

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

### SPECIAL SITTING

Tuesday, 18<sup>th</sup> September 2018

The House met at 2.30 p.m.

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

#### PRAYERS

**Hon. Speaker:** Order, Members! I find that we quorate. Therefore, we can commence.

#### MESSAGE

##### REFERRAL OF FINANCE BILL 2018 BY HIS EXCELLENCY THE PRESIDENT

**Hon. Speaker:** Hon. Members, I have combined Order Nos.2 and 3 because they are interrelated.

Hon. Members, this is Message No.14 of 2018 from the President. It is titled “Referral by His Excellency the President on the Finance Bill 2018.”

*(Several Hon. Members walked into the Chamber)*

Hon. Members, just walk in quickly. Hon. Members, Standing Order 29(1) states that, and I quote:

“(1) Whenever during a Session the House stands adjourned, whether or not a day has been appointed for the next meeting, the Speaker may, on the request of the Leader of the Majority Party or the Leader of the Minority Party, appoint a day for a Special Sitting of the House.”

In this regard, I received and acceded to a request from the Leader of the Majority Party to hold special sittings. Pursuant to the provisions of Standing Order 29(2) and (3) of the National Assembly by Gazette Notice No.9380, which was published in the *Kenya Gazette* of 13<sup>th</sup> September 2018, I gave notice of this Special Sitting and that of Thursday 20<sup>th</sup> September 2018 to the Members of the National Assembly. In addition, I also published notices in the local

dailies notifying Members of the said sittings and the business to be transacted. Accordingly, this Special Sitting is properly convened.

Hon. Members, you may recall that on 30<sup>th</sup> August 2018, the National Assembly passed the Finance Bill, 2018. Thereafter, the Bill was presented for assent to His Excellency the President in accordance with the provisions of the Constitution and our Standing Orders.

However, His Excellency the President, by way of a memorandum, has since referred the Bill back to the National Assembly for reconsideration, pursuant to the provisions of Article 115(1)(b) of the Constitution. His Excellency, the President, has expressed reservations on:

- (a) Clause 2 of the Bill on the definition of the term ‘winnings’ for purposes of taxation;
- (b) Clause 18 of the Bill on deferral of the commencement date for the Value Added Tax on petroleum products;
- (c) Clause 31 of the Bill on Excise Duty proposed to be levied on sugar confectionery and fees charged for money transfer services;
- (d) Amendments to the Betting, Lotteries and Gaming Act on the rates of taxation for betting, gaming, lotteries and prize competitions;
- (e) Clause 68 of the original Bill on the proposed contributory scheme to the National Housing Development Fund (NHIF) to enable access to affordable housing;
- (f) Amendments to Part VII of the Bill relating to the Miscellaneous Fees and Levies Act on an anti-adulteration levy to be charged on kerosene imported into the country for home use; and
- (g) Recommendation for consequential amendments to the Appropriations Act, 2018, required to bridge the financing gap in accordance with Section 40(5) of the Public Finance Management (PFM) Act, 2012.

I will resume my seat to allow Hon. Members to make their way in.

*(Hon. Speaker resumed his seat)*

Hon. Members making your way in, please, do so quickly. You can register your presence anytime later, that should not take too much of your time.

Consequently, the President recommends amendments to the said clauses and the Bill. You may recall that Section 41 of the Public Finance Management Act and Standing Order 245 provide that the Finance Bill shall be considered and approved not later than 90 days after the passage of the Appropriation Bill. The Appropriation Bill, 2018, having been passed on 26<sup>th</sup> June 2018, that period expires before the ordinary resumption of the House on 2<sup>nd</sup> October 2018, thereby necessitating the special sittings that you have been asked to attend this week.

Before I commit the Memorandum to the relevant committee for consideration and reporting to the House, I wish to inform the House that my office is in receipt of a letter from the Member for Mathare Constituency, Hon. Anthony Tom Oluoch, touching on the Memorandum. In his letter, Hon. Oluoch raises three matters, on which he seeks direction before consideration of the Memorandum. These are:

- (i) whether where Parliament cannot raise the two-thirds threshold required under Article 115(4)(a) of the Constitution as read together with Standing Order No.62 of the National Assembly Standing Orders, the effect of the failure results into the

- President's reservations becoming law, which in effect makes the President a legislator contrary to the doctrine of separation of powers;
- (ii) whether the reservations of the President which have not been subjected to public participation in terms of Standing Order 127 can stand the test of law; and,
  - (iii) whether the reservations of the President touching on specific parts of the Finance Bill, and not the entire Bill, are constitutional.

You will recall that I did give guidance on a similar query raised in the last Parliament in a Communication delivered on 28<sup>th</sup> July 2015 concerning consideration of Presidential Memoranda and amendments thereto. In that instance, the then Member for Rarieda Constituency, Hon. Nicolas Gumbo, had sought guidance from the Speaker on the following matters relating to presidential referral of Bills to Parliament for reconsideration-

- (i) whether, in expressing his reservations and sending a Bill back to Parliament for reconsideration upon refusal to assent under Article 115 of the Constitution, the President can make specific proposals for amendment to the particular Bill;
- (ii) whether the specific proposals for amendment made by the President should go through the entire law-making process of consideration by the relevant committee, including pre-publication scrutiny, public hearings, First, Second and Third Readings;
- (iii) whether accepting of the text proposed by the President and which has not been subjected to the ordinary law-making process as outlined in (b) above should require a two-thirds majority; and,
- (iv) whether the House would be properly constituted if, at the time of putting the Question on the President's reservations or recommendations, there are less than two-thirds of all the Members present in the House.

The summary of my Communication then, which is now substantively codified in Standing Order No. 154, was as follows-

- (a) That, in submitting his reservations on a Bill to the House, the President is not prohibited from including his preferred text of the particular clause, section, subsection or paragraph of the Bill;
- (b) That, just like amendments to Bills, the text proposed by the President on a Bill need not be subjected to the other stages subjected to a Bill upon publication, namely, publication, First Reading, Second Reading and Third Reading;
- (c) That, any committee or Member of the House is free to propose further amendments to the Presidential recommendations, so long as such amendments have the effect of fully accommodating the Presidents reservations, the voting threshold for the passage of such amendment or, indeed, the proposals made by the President is a simple majority as contemplated by Article 122(1) of the Constitution. Any other proposed amendment that does not fully accommodate the reservations, or, indeed, is a total override of the Presidents reservation, including his proposed text, would attract the two-third requirement;
- (d) That, pursuant to the provisions of Standing Order 1(2), the determination of whether a proposed amendment by a Member or a committee to the President's reservations would have the effect of 'fully accommodating' those reservations shall be made by the Speaker on case by case basis; and,

(e) That, the absence of, at least, two-thirds majority at the time of putting the Question does not, in any way, imply that the House is improperly constituted. Once again, Hon. Members, let me allow Members to make their way in.

*(Hon. Members walked into the Chamber)*

Make your way in. You can register your presence later. Members making your way in like Hon. Wanga, do so quickly. I have just allowed you time to come in. Those like the Member for Gatundu, who are shaking hands, you can do it later.

Hon. Members, I will proceed. In that particular Communication, I did interrogate at length the issues raised by Hon. Oluoch with regard to the participation of the President in law-making as allowed by Article 115 of the Constitution. In answer to the first issue raised by Hon. Oluoch, Members will note that the two-thirds voting threshold only becomes applicable to the House if it intends to negate or amend the proposed text in respect of the reservations made on the Finance Bill, in a manner that does not fully accommodate the President's reservations. It is not a requirement that affects the quorum of the House at the commencement or consideration of the reservations. In terms of the procedure to be adopted in considering the reservations, the procedures of the House are quite clear.

As Members are aware, all questions for decision in the House are put in the positive. That is to say, with regard to the President's reservation, the Question to be put in the Committee of the whole House will, for example, be as follows and I quote:

“THAT Clause “x” of the Bill be amended as proposed in the reservations by His Excellency the President.”

At that point, the provisions of Article 122(1) of the Constitution requiring a simple majority of Members on a vote shall apply. I put emphasis on the words “simple majority”. In terms of procedure, this is exercised by way of collection of voices of “Ayes” and “Nays” as provided for in Standing Order No. 69 regarding voting in the House. The Chairperson of the Committee of the whole House will thereupon announce the result of the voice vote. It is expected that any Member intending to reject, that is, to totally oppose, the proposed text of the reservation or a Member intending to amend the Clause in a manner that does not fully accommodate the President's reservations, would rise and cause a Division as contemplated by Standing Order No. 72(1) (b) as read together with Standing Order No. 72(1)(b) on electronic voting.

If 30 or more Members rise to claim a Division, the Chairperson shall forthwith order that the Division Bell be rung as usual. If after 10 minutes or such further period as the Chair may direct, there are 233 Members in the House, being two-thirds of all Members of the National Assembly, the House shall proceed to an electronic vote in order to vote and confirm the claim to negate the recommended text of the reservations or amend the clause in question in a manner that does not fully accommodate the President's reservations. Where there are less than 233 Members in the House despite the ringing of the Division Bell, the Members claiming a Division will have failed to garner the numbers required under Article 115(4)(a) of the Constitution and, therefore, uphold the earlier decision made by way of a voice vote.

Hon. Members, indeed, even our courts have made pronouncements on the questions raised with regard to the participation of the President in the law-making process. This was the case with regard to the passage, referral and assent of the Kenya Information and Communications (Amendment) Act, 2013, the Public Audit Act, 2015, and the Finance Act, 2017, where the courts, in separate suits, affirmed the constitutional role of the President as outlined in Article 115 of the Constitution vis-à-vis the role of the House in the consideration of the President's reservations.

For the benefit of the House, I will cite some of these cases. With regard to the enactment of the Kenya Information and Communication (Amendment) Act, 2013, it was argued in court that the manner in which the Bill was referred back to the National Assembly with recommendations on various clauses, amounted to the President assigning himself a legislative role not contemplated or provided for in the Constitution, in violation of the doctrine of separation of powers. It was further contended that the referral of the Bill to the National Assembly with explicit reservations and suggested alternative clauses, and the acceptance of the recommendations by the National Assembly, amounted to usurpation of legislative authority and surrender of constitutionally vested power by the National Assembly (Nairobi High Court Constitutional Petition No. 30 of 2014 consolidated with Petition No. 31 of 2014 and Judicial Review Misc. Appl. No. 30 of 2014).

In a decision rendered by a three-judge bench, the court ruled that the petitioners had assigned a narrow meaning to the term "reservations" that was not in accord with the Constitution. It was the court's holding that it does not expect the President to simply state, "I have reservations about this Bill," since without more information in the memorandum there would be nothing for the Legislature to consider, accommodate, or reject. This led to the determination that the President properly exercised his constitutional mandate as is vested in his office under Article 115.

Further, with regard to the enactment of the Public Audit Act, 2015, the court was faced with the question of whether the President actively participated in the legislative process in the manner he noted in his reservations and whether that violated the law-making process. In answer, the court agreed with the decision of the three-judge bench in the Kenya Information and Communications (Amendment) Act, 2013 judgment, noting that it was unable to find fault with the procedure adopted by the President in making his reservations, which included recommended text that both Houses passed, when returning it to Parliament.

Similarly, Hon. Members, the court was recently invited to declare that the President had overstepped his mandate under Article 115 of the Constitution by referring back the Finance Bill, 2017 with reservations, including a recommendation on the reduction of the rates of taxation applicable to betting, lotteries and gaming activities as proposed by the House in its amendments to the Betting, Lotteries and Gaming Act. In affirming the role of the President in the law-making process, the court categorically stated:

"The constitutional power of the President to state what is wrong with the Bill can be done without making recommendations or proposals to Parliament to avoid the danger

of being perceived to be descending to the legislative arena which is a function of Parliament. However, to the extent that Members of Parliament have the constitutional safeguard and freedom of rejecting the recommendations, I find that it would be unsafe to conclude that they were influenced by the President's proposal." (Nairobi High Court Constitutional Petition No. 353 of 2017).

From the precedent set by this House and affirmed by the view taken by courts, it is therefore apparent that the claim by the Member for Mathare Constituency and his apprehension that "the consideration of the President's reservation is, in effect, an unconstitutional *fait accompli* which leaves them with no option", is misplaced. Indeed, Article 115 of the Constitution clearly allows the President to participate in the law-making process through suggestions made to this House in his reservations. The reservations by the President will be presented as a proposal to the House for agreement and the House may vote to include it in the Bill, negate it or amend it, subject to the applicable voting thresholds prescribed under Article 115 of the Constitution. The obligation to raise the voting threshold is left to those wishing to negate the proposed text or amend the text in a manner that does not fully accommodate the President's reservations.

With regard to the implication of this higher voting requirement on the legislative authority of Parliament, allow me to quote the finding of the learned judge of the High Court in the case of the Public Audit Act, 2015:

"The President's reservations were expressed in his memorandum to Parliament in the form of several recommendations and suggestions that Parliament eventually approved and passed without amendments. The drafters of our Constitution must have intended that the President's reservations should almost prevail when they imposed a higher threshold of two-thirds of Members in order to reject or amend the reservations." (Nairobi High Court Constitutional Petition No. 388 of 2016)

The second issue raised by Hon. Oluoch relates to the issue of public participation on the President's reservations. On this question, I will reiterate my ruling delivered on 28<sup>th</sup> July 2015, on the reservations not being subjected to the normal Bill procedure under the Standing Orders, since the President is availing himself an opportunity similar to that enjoyed by Members of this House when proposing amendments during Committee stage. Amendments are only considered during the Committee stage and are not subjected to other processes that a Bill goes through prior to that stage. As a matter of fact, in the case of the Finance Act, 2017, the learned judge of the High Court did find that and I quote:

"On the alleged non-compliance with the Standing Orders, the earlier communication from the Speaker of the National Assembly is instructive. It will suffice to state that, just like amendments to Bills; the text proposed by the President on a Bill need not be subjected to other stages a Bill is subjected to upon publication, that is, publication, First Reading, Second Reading and Third Reading. Consequently, I find that there was no breach of the procedural requirements." (Nairobi High Court Constitutional Petition No. 353 of 2017).

In any event, Hon. Members, a perusal of the reservations and the various recommendations contained in the Memorandum does not reveal any matter not covered either under the Bill as published, or covered in the totality of the amendments initially proposed on 29<sup>th</sup> and 30<sup>th</sup> August 2018, in the Committee of the whole House by the Departmental Committee on Finance and National Planning; the Leader of the Majority Party, the Minority Party Whip, or indeed the other Members who had amendments in the Order Paper during those particular sittings.

Indeed, these amendments were said to be a product of public participation.

Let me allow Members to make their way quickly into the Chamber. Please, quickly take your seats. In any event, you are coming late. You can take your seats and shake hands later.

I will proceed.

*(Hon. Members took their seats)*

Hon. Members, you will note that the reservations relating to the Betting, Lotteries and Gaming Act with regard to definitions and applicable rates of tax relate to an Act that the House sought to amend through the Finance Bill, 2018.

Further, Hon. Members the reservations with regard to the Value Added Tax (VAT) on petroleum products relate to an amendment made by this House to the Bill moved by the Minority Party Whip, the Hon. Junet Mohamed. The other reservations with regard to the amendments to the Excise Duty Act and the Employment Act on the proposed contributions to the National Housing Development Fund relate to amendments made by this House to provisions that were originally in the Bill.

Indeed, the reservation and recommendation on the National Housing Development Fund is nearly word for word similar to the amendment proposed by the Chairperson of the Departmental Committee on Finance and National Planning and the Leader of the Majority Party during the Committee Stage of the Bill, which was said to have been initiated as a result of public participation. The query with regard to the need for public participation is therefore disingenuous and unnecessary.

Hon. Members, Hon. Oluoch raised a third issue of whether the President's reservation with regard to the Finance Bill, 2018, amounts to a "line-item veto", and, if it does, whether the same is constitutional. In Parliamentary parlance, a "veto" is a constitutional right to reject a decision or proposal made by a lawmaking body. A "line-item veto", on the other hand is a rejection of a specific portion of a legislation passed by the legislature. In classical use, a president exercises a right to reject a legislation forwarded for assent in totality.

In the event a legislature proposes to proceed and pass the legislation without reference to the President's objections, it would ordinarily require a super-majority to do so. This is the case in the United States of America as dictated by its Constitution where the President is only mandated to reject a Bill and refer it back with a list of objections. The Congress thereafter can only pass the Bill by a super-majority, in both Houses.

The wording of Section 7 of Article I of the Constitution of the United States of America on the consideration, passage and assent of legislation only contemplates the classic use of a veto hence a President is not at liberty to reject portions of a legislation passed by congress.

This practice is well explained by William McKay and Charles W. Johnson, in their book titled: *Parliament and the Congress: Representation & Scrutiny in the Twenty-First Century*.

Indeed, far from the claim by the Member for Mathare, the practice in Kenya is, however, quite different as evidenced by Article 115 of the Constitution and, for those who mind the history of this Article, Section 46 of the repealed Constitution. Both provisions do allow a President to refer a Bill back to the legislature with reservations. Similarly, both provisions allow the legislature to amend a Bill to accommodate the reservations of the President, therefore, leading to the conclusion that a President may refer a Bill back to the National Assembly with reservation on all or specific clauses of a Bill.

The only departure between the two provisions, as I noted in the Communication delivered on 28<sup>th</sup> July 2015 was that, whereas Section 46 of the repealed Constitution contains express provisions empowering the President to return a Bill back to the National Assembly by submitting a memorandum to the Speaker indicating the specific provisions of the Bill, which in his opinion should be reconsidered by the National Assembly including his recommendation for amendments, Article 115 of the current Constitution omits this express requirement for submission of recommendations. In that Communication, I did indeed direct that despite the lack of an express provision in Article 115 requiring the President to submit his recommendations on a Bill, the Constitution does not prohibit this practice either, in line with the cardinal principle of interpretation of law that whatever is not prohibited by the Constitution or any law is presumed to be allowed.

Hon. Members, the President is, therefore, within his constitutional right to present a memorandum touching on specific clauses of the Finance Bill, 2018. Indeed, Article 115 gives the House an option of either amending the Bill to agree with the President's reservations or disregarding the President's wishes by raising a two-thirds majority.

Hon. Members, the Memorandum from the President concludes by requesting the House to consider amendments to the Appropriation Act, 2018, in light of the passage of the proposals in the Finance Bill, 2018, which create a financing gap. This does not constitute a new proposal for introduction into the Finance Bill, 2018.

As Members are fully aware, Section 40(5) of the Public Finance Management Act, 2012 requires the House, in adopting the Finance Bill, to ensure that the revenue raising measures passed are consistent with the approved fiscal framework and the Division of Revenue Act, including consideration of the impact of proposed changes on the composition of the tax revenue, among other principles.

The President notes that in the event the House agrees with the measures outlined in the Memorandum, the financing gap will remain in the region of Kshs55 billion. Consequently, the House shall have to amend the Appropriations Act, 2018 as required by law to eliminate this gap or such other amount as may result from any amendments made to the Finance Bill, 2018. That

process will be referred to the Budget and Appropriations Committee as contemplated by the Public Finance Management Act, 2012 and our Standing Orders.

Hon. Members, as I conclude, I thank the Member for Mathare Constituency for bringing forth these issues that have necessitated me to consolidate the Message from the President with this Communication as a guide to the House.

The President's Memorandum stands now committed to the Departmental Committee on Finance and National Planning for consideration. The Committee should table its Report in the morning of Thursday, 20<sup>th</sup> September, 2018.

I wish to reiterate to the House and the said Committee that only the clauses of the Bill that have reservations ought to be considered. The Committee may, subject to new Standing Order 195 relating to attendance by non-members of select committees, admit the Member for Mathare to participate and, or present any views he has on the Memorandum together with any other Member or other persons who may show interest in the process.

I also direct the Clerk to now circulate the Memorandum from His Excellency the President to all Members so that they can familiarise themselves with its contents. The Clerk is further directed to avail this Communication to Members together with my Communication of 28<sup>th</sup> July 2018 regarding Consideration and Scope of Presidential Reservations. May I also add that my Communications and, indeed, my many rulings on these matters have been codified into a small book titled: *Speaker's Considered Rulings and Guidelines*.

I thank you, Hon. Members.

Member for Yatta, we are not yet through. You have just come in a while ago and have become thirsty so fast.

## MESSAGE FROM THE SENATE

### APPROVAL FOR APPOINTMENT TO THE PARLIAMENTARY SERVICE COMMISSION

Hon. Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received a Message from the Senate regarding its decision on the approval of a Member for appointment to the Parliamentary Service Commission (PSC).

Hon. Members, the Message reads in part, and I quote:

“In accordance with the provisions of Article 127(2)(d) of the Constitution, by a resolution passed on Thursday, 13<sup>th</sup> September 2018, the Senate also approved the appointment of Hon. Samuel Kiprono Chepkong'a as a member of the Parliamentary Service Commission.”

Hon. Members, you will recall that this House, by a resolution passed on Thursday, 2<sup>nd</sup> August 2018, approved the said member for appointment to the PSC. This, therefore, concludes the bicameral approval of the appointment process, and paves way for the Commissioner to take oath of office as required under Article 74 of the Constitution before he commences his duties.

Hon. Chepkong'a is, therefore, invited if he is available to appear before the Chairperson of the Commission anytime from tomorrow morning.

I thank you, Hon. Members.

Next Order!

### PAPERS LAID

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

**Hon Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The 2018/2019 Supplementary Estimates I Programme Based Budget of the National Government of Kenya for the year ending 30<sup>th</sup> June 2019; and,

Statement on the 2018/19 Supplementary Estimates No.1 by the Cabinet Secretary for the National Treasury.

*(Hon. Aden Duale laid the documents on the Table)*

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

**Hon. Speaker:** Yes, Member for Kikuyu. What is your point of order?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, this is more of a point of information. I want to inform the Members of the Budget and Appropriations Committee in view of the Papers just laid by the Leader of the Majority Party on the Supplementary Estimates that we will have a meeting tomorrow morning and the whole day.

I wish to take this opportunity to invite all Chairs of Committees to join us tomorrow. Through the Liaison Committee, we will make the venue of the meeting known. We will deliberate on the Supplementary Estimates and have a Report ready by Thursday morning. All Chairs of Committees are invited except the two Oversight Committees and Special Funds Accounts Committee.

**Hon. Speaker:** The Chair of the Budget and Appropriations Committee jumped the gun, but he is quite in order. The Papers laid by the Leader of the Majority Party stand committed, as I had indicated in my Communication, to the Budget and Appropriations Committee for appropriate consideration.

As you invite Chairs of other Committees to your meeting, I also want to direct Chairs of the PSC Committees, the Clerks of both Houses of Parliament and more particularly the Chair of the Finance Committee, Hon. Keynan, to also appear before your Committee. I am sure the meeting may have a few issues which they wish to be considered. Hon. Keynan is present and he can carry with him as many other Commissioners as possible. It is only the Chairperson who will not be present.

**Hon. Adan Keynan** (Eldas, JP): Thank you, Hon. Speaker. I will attend and our position is already known. Nothing will be touched on the PSC proposals.

*(Laughter)*

**Hon. Speaker:** Hon. Keynan has made... Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I think in your magnanimity, you have indicated that the PSC Chair of the Finance Committee will appear together with other Commissioners before the Committee. Indeed, I want to confirm that a letter is on its way inviting Members of the PSC and the Judicial Service Commission (JSC) to the meeting tomorrow morning.

However, you have given Hon. Keynan an opportunity and he has said something which is very telling that... When I said all Chairs, it meant even the Chair of the National Government Constituencies Development Fund (NG-CDF) Committee. He is also invited except the Chairs of the Oversight Committees. I had a problem with the assertion by Hon. Keynan who purports to be writing the Report on behalf of the Budget and Appropriations Committee. He has indicated that nothing will be touched.

**Hon. Speaker:** Hon. Ichung'wah, you are now out of order because you are discussing nothing. Hon. Members, who is the Vice-Chair of the National Government Constituencies Development Fund (NG-CDF) Committee?

**Hon. Members:** Hon. Omar.

**Hon. Speaker:** I know the Chair is indisposed and out of the country. Hon. Wakhungu.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Speaker. I want to raise a matter regarding the Chair of the NG-CDF and, lucky enough, the Chair of the Budget and Appropriations Committee has raised it. Looking at the Memorandum, you find that NG-CDF is under threat. So, it is important for the Chair of the NG-CDF to be there and also friends of the Committee so that it can be considered accordingly and acted upon appropriately.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, you know the invitation is from the Chair of the Budget and Appropriations Committee. I see the Member for Homa Bay Town.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker for reconvening the House during recess. The matters which we will transact between today and Thursday are of grave national importance. Will I be right to seek your indulgence, as the Chair, to re-order the Order Paper, so that we can straight away deal with the matter of Value Added Tax (VAT)?

**Hon. Speaker:** Which Order Paper?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, there is only one circulated to us relating to this Special Sitting. It includes the matters gazetted for today and Thursday.

Hon. Speaker, I was just requesting that, because the main issue as to why the people we represent believe we are here concerns VAT – and it is a matter over which I know there is a conscious decision by Members – it is a matter we can vote straightaway so that we deal with the other matters.

I beg you, Hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, unlike all of you, the Constitution made it very clear that the Speaker shall have no vote. So, the Memorandum has been referred to the relevant committee of the House, namely; the Departmental Committee on Finance and National Planning, which will then bring a Report to the House. If we take the route that Hon. Kaluma has suggested we will, obviously, be in breach of our Standing Orders and other traditions. Hon. Kaluma, I can see you are anxious to dispose of this matter, but let us wait for the time, which is Thursday morning.

I can see the Member for South Imenti.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Speaker, for giving me this opportunity. I listened to the Chair of the Budget and Appropriations Committee severally excluding the three important committees of this House. The Public Accounts Committee (PAC), Public Investments Committee (PIC) and the Special Funds Accounts Committee (SFAC) are the watchdog committees of this House. We know who the thieves are in this country. It is important even when he is doing his work, to really consult these important Committees because we know where resources are wasted and plundered. We know who steals public resources. The Chairman of the Budget and Appropriations Committee should not be afraid of these three watchdog committees. He should not see them as enemies of this House, or of the processes that go on in this House.

Hon. Speaker it is, therefore, important for Hon. Kimani Ichung'wah, my good friend, not to be intimidated by these three committees because like now, in terms of where we should cut some budgetary allocations, we have realised that all the funds that are allocated to the ministries go to waste. If you asked me where to cut some budgetary allocations to raise funds to fill the Budget hole, I can tell you even at 1.00 O'clock, when I am asleep.

*(Laughter)*

Therefore, the Chairman should really not be afraid of our committees because we can make his work easier. I can see that my colleagues are also agitated by his statement.

Thank you, Hon. Speaker.

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, this House has been transacting business for close to a year. I confirm that PAC, PIC and SFAC are yet to table their reports here. Based on those reports, as a House, we can decide where to cut expenditure as we will know where there is wastage. This is a wakeup call. Hon. Wandayi, Hon. Nassir and Hon. Kathuri are doing very good work, but interrogating people in Rooms 7 and 9 is not the end of business of those Committees. We get to the end of business when reports are tabled here and adopted. Other Government agencies can also use those reports to bring people to book.

Secondly, you have heard Hon. Chris Wamalwa say the NG-CDF is in the Memorandum. This is a House of facts. I can even go to the HANSARD. He said that. Maybe, it was a slip of the tongue. The NG-CDF is in the Supplementary Estimates that I have tabled. This Memorandum has about five items in respect of which this House needs to agree one way or

another. The roadmap is set. Kenya is a parliamentary democracy. There are parties that form parliamentary parties.

Hon. Speaker, therefore, I want Hon. Wandayi, Hon. Nassir and Hon. Kathuri, who are doing a very good work, to table their reports when we come back in October. The House Business Committee (HBC) that you chair will give them priority so that we know, through our records at the plenary, where wastage in Government is happening. That will not help the people of Kenya alone. It will even help the President in making sure that certain people are also relieved of their duties. However, one year down the line, we do not have a report from any of the watchdog committees of this House.

**Hon. Member:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Points of order should not be confused with points of argument. Hon. Kajwang'! What do you want to say?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Speaker, protect me from the Leader of the Minority Party. As you see, I am sitting next to him. The Leader of the Minority Party is threatening me with consequences for participating in this House pursuant to Article 117, which states that there is freedom of speech in this House, and that everybody will follow his conscience as we transact business in this House. He is talking about issues which are outside of this Parliament. It is the same thing which the Leader of the Majority Party, in a way, is trying to cast aspersions on by telling us about parliamentary democracy and some things outside the House that we do not know. Is it in order for these people to intimidate us when we know where to vote? We know where the country is going. We know our people.

*(Loud consultations)*

**Hon. Speaker:** Order! Order, Hon. Members! Order! Order! Hon. Members, the Chair will, obviously, not be able to rule on whether the Leader of the Minority Party is in order or not, arising from a complaint whose genesis is, maybe, some whisper between Hon. T.J. Kajwang' and himself. If he whispered something to you, because you said you are seated very close to him which, indeed, I can see is true, I am unlikely to know. Both you and the Leader of the Minority Party have been smiling at one another. How am I likely to interpret that, that is a threat? I can only imagine that you have been exchanging on matters to do with the great county of Homa Bay.

Let us hear Hon. Omboko Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker, for the Communication on the fact that we have had to have this Special Sitting of the House.

Hon. Speaker, the matter that we shall be looking at, especially the matter which one Hon. Member raised, is the issue of the tax. Because that is a matter that concerns Kenyans, I beg your indulgence that, when it comes to voting on the particular matter, because it is raising a question of integrity, independence and strength of this House, you allow the voting to be done publicly so that Kenyans can know who is for them and who is not for them.

Thank you, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Members, my Communication is very clear about how that is to happen. I am unlikely to change my direction merely because there is excessive foot thumping.

That is not the way we make decisions here. So, we will go by the Communication which, indeed, amplifies what is in the Standing Orders. So, there should be no difficulties.

Hon. Nassir, do you want to say something?

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you, Hon. Speaker. The committees that we chair have been mentioned. As a Committee, we have only been constituted for about six months. The level of corruption in those State corporations has been so intricate and complex. I am glad that my brothers, Hon. Duale and the Chair of the Budget and Appropriations Committee, agree. People need to “fry” and “burn” to set an example that corruption is not allowed. When we bring those reports to the House, we hope that the Members will show the same enthusiasm so that we have zero levels of corruption in this country and zero tolerance on misuse of public funds. Eventually, we will have zero taxation of fuel.

**Hon. Speaker:** There is nothing to discuss. I can see Hon. Wandayi wants to say something. There is no debate. Hon. Members, there is no debate. The matter will come on Thursday and you will debate at that time. For now, there is nothing out of order. It is not just for people to speak for the sake of speaking. That is not the way it is done. Hon. Wandayi, do not raise your finger. It will not help. There is nothing before the House. The Memorandum and the Supplementary Estimates have been committed. You really have nothing.

Let us move to the next Order.

## BILLS

### *Second Reading*

#### THE URBAN AREAS AND CITIES (AMENDMENT) BILL

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, because you have committed the Memorandum to the Departmental Committee on Finance and National Planning and you have also committed the bulky Supplementary Appropriation Estimates to the Budget and Appropriations Committee, in order to give Members time to read and internalise that, I ask that we defer Order Nos. 8, 9, 10 and 11. I have asked you to defer Order Nos. 8, 9, 10 and 11.

**Hon. Speaker:** Very well. Order Members!

*(Loud consultations)*

Order Members!

*(Several Hon. Members stood up in their places)*

I am sure many of you may not have heard what the Leader of the Majority Party has said. He has asked for the deferment of the businesses appearing as Order Nos. 8, 9, 10 and 11 so as to give Members enough opportunity to look at the Memorandum as well as effectively participate tomorrow in the business before the Budget and Appropriations Committee.

*(Bill deferred)*

#### THE WAREHOUSE RECEIPT SYSTEM BILL

THE HEALTH LAWS (AMENDMENT) BILL

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL

*(Bills deferred)*

**ADJOURNMENT**

**Hon. Speaker:** Therefore, that means that there is no business. The time being 3.34 p.m., this House stands adjourned until Thursday, 20<sup>th</sup> September, at 9.30 a.m.

The House rose at 3.34 p.m.