

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 28th March 2018

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

RECRUITMENT AND DEPLOYMENT OF PRIMARY SCHOOL TEACHERS

Hon. Speaker: Hon. Members, I have a Petition to present. 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 communicate to the House that my office has received a Petition signed by Mr. Julius Kipkoech Bores on behalf of religious organisations and residents of Nandi County.

The Petitioner alleges that there is an alarming shortage of primary school teachers, especially in rural areas in the country. The Petitioner asserts that the Ministry of Education, Science and Technology, in conjunction with the Teachers Service Commission (TSC), has developed a policy of hiring teachers and posting them outside their counties. Further, he avers that this new policy has resulted in challenges especially to female primary school teachers with young families and children as they are forced to work in remote and hardship areas with insufficient hardship allowance.

The Petitioner, therefore, prays that the National Assembly intervenes and enacts legislation that ensures that TSC enhances gender sensitivity while posting newly-hired female teachers with young families, and recommend recruitment of adequate number of teachers to all public schools across the country.

Pursuant to the provisions of Standing Order 227, this Petition, therefore, stands committed to the Departmental Committee on Education and Research for consideration. The Committee is requested to consider the Petition and report its findings to the Petitioner and the House in accordance with Standing Order 227(2).

I thank you.

Hon. Members, before I allow comments, let me allow Hon. Jude Njomo to also present his Petition.

THE ROLE OF CENTRAL BANK OF KENYA IN ACQUISITION OF CHASE BANK

Hon. Njomo: Thank you, Hon. Speaker. I, the undersigned, on behalf of residents of Kiambu Constituency, draw the attention of the House to the following:

- (a) THAT, in April 2016, Chase Bank was put under statutory management by the Central Bank of Kenya following liquidity issues. Subsequently, after two weeks of the closure of the bank, Chase Bank was put under the management of the Kenya Commercial Bank;
 - (b) THAT, in January 2018, a Malaysian lender, SMB Holdings, received an approval from the CBK to take over Chase Bank;
 - (c) THAT, as part of the deal, CBK indicated that SMB Holdings would acquire the lender's carved assets and liabilities and absorb the staff of Chase Bank;
 - (d) THAT, the United Bank Limited of Dubai and its London subsidiary have filed a suit in the High Court seeking to stop SMB Holdings from acquiring Chase Bank;
 - (e) Further that United Bank Limited of Dubai and its London subsidiary allege that Chase Bank depositors have not been informed of the proposed acquisition by SMB Holdings;
 - (f) THAT, CBK and Kenya Deposit Insurance Corporation have not provided information on how SMB Holdings was identified, noting that various local banks have the capacity to acquire Chase Bank;
 - (g) Concerned that under similar circumstances, CBK gave an approval to SMB Holdings to take over the collapsed Imperial Bank and the depositors are yet to be updated regarding the status of the assets of Imperial Bank;
 - (h) THAT, efforts to resolve this matter with relevant Government agencies have been futile; and,
 - (i) THAT, the matter presented in this petition is not pending in any court of law.
- Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Finance and Planning—
- (a) Cause an audit into the said acquisition process by SMB Holdings and general status of the banking sector in the country and establish whether any on site supervision has been undertaken in the past two years by the CBK;
 - (b) Establish whether the CBK conducted its supervisory role prior to collapse of Chase Bank and Imperial Bank;
 - (c) Establish the actual financial status of Chase Bank and Imperial Bank and establish whether the CBK undertook to provide technical or financial support to SMB Holdings in connection with the acquisition of Chase Bank;
 - (d) Ensure that the petitioners' plight is addressed and make any other order or direction that it deems fit in the circumstances of the matter.

And your petitioners will ever pray.

Thank you.

Hon. Speaker: Is it the case that at some point as you read through, you said that some other bank in Dubai has filed a case in the High Court to stop SMB Holdings from taking over Chase Bank? If that be so, as I thought I heard you read out, then it cannot also be correct that the matters are not pending before any court. Hon. Jude Njomo, you could clarify that.

Hon. Njomo: Hon. Speaker, the Petition is not about the acquisition of the bank. The Petition is about the role of the CBK in the acquisition of the bank. Did the CBK play its rightful role in making sure that these banks did not collapse? Did it play its supervisory role in the transaction that was carried out? This Petition has nothing to do with the actual acquisition of the bank. The matter that is in court is about acquisition of the bank. The petitioners are asking about the role of the CBK, so that other banks do not follow suit if the CBK does not play its rightful role.

Hon. Speaker: Very well. Hon. John Mbadi.

Hon. Ng'ongo: Thank you, Hon. Speaker. I will comment on this second Petition by Hon. Jude Njomo. I am sure Members will remember that sometimes in the 90s, the collapse of banks in this country was the order of the day.

Hon. Speaker, we discussed seriously that we did not have strong legal framework to help banks stand on their feet and especially those which are faced with financial distress. However, the 11th Parliament did justice to Kenyans by passing the Insolvency (Amendment) Bill 2017. It was our expectation that with this law, the CBK would have the legal framework and machinery to help out these struggling institutions. We know that there are two ways through which a bank can be forced into struggling. One is by normal financial distress which may be caused by management mistakes. There is also the case where the management subjects banks to this kind of financial distress by purely defrauding the people of Kenya. That is what has happened in the case of Chase Bank and Imperial Bank.

Hon. Speaker, investors put money through their banks trusting that it is safe for their own use. However, when you put your money in the bank, it can lead to financial collapse and economic collapse of the country if people lose confidence in banks. It is important that if the CBK cannot discharge their supervisory role properly, then this House should come in to try and understand what the problem is. Once a bank in a financial distress is put under statutory management, one would expect almost the same outcome. Rarely in Kenya would you find a financial institution that has been put under statutory management coming back to life. Most of them from statutory management go to receivership, liquidation and that is hurting Kenyans so much. I appeal to the Departmental Committee on Finance and National Planning and the Departmental Committee of Trade, Industry and Cooperatives to look into this matter and get clear evidence and representation from CBK to tell us what their problem still is. They were crying and complaining of the legal framework and we gave them. They have not complained that the law is not sufficient for the CBK to be able to discharge its duty.

As I conclude, the Governor of the CBK has been hailed as a performing Governor. I think he even got an award on the same. We want to see his capability and capacity by helping these banks come back to life. That is when we will know that he is discharging his duties efficiently and effectively.

Thank you, Hon. Speaker.

Hon. Speaker: Leader of the Majority Party, the Floor is yours.

Hon. A.B. Duale: Thank you, Hon. Speaker. I support this Petition. This House is under obligation to protect the people we represent. There are people whose businesses collapsed because of the collapse of these banks. We must have a law that protects Kenyans. Nakumatt has collapsed with over Kshs80 billion owed to suppliers. These are poor Kenyans who were supplying Nakumatt. Today, there are people whose houses are being sold and they cannot even take their children to school.

On the issue of banks, the story out there which the Governor of the CBK keeps telling us is that in three months' time... I am sure there are Members here whose money and that of the Government went under in Chase Bank. Every three months our people are told that their money would be paid at a percentage of 10 to 15 for six months, but nothing is moving so far.

Hon. Speaker, the story out there is that when Imperial Bank was going under and was being closed by the CBK, it had a liquid cash of over Kshs25 billion. That bank should not have been closed. All these are being done because the Department of Supervision at the CBK is not working. If banks are supervised, then things like insider trading will not take place. I want the Chair of the Departmental Committee on Finance and National Planning to ask for the

supervision reports by the CBK of all the banks in the country for the last two years. You will find that they have none.

Hon. Speaker, the money Chase Bank went under with have made people, parastatals and even some Members suffer because their NG-CDF money was there.

Finally, and very importantly, we have been told about the story of the KCB taking over Chase Bank because it was sold. In fact, part of the people who now run Chase Bank are KCB staff. We are told there is a bank from Mauritius coming to take over Chase Bank. We want the Governor of the CBK to come out very clearly. In that transaction, he stated that he wants to give shillings to that foreign bank. What this Committee should ask is, if the CBK really wants to give money to a foreign bank, why not the same to KCB? This matter must be very serious. Order that Committee to bring its report very fast because there are millions of Kenyans suffering. Chase Bank had branches everywhere in our country from the smallest to the biggest. We want to know when our people will be paid their hard-earned money.

Secondly and a food for thought for this House, we must bring a legislation to protect depositors. It happens in the developed countries like the United States of America (USA). When I put my Kshs10 million in a bank, the law must protect me in the event something happens to that bank.

Hon. Speaker, when you put money in the bank, some crooks who call themselves the owners do inside trading. The CBK does not do any supervisory work. The bank collapses and the next morning you are told that the bank has been closed. There are many people who are now ailing in hospitals because the little savings they had went down with Chase Bank and Imperial Bank. So, this Committee must start investigating and call all stakeholders, including Government agencies to appear before it. The CBK must bring the reports on supervision so that we can go to the bottom of the matter. In the end, we should recommend protection of investors.

I support.

Hon. Speaker: Let us have the Member for Igembe Central.

Hon. Kubai Iringo: Thank you, Hon. Speaker for giving me a chance to comment on these petitions. On the Petition of the TSC and the deployment of teachers, I support. I also urge the TSC and the Ministry of Education, Science and Technology to do an audit of all the teachers that we have in this country and also their distribution. In this country, there are schools which have many teachers and others have few. There are some arid areas and teachers do not want to go there because of the hardship associated with those areas. There is a big influx of teachers in schools where teachers are paid a hardship allowance. Teachers who are not paid hardship allowance tend to seek transfers to other schools. It is high time an audit was done of all the schools in this country and the distribution of teachers. There are many teachers out there who are unemployed. The TSC should employ them in order to cover the gap we are talking about. All children in this country should receive the same education.

Concerning the Petition on Chase Bank, I support. There are so many Kenyans who are now in abject poverty because their money is held in that bank. They are not sure if they will ever get their money. When banks go under, there is the process of liquidation that ensues. However, the liquidators end up taking all the money thereby leaving the institution in more debts than they found it. In fact, the person who suffers is the one who invested in the bank. Therefore, we need to protect the depositors and investors. The CBK must have a way of recouping the money in order to save depositors.

I support.

Hon. Speaker: Member for Kitui Central.

Hon. Mulu: Thank you, Hon. Speaker. I support the Petition by Hon. Njomo, but we need to provide information. During the 11th Parliament, when the Budget and Appropriations Committee was under suspension, I found myself in the Departmental Committee on Finance and National Planning. At that point, the matter of Imperial Bank going under was very hot in this country. I remember very well, under the chairmanship of Hon. Langat, the matter of banks going under was thoroughly discussed by that Committee. There is a lot of documentation relating to that. I remember at one point doing a paper on that.

So, even as the current Committee starts investigating this matter, it would be very good to use that document as a starting point. This matter is well documented and the points are very clear. The challenges we have with banks in this country include insider banking where directors engage in banking and in the process, there is conspiracy. Directors also conspire with the CBK Monitoring and Evaluation Department. So, that report can be a very good starting point. We should avoid doing the same thing that was done by the Committee in the 11th Parliament.

The other point that I want to raise is the issue of implementation. The report I am talking about has very serious recommendations. Our Committee on Implementation needs to help this House. It does not make sense to spend a lot of time discussing these issues and documenting them, but nobody follows up. If there was a serious follow-up, the issues being raised by Hon. Members would be addressed in a very clear manner. Very specific recommendations were provided. So, the Committee, under the chairmanship of Hon. Limo, needs to use that as the starting point and help this country. Our people are suffering and some have even committed suicide. You bank your money somewhere as you plan to do a project, but after some time, you are told the money is no longer available to you. Where do you start from?

On the matter of the Petition on education, as a House, we have taken a long time to talk about lack of teachers in our schools. Kitui County is leading in this country in terms of shortage of teachers. The Departmental Committee on Education and Research should try and help our children by bridging the huge gap. I believe my constituency, Kitui Central, is the most developed in Kitui County. However, there are schools there with only four teachers. So, at one point, you have about four classes having no teacher. The classes have to share the few teachers who are available. So, instead of teaching the full 40 minutes, they do 20 minutes and rush to the other class to do another 20 minutes. Yet these students are expected to sit the same national exams as other students who have access to teachers. This House needs to help in this matter of shortage of teachers. It is the only way our children will get better grades.

With those remarks I support.

Hon. Speaker: Hon. Members, before we get the last comment because the time for petition is only 30 minutes, let me recognise the presence, in the Speaker's Gallery, of students from Kaplong Girls High School, Sotik Constituency, Bomet County and pupils from Cornerstone Preparatory Academy, Naivasha Constituency, Nakuru County. They are all welcome to observe proceedings in the National Assembly this afternoon.

Let us have the Member for Nyaribari Chache.

Hon. Tong'i: Thank you, Hon. Speaker for the opportunity to speak on this Petition. The banking industry is the engine of any economy in any country. Even as Chase Bank goes through challenges, all of us are hurting because our brothers, sisters and friends have invested a lot of money in it by way of deposits. A matter can never be alive forever. There must be closure to what is going on with Chase Bank and Imperial Bank. We think it is not good for the country's economy, for people to be put in abeyance waiting forever for intervention. Every time they go to the bank, they are told to come the next day.

It also hurts the workers because the biggest investment in any company are the workers and when workers are not sure of what tomorrow holds for them, they are likely to mess up the little that was left behind. This House has a duty to ensure that there is sobriety in those banks. People's savings have gone to the drain. Businessmen have lost heavily because the opportunity cost to any investment is much bigger than the money that has gone to the drain. Even if they were to be given that money now or next year, the opportunity cost is still a lot heavier on the investors.

Obviously, the value of money today is not the same as tomorrow. We hope that with this development, the CBK will move with speed. The advantage we have is that we have a very good Governor of the CBK. He is a very sober man. We also have a good Chairman, who is sober and experienced. We would wish that they move with speed, so that they can bring this matter to closure for the good of the economy.

It is high time we talked about the shortage of teachers in some areas in this country. We cannot have one part of the country hurting because of lack of teachers. Indeed, schools are closing down because they do not have teachers. This is not only happening in North Eastern, but also in some parts of Kenya. My constituency is friendly, for lack of a better word, and some schools are heavily understaffed.

We need the TSC to move with speed, so that they can audit all the schools and ensure there is equitable distribution of teachers. Those areas where population is huge like in my constituency - where God has given us the gift of many good children - should not be disadvantaged. We should go by teacher to pupil ratio. My area has many schools and we have a high density population. Therefore, we should be given teachers commensurate to the number of students.

We need to achieve the ratio which is envisaged by the education sector to ensure that our children get quality education. When we help needy children to get education, we are helping the society in a better way. Children should not suffer and get education which will not mean much to their careers and future development. They say, 'if you think education is expensive, try ignorance'. We do not want to try ignorance, we have been there before. We know it hurts and we do not want to try it again.

With those very many words, I support the Motion. I hope the committee involved will move with speed to resolve the issues raised here for the good of the country.

Thank you, Hon. Speaker.

Hon. Speaker: Finally, Hon. Omboko Milemba.

Hon. Milemba: Thank you, Hon. Speaker. My comments are on the issue of de-localisation of teachers. That policy came in quickly and without much consultation from the stakeholders. It is true that it has caused a lot of suffering among teachers. Originally, teachers were localised under the District Focus for Rural Development during the time of President Moi and teachers worked closer to their homes. Today, with the de-localisation policy, teachers are being moved to far-away places.

The idea of de-localisation has no face for the teachers especially considering the fact that the HIV/AIDS epidemic has affected the Kenyan population including teachers. De-localisation equally, has no face for the old teachers who are almost retiring, the sick, females and youthful teachers who are just newly married. It is causing a lot of havoc among the teachers. De-localisation, for the sake of the House to understand further, has moved from the level of just de-localising the existing teachers to de-localising promotions. Currently, what is happening is that, for one to be promoted, he must be a non-local.

So, the de-localisation policy has moved from the teachers to promotions. It is causing a lot of bad feelings among communities because local teachers are feeling left out. De-localisation is being used for favouritism because a teacher who is a non-local in an area is promoted and the locals are left out. Therefore, this policy needs to be looked into. It is true that there is a big shortage of teachers in this country and the number stands at 103,000. It is important for the Government to set aside funds for employment of more teachers in our schools. The Departmental Committee on Education and Research should look into this and make sure that Members of Parliament do not run up and down on daily basis trying to arrange transfers for their teachers.

With those many remarks, I support.

Hon. Speaker: Hon. Members, you know when something is time-bound, there is no way we will exceed the time. Accordingly, the Petition by the member of public from Nandi County is referred to the Departmental Committee on Education and Research. The Petition by Hon. Jude Njomo is referred to the Departmental Committee on Finance and National Planning. The committees are asked to expedite the process of getting views from the public.

Next Order!

PAPERS LAID

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:

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

- (a) National AIDS Control Council.
- (b) Nairobi Centre for International Arbitration.

Reports of the Auditor-General on the Financial Statements of the Kenya National Shipping Line Limited for the year ended 30th June 2015 and the certificate therein.

Reports of the Auditor-General on the Financial Statements of the Kenya National Shipping Line Limited for the year ended 30th June 2014 and the certificate therein.

Annual Report of the Victim Protection Board by the Office of the Auditor-General and Department of Justice for the Financial Year 2016/2017.

Hon. Speaker: Very well. Next Order!

POINTS OF ORDER

EXTENSION OF PERIOD FOR CONSIDERATION OF THE PARLIAMENTARY SERVICE BILL

Hon. Speaker: The Chairperson, Departmental Committee on Justice and Legal Affairs, Hon. Cheptumo.

Hon. Cheptumo: Thank you, Hon. Speaker. I rise to request for extension of time for consideration of the Parliamentary Service Bill, 2018. This Bill was Read the First time on 13th March 2018 and thereafter referred to the Departmental Committee on Justice and Legal Affairs for consideration.

Under Standing Order No.127(4), as a Committee, we had 21 days to report back to the House. The deadline for the 21 days is on 3rd April 2018, and by this time, the House will be on a short recess, of course, without anticipating debate on this particular issue. Consequently, and notwithstanding the provisions of Standing Order No.127(4), I wish to move that this House resolves to extend the time for consideration and report to the House on the Parliamentary Service Bill by the Committee by a further 22 days from 3rd April 2018.

This Bill is very important. We are going to receive comments from institutions and the public. Therefore, we need enough time, so that, we are able to process all these and report back to the House. That is the request we are making as a Committee on the extension by a further 22 days from 3rd April 2018.

Hon. Speaker: Well, I see no objections. In any event, Members, the Bill is dealing with the entire institution of Parliament. It is trying to bring it into conformity with the Constitution of Kenya, 2010.

It is unfortunate that Parliament, more particularly this House, has passed most of the other Bills and amended other laws to bring them into conformity with the Constitution of Kenya, 2010, but has not been able to update the Parliamentary Service Bill 2000 so that it still retains references to the National Assembly alone without recognising bicameralism, which was ushered in by the 2010 Constitution, among other issues that are contained in it. So, I think Hon. Cheptumo, the House should give you the time. Hon. Olago Aluoch, what is your view?

Hon. Aluoch: Thank you, Hon. Speaker. Indeed, we discussed this in our Committee meeting and we mandated the Chairman to ask for this extension. We feel that the issues we discussed are very pertinent and grave. We do not have sufficient time. So, I rise to support my Chairman.

Hon. Speaker: It is so ordered. You have an extension of 22 days starting from 3rd of April. Next is Hon. Emanuel Wangwe.

DENIAL OF ACCESS TO KENYA NATIONAL EXAMINATIONS COUNCIL OFFICES

Hon. Wangwe: Thank you, Hon. Speaker. I request for a Statement from the Committee Chairperson pursuant to Standing Order No. 44(2)(c) on denial of access to Kenya National Examination Council (KNEC) offices Nairobi.

Hon. Speaker, pursuant to Standing Order No. 44(2)(c), I seek to request for a Statement from the Chairperson, Departmental Committee on Education and Research, on the manner in which Hon. Benard Shinali, Member for Ikolomani and I were handled at the Kenya National Examinations Council (KNEC) offices along Dennis Pritt Road in Nairobi today. We were denied access to these offices today, Wednesday 28th March 2018. Pursuant to Article 1, read together with Article 95 of the Constitution, our mandate to represent the citizens has been infringed. We were seeking for a meeting with the Chief Executive Officer (CEO) and the chairperson of KNEC so as to deliberate and resolve the cancellation of 2017 examination results for Chebuyusi Boys High School, where 190 students are affected.

Pursuant to Articles 28, 33, 35 and 95 of the Constitution on human dignity, freedom of expression, access to information and our role as legislators to represent the people of our constituencies respectively, the matter is grave and requires the chairperson to undertake to inform the House and ourselves why we were given such treatment. Hon. Speaker, I seek your indulgence that the Chairperson of the Departmental Committee on Education and Research undertakes to provide a Statement on the above matter.

Thank you, Hon. Speaker.

Hon. Speaker: Let us have the Chairperson, Hon. Melly, or his deputy, Hon. Kimunya. You have heard the request that has been made. How soon do you think you can provide some information to the two Members and to the House?

Hon. Kimunya: Hon. Speaker, we have heard the request. We will be looking at it and hopefully we can get through within two weeks after the House resumes.

Hon. Speaker: That is on or about 24th of April. The House is going on recess at the close of business tomorrow. It resumes on 10th April. I am sure all of us have a miniature calendar of the House for this Session. These dates should be at your fingertips. The House will resume on 10th April and Hon. Kimunya is saying that two weeks thereafter, they will report back to the House. There is nothing out of order about that. I have allowed it. There is nothing out of order unless you will be the one out of order.

Next Order!

PROCEDURAL MOTION

RESOLUTION TO HOLD A SITTING ON THURSDAY MORNING

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

Hon. A. B. Duale: Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold a Morning Sitting on Thursday, 29th March, 2018 commencing at 9.30 a.m. for purposes of considering individual Members' Motions and any other important business.

From the outset, I thank my colleagues in the House Business Committee that you chaired late last night. We substituted today's Morning Sitting for urgent Government business. I thank my colleagues more sincerely that, that business was concluded. Tomorrow will be for Private Members' Motions. That is why we need to have this Procedural Motion to set aside tomorrow morning for Private Members' Motions. That decision of rearranging was done by the HBC. Every time the HBC is mandated with the business of the House, they have the powers to rearrange, to ballot Motions and to look at when committee reports will be tabled and moved. As I explained in the morning, what we were supposed to do this morning is what we are going to do tomorrow morning on Thursday. So, I seek the approval of the House and ask my colleague, the Leader of the Minority Party, to second.

Hon. Speaker: Hon. John Mbadi.

Hon. Ng'ongo: Thank you, Hon. Speaker. In seconding, I just want to say that we made a promise in this House that we were substituting tomorrow's morning sitting for today's morning sitting which would help us compensate for the time for Private Members' Motions that we utilised for the Business of Majority and Minority leadership. This is a Procedural Motion. I just ask my colleagues that we can avail ourselves here at 9.30 a.m. tomorrow morning, so that we can demonstrate that this is a House that when duty calls, we can even add an extra sitting to accomplish tasks that are ahead of us.

I second. Thank you, Hon. Speaker.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: I put the Question

(Question put and agreed to)

Hon. Members, I also wish to recognise the fact that the House has approved this sitting in plenary that starts at 9.30 a.m. I am aware that some committees had already scheduled other businesses for tomorrow. Please, first attend the plenary before you go to your other committees' businesses, some of which I have already approved, which had not been there because of this particular resolution.

MOTIONS

EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEE TO THE JUDICIAL SERVICE COMMISSION

Hon. Speaker: Let us have the Chair of the Departmental Committee on Justice and Legal Affairs, Hon. Cheptumo.

Hon. Cheptumo: 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, this House resolves to extend the period for consideration of the nominee submitted by H.E. the President for appointment to the Judicial Service Commission by a further period of fourteen (14) days from 3rd April, 2018.

On 20th March 2018, His Excellency the President forwarded to this House a notification of nomination of Hon. Justice Mohammed Abdullahi Warsame, for consideration and approval for appointment as a member of the JSC. Pursuant to the provisions of Standing Order No.42 (1) of the National Assembly, on Tuesday, 20th March, 2018, you conveyed a message from the President to the House, effectively committing the nominee to the Departmental Committee on Justice and Legal Affairs for vetting.

Section 8 of the Public Appointments (Parliamentary Approval) Act provides as follows:

“Unless as otherwise provided in any law, a Committee shall consider a nomination and table its report in the relevant House for debate and decision within fourteen days from the date in which the notification of nomination was given in accordance with Section 5.”

Section 9 of the same Act provides as follows:

“If after expiry of the period for consideration specified in Section 8, Parliament has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.”

The Committee is required under Article 118(1) to undertake public participation. The same requirement is stated in Section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011. The Clerk, on 21st and 22nd March 2018, by way of advertisement in the local dailies, called upon the public to submit memoranda, objecting or otherwise, the nomination of the candidate. The 14 days which are granted to the Committee by the Standing Orders include seven days of receiving memoranda from the public and seven days within which we engage in

vetting when the nominee appears before the Committee. Those seven days have already expired.

The House will proceed on recess on Thursday, 29th March 2018, a day after the deadline of receipt of public memoranda. The deadline for receiving memoranda is 29th March, 2018, which is tomorrow. Because of that, and now that we will be on recess after tomorrow, we will not have sufficient time to undertake vetting of the nominee. It is because of this reason that I move this Motion.

Pursuant to Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011, I wish to move that this House resolves to extend the time for consideration of the nomination and reporting to the House by the Departmental Committee on Justice and Legal Affairs by a further period of 14 days from 6th April 2018. This will give us sufficient time to vet the nominee and report back to the House. I request Hon. George Murugara to second.

Hon. Speaker: Let us have the Member for Tharaka.

Hon. Murugara: Thank you, Hon. Speaker. I beg to second the Motion.

(Question proposed)

Hon. Speaker: Let us have Hon. John Mbadi.

Hon. Ng'ongo: Thank you, Hon. Speaker. This Motion seeks to ask the House to extend the period allowable for the consideration of this nominee. I believe that this is the nominee from the Court of Appeal who will sit on the JSC. With your permission, I think there are weighty matters that need to be addressed with regard to this issue. Based on the principle and doctrine of separation of powers, one arm of Government is presenting to another arm, their nominee to sit on the JSC.

Hon. Speaker: Order Members! Those Members who are coming in, please, allow us to follow the proceedings.

Hon. Ng'ongo: Hon. Speaker, one arm of Government, in this case the Judiciary, is presenting to another arm of Government their nominee to sit on the JSC and that is Justice Warsame. This is after the rigorous process that this gentleman has gone through to be elected to represent that category of judges in this country. This is a process. In my view, there is a purpose for vetting. We cannot vet someone perpetually. The main reason why we vet is to understand whether someone is qualified for a job. Vetting is not an exam. We vet to get to understand whether someone qualifies for a position or not. If this person has gone through a process to qualify to be a member of the JSC proposed by one arm of Government, namely, the Judiciary, I do not think the doctrine of separation of powers would allow us to subject this gentleman to further vetting.

I am shocked that this is coming from the Majority side. Just the other day, this House passed a resolution that all those Cabinet Secretaries who have been reappointed to office by the President will not be subjected to fresh vetting by the House. Therefore, the question that I want to ask the Chair of the Departmental Committee on Justice and Legal Affairs as he prepares to reply - and I wish he would listen first - is if we made a decision as a House that the reappointed Cabinet Secretaries are not supposed to be subjected to another round of vetting, why are we subjecting the reappointment of a member of the JSC representing the Court of Appeal judges in the commission, to vetting? The same Justice Warsame has been sitting on the JSC. Let us not have our cake and eat it. If we are not subjecting people who have held offices to fresh vetting for the same office, there is no reason to again subject Justice Warsame to vetting.

The Motion before us seeks to extend time to engage in a task that this House should not perform. Why should we even grant permission to allow a committee to look into a matter that will be interfering with another arm of Government, after it has already elected a person to represent them on the commission?

I oppose the Motion.

Hon. Speaker: Hon. John Mbadi, fortunately, I am acutely aware that you were a Member of the 10th Parliament that approved the vetting of members to the JSC, whose names were submitted to the Departmental Committee on Justice and Legal Affairs after going through the same process in or about November/December 2010.

Jog your memory. I do not want to tell you the names because I know all of them. I even have the HANSARD. I have gone through what happened at that time. In fact, Justice Riaga Omollo went through the same process after being elected by the Court of Appeal to represent it in the Judicial Service Commission (JSC). He appeared before the Committee which was then chaired by Hon. Ababu Namwamba. A Report was tabled here. Hon. John Mbadi, as a Member of the House, contributed happily and the Report was passed. I do not want to give you several other names because I know all of them.

According to Article 230 of the Constitution, the nominees to the Salaries and Remuneration Commission (SRC) go through a process which is similar to that of election by several bodies named under this Article. If you look at Article 171 of the Constitution regarding the constitution of the JSC, the members to the JSC go through a process of election by the Supreme Court, Court of Appeal, the High Court, Kenya Magistrates' and Judges' Association and the Law Society of Kenya (LSK). The Attorney General is also a Member. If you go to the provisions of Article 250 (2) of the Constitution, you will see the requirements of members who should serve in any constitutional commission. This is what we call Chapter 15 of the commissions which are named under Article 248 of the Constitution. They must go through a process indicated as identification, recommendation, approval by the National Assembly and appointment by the President.

Article 248 of the Constitution says:

“This Chapter applies to the commissions specified in clause (2) and the independent offices specified in clause (3), except to the extent that this Constitution provides otherwise.”

So, being elected by one body is a method of being recommended. There is a clear distinction. Mark the word, “elected”.

Article 127 of the Constitution shows constitution of the Parliamentary Service Commission (PSC). This is the best example where the Constitution provides otherwise. The Commission consists of four Members from the National Assembly and three Members from the Senate. The word used there is “appointed” by Parliament. Read all those Articles of the Constitution. Fortunately, I am very clear on them. The only time that the word “appointed” is used is with regard to the Members of Parliament who will serve in PSC. In all those other bodies, the words used are “identified, elected, and recommended for approval by National Assembly”. So, Hon. John Mbadi, this is an issue which we need more time than this Motion which is seeking extension of time, so that we can get some people to address it. It is important to look at all those issues which I have raised in all those Articles in the Constitution. We need to put all of them in context, so that we do not pick any one of them in isolation from the rest. As a House, we will then see how best we will deal with situations of this kind.

There will be other bodies under the Constitution and other national legislation which will identify, nominate, recommend and elect persons. As the National Assembly, do we want to

wash our hands off and say that since people have been identified, recommended, elected and nominated by those other bodies; we then do not play our legitimate role under Article 250 of the Constitution of approval? All these are questions which we need to think through and process. An extension of time would accord this House in its entirety the opportunity to think through all of them. As we listen to all the contestations, we, as a House, will resolve in a manner that keeps the House abreast of any developments that may be happening out there and any judicial interpretations that may be given out there. If we do that, we will not have any issues with whatever method of identification of nominees to serve in whatever bodies, as long as they are the commissions which are in Chapter 15 of the Constitution.

I want to invite the Departmental Committee on Justice and Legal Affairs to look at all these issues, so that whatever decisions and recommendations you bring to the House are informed by a consideration of all those issues that I have raised. It is important that we do not look at any one of those cases in isolation.

Hon. John Olago Oluoch wants to add his voice. The machine has hung. Use the dispatch card.

Hon. Aluoch: Thank you, Hon. Speaker. Indeed, I appreciate your wise counsel and guidance of the House on this matter. I have also listened to Hon. Mbadi. I subscribe to the view of Hon. Mbadi. I hold the view that neither Justice Warsame nor any nominee to the JSC by the Kenya Magistrates' and Judges' Association or the LSK should be vetted by Parliament. However, I wish to support my Chairman's Motion for extension of time because it will give the House and the Committee time to look at this matter in detail. We will also look at comparative analysis from other jurisdictions so that when we present a report, it will be a well consolidated one which the House will debate and set such precedent.

I support the Motion, Hon. Speaker.

Hon. Speaker: Hon. Members, let me put the Question.

(Question put and agreed to)

Hon. Members, I wish to rearrange the business on the Order Paper. The next Order is the business appearing as Order No. 13 after which the rest will follow as per the Order Paper.

APPROVAL OF NOMINEES FOR APPOINTMENT AS
AMBASSADORS AND HIGH COMMISSIONERS

Hon. Speaker: I am informed that the Motion is going to be moved by the Member for Limuru, Hon. Peter Mwathi. You may move it from the Dispatch Box.

Hon. Mwathi: Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the vetting of three nominees to the position of Ambassadors/High Commissioners, laid of the House on Wednesday, 28th March 2018 and pursuant to provisions of Article 132(2)(e) of the Constitution approves the appointment of Amb. Richard Titus Ekai, Hon. Wilfred Gisuka Machage and Hon. Mohamed Muktar Shidiye as Ambassadors/ High Commissioners.

Pursuant to Article 132(2)(e) of the Constitution and Section 5 of the Public Appointments (Parliamentary Approval) Act, No.33 of 2011, His Excellency the President forwarded to the Clerk of the National Assembly a notification of appointment containing the names and curriculum vitae of four Ambassadors/High Commissioners nominees on 14th March 2018.

On 15th March 2018, Hon. Speaker, you communicated the notification of the nominees and therefore referred the matter to the Departmental Committee on Defence and Foreign Relations for vetting and reporting to the House within 14 days.

The office of High Commissioner is under the Ministry of Foreign Affairs and International Trade whose duties is among others, advancement and protection of Kenya's interest, promotion of Kenya's influence in international decision-making, protection of Kenya's sovereignty, promotion and strengthening of bilateral and multilateral cooperation, promotion of sub-regional and regional integration and promotion of public diplomacy among others.

In considering the nominees, the Committee held three sittings. Three nominees appeared before the Committee on 27th March 2018 and were vetted in accordance with the provisions of the Constitution and the Public Appointments (Parliamentary Approval) Act, 2011 and the National Assembly Standing Orders.

One nominee, Eng. John Okunga Ogango, had notified Clerk of the National Assembly, vide the letter written on 21st March 2018, of his withdrawal from the approval process and as outlined under Section 6 (1) of the Public Appointments (Parliamentary Approval) Act, the Committee therefore deliberated on the nominees' duly filled questionnaire in accordance with Section 6 of the Public Appointments (Parliamentary Approval) Act, curriculum reports, certificates from relevant authorities which were submitted by the nominees including their oral submissions during the vetting at the sitting held on Monday 27th March 2018. In conducting the approval hearing the Committee examined the nominees against various criteria like academic qualifications, employment record, professional affiliations, potential conflict of interest, knowledge of the relevant subject, overall suitability, integrity, vision and leadership; and expectations and key priorities.

The Committee in compliance with the Constitution and other legal requirements ensured that its meetings were open to the public and was covered by the media.

The Committee made the following general observations which apply to all the three nominees who were vetted: In accordance with Article 78(1) of the Constitution, all nominees are Kenyan citizens and do not hold dual citizenship. Academic credentials and professional training and experience of all nominees are in accordance with provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act No.33 of 2011.

All nominees satisfied the requirements of Chapter Six of the Constitution on Leadership and Integrity. None of the nominees has been charged in a court of law or mentioned adversely in a parliamentary Committee report or commission of inquiry. As stipulated in Article 75(1), all the nominees have no potential conflict of interest. All the nominees satisfied the requirements of Article 77(1) of the Constitution, in that they do not intend to participate in any other gainful employments. All the nominees do not hold office in any registered political party hence satisfy the provisions of Article 77(2) of the Constitution. None of the nominees has been dismissed from office under Article 75 of the Constitution for contravention of provisions of Article 75(1) which is conflict of interest, Article 76 on financial probity, Article 77 on restrictions of State officers and Article 78(2) on dual citizenship. The Committee did not receive any written statements on oath contesting the suitability of the nominees.

Eng. John Okunga Ogango, a nominee, had notified the Clerk of the National Assembly of his withdrawal in accordance with Section 6 of Public Appointments (Parliamentary Approval) Act. The appointing authority had not indicated the diplomatic stations the nominees were to be posted to as was the case earlier on with the nominees we had vetted. The Head of Public Service, through a letter communicated to this House dated 26th March 2018, opined that the Committee was ideally required to determine the suitability of the nominees to represent Kenya's foreign policy and to defend the national interest before the President assigned them diplomatic missions. So the Committee proceeded with the vetting.

The first nominee to be vetted was Richard Titus Ekai who appeared on 27th March 2018 at 9.00 a.m. and was interviewed. These are some of the facts that we found out about him. Richard Ekai is a Kenyan citizen born in Turkana County. He holds a bachelor's degree in Physics; a Master's degree in Physics, solar energy from Moi University and a PhD on renewable energy from the University of Hannover, German. He also holds a Master's degree in Business Administration. He is quite schooled.

Amb. Richard Titus Ekai's work experience is largely in the public sector and we noted that he has been an ambassador in the Kingdom of Thailand. Amb. Richard Ekai is a beneficiary of several awards some of them being the Chief of Order of the Burning Spear (CBS) which was conferred by His Excellency President Uhuru Kenyatta in December 2014.

He also holds Moran of the Burning Spear (MBS) which was conferred by President Mwai Kibaki in December 2011 and also Dean of Diplomatic Corps in Thailand from March 2012 to June 2013. He is a Member of the Kenya Association of Public Administration and Management.

The Committee considered the suitability of Richard Titus Ekai to serve as an ambassador and also noted that he has previously served as Ambassador in the Kingdom of Thailand.

The Second nominee to appear before the Committee was Dr. Wilfred Gisuka Machage who also appeared on 27th March 2018 at 10.00 a.m. and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, and the Standing Orders.

Dr. Wilfred Machage is a Kenyan citizen who was born in Migori County in 1956 and holds a Bachelor of Medicine and Surgery degree from the University of Nairobi which he got in 1983. He has attended several courses during his career like Monitoring and Evaluation, International Programme. He also has a certificate in Management, Urban Planning and Administration of African Countries from China and certificate in Development and Managing Change in a Dynamic World which he got from Harvard Kennedy School, Executive Education.

Hon. Machage began his career as a medical officer in the Ministry of Health and later practised as a private practitioner. Hon. Machage is a beneficiary of honours. First is the recognition by the Office of the President in contribution to the upgrading of the Nairobi-Thika Highway. He has got Moran of the Order of Golden Heart (MGH) which was conferred by His Excellency President Mwai Kibaki in 2008. He has also been a Senator of Migori and Member of Parliament for Kuria Constituency. He has been an Assistant Minister in the Office of the President, Assistant Minister in the Ministry of Health, Assistant Minister in the Ministry of Lands, Minister for East African Community, Chairman of Democratic Party and a Member of Orange Democratic Party as well as Deputy Party Leader of the Democratic Party.

The third nominee was Hon. Mohamed Muktar Shidiye who appeared in our Committee on 27th March 2018 at 11.00 a.m. and was interviewed pursuant to the Constitution, Public

Appointments (Parliamentary Approval) Act, and Standing Orders of this National Assembly. Hon. Shidiye is a Kenyan citizen born in Garissa County and he holds a Bachelor of Arts degree in Political Science and Philosophy from the University of Nairobi attained in 1991 as well as Master of Business Administration degree from Mt. Kenya University. He is currently pursuing a PhD in Kampala International University.

Mr. Shidiye's work experience spans over 27 years. His experience in public administration, Legislature and the Executive is vast. He started his career as a District Officer in the Office of the President and worked in Meru, Machakos and Embu districts between 1990 and 1992. He was elected a Member of Lagdera Constituency for 15 years. He has also held directorship positions in Consolidated Bank and National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA).

Hon. Mohamed Muktar Shidiye is the beneficiary of award of Chief of the Order of Burning Spear, First Class, in 2015 and a Member of the Commonwealth Parliamentary Association. Allow me – due to the workload that the Committee had – to thank the members of the Committee for working late in the night and also members of staff who ensured that this Report came in time and that we beat the deadline of 14 days as you directed.

Pursuant to Article 132(2) of the Constitution, and Standing Order 216(5)(f), the Committee is requesting the House to approve the nomination of:

- (i) Ambassador Richard Titus Ekai for the appointment by His Excellency the President as Ambassador/High Commissioner;
- (ii) Hon. Gisuka Machage, for appointment by His Excellency the President as Ambassador/High Commissioner; and
- (iii) Hon. Mohamed Muktar Shidiye for appointment by His Excellency the President as Ambassador/High Commissioner.

With those many remarks, I wish to move and request a Committee Member, Hon. Patrick Makau, to second.

I thank you.

Hon. Speaker: Member for Mavoko.

Hon. King'ola: Thank you, Hon. Speaker. I rise to second this Motion moved by Hon. Mwathi and indeed confirm that we vetted the various nominees. I confirm that the three of them were all up to the task. They are well versed with the Kenya Foreign Policy although their diplomatic stations were not given. Indeed we were impressed by the former Members of Parliament – Wilfred Machage and Mohamed Shidiye. In fact, we are setting a precedent in this House that former Members of this House are given such portfolios to lead. When you look at Titus Ekai, he is a qualified man. He has been in diplomatic world. He is up to the task.

I beg to second.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: Is it the desire of the House that I put the Question?

Hon. Members: Yes!

(Question put and agreed to)

Hon. Speaker: Hon. Members, in keeping with the Communication earlier made, we now revert to the business appearing on Order Paper in exclusion of Order No. 13 which we have

concluded. Hon. (Ms.) Gladys Boss Shollei, Chairperson of the Committee on Delegated Legislation

ADOPTION OF REPORTS BY COMMITTEE ON DELEGATED LEGISLATION

Hon. (Ms.) Shollei: I beg to move the following Motion:

THAT, this House adopts the Reports of the Committee on Delegated Legislation, laid on the Table of the House on Tuesday, 27th March 2018, and pursuant to the provisions of Standing Order 210(4)(b) annuls in entirety the following regulations:

- (i) The National Land Commission (Investigation of Historical Injustices) Regulations, 2017;
- (ii) The Traffic (Amendment) (No. 3) Rules, 2017; and
- (iii) The Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017.

Articles 94, 95 and 109 of the Constitution vest legislative authority in Parliament. However, an Act of Parliament may confer such authority to the Executive, provided that the nature and scope of the law, its purposes and objectives and the limits of such power, is specified.

The Select Committee on Delegated Legislation is established pursuant to the provisions of Standing Order No. 210 with the power to scrutinise all statutory instruments submitted to the House and to certify and ensure that these instruments comply with the Constitution and Statutory Instruments Act and all other applicable laws.

In exercise of these powers conferred by Section 36 of the National Land Commission Act, the Chairperson of the National Land Commission published the National Land Commission (Investigation of Historical Land Injustices) Regulations 2017 on 6th October 2017 via Legal Notice No. 258 of 2017. Following the publication of these regulations, they were tabled in the House on 7th November 2017. They were immediately committed to the Select Committee on Delegated Legislation for review and scrutiny.

The Committee sat and considered these regulations and had the occasion to meet with the National Land Commission. Having considered the regulations against all provisions of the laws, particularly Article 67(2)(e) and Article 94(6) of the Constitution and the National Land Commission Act which empowers the commission to make regulations and statutory interpretations, the Committee was able to observe that the commission had published the regulations before the approval of Parliament which is contrary to Section 36 of the National Land Commission Act which provides that such regulations shall be tabled for parliamentary approval.

Also, the Committee observed that pursuant to Section 13 of the Statutory Instruments Act, the commission appears to have had an unjustifiable delay in publication and tabling of the regulations before Parliament. You will recall that the regulations were published on 6th October 2017, transmitted to the Clerk of the National Assembly on 16th October 2017, thereafter tabled by the Leader of the Majority Party on 7th November 2017.

That implies that the regulations were brought to Parliament five years after the commencement of the National Land Commission Act. If that is not unjustifiable delay, I do not know what is.

As regards the Traffic Act and in exercise of the powers conferred by Section 119 of the Traffic Act, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development published the Traffic (Amendment) (No. 3) Rules, 2017 on 19th December, 2017 via Legal Notice No. 299 of 2017.

These rules were intended to review fees paid for inspection of motor vehicles upwards, in a graduated manner. This affects members of public. The Committee found, after deliberations and in consultation with the National Transport and Safety Authority (NTSA) members that, in fact, the regulations were published and presented without adequate public participation. The schedule stipulates that the memorandum should contain a brief of who was consulted over the period and what were the responses. It further adds that there ought to have been some analysis of the outcome and the department's policy in response to those concerns by members of the public.

The Committee was, therefore, of the opinion that because the ministry did not conduct sufficient consultations, they were unable to approve the regulations.

As concerns the Kenya Defence Forces Act, again in exercise of the powers conferred by Section 304(1)(g) of the Kenya Defence Forces Act, No.25 of 2012, the Cabinet Secretary for Defence and Chairperson of the Defence Council published the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017 on 7th July 2017 via Legal Notice No. 237 of 2017.

The Committee considered the regulations, particularly Regulation (4) which provides that:

“Pensions, gratuities and other allowances may be granted by the Defence Council with the concurrence of the National Treasury in accordance with these Regulations to officers and service members of the Kenya Defence Forces and shall be a charge on the Consolidated Fund.”

After deliberations, the Committee observed that this Regulation contravenes the provisions of the Constitution vide Article 206(2)(a) of the Constitution which provides that:

“Money may be withdrawn from the Consolidated Fund only in accordance with an appropriation by an Act of Parliament.”

Further, Article 206(4) of the Constitution provides that money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.

Regulation 4, therefore, contravenes Section 13(g) of the Statutory Instruments Act, 2013 which requires the Committee to consider whether the regulations involve expenditure from the Consolidated Fund or other public revenues.

Regulations 18 and 38 establish a Pensions Assessment Board and Pensions Appeal Board, respectively. That contravenes Section 13(c) of the Statutory Instruments Act which requires the Committee to consider whether a regulation contains a matter which in the opinion of the Committee should properly be dealt with in an Act of Parliament. The Committee was of the opinion that such a board could only be established through an Act of Parliament in the manner specified by the State Corporations Act.

I beg to move. I call upon a Member of the Committee on Delegated Legislation, Hon. (Ms.) Jennifer Shamallah to second this Motion.

Thank you.

Hon. Speaker: Hon. Shamallah.

Hon. (Ms.) Shamallah Jennifer: Hon. Speaker, I rise to second the Motion tabled in the House today, in that, the three regulations be annulled in their entirety. The Hon. Boss Shollei has extensively touched on these three regulations. I wish to concentrate more on the very emotive one which is on the investigation of historical injustices.

The National Land Commission was established under Article 67 of the Constitution of Kenya. Its functions amongst others are to initiate investigations into present and historical land injustices. The Regulations were to have given power to the NLC to initiate these investigations. Indeed the Sessional Paper No. 3 of 2009 on the National Land Policy recognizes the need for a comprehensive National Land Policy. The Sessional Paper was formulated to provide an exclusive framework to address critical issues of which historical injustices was amongst them.

The Regulations which we are recommending to be annulled today, would have given life to the policy framework on the existing legislation. However, the Committee on Delegated Legislation is anchored in law and guided at all times by the rule of law but most importantly by the Constitution of Kenya, hence no exemptions can be granted to the NLC in spite of the very important nature of these land injustices. It was noted that the NLC failed to comply with the public scrutiny in not complying with its parent Act which demands that it must ensure that the regulations are tabled before Parliament.

With those few remarks, I second the Motion and ask Members to support the same.

Hon. Speaker: I did not know that the two of you are in the same Committee. You are like siamese twins.

(Question proposed)

Hon. (Ms.) Ochieng: Thank you very much, Hon. Speaker. I stand to contribute to this Motion. When an authority is delegated and people are put in place to carry out certain activities and give reports and information, or make decisions and implement them to help fulfill mandates that affect the people of Kenya in one way or another, it is important that the mandate is carried out with respect and in timeliness. It is surprising and amazing that people delay in giving reports. This shows that somebody is sleeping on their job and as this happens, usually there is a lot of problem like in the case of the land commission. There are so many issues that are causing a lot of agony to families and Kenyans as far as issues of land are concerned. We have seen families fight boundaries and bring chaos, we have seen people kill one another and destroy property, if only the NLC would be proactive in doing their job and bring all the reports for consideration, action would be taken on time and we would save Kenyans a lot of problems.

It is important that when authority, legislation or regulations are delegated to somebody, they should do so with the keenness and the speed with which these issues are expected to be discussed, looked at and brought to the House in good time. Therefore, I rise to support this Motion that calls for adoption of that Report. I think it is in the interest of the House and the public that all commissions, institutions and bodies that are created to deliver specific services do so as a matter of urgency, with keenness and the weight that it deserves, to help deliver the relevant services to Kenya and make Kenya a peaceful governable country that can accommodate all of us. Without saying so much, I think it is important that this House adopts this Report, looks into it and ensures that the recommendations therein are implemented to make a point that anybody who is appointed for whatever reason, carries out whatever activity to take their work seriously and deliver on their mandate on time.

I support the adoption of this Motion.

Hon. Speaker: Member for Tharaka.

Hon. Murugara: Thank you, Hon. Speaker. I support the Motion that these sets of regulations be annulled. I sat in the committee that took the decision that these regulations had defects ranging from being contrary to statute and the Constitution. The NLC's investigation of

historical injustices and these regulations are very important to this country. It is incumbent upon the NLC to ensure that these regulations are brought back in a proper and timely manner and that they are passed and approved by Parliament for purposes of implementation. Therefore, it is my humble plea to this commission that it moves with speed and reintroduces and republishes these regulations in compliance with the Constitution and conducts public participation and the same will be approved.

The traffic amendment rules were introduced under the Traffic Act to impose licence fees on inspection of motor vehicles on a graduated scale starting with motorcycles to small cars, to lorries and trailers. Unfortunately, two reasons were considered as far as these regulations were concerned. The first one being that there had been no consultation whatsoever with the people of Kenya. The people of Kenya were being taxed when there was no consultation or representation. Two, the fees that were proposed were inordinately high and not suitable to the people at the grassroots especially the *boda boda* owners and riders when it came to inspection. In view of that, contrary to public policy, these regulations were annulled.

The third regulations, the Kenya Defence Forces (Pensions and Gratuities)(Officers and Service Members) Regulations, 2017 sought to introduce pensions and gratuities for serving members of the defence forces of the Republic of Kenya. Fortunately, there had possibly been no proper research into this, because in the first instance the regulations were *ultra vires* to the Constitution. In a very clever way, they were trying to draw money from the Consolidated Fund without approval of Parliament and the other necessary and relevant authorities. That was *ultra vires* and therefore the committee decided to do away with those regulations until the law is complied with.

The next problem with those regulations was that the parent statute, which is the Kenya Defence Forces Act, had not made any provision for boards which would sit and make determination as regards gratuities. That was a new provision introduced through regulations, which in the view of the committee was again *ultra vires* to the parent statute and could not pass the test under the Statutory Instruments Act regarding scrutiny of statutory documents before approval by this House. It is in view of that, again, these regulations had to be annulled.

The point being made here is that inasmuch as delegated legislation is subsidiary legislation, it is the very basic law that governs our country and the people of Kenya. It is a very important aspect of law which must be promulgated in accordance with the other statutes and in accordance with the Constitution. Every authority, every person given the power to make regulation must always bear in mind that due process has to be followed. Otherwise, Parliament would annul those regulations and they would be back to square one. This is exactly what is happening here. Due process was not followed and therefore these institutions have to go back and ensure that they do the correct thing. And this Parliament will not hesitate to approve regulations that are in accordance with the law, the Constitution, the parent law and the Statutory Instruments Act. It is in view of those submissions that I also support that we do annul these three sets of regulations.

Thank you.

Hon. Speaker: Member for Kathiani.

Hon. Mbui: Thank you, Hon. Speaker, for this opportunity. The Statutory Instruments Act allows the CS to make regulations, the purpose of which is to breathe life into the Acts of Parliament and to ensure that the Acts that are passed by this House can be implemented. By so doing the CS is supposed to publish the regulations and present them to this House within a very short period of time. After that, Parliament is meant to deliberate and within, I think, 28 days

either approve or annul the regulations presented to this House. Failure of discussion basically means that the regulations are passed or seemed to have been approved by the House.

We have noted that there is a lot of mischief many times from the Executive. Some of the things that they have done are, one, they constantly bring regulations to this House either late or when we are just about to go on recess so that there is not enough time for the House to deliberate and make a decision. Of course when we are on recess for more than 28 days, some of those regulations seem to have just passed without having gone through discussion by the House.

The second issue we have noted is that there is constantly a question of public participation. A lot of the regulations that come to the House, we realise that the Executive does not give enough time or bodies an opportunity to participate in the crafting of the regulations. The third issue we have noted is that whenever the regulations are supposed to put a financial burden on the public, then there is supposed to be an impact assessment report. Many times that report is not presented. Finally, the legislation is sometimes done through the backdoor.

For example, the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017 is a clear attempt to create a situation where the board that has been formed can actually get money directly from the Consolidated Fund, which clearly can only be allowed by this House. So we have noted that in some of these regulations coming before the House, there is an attempt to actually legislate through the backdoor. So I support that these regulations be annulled. The chair has clearly indicated the reasons why we should annul them. I think it is important as we move forward as a House we find a way of ensuring that all regulations get to be discussed in this House, because there are attempts to go through the backdoor and allow them to become law without this House doing its due diligence.

I support, Hon. Speaker.

Hon. Speaker: Member for Laikipia West.

Hon. Mariru: Thank you, Hon. Speaker, for this opportunity. I rise to support this Motion. I am a member of this committee. The issues that have been raised in this Motion are very fundamental. Particularly, I want to give the example of the National Land Commission (Investigation of Historical Injustices) Regulations, 2017. These are very critical regulations. If you refer to the Constitution, it contemplated a situation where the National Land Commission and indeed the Ministry of Lands would make these regulations that then give effect to the very specific provisions in the Constitution around historical injustices. And these are the issues that Kenyans have been asking, because the Constitution does provide that there will be a framework to address historical injustices around land. But we have not had an opportunity and that framework has not been put in place. Kenyans have been waiting for that framework so that they are clear on how they can lodge historical claims, how the claims will be processed and the timelines to process those historical injustices. Essentially, how a historical claim would be processed from the beginning to the end. These regulations essentially were to address that; basically put the meat and be clear on that programme. But when these regulations were prepared, as it has been noted by our able chair, most fundamentally they were not subjected to public participation.

It must be very clear that public participation is not voluntary. Public participation has become a national value and national principle. It is no longer possible to do any fundamental policy change or formulation or any law or regulation without involving the public. It is non-negotiable, more so when you are dealing with issues of historical injustices. Regulation on historical injustices, especially around land, is an area that needs every Kenyan to be engaged, to be involved, to give their views. As it is clear in Kenya now, issues of land are emotive. You

therefore cannot go in a boardroom and seek to draft such regulations without involving the public. It is absolutely not possible. So the committee realized that and on that verdict and in accordance with national values on public participation, these regulations must fall.

It is also interesting that some of these national agencies are actually bringing some of these Regulations out of time. The Act on subsidiary legislation is very clear, and any unjustifiable delay in publication and laying of these Regulations in Parliament, would essentially lead to the same conclusion that these regulations must fall.

Hon. Speaker, if I may refer to Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017, it is completely clear that these Regulations are very important to Kenya Defence Forces. However, there are certain things that must be clear. One is on the issue of public participation. It is not possible for these Regulations to pass without public participation. Equally important is the unconstitutionality of these Regulations. These Regulations contravene Section 13(g) of The Statutory Instruments Act, 2013 and Article 206(2) and 4 of the Constitution on withdrawal of money from Consolidated Fund. It must be clear that you can only charge money from Consolidated Fund, if there is a substantive Act of Parliament. You cannot use the backdoor to access the Consolidated Fund because it is a sovereign fund. You cannot also use a subsidiary registration to access this money. What this Regulation seeks to do is actually to access the Consolidated Fund through the backdoor. It has to be through an appropriation, an Act of Parliament after a budget has been made.

Secondly and equally important, it must be also clear to the national agencies that any substantive provision within a subsidiary registration must come to this House through a substantive law. It is not possible to establish a substantive organ through a subsidiary registration that was not contemplated under the substantive Act of Parliament. This is what this Regulation seeks to do. They seek to establish the Pensions Board as well as the Appeal Pensions Board through the subsidiary registration. That cannot happen and must fall. It contravenes the Statutory Instruments Act itself. I support the Committee's resolution that these Regulations must fall because if the Kenya Defence Forces would like to establish a Pensions and Appeals Pensions Board let them come and seek an amendment to the Kenya Defence Forces Act and not through a subsidiary registration.

Hon. Speaker, I support.

Hon. Speaker: Member for Nakuru Town East, what is your point of intervention?

Hon. Gikaria: On a point of order. Thank you, Hon. Speaker. I rise under Standing Order No.95. Reading the mood of the House, I can see there is no objection. Everybody is supporting this Motion. I request you call upon the Mover to reply.

Hon. Speaker: Well, looking at people who may have wanted to contribute, I am sure it is the desire that we comply with provisions of Article 121 and 122 of the Constitution as we put a Question. Can I get the feel of the House? Is the mood that I call upon the Mover to reply?

Hon. Members: Yes.

Hon. Speaker: Do I need to put the Question because it looks like it is obvious.

(Question, that the Mover be called upon to reply, put and agreed to)

The Member for Nambale is unfortunate alone. Sorry, Mover, the Floor is yours please.

Hon. (Ms.) Shollei: Hon. Speaker, first I want to thank Members for their valuable contributions. In response to what has been raised, the annulment is not fatal. The bodies

concerned still have an opportunity to resubmit the Regulations to the Committee on Delegated Legislation. Indeed, orders were already granted by a court on 31st of February 2018 which extended for a further six months from the date of the ruling.

The National Lands Commission must then comply with that order. Also, for the Traffic Regulations we know that the National Transport Authority is working on bringing the legislation back to us. We hope that this would be a lesson for other regulatory bodies so that they ensure they comply with the law.

With that, I beg to move.

(Question put and agreed to)

Hon. Speaker: Next Order.

REPORT ON GENERAL OPERATIONS AT THE KENYATTA NATIONAL HOSPITAL

THAT, this House adopts the Report of the Departmental Committee of Health on the alleged sexual assault, breakdown of equipment, surgical mix-up and general operations of Kenyatta National Hospital, laid on the Table of the House on Tuesday, 20th March 2018, pursuant to the provisions of Standing Order 216 (5) (e)-

subject to deletion of Paragraph 255 appearing on Page 61 of the Report and substituting therefore the following new paragraph:

255. The Ministry of Health should:

(a) compensate Mr. Samuel Kimani Wachira for the risk he was exposed to, trauma and permanent deformity caused by the surgical mix-up and Mr. John Nderitu Mbugua for the delayed surgery that exposed him to fatality likely to result from the blood clot; and

(b) institute remedial action on the two patients with a view to ensuring their full recovery.

Amendment proposed

THAT, the motion be amended by inserting a new paragraph on Page 60 of the report after Paragraph 245 as follows:

45A. The Cabinet Secretary responsible for Health constitutes a Taskforce on KNH to undertake, among other matters, the following:

i) Receive and consider the Report of the Directorate of Criminal Investigations on various allegations on the KNH;

ii) Investigate, inquire into and report on-

(a) the general management of patients both in and out-patient in order to address overcrowding;

(b) general financial management and funding of the hospital;

(c) The status of equipment and other hospital facilities including their suitability; and

(d) staffing matters at the Hospital.

(iii) Make such recommendations as may deem appropriate in respect of the matters under paragraphs (i) and (ii).

(Hon. (Ms.) Chege on 22.3.2018)

(Resumption of Debate interrupted on 27.3.2018)

Hon. Speaker: Hon. Members, by the time the House stopped debate on this Motion it was debating an amendment that had been proposed by Hon. Rindikiri. I can see that quite a number of Members contributed to it. Being a dilatory Motion, it cannot take the entire period of the House. We must dispose of the amendment at some appoint. However, since the Chair of the Departmental Committee of Health was not in the House, she has requested to make some comments on the Rindikiri amendments. She will have a very short time to make comments to the amendments by Hon. Rindikiri after which I will put the Question on the same so that we proceed to dispose of any other amendments.

Hon. (Ms.) Sabina Chege, the Floor is yours.

Hon. (Ms.) Chege: Thank you, Hon. Speaker. It is kind of you to give me an opportunity to speak to this. I am sorry when the amendment was moved I was not in the House. At the outset, I would like to oppose the amendment as the Chair of the Committee and with reasons that the amendment is a duplication of what the Committee has already identified and prescribed recommendations to deal with. If you allow me, I want to do illustrations.

If the Hon. Member goes to paragraph 248, it proposes the Report from the Director of Criminal Investigation (DCI) which will be received in the National Assembly after 14 days, which is this House. It is envisioned that any criminal culpability will be directly prosecuted by the Director of Public Prosecutions (DPP), while any security lapses exposed will be addressed by the management.

Our Report has also identified errors in management of patients at the hospital leading to overcrowding and disorder in service to patients. Paragraphs 247, 260, 262 clearly demonstrate what is needed to cure this problem from enforcing the referral strategy to digitising records and improved services in the county-run hospitals. Already the financial status at the hospital which has been alluded to in the amendment has clearly been demonstrated in this Report in paragraphs 236 to 240 which have shown a deficit of funding at the hospital compounded by other matters including bill waivers and absconding patients.

Hon. Speaker, paragraphs 264, 268, 271 and 272 have prescribed more funding from the Government of Kenya, audit of pending bills, ring-fencing of National Hospital Insurance Fund (NHIF) reimbursements and building up of partnerships for more funding.

On the status of equipment in the hospital, the hospital has already produced an inventory. I have it and I can table it in this House and a replacement plan for the period of 2017 to 2022. Our Report has already clearly stated under paragraph 221 that up to 45 per cent of the equipment at the hospital is obsolete. Paragraphs 216 to 220 and 222 details what the Committee observed during its visit with paragraph 254 recommending the National Treasury, Ministry of Health and Kenyatta National Hospital (KNH) to jointly agree on the replacement plan. Paragraph 230 identifies the precise shortage of human resource personnel at the hospital.

Paragraph 231 and 235 clearly exposes the staffing challenges. As a remedy, paragraph 269 has called for address to the staffing shortage in the hospital. Paragraph 273 will further examine the MoU between KNH and the University of Nairobi as regards to the registrars engaged in the hospital.

With all these details, the country and the taxpayer should not be burdened by a task force to regurgitate what this Committee has meticulously exposed in its Report. Moreover, the hospital has since engaged the services of an audit firm to audit the internal control system of the hospital and this is covered in paragraphs 93, 99 and 155 which have spoken to this. The House should look at the details in the Report and see that all issues raised here have been addressed. It is not lost on all of us as Kenyans that the country has previously been overburdened by numerous task forces, commissions of inquiries and committees whose outcomes have never seen the light of day. The recommendations prescribed by this Committee, if implemented, will cure all the concerns of Members that support the proposed amendments. It is the responsibility of a Committee of this House to oversee ministries...

(Loud consultations)

Hon. Speaker: Proceed.

Hon. (Ms.) Chege: Hon. Speaker, I am not used to being involved in a shouting match and that is why I just needed to note that we are not in a market place.

It is the place of a Committee of this House to oversee ministries, departments and agencies as provided for under the Constitution, Article 124 and Standing Order No. 216 (5) and the House must not relinquish its role to another amorphous taskforce.

I beg this House to reject that amendment. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, as I have said, many of you discussed the proposed amendment by Hon. Rindikiri and you are aware of it unless you want me to remind you. I think in opposing, the Chairperson has almost addressed every aspect which is contained in the proposed amendment. Therefore, I will put the Question on the basis that all of you have the Order Paper and can see what is in the proposed amendment.

(Question, that the words to be inserted be inserted, put and negated)

(Hon. Members stood up)

Those rising are claiming for a division? Sorry you are too few. You look like a village. Hon. Members, the proposed amendment by Hon. Rindikiri is defeated. I have received yet another amendment and I want to dispose of it. I call upon Hon. Alfred Keter to move his proposed amendments.

Hon. Alfred Keter: Hon. Speaker, my amendment was subject to the other amendment. It will be redundant if I was to proceed with the other amendment of deletion.

Hon. Speaker: Hon. Keter, I am usually very meticulous when Members submit documents to my office. You submitted this proposed amendment and you never indicated that it was a further amendment to the amendment proposed by Hon. Rindikiri. If you had intended that to be the case, you ought to have indicated here. I can read what you said:

“THAT, the Motion be further amended by deleting paragraphs 245, 246 and 250 on page 60 of the Report.”

That was your amendment

Hon. Alfred Keter: That was my amendment.

Hon. Speaker: Are you moving it?

Hon. Alfred Keter: I want to withdraw it.

Hon. Speaker: You want to withdraw it?

Hon. Alfred Keter: Yes.

Hon. Speaker: The amendment by the Hon. Keter is withdrawn. Leave is granted.

(Proposed amendment by Hon. Alfred Keter withdrawn)

Hon. Members, so many of you have contributed to this Motion. It cannot be the only business we are going to transact. Hon. Members listen. Let us have Hon. Wanga.

Hon. (Ms.) Nyasuna: Thank you, Hon. Speaker. I had submitted an amendment yesterday. I am surprised that, that amendment has not appeared anywhere for debate.

Hon. Speaker: Hon. Wanga, you can attest that I process all amendments as fast as they come to my office, including this one which just came in this afternoon

Hon. (Ms.) Nyasuna: I can attest to your efficiency in processing amendments here. So, I am very surprised that my amendment, which I submitted to the Clerks-at-the-Table has not appeared anywhere. I am very shocked given your efficiency, Hon. Speaker. That I can attest to.

Hon. Speaker: I just have not seen it. So, I may not be of much assistance.

Hon. (Ms.) Nyasuna: Hon. Speaker, my amendment was supposed to be debated yesterday but we ran out of time. I spoke to it even when I was making my contributions to the Report. Hon. Speaker, I would really appreciate your intervention on the matter.

Hon. Speaker: But there is nothing I can do without it. I have not received it. Well, I direct that the Mover be now called upon to reply.

Hon. (Ms.) Chege: Thank you, Hon. Speaker. With you indulgence, the Member for Kikuyu is asking for a minute. I do not know whether that is allowed or should I just proceed to reply?

Hon. Speaker: Just reply.

Hon. (Ms.) Chege: Hon. Speaker, let me take this opportunity to thank the Members of this House who stood with the Committee Report and supported it. I want to note that committee reports are very important and if we try to water them down for whatever reasons, we will be bringing down the dignity of this House.

Hon. Members, I would like to urge that as we make amendments and other adjustments to Committee Reports, we should consider the time the Committee took in conducting its investigations. If any Member had an issue that he or she wanted to contribute on...

We held public hearings and this matter was actually at the glare of the media. Members should have come to submit their issues before the Committee, instead of us seeming like we are pulling and pushing. I know we may want to impress the people who voted us in by showing that we are fighting for them. I want to reiterate again, the health status of this nation and of the citizens of Kenya will not be achieved by politicizing health.

I also want to urge this House to support the Government with regard to the Big Four agenda and especially the issue of universal healthcare. I know the Parliamentary Service Commission normally procures a private insurance cover for us. To show commitment in

supporting the Government, I propose we look for a way of working with the National Hospital Insurance Fund (NHIF), to fully insure Members of this House. I know some of the ex-Members of Parliament are already getting a more privileged insurance cover than what we are getting from the private cover.

I wish to thank all Members for their commitment. I thank the Members of my Committee and the secretariat for great work done. They did a very impressive Report. I want to thank the Majority Whip for standing with Members. I do not want to name all the Members who spoke, but I thank them. We want to stand for the health of this nation. I hope the leadership that will be offered at Kenyatta National Hospital will trickle down to the county leadership so that we can achieve universal healthcare.

Thank you, Hon. Speaker.

(Question of the Motion as amended put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Mbalu) took the Chair]*

THE PUBLIC TRUSTEE (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Order, Members! Those who are leaving the Chamber may do so in a quiet manner as we proceed to the next business.

Hon. Members, we are in the Committee of the whole House. This is debate on the Public Trustee (Amendment) Bill (National Assembly Bill No.32 of 2017).

(Clauses 3, 4 and 5 agreed to)

Clause 6

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see we have amendments.

Order Members! I can see Members coming in and going out. Hon. Washiali, can you prosecute your amendments to Clause 6?

Hon. Washiali: Hon. Temporary Deputy Chairlady, my apologies because the Chairman of this Committee is meant to be here, but unfortunately something has cropped up. On his behalf, I beg to move:

THAT, the Bill be amended in clause 6 —

(a) by deleting the proposed new section 5B and substituting therefor the

following new section 5B—

Office of which the Public a Trustee to be a body corporate	5B. There is established an office of the Public Trustee (a) shall be a body corporate with perpetual succession and common seal; (b) may acquire, hold and dispose of property; and (c) is capable of suing and being sued in its corporate name
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(b) in the proposed new section 5C by —

(i) inserting the words “for at least one hundred and eighty days” immediately after the words “person is missing” in the prefatory statement in subsection (1); and

(ii) inserting the following new subsections immediately after subsection (5) —
“(5A) Where a court is seized of an application under this section, the court may only grant an order or consent to the sale, charge, transfer, exchange or disposal of any property if the total value does not exceed two hundred and fifty thousand shillings or ten percent of the gross value of the estate of the missing person whichever is lower.”

(c) in the proposed new section 5E —

(i) in subsection (2) by deleting paragraphs (b) and (c) and substituting therefor the following new paragraphs—

“(b) the person for the time being in charge of public investment and portfolio management at the ministry responsible for matters relating to finance or a designated representative;

(c) one advocate having at least ten years’ experience nominated by the Law Society of Kenya;

(d) three persons with knowledge and at least fifteen years’ experience in matters

relating to finance, economics and investments—

(i) one of whom shall be of opposite gender from the other two;

(ii) not being public officers; and

(iii) not being full time employees or directors of a public company.”

(ii) in subsection (2) by renumbering paragraph (d) as (e); and

(iii) inserting a new subsection immediately after subsection (2) —

“2A. The members of the Board under subsection 2 (c) and (d) shall be appointed by the Attorney-General.”

(d) in the proposed new section 5F —

(i) by deleting subsection (1) and substituting therefor the following new subsection (1)—

“(1). The functions of the Board shall be to—

(a) review and oversee matters pertaining to the investment of estate and trust funds;

(b) formulate, review and oversee the implementation of the Public Trustee Investment Policy; and

(c) advise the Attorney-General on the management of the investment portfolio.”

(ii) by deleting subsection (3) and substituting therefor the following new subsection(3) -

“(3) A member of the Board appointed under subsection 1(c) and (d) shall hold office for a term of three years and shall be eligible for reappointment for one further term.”

I am happy to report that the Chairman is back.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you, Hon. Washiali for moving the proposed amendments to Clause 6. For the sake of the House, I want to request the Chairperson to give the House the import of the proposed amendments.

Hon. Cheptumo: The justification for the amendments is that the Bill proposes to move the provisions relating to the Office of Public Trustee as a body corporate from Section 25 of the parent Act. We want to bring it forward to the front page of the Bill. This is a re-drafted version of the amendment in order to make proper reference to the Office of the Public Trustee, which is a body corporate and also distinguish it from the office bearer, that is, the natural person. That is the essence of this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Having been given the import and essence of amendments on Clause 6, I will, therefore, propose the Question.

(Question of the amendment proposed)

I see a request from the Member for Lari. Do you want to contribute on the proposed amendments? Hon. Kimunya and lastly, the Member for Rangwe, do you want to contribute on this? There being no interest to the amendments, I put the Question.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

(Clause 6 as amended agreed to)

Clause 7

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Again, there is an amendment. Let us have Hon. Cheptumo.

Hon. Cheptumo: Hon. Temporary Deputy Chairlady, I beg to move:

THAT Clause 7 of the Bill be amended—

(a) in the marginal note by deleting the words “report of death” and substituting therefore the words “consent of a missing person”; and

(b) by deleting the proposed new section 6A and substituting therefor the following new section 6A—

“6A. Where the consent of a person is required before the appointment of the Public Trustee as an administrator or trustee and the person required to give consent is declared to be missing by a court of law, the appointment of the Public Trustee may be made without the consent from the missing person having been obtained.”

Hon. Temporary Deputy Chairlady, the justification for this amendment is that under the Succession Act, the beneficiaries of an estate of a deceased person must consent to the appointment of an administrator or trustee and administration of the estate. It cannot proceed without such consent. The Bill proposes to make provision that dispenses with the consent of certain categories of persons such as persons absent from Kenya, persons under 18 years and not of full mental capacity, disabled persons and missing persons.

The point here is that there are people who cannot give consent for the appointment of an estate administration. That is why we want to have those classes of people where we can go to court and obtain the consent on their behalf because they are unable to. For example, somebody who is under 18 years has no legal basis to consent or somebody who is missing within the jurisdiction, may be somebody who has disappeared. You will be seeing it later. Those are the exceptional cases where we are saying that is where consent may be given not by the beneficiaries of the estate.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I see no comment to the amendment.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 7 as amended agreed to)

Clause 8

Hon. Cheptumo: Hon. Temporary Deputy Chairlady, I beg to move:

THAT the Bill be amended in Clause 8 —

a. by inserting the following new paragraph immediately after paragraph (b)—

(ba) in subsection (2) by deleting the words “twenty thousand” and substituting therefor the words “one hundred thousand”

Hon. Temporary Deputy Chairlady, the justification of the amendment is that presently in Section 8 (2) of the Act where the estate of a deceased is worth less than Kshs20,000, a person entitled to be granted the letters of administration of the estate of the deceased can apply to the Public Trustee for certificate to administer the estate of the deceased persons after lapse of 14 days from the death.

The rationale for the provision is that the gross value of estate is not significantly large and need not be subject to extensive process. That ordinarily takes about six months where there is no dispute. That figure of Kshs20,000 is a very minimal figure. Assuming you have an estate which is worth say Kshs5,000 or Kshs10,000, then you subject it to the rigorous process, it would really jeopardise the interest of the beneficiary of the estate. We are talking of 14 days just to secure the beneficiaries because the amount involved is substantially low. That is the essence of this justification.

Again, it is important for this House to know that these proposed amendments seek an enhancement of the gross value of estate that can be administered from Kshs20,000 to Kshs100,000. So, we want to raise the figure again from Kshs20,000 to Kshs100,000. Those days when this law was passed, Kshs20,000 was a lot of money. However, today that figure is really not significant. We are talking of enhancing the figure to Kshs100,000. That is the essence of the second part of this amendment.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 8 as amended agreed to)

(Clause 9 agreed to)

Clause 10

Hon. Cheptumo: Hon. Temporary Deputy Chairlady, I beg to move:

THAT the Bill be amended in Clause 10—

(b) by deleting subparagraph (i) in paragraph (a); and

(c) in paragraph (a) by deleting the word “administers” in subparagraph (ii) and substituting therefor the word “administering”.

Hon. Temporary Deputy Chairlady, we have a very simple and clear explanation as to the justification. The Bill proposes to render Section 12(2) optional meaning that the Public Trustee to give notice to creditors to prove their debt in either the *Kenya Gazette* or any other suitable manner. However, it is necessary to have the notice placed in both *Kenya Gazette* and other suitable manner to ensure that any potential creditor sees the notice.

The Bill as it is proposes to only gazette notifications through the *Kenya Gazette*. We propose that it should be through the *Kenya Gazette* and the dailies so that as many Kenyans as possible are able to note the notice being issued by the public trustees. We want to widen the scope of circulation of the information in adding other appropriate media like the newspapers.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 10 as amended agreed to)

(Clauses 11 and 12 agreed to)

Clause 13

Hon. Cheptumo: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in Clause 13 by inserting the following new paragraph immediately after paragraph (i)—

“(j) formulate, implement and oversee programmes to raise awareness on law of succession and trusteeship”.

The justification of this is that this is an additional duty which will be laid on the Public Trustee to conduct civic education on matters relating to the law of succession and trusteeship. Kenyans under our Constitution are entitled to the right to information. The Department of Public Trustees should educate Kenyans. Most Kenyans are not aware of this law so we want to task the Public Trustee to spend time and resources to educate Kenyans on the relevant laws and procedures to be followed. This will enable Kenyans to benefit from this law.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 13 as amended agreed to)

Clause 14

Hon. Cheptumo: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in Clause 14—

(a) by deleting the words “living with mental disability” appearing after the word “person” in paragraph (a) and substituting therefor the words “suffering from mental disorder”; and

(b) by deleting the words “living with mental disability” appearing after the word “person” in paragraph (b) and substituting therefor the words “suffering from mental disorder”.

The justification is that the Mental Health Act uses the term “persons suffering from mental disorder”. This Act is referred to in Clause 21 of the Bill. It is important that there is consistency in the use of terms bearing the same meaning and usage across the statute books and, more specifically in this case, because there is a cross-reference to that Act. We want to have uniformity between the Bill we are amending and the Mental Health Act. Usage of those words must be similar in both laws and that is the essence of this amendment.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 14 as amended agreed to)

(Clauses 15 and 16 agreed to)

Clause 17

Hon. Cheptumo: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 17 of the Bill be amended by deleting the proposed section 28 and substituting therefor the following new section 28—

Application of
Unclaimed
Financial Assets
Act No.40 of
2011

“28. The provisions in the Unclaimed Financial Assets Act that require institutions to remit unclaimed assets to the Unclaimed Financial Assets Authority shall not apply to the Public Trustee.”

This is a very interesting one because we have an authority where unclaimed assets from institutions such as banks, insurance companies are surrendered. This is for investment and for the benefit of the Kenyan people until the time when the beneficiaries come forward. We need to distinguish this from what we have here because what is being taken care of by the Public Trustee are not necessarily unclaimed assets. Those are assets being held for the benefit of the beneficiaries of either deceased persons or somebody who is missing. That is the distinction. Hon. Kimunya was already wondering whether we are not hiding something here. That is the distinction between those two authorities.

We do not object to the fact that unclaimed assets from the private sector should be forwarded to the Unclaimed Assets Authority. But resources being held by the Public Trustee for the benefit of the beneficiaries of a deceased person should not be forwarded to the Unclaimed Assets Authority. That is the distinction that we want to make. That is basically the essence and justification of this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Kimunya do you want to comment on this? I see no interest from Members to comment on this.

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 17 as amended agreed to)

Clause 2

Hon. Cheptumo: Hon. Temporary Deputy Chairlady, I beg to move:
THAT, Clause 2 of the Bill be amended—

(a) by deleting paragraph (a);

(b) in paragraph (b) by—

(i) deleting the proposed definition of the term “Principal Secretary”;

(ii) inserting the following new definitions in proper alphabetical sequence—

“enemy” has the meaning assigned to it under the Kenya Defence Forces Act;

“missing person” means a person whose whereabouts are unknown despite reasonable efforts to locate the person and—

(a) who is no longer in communication or contact with those persons who the missing person would likely or ordinarily be in communication or contact with; or

(b) whose safety and welfare are feared for given the person’s physical or mental capabilities or the circumstances surrounding the individual’s absence; and

(c) who had not made provision for the administration of his or her property.

“Public Guardian” means the Public Trustee acting as trustee for a person who has impaired capacity and has no one willing or able to act on behalf of the person;

The amendment proposed in the Bill will result in subjecting all matters that the Public Trustee deals with to the High Court only. Succession matters should either go to the High Court or other law courts. The definition of the term “High Court” as per the Bill is restrictive in the sense that you want to confine all matters of succession to the High Court. We have very few high courts in our country. We wanted to now allow flexibility so that matters can be taken to the law courts, Chief Magistrates’ Courts, Principal Magistrates’ Courts, High Courts and so on. That is the essence of that particular amendment. It is to allow Kenyans to access the services of other law courts and not just the High Court.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted be inserted,
put and agreed to)*

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, we have moved all the amendments. So, I call upon the Mover of the Bill to move the reporting.

Hon. Cheptumo: Hon. Temporary Deputy Chairlady, I beg to move that the Committee does report to the House its consideration of the Public Trustee (Amendment) Bill, National Assembly Bill No.32 of 2017, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Mariru) in the Chair]*

REPORT

THE PUBLIC TRUSTEE (AMENDMENT) BILL

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Trustee (Amendment) Bill, National Assembly Bill No. 32 of 2017, and approved the same with amendments.

Hon. Cheptumo: Hon. Temporary Deputy Speaker, I beg to move that the Public Trustee (Amendment) Bill, National Assembly Bill, No. 32 of 2017 be now read the Third Time. I request Hon. Kimunya to second.

The Temporary Deputy Speaker (Hon. Mariru): Hon. Member, please re-do that, so that it is clear.

Hon. Cheptumo: Sorry, Hon. Temporary Deputy Speaker. I beg to move that the House does agree with the Committee in the said Report. I also request Hon. Kimunya to second.

Hon. Kimunya seconded.

(Question proposed)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Mariru): Hon. Members, I defer putting the Question because there is no Quorum.

Hon. Members, there being no other business and the time being 5.24 p.m, this House stands adjourned until Thursday, 29th March 2018 at 9.30 a.m.

The House rose at 5.24 p.m.