government will not access money since there will be no money being raised. Therefore, considering the issues that exist with revenues, it is very important that we allow the CS to have the opportunity to raise taxes even before the enactment of the Finance Act. It is also important for us as Members to speak to the issues that are of concern to Kenyans on taxation. Taxation is a very sensitive matter. Kenyans feel that they are overtaxed in some areas. Therefore, this offers that opportunity to speak to those issues even before the Chair of the Departmental Committee on Finance and National Planning tables the Bill and the report for debate.

Hon. Speaker, judging from your body language, I can estimate which direction we are about to take. It is a good opportunity for this House to now speak to the real issues touching on taxation of our people and how we will raise revenues to finance the budget whose estimates we just passed in this House a few weeks ago.

**Hon. Speaker:** I can see Hon. Wamalwa and Prof. Oduol. Please, do not take more than three minutes.

**Hon. Chrisantus Wakhungu** (Kiminini, FORD-K): Thank you, Hon. Speaker. I thank Hon. Kajwang' for bringing this up so that we can learn from the good experience of Hon. Kimunya. Some of us who were in the last Parliament never saw those issues of the Committee of Supply and the Committee of Ways and Means. The Committee of Supply that we considered before the Budget Estimates were read out provided a very good opportunity of scrutinising the budget. It gave us an opportunity to feel that we are in a presidential system and this is a budget-making House as compared to the last Parliament.

Hon. Kimunya mentioned that the Committee of Ways and Means will be provisional. So, when we debate the Finance Bill and annul some of the issues presented here, what is likely to happen? He mentioned that it would be provisional. I wanted to see that transition. It is a stop gap measure. Very soon, we will debate the Finance Bill. Some of us are very uncomfortable, particularly with regard to the issue of *M-pesa*. What happens? If we annul something that we have passed through this provisional provision, which one will take precedence?

Hon. John Mbadi, the Leader of the Minority Party, mentioned the issue of the Standing Orders. He said that if a House has passed a resolution, you cannot bring back that Motion within the timeframe of six months. Reflecting back in the last Parliament, there was an outcry on zero taxation. I remember you, Hon. Speaker, exercised the Standing Order No.1 and it was brought back. We debated and reviewed it. I also expected you to have mentioned something about this. Although he left, but I was taking notes, he mentioned the issue of how we can bring this back and just the other day the House passed a resolution on something pertaining to it.

As you conclude, you can also touch on that issue. This is continuous learning. I thank Hon. Amos Kimunya because he really brought it out well. That is why some of us are listening

keenly. The Leader of the Majority Party is always on top of things. I saw him going through the document. Thank you, Hon. Kajwang', and others who have contributed as we move on.

**Hon. Speaker:** I wanted Hon. Kajwang' to be the last one to contribute. So, I want to give the opportunity to Prof. Oduol.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute. I want to say that this was a profound and useful learning experience. I want to thank Hon. T.J. Kajwang', Hon. Amos Kimunya and the Leader of the Majority Party.

The point that I want to raise is in line with what Hon. Wamalwa has indicated. It is in line with the submission which I made when we considered the Tax Laws (Amendment) Bill, 2018 in the House. It was to find out whether we would go back to what we had agreed on as a House, with regard to reclassification of supplies from zero-rated to exempt status to increase domestic funds.

As we determine this matter, I want to ask about the issue that was raised by Hon. Mbadi. We, as a House, were quite happy when the Committee realised that if we reclassify items which are in zero-rated status to exempt status, we will bring untold challenges in VAT on items such as medicine, cooking gas, milk, flour and the number of issues that will affect the vulnerable groups. I am saying this because I feel that it will be clear, if there is a provision that will not allow us to go back and it is a matter that we can discuss before six months are over, we need to look into this. We also need to look at Article 94 of the Constitution which is on the role of Parliament. Remember our legislative authority, even when we derive and interpret it, is derived from the people of Kenya. I remember what you told us during the induction. You told us that whatever legislation we make should either reflect the aspirations of the people or be seen to directly seek to solve problems that we experience.

Thank you, Hon. Speaker. I truly find this discussion very illuminative and useful. However, I want to be sure that we will not go back to what we clearly indicated, if the legislation will affect women, the vulnerable people and those in informal areas.

**Hon. Speaker:** Hon. Kajwang'.

**Hon. Tom Kajwang'** (Ruaraka, ODM): Hon. Speaker, when I rose on a point of order to urge Members on this issue, I mentioned that you are doyen in these issues. You have just proved it. You have opened my eyes to something which I did not see. The Committee of Ways and Means that is in the Order Paper is a description of how the Leader of the Majority Party may have wished his Motion to be, but not necessarily that we were going to recline into a committee.

I have also reflected on Article 159 of the Constitution, so that procedure should not have a pre-eminence over substance. These are issues that we need to bring up when and if they arise. First of all, sometimes I am amazed because Members are not in this House when we transact business. They are here when we transact sideshows. However, when we are transacting business, you do not see Members in the National Assembly. These are the things that make us legislators. In doing the best we can, we got in a few things that we need to disentangle ourselves from. One is the question of the Statutory Instruments Act. An instrument should only come before us, if we are annulling it, but not approving it. We had that debate before. There is a legal advice on the issue. For example, an Instrument such as this has been considered within the realms of the Statutory Instruments Act and should have come as a Motion. According to the Statutory Instruments Act, the committee should have just written a letter to the CS and allowed

them to go on with what they are doing because that is approving. It would come before us for debate only if we were annulling it.

I also want to tell my friend, Hon. Kimunya, whom I really learn a lot from, something. His only disadvantage is that he was not in the House when we were implementing many of these statutes. This is the time he had the health break. The problem is that when you have practices and traditions which are against a statute or the Constitution, the Constitution and the statute take precedence. This is a challenge to us in the Rules and Procedure Committee to relook at the Standing Orders and mention the Committee of Means and Ways the way we have mentioned the Committee of Supply. The Members who are in the Departmental Committee on Finance and National Planning should consider relooking at this archaic legislation and see how we can come up with the Finance Bill, even if we will sleep in this Chamber and get it done. This will give Kenyans something which they can use to pay their taxes in a Bill, but not pursuant to an order which has not been considered properly by the members of the country in public participation.

I thank you, Hon. Speaker, for your guidance. I have nothing useful to add.

**Hon. Speaker:** I have just noticed that the Member for Kibwezi West had placed an intervention. Just like all of us, he is guilty for noticing this anomaly this late.

**Hon. Patrick Musimba** (Kibwezi West, Independent): Hon. Speaker, I thank you for giving me this opportunity to contribute. These are things which we had discourse over even in the 11<sup>th</sup> Parliament. My concerns are pretty straightforward because what has been called to question is whether an Act lapses.

We have the Finance Act, 2017, which was passed by this House. It mandates the National Treasury to collect taxes in a defined way. The budget-making process is solely the purview of Parliament. Otherwise, we consult with the CS only when Article 114 of the Constitution checks in when we propose Bills or measures. The primal point that has been raised is that Kenya is always an entity which is a growing concern. When we look at the issue of the Committee of Ways and Means, saying that we want to mandate particular taxes to be collected, my biggest concern is Number 4, which is miscellaneous fees and levies. This is the only thing which has been carried over from the previous budget cycle to this particular one. Those issues will be before the Departmental Committee on Finance and National Planning and this House to determine to what extent we enshrine the economic and social rights as enshrined in Chapter 4 of the Constitution. The principles of taxation require taxes to be just, equitable and representative.

As a colleague said, our mandate in the House is to ensure that everything that we pass is in the interest of the people of the Republic of Kenya. Taxes, as was ably raised by Hon. Ichung'wah, are very sensitive, especially when loopholes are created. I will take that word 'loophole' back. A scenario is created where corporate Kenya can come out and say that in the next 90 days or even in just 30 days, they will collect money from the public that might not necessarily end up in the National Treasury. This is a very salient thing because we report our taxes on a yearly basis and pay anticipatory taxes on a quarterly basis. That is the same period unto which some of these levies, which are going to take effect immediately, will come through. I know there are a lot of things to review and I welcome them. However, I want to urge caution that we should not pass this particular Act because the National Treasury is already mandated to collect money. I do not think anyone will go to court if the same tax he was paying in the last financial year was imposed in the next 90 days.

Hon. Speaker, this is a point I wanted your guidance on because we say everything emanates from the Constitution of Kenya, 2010. There were fundamental rights which were

enshrined in there that cannot be negated just because we have statutory instruments. They cannot go against the greater will of Kenyans.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, a number of issues have been raised, some of which we have covered in the course of the engagement we have had. The issue raised by Hon. John Mbadi was never raised specifically to say which resolution of the House, in substance, resembles what is contained in this Motion. Therefore, I am unable to apply the provisions of Standing Order No.49 properly unless he points out which one the House has already resolved itself on. Even Hon. Wamalwa suggests that I use Standing Order No.1, but on a matter of this nature, a resolution of the House, unless rescinded - of course as Standing Order No. 49(2) says - will still stand. The Speaker cannot use Standing Order No.1 because it only applies only when there is no clear express provision.

The other issue is what is contained in Article 210 on tax or fees or levies, which may be levied or adjusted or varied except as provided for by legislation. Fortunately, as Hon. Kimunya, in my opinion, ably and clearly explained, this proposal is contained in the speech which gave highlights of the budget. I do not know whether Members had an opportunity to look at the speech. It contained ways and means. Strictly speaking, that is what the speech was all about.

The House had already dealt with supply. You had supplied, for example, to the Parliamentary Service Commission, a certain amount and ministries the same. The House was supplying, but having supplied, you also have the responsibility to approve ways and means of raising that which you purported to have supplied. Otherwise, there will be nothing to supply. You cannot have your cake and eat it! It is that straightforward. It is not possible to sit and supply and not approve ways and means. If you do that, you will then have to come back here and use Standing Order No.49 to rescind all the resolutions you would have made in supply. What were you supplying? Unless you are telling the Cabinet Secretary to go out there in the wild and beg. We have already supplied.

*(Hon. Kimani Ichung'wah whispered off record)*

I do not want to use the word used by the Member for Kikuyu, the Chairman of the Budget and Appropriations Committee. He just whispered something which will not be good for the House to go by. Indeed, I appreciate the point raised by Hon. Kajwang' that in a debate of this nature, we should have the House near full. Unless people understand ways and means, they will come and vote without first of all realising that they have already supplied. So, some of the ways and means proposed may appear unpopular out there in the streets and villages. We saw some of those reactions even yesterday. They may be unpopular. Taxation has never been popular anywhere in history of the world. If anybody got a chance not to pay taxes, they would be the happiest to live like that. So, it is a painful thing, but the responsibility still rests with this House for the republic. We either approve or disapprove. If you do not approve sufficient resources as to what you have supplied or what you have purported to supply, then you must also come up with other ways and means of raising the shortfall.

Because of Section 7 of the Sixth Schedule of the Constitution, the Provisional Collection of Taxes and Duties Act, 1959, as revised in 2015, is still the law that anchors provisional collection of taxes and in terms of the Public Finance Management (PFM) Act, 2012, until such time as the Finance Bill will have been passed into law to become an Act. To a very large extent, it is contained in the speech and the various instruments that are tabled in the House after

gazettement as required under the Statutory Instruments Act. Also, it is good to familiarise ourselves with what the Statutory Instruments Act says. For instance, it states that an instrument-making body is allowed to publish in the Gazette. It is important we all familiarise ourselves with that. Once they are tabled before the National Assembly, they assume the force of law because they have the authority of the Statutory Instruments Act until annulled. And anything done on the authority of those instruments until annulled is legal and lawful. That is the point Hon. Kajwang' raised with regard to the statutory instruments.

It is for that reason that I redirect those instruments, which are all finance-related - they relate to ways and means - to be considered by the Departmental Committee on Finance and National Planning because it is the same committee that is considering the Finance Bill. According to me, the PFM Act, 2012 has to be passed by the House within 90 days after the Appropriation Bill is assented to and becomes an Act. It was assented on Friday last week. So, from Friday last week, we have 90 days within which to pass the Finance Bill and do public participation. The public participation is assumed in the saving clause of Section 7 of the Sixth Schedule. It is deemed to have happened even in this law which was enacted in 1959 as revised in 2015. They are saved and they are to be interpreted with variations and adaptations as are necessary and in conformity with the Constitution. Look at Section 7.

Unlike in the past, and I am sure Hon. Kimunya and the Leader of the Majority Party will recall that before the 11<sup>th</sup> Parliament, the Finance Bill used to take close to seven months. In fact, almost invariably, it used to be one of those last Bills passed before the House went on the long Christmas recess, but, at least, the PFM Act has reduced that period to 90 days from the date the Appropriation Bill is enacted. So, I am directing that debate on this Motion be stood down. In the meantime, the Departmental Committee on Finance and National Planning should consider the various statutory instruments that have been gazetted by the CS for the National Treasury and table a report. Unless they are annulled, anything done on the authority as they are now is covered by the Statutory Instruments Act. That is what saves public participation. Public participation is expected to happen now with the committees of the House. Hon. Limo, who is present, the Chair of the Committee on Finance and National Planning, you have an onerous task to look at those various instruments and table your report even as you engage the public in presenting views on generally many of the other ways and means contained in the Finance Bill as published. In fact, it is published in your name.

Hon. Members, we stand down this debate, but it has been very healthy.

*(Applause)*

Indeed, as we said, since the promulgation of the new Constitution, there have been many things that people have been changing. Erskine May says that money resolutions especially ways and means just as it is provided for... Again, as Hon. Kajwang' has stated, traditions, customs and practice cannot supersede the grand norm particularly the Constitution, neither can they supersede specific provisions of legislation.

This House is trying to help the National Treasury. Remember, in the last five years, the statutory instruments have never been deemed to have been approved by you. They have been deemed to have been approved because those Gazette notices were always issued and dumped in some offices around Parliament. So, you are deemed to have been passing them. Hon. Patrick Musimba, you are deemed to have been passing them. Now we are saying that we want to see them. We want to see what is proposed in those instruments.

*(Applause)*

Hon. Leader of the Majority Party, it is good that you proposed this Motion to be in this title 'Committee of Ways and Means'. The Leader of the Majority Party's argument is that we have already done supply and therefore, we must now do this. Even when we did supply, we did not appoint specific Members. It was the House. He meant well. He had good intentions. This one was going to discuss ways and means of raising revenue to finance the projects that you have supplied for including those of the Parliamentary Service Commission.

Hon. Members, it has been a good afternoon discussing this. It has been very enlightening to many us. I will stop at that point. I do not know whether the House is still in the mood of proceeding with business.

**Hon. Members:** No!

*(The Committee of Ways and Means stood down)*

**Hon. Speaker:** The Leader of the Majority Party is the owner of the next business. This business will take quite some time if you have looked at various proposed amendments to the Copyright Act.

Hon. Members, if it is the desire of the House, I must follow that. Hon. Musimba, the tradition can be recaptured from the Statement of Speaker Lenthall of 4<sup>th</sup> January 1642, who said that a Speaker is the servant of the House. So, I must obey the instructions of the House.

### ADJOURNMENT

**Hon. Speaker:** Hon. Members, the time being 6.25 p.m., the House stands adjourned until Tuesday, 24<sup>th</sup> July 2018 at 2.30 p.m.

The House rose at 6.25 p.m.