

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 13th November, 2018

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

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

PRAYER

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KALAMAZOO
COLLEGE, MICHIGAN

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting students from Kalamazoo College, Michigan, United States of America (USA) who are on a six month exchange programme hosted by the University of Nairobi. They are accompanied by university staff. I request them to stand when called out so that they may be acknowledged in the Senate tradition.

- (1) Cludia Stroupe
- (2) Meryl Mc Donhell
- (3) Raen Wolmark
- (4) Tamara Morrison; and,
- (5) Dr. Kathleen Anangwe, Lecturer University of Nairobi

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

(Applause)

The Speaker (Hon. Lusaka): Proceed, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I also extend a welcome to the students from Kalamazoo Collage in Michigan, USA. These are students who are currently attached to the University of Nairobi under the Department of Sociology and

Social work. They are also taking other different courses from the University, for example, in Kiswahili and the intention is to have a Kenyan experience.

Mr. Speaker, Sir, this is an exchange programme that has run for more than 53 years from 1965, when we had the first group of students coming to interact with fellow students. This program is to help to build up on cultures and share social, religious and political experiences so as to make the world a better place. Through these exchanges, they are able to know what it feels like to be Kenyan. Most of them actually live with Kenyan host families and eat Kenyan food. They have all eaten *Ugali*, including the brown one, and have travelled with the families to different places.

Mr. Speaker, Sir, this is something that needs to be encouraged because it is what builds a spirit of multiculturalism. It also enables the young people from different parts of the world to understand each other's cultures. That way, we end up having more political, cultural and social stability.

Mr. Speaker, Sir, apart from the students who come from Kalamazoo College to the University of Nairobi, there are other students. So far, up to 22 students from the University of Nairobi have been sponsored to also go and have the experience in the USA. While there, they attend research courses, interact, integrate and learn very many things. It is through these sorts of experiences that publications and researches are built on.

Mr. Speaker, Sir, these students are very excited to be in the Senate this afternoon. As we know, the Senate of Kenya is what entrenches devolution because we are the guardian angels of the counties. In a bicameral system, we ensure that the interests of counties are taken care of and that we are looking at the social, political and cultural issues from particular counties. All these are discussed within the Senate. The Senate consists of 68 Members and, all together representing various counties, it tries to drive the agenda to ensure that through devolution, the governance that has been devolved to the various counties can move us to the next realm.

Mr. Speaker, Sir, as they came this afternoon, we have had a chance to go round to the various offices. We have talked about the various Committees and the work that we do. We hope that through this interchange, the interest they are beginning to have in the Senate is something that they can take back to Kalamazoo College and share it with the other students who have not come with them. They will tell them what we do in Kenya and look for ways of collaborating further.

We, therefore, welcome them to Kenya, the Senate and to be with us this afternoon and experience how we work in the Senate of Kenya.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Next Order.

MESSAGE FROM THE NATIONAL ASSEMBLY**APPROVAL, WITH AMENDMENTS, OF THE URBAN AREAS
AND CITIES (AMENDMENT) BILL**

Hon. Members I want to report to the Senate that pursuant to Standing Order 41(4) and (6), I have received the following Message from the Speaker of the National Assembly regarding the approval, with amendments, of the Urban Areas and Cities (Amendment) Bill (Senate Bills No. 4 of 2017).

Pursuant to the provisions of the Standing Orders 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

“WHEREAS, the Urban Areas and Cities (Amendment) Bill (Senate Bills No. 4 of 2017) was published vide Kenya Gazette No.157 of 13th October, 2017, as a Bill concerning county governments seeking to amend the Urban Areas and Cities Act 2011;

WHEREAS, the said Bill was passed by the Senate on Thursday 29th March, 2018, and referred to the National Assembly for consideration;

AND WHEREAS, the National Assembly passed the said Bill on Wednesday 7th November, 2018, with Amendments to Clause 19 in the form attached herewith;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders 41(1) and 144 of the National Assembly Standing Orders; I hereby convey the said decision of the National Assembly to the Senate”.

Hon. Senators, Article 112(1)(b) of the Constitution provides that if one House passes an Ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration. In this regard, I direct the Standing Committee on Devolution and Intergovernmental Relations to deliberate on the National Assembly Amendments and report to the Senate.

Further, pursuant to Standing Order 159(1) of the Senate Standing Orders, I direct that the National Assembly amendments to the Urban Areas And Cities (Amendment) Bill (Senate Bills No. 4 of 2017) be circulated to all Senators and be listed on the Order Paper for consideration on Tuesday, 20th November, 2018.

I thank you.

BILLS*First Reading***THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL
(NATIONAL ASSEMBLY BILLS NO.10 OF 2018)**

*(Order for First Reading read - Read the First Time and
ordered to be referred to the relevant Senate Committee)*

*Second Reading*THE COPYRIGHT (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.33 OF 2017)*(Sen. Murkomen on 7.11.2018)**(Resumption of Debate interrupted on 7.11.2018)***The Speaker** (Sen. Lusaka): Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you Mr. Speaker, Sir. I stand to support this Bill, which was moved, seconded and discussed. It is an important Bill, which, basically, is aimed at ensuring that the Marrakesh Treaty is actually put into place. It seeks to ensure that when somebody comes up with a product, that the product is recognized as that person's product and cannot be taken up or abused by somebody else.

Indeed, we know overtime of very many products that have been produced in Kenya, which are very authentic to Kenya. For example, we have the "kiondo" and songs from various communities, such as *kayamba* songs that have been taken by other communities. They actually patent that particular material and make it their own. Overtime, it means that, that particular community is not able to reap the fruits of that particular product.

This Bill was introduced and debated in the National Assembly and has now come to the Senate. One of the most important aspects of this Bill is that it aims at establishing a tribunal which will be responsible for dispute resolution over registration of copyright. This is very key because we are aware that most of the time when there have been disputes, there has not been a proper tribunal in place. This is because most different facets of the particular discourse in the dispute will take specific positions, which are very difficult to differentiate.

With the tribunal in place, it will be possible to ensure that this registration of copyrights is put into place. It will also ensure that the Kenya Copyright Board, which will be in charge of ensuring that the discussions are made within a particular order and discourse, can actually be enhanced.

This Bill also seeks to amend provisions dealing with offences, for purposes of ensuring clarity and providing for offences by bodies corporate, which are not provided in the current law. Like many other statutes and laws, we also have provisions in this Bill for any infringement of the rule that has been put into place.

The Bill also provides for a register of copyright works. This is very critical because most of the time, without appropriate databases, it becomes very difficult to be able to follow through and know which copyright lies with whom. Therefore, this Bill provides a register that creates an environment where such copyrights can actually be checked.

It also ensures that the qualifications and appointment of the executive director of the Kenya Copyright Board is put into place and, therefore, overtime he can go through,

to ensure that the provisions of the board that are very critical have also been put into place.

As I go through the Bill clause by clause, most of the recommendations and provisions are in place. It is a Bill that will help us create a lot of order in the way we do things, especially in matters copyright.

Mr. Speaker, Sir, I support.

The Speaker (Hon. Lusaka): Since there is no one seeking to contribute, I call upon the Mover to reply.

The Senate Majority Leader (Sen. Murkomen): Thank you Mr. Speaker, Sir. I want to thank all the Senators who made their contribution to this very important Bill. I listened to many presentations, including by Sen. (Dr.) Musuruve, who made a very eloquent presentation.

I would like to remind the House that each of us should acquaint ourselves with the difference between tangible property, as we know it, and intellectual property. This is because when it comes to copyright, you do not need to register for it to be protected. For instance, the moment someone publishes a book, it is automatically protected by law. The register that is provided for here is for purposes of enforcement; to assist the Kenya Copyright Board to perform its responsibilities in terms of when there will be complaints. It will assist both the Kenya Copyright Board and the Anti-Counterfeit Agency in the enforcement of sanctions.

I want to thank Members for all the issues that they have raised with regard to this Bill. It is an important Bill that will go a long way to make a difference in the area of copyright law, particularly for persons with disabilities, who will access reading materials. It also does a great deal to domesticate the international law that is related to protection of persons with disabilities, and at the same time protects Intellectual Property Law.

I do not want to say much. I appreciate everybody. I beg to reply, and in that regard, request you to postpone the putting of the question, pursuant to Standing Order 61(3).

The Speaker (Sen. Lusaka): That is okay.

(Putting of the Question on the Bill deferred)

Hon. Senators, for the convenience of the House, we will go back to the laying of Papers. I now call upon the Senate Majority Leader and, thereafter, the Chairperson of the County Public Accounts and Investments Committee (CPAIC) to lay the Papers.

PAPERS LAID

REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY EXECUTIVES/AGENCIES

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday 13th November, 2018:-

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Report of the Auditor-General on the Financial Statements of County Executive of Laikipia for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Kiambu for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Nyeri for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Kirinyaga for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Murang'a for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Nyandarua for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Baringo for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Bomet for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Samburu for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Narok for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Nakuru for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of County Executive of Kericho for the year ended 30th June 2017.

Report of the Auditor-General on the Financial Statements of Homa Bay County Assembly Car Loan and Mortgage Fund for the year ended 30th June 2016.

Report of the Auditor-General on the Financial Statements of Homa Bay County Assembly Car Loan and Mortgage Fund for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Homa Bay County Executive Car Loan and Mortgage Fund for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Homa Bay County Assembly Car Loan and Mortgage Fund for fourteen (14) months period ended 30th June, 2015.

Report of the Auditor-General on the Financial Statements of Bungoma County Women Empowerment Fund for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of County Assembly of Siaya Car Loan and Mortgage Fund for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Garissa County Executive for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Embu County Executive for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Kitui County Executive for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Mandera County Executive for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Wajir County Executive for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Marsabit County Executive for the year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Meru County Executive for the year ended 30th June, 2017.

Report of the Auditor General on the Financial Statements of Isiolo County Assembly for the year ended 30th June, 2017.

(Sen. Murkomen laid the documents on the Table)

The Speaker (Hon. Lusaka): The other Paper will be laid tomorrow.

BILL

Second Reading

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILLS NO.19 OF 2018)

Sen. Poghiso: Thank you, Mr. Speaker, Sir. I beg to move that the County Outdoor Advertising Control Bill (Senate Bills No.19 of 2018) be now read a Second Time.

I request that we look at this Bill from the perspective that it is a Bill that concerns counties. It has a number of proposals concerning counties. Outdoor advertising, which is a major economic activity, will now rest in the hands of the counties, especially the licensing. The County Executive Committee (CEC) Member responsible for this particular docket, will be the one to issue licenses. In here, we will have licenses and the licensing authorities.

You will also find that the Kenya National Highway Authority (KeNHA), which takes care of our roads, is also going to be part and parcel of the licensing procedures. Therefore, the principal objective of this Bill is to ensure that outdoor advertising respects amenity and does not prejudice public safety, road safety and that the display of outdoor advertisements contributes positively to the appearance of a well-cared for and attractive environment.

Advertising is a rapidly growing industry and now forms part of everyday culture. It often adds colour to our streets, it is a valuable source of information and it is viewed by many as a source of entertainment. Outdoor advertising is a key element of the industry and contributes to the creation of a vibrant and competitive economy. This Bill is going to change the way we have done advertising. There has been controversy about what distances one billboard from another. We have had some of them obstruct traffic or

people who are driving, problems of vendors fighting over spaces and controversy with the KeNHA regarding the person who is responsible for collecting the charges for outdoor advertising.

Outdoor advertising is a very important aspect of how we communicate. We get news through outdoor advertisement but we also advertise businesses. These billboards come in all sizes, shapes and forms. Some of them are electronic while others are analogue but one thing about outdoor advertising is that it involves space which must be taken care of. Who takes care of that space will be answered by some of the proposals in this Bill. Who decides the distances and how far from the highways and roads should they be, in which order should they come and who gets the license? The biggest struggle is who gets the license. The competition in this sector is very high.

We have proposed in this Bill that this new Bill be cited as the County Outdoor Advertising Control Act, 2018, when it becomes an Act. In the preliminaries of this Bill, we have given the definitions. We have defined advertisement, amenity, arena, County Executive Committee Member, hoarding, which is the structure that is used to surround the buildings and licensee, who is the person seeking to carry out outdoor advertising business. We have also defined something called sponsorship marketing plan. All these definitions help to say that advertising is about site but it is sometimes about the actual display.

The Bill does not apply to a notice or display setting out directions for it is not outdoor advertising. It does not include the name of the owner or occupant of a premise which show direction or naming places. However in Clause 3(b) it does include:-

“Anything employed wholly as a memorial, railway or road signal or a placard or other object borne by an individual’ as they move around is not what we mean.”

Outdoor advertising licensing is going to be the center of this Bill. Clause 4(1) states that-

“A person who intends to engage in the outdoor advertising shall submit an application for an outdoor advertising licence to the respective county executive committee member.”

Every county will have the different CEC’s representing trade or any other docket as long as they define for us that this is the person who licenses and that is the CEC being mentioned here. They may have different dockets but it is defined as to who is responsible. That is the person who is key in the proposal made here.

For a long time, counties were not involved yet they are the ones that bear the brunt of outdoor advertising. It is the counties that should be getting resources from the outdoor advertising which are within their counties. Some counties, which have highways going through them, will have to involve KeNHA. Some of them do not have roads while some of them have rural roads hence the decisions will purely be made by those counties. The CEC has the authority, therefore, to prepare the necessary licenses for them to be in tandem with the licenses everywhere. We have to standardize those licences.

Mr. Speaker, Sir, Clause 5 states that-

“In considering the application for a licence under Clause 4 that I have read, the County Executive Committee (CEC) Member shall take into account a number of things-

(a) the effect the advertising will have on the general characteristics of the area including its effect on any features of historic archeological, architectural landscape, cultural or other characteristics;

Mr. Speaker, Sir, hitherto, people have been putting advertising displays as they wish. They negotiate with the person who owns the land and put whatever size and colour of advertisement they want without caring whether it creates any obstruction or changes the historic, cultural or architectural nature of that landscape. It will be important that before a person gets a licence, all that is looked into.

(a) in giving the licence, the CEC Member, will have to look at whether the proposed advertisement will-

(i) endanger or obscure anyone using the highway, railway, water way, dock, harbor or the aerodromes, airstrips, airports.

(b) hinder the reading or interpretation of any other traffic sign, railway signal or aid to navigation by water or air;

This is very common. As we drive on our highways, there are big billboards which prevent a person from seeing oncoming vehicles around the corner. It also hinders the reading of other signs.

The billboards should also not hinder the operation of any device used for the purpose of security, surveillance or for measuring speed of any vehicle. For example, the police would like to measure the speed of vehicles but big billboards hinder that. Therefore, there are many ways in which the CEC Member must take into consideration factors that cause problems.

This Bill, in this Clause goes further to say-

“(iv) be so distracting or confusing as to pose a hazard to road user in the vicinity of the advertisement; or,

(v) obscure any existing and legally erected advertisement;”

Mr. Speaker, Sir, the competition today is how big an advertising billboard is so that it can obscure and prevent people from reading an existing one. Therefore, order has to come in. The CEC Member has to consider that before allocating a particular spot.

Mr. Speaker, Sir, in Clause 6, the CEC Member has been given a timeline.

It states that-

“The county executive committee member shall within fourteen days of receipt of any application under section 4, consider the application and may-

(a) where the applicant meets the requirements of this Act, approve the application and issue a licence to the applicant;

(b) approve the application subject to such conditions as the county executive member may impose; or

(c) reject the application.”

Mr. Speaker, Sir, I know that this is where the controversy will be. In which order, therefore, will the CEC, Member consider those who come?

Clause 7 states that-

“The county executive committee member shall in considering an application and where appropriate, consult other relevant public bodies that have an interest in the safe display of the advertisements including the county executive Committee member responsible for planning, environment, management, transport and roads within the county”.

Clause 8 states that-

“An outdoor advertising licence-

(a) comes into force on the date specified in that licence or, if no date is specified, the date on which it is issued and upon payment of the prescribed outdoor advertisement fee; and

(b) remains in force for the period specified in the licence.

Clause 9 states that-

“A licensee shall not alter, remove, re-erect or upgrade an advertisement for which a licence has been issued unless the licensee has applied for and obtained the approval of the county executive committee Member”

Mr. Speaker, Sir, there has been a common practice where the licensee assumes that once a space and licence has been given for a year, they can then keep changing the size and content of the advertisement. However, a licence is given specifically for a particular period and advertisement. That is what will be enforced throughout the period.

Mr. Speaker, Sir, Clause 10 states that-

“A licensee may at least in one month before an expiry of a licence apply to the county executive member for renewal of the licence”

Mr. Speaker, Sir, this is simple. If there is no contest, it is easier to renew and allow that person to continue advertising. In areas where the owner of the site is different from the county, in re-applying, therefore, he or she must write, copy and get consent from the owner of the site but also from the Kenya National Highway Authority (KeNHA).

We have tried, in this Bill, to make sure that the outdoor advertisements along our highways meet the necessary criteria, quality and standards of our highways. Therefore, KeNHA plays a big part in this. One of the areas which usually bring problems in the competition is where one licence has to be revoked.

Mr. Speaker, Sir, Clause 11 states that-

“The county executive committee member may revoke or permit the continual licensing of the licensees as issued under section 6 as the member may consider necessary with reasons therefore where the advertisements-

(a) by its design, prejudices operations to the area in which it is located;

(b) constitutes or has become a danger to any person or property;

or

(c) obscures any other advertisement, natural feature, architectural feature or visual line of civic, architectural, historical or heritage of significance.

These are reasons for revocation.

Mr. Speaker, Sir, Clause 12 states that-

“A County Executive Committee member shall not revoke a licence or impose a condition under subsection (1) unless the county executive committee member –

a) issues to the licensee, a notice of at least twenty one days of the intention to revoke the license or impose a condition for the continued licensing of the licensee;

Therefore, it cannot just be done unilaterally and without regard.

b) grants the licensee an opportunity to be heard before revocation or intended conditions.

There should be fairness in presentation of these conditions.

Clause 12 states that-

“A person aggrieved by the decision of the county executive committee member under this Act shall apply to a court of law for review of the application within fourteen days”.

Mr. Speaker, Sir, therefore, fairness should be applied as we consider these controversial issues.

Part III of the miscellaneous provisions, Clause 14 states that:-

“The licensee shall-

(a) maintain the site used for the display of an advertisement in a reasonably clean and tidy condition;

(b) maintain the structure and hoarding used for the display of advertisements in a safe condition and in a manner that does not endanger the public;

(c) upon removal of the advertisement, restore the site to a safe condition that does not endanger the public and a reasonably clean and tidy condition so that it does not impair the site’s visual amenity;

(d) meet all costs arising from the maintenance or removal of the advertisement.

Mr. Speaker, Sir, Clause 16(1) states that-

“The authorized officer may, on any day other than a Sunday or public holiday, carry out an inspection of the advertisement.

This is also a new situation. For us to know whether any advertisement has breached a law, there has to be inspections.

(2) An authorized officer under subsection (1) shall-

(a) before the commencement of an inspection produce a written confirmation of the officer’s authorization to the owner of the property on which an advertisement is displayed;

The reason is because some of the advertisement sites are within private properties. Therefore you must have a written confirmation to enter the property, so that you inspect it with due regard to decency, orderliness and the right to property under Article 40 of the Constitution.

There are also penalties proposed. Clause 17 provides as follows-

“A person who willfully or recklessly destroys or damages any advertisement belonging to another person, commits the offence of vandalism and is liable, upon conviction—

(a) in the case of a first offence, to imprisonment for a term not exceeding nine months, or to a fine not exceeding two hundred thousand shillings, or to both; and

(b) for any subsequent offence, to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred thousand shillings, or to both.”

This is common during political campaigns and things like that. During competitions, vandals are hired to destroy other people’s advertisements. These penalties are good because people will begin to respect other people’s advertisements because it is costly to put them up. This is something that we must respect. It is a polite way of saying that property belonging to other people should not be destroyed.

Clause 18 of this Bill provides that:-

“A person who contravenes any provision of this Act for which no penalty is provided is liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred thousand shillings or to both.”

Clause 19(1) states that-

“(1) A county assembly may enact county specific legislation for the implementation of this Act in the respective county.

(2) Without prejudice to the generality of the foregoing, legislation made under subsection (1) may provide for—

(a) the service of any notice required under this Act;

(b) the fees and charges to be paid in respect of any matter required for purposes of this Act;

(c) the forms of application for outdoor advertising;

(d) the different classes and duration of an outdoor licence;

(e) the acceptable size and physical location of outdoor advertisement displays;

(f) the performance of the functions, the exercise of the powers and discharge of the duties of the committee under this Act; and

(g) any other matter necessary to give effect to the provisions of this Act.”

As I conclude, this is an important Bill that will ensure orderly presentation and display of advertisements in our country. When two people are in competition, it should not just be “first come, first served” but they should meet the standards.

The Bill also provides opportunity to anyone who feels they have not been given due consideration to appeal. There is time to appeal the unilateral decisions made by the County Executive Committee (CEC) members. One person should not make a decision to the disadvantage of others.

This is an important Bill and I urge my colleagues to support and pass it. They will have time to give their views on what should be added or removed.

We all see adverts on our highways. For those of you who know, outdoor advertisement is a competitive business. To some extent, there is monopoly in certain areas but we are trying to open up the market for anyone. This Bill will simplify the way applications are done and make counties responsible for licensing. You know what that means. The practice is that a person who has a license from Nairobi can advertise anywhere in the country. This Bill requires that you must go to a particular county and make an application. That means that anyone who will want to advertise will be able to do so in our counties.

The Bill also encourages partnerships. It means that a big advertising company will have to look for partners in the counties. That will spread the opportunities to other people in the counties. In essence, it will discourage monopoly which has been there.

Mr. Speaker, Sir, I beg to move and ask Sen. (Dr.) Milgo to second.

Sen. (Dr.) Milgo: Mr. Speaker, Sir, thank you for giving me this chance to second The County Outdoor Advertising Control Bill, 2018. This Bill is important in the sense that it will provide a legal framework for regulating outdoors advertisement in counties and for connected purposes. I think this Bill will go a long way in bringing sanity in terms of advertisement because, currently, there is a lot of confusion. Sen. Poghio mentioned that there are people who control how advertisements are done. In that case, it is survival of the fittest for goods or services one wants to be advertised.

This Bill is quite in order because it indicates what is exempted from advertisements such as those that are ordinarily for providing direction to properties for sale or lease. In addition to that, there are advertisements of road signs, those of enclosed buildings or institutions and the ones related to sporting arena and cultural areas. For such, individuals will be exempted from making applications.

Clause 2 of this Bill states requirements that an individual has to meet when making an application for an advertisement. For example, whoever wants to advertise must supply and even show the owner of the site where such the advertisement will be placed. In this case, a letter from the Kenya National Highways Authority (KeNHA) as well as the plan where such an advertisement will be displayed will be required because in the past, we have seen some people just placing advertisements anywhere, including on top of buildings. By so doing, they affect other businesses.

The requirements in Clause 5 will ensure that adverts do not cause any obstruction, for example, on roads where one is not able to see oncoming vehicles or hinder someone's business. We have seen cases where someone places an advertisement to the extent of blocking businesses or on top of another and that is obstruction.

Clause 6 of this particular Bill specifies the number of days that somebody has to wait before an application is considered. In the past, an application would be made and someone would wait for days without end without knowing reasons why the application was not successful. For this particular case, it has specified that within 14 days of receipt of an application, somebody will have to receive a report as to whether they were considered or not.

Mr. Speaker, Sir, Clause 10 of this particular Bill contains a provision that applicants should specify if one wants to renew a license for that particular space like it is given at least one month before the expiry. One can reapply to advertise on the particular

spot. This Bill is useful in the sense that Clause 12 goes ahead to even provide for legal redress for individuals who have applied and then feel aggrieved. Sometimes some people may have applied and then they feel that they have lost in an unfair manner. This Bill provides for ways to receive such redress.

Clause 3 of this Bill also provides for cases because in every case, you realise that there are people who may even want to vandalize, damage or even destroy billboards of other people. The Bill has provided for how people found guilty of this offence will be treated.

Clause 18 states-

“A person who contravenes any provision of this Act for which no penalty is provided is liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred thousand shillings or to both.”

(Loud consultations)

With such provisions, I think this Bill will go a long way to speak to the issue of adverts in various counties as well as cure ---

The Speaker (Hon. Lusaka): Hon. Members, let us consult in low tones.

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir, for saving me from that noise. In this case, it will speak to the issue of adverts which has been a nightmare in various areas. I love this one because it directs one to the specific counties. In the past as it has been said, anybody would advertise anywhere. However, I think once this Bill goes through, we shall be able to see sanity in terms of advertisement.

With those few or many comments, I wish to second this Bill from Sen. Poghishio.

(Question proposed)

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. Let me start by congratulating Sen. Poghishio for this Bill. I think it is coming at the right time as we try to bring order to systems within counties, especially in advertising, knowing that this industry is key and that advertising is one component that is critical in selling goods. It becomes frustrating when a billboard that you have put up very clearly ends up being blocked by for example, another board.

For a long time, this is a sector that people have taken for granted and there has not been proper legislation that has been put into place to ensure that a system is working.

I am looking at Clause 18 which is a penalty Clause. I would like to suggest to Sen. Poghishio that this penalty does not seem to be harsh enough, taking into consideration what it means for somebody whose industrial effort is interfered with. The Clause says-

“A person who contravenes any provision of this Act for which no penalty is provided---”

So, there are areas where some penalty will be provided but where no penalty is provided; we are only looking at:-

“on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred thousand shillings or to both.”

That, to me, is money that somebody can pay very easily and still contravene such a law. I would propose that as we go through this Bill and as we go to the Third Reading, we look at our amendments, that maybe we want right from the onset to have a very strict penalty so that it acts as a deterrent. Otherwise, if we have a penalty that does not act as a deterrent, then chaos would ensue and people will continue to just put their adverts wherever and whenever they want to put them.

Mr. Speaker, Sir, this Bill also incorporates County Executive Committee (CEC) member, County Coordinating Committee Members and also the county as a whole. Therefore, it gives provision for a process for the CEC in terms of coordinating this process and also participating in giving a specific license. In fact, I think the most important component of this Bill is the provision for a license and the processes for giving that license.

For example, looking at Clause 10, it says-

“A licensee may, at least one month before expiry of the license, apply to the executive county committee member for a renewal of the license.”

That order and system is critical within – especially - the county structure.

Indeed, when we look at Clause 6(3), again we have the provision that the CEC must make a response for an application for a license and the timeline is limited to seven days. When we talk about industry and marketing, it is a competition and unfortunately, there are those who for whatever reason might be a step ahead. Maybe they are shrewd business people or have connections and can find ways to ensure that other members have processes that make it difficult for them to get those licenses.

Mr. Speaker, Sir, I think this provision of clear-cut licenses and procedures for getting the licenses and indeed, an upper cap and limit of the seven days so that within that particular time, you are given that license, is very critical.

Again, Clause 6 is key because it gives the operational process. For example, where the applicant meets the requirements, then an approval must be given. That approval must be looked at in terms of the condition but also, if it is to be rejected, the rejection also has to be stipulated very well.

I think Clause 3 is also critical because sometimes in a Bill that is left too wide and broad, then you find people making various interpretations. For example, we have various adverts that give directions to places like an office. Therefore, this Bill in Clause 3, is clear about what situations for interventions should be there and where there are no interventions. For example, it says-

“This Act does not apply to –

(a) a notice or display setting out –

(i) directions to property---

That is pretty straightforward. Or, where a provision is giving -

(ii) the name of the owner or occupant of a premises---

That should not be interfered with. It moves on clearly to say clearly that where there is this order within the advertising forums that are put into place, then that is where the intervention will come from.

As I have said in Clause 2, there are clear provisions for outdoor advertising license, the people responsible, how it should be done and where the written consent should be taken to. I think the innovativeness of having the block plan of the property which is put in advance with the license so that some assessment can be done about the other features that are surrounding that particular premise where that Board should go in terms of advertising and how it should be put. So, this block plan will help to draw to the CEC member, a clear idea of what is going on.

Mr. Speaker, Sir, that is even elaborated more in 4(d) where it is mandated that there should be-

“An artistic impression showing the detail, location and measurement of the proposed advertising sign.”

I think it is quite thorough in terms of the provisions that are being given in enhancing and reducing the limitations and the absurdities that can come in with advertising.

In 4(e), it says-

“A diagram of the property laying out the position of the proposed advertisement---”

This is great and specific, thorough and micro in terms of approach rather than just having a macro approach.

Again, Clause 5, in considering an application for the license, what the person should do and what he should be looking at and where if the license is rejected, under what conditions. For example, is it endangering or obscuring a particular place, hindering the reading of interpretation? This is very serious because maybe this is a board indicating this is the way to the hospital and somebody has put there an advertisement of the greatest beer on earth and somebody is busy looking for where the hospital is and they go to the wrong place.

There is, indeed, a time when we had discussions about posters, for example, and where they are placed. A distractive poster at a roundabout might actually lead to more accidents. Therefore, all this nexus and ideas that go into advertising is all about structuring and putting the right things at the right places. Therefore, that is a very well covered Clause.

Mr. Speaker, Sir, I had already mentioned Clause 6 and the other ones. However, coming back to Clause 12, it has to do with a review, which is very good. This is because most of the time in most of the places, once you get a “no,” it is a “no.” Clause 12 refers to where you have been denied a license and it gives you an avenue for you to appeal and ask for it. It says-

“A person aggrieved by the decision of the county executive committee member under this Act shall apply to a court of law for review of the application within fourteen days.”

As I wind up, Mr. Speaker, Sir, there is an important section that deals with the transition clause, and that has been put in place. The particular provision is already in place even for those who have already done the advertising and the application of this law also takes immediate effect. Therefore, this outdoor advertising license shall come into force immediately before the commencement of this Act. If it comes before the commencement of this Act, it shall be deemed to have been issued under this Act.

We know that there are people who always take advantage of transitions. One may have people coming in during the transition process, saying ‘this advertisement is illegal’ when it is probably not. Therefore, at least that transition clause is put into place and remains in force subject to the provision of this Act for the remainder of the period of the license. That is important because it will protect the parties involved and, therefore, the licenses will have continuity.

Congratulations, Sen. Poghiso, for this Bill; and as I indicated earlier, I support it. I hope that once it becomes law, it can be applied so as to create order and to unleash the economic input within the counties that can actually be enhanced through advertising.

Thank you, Mr. Speaker, Sir.

Sen. Olekina: Thank you, Mr. Speaker, Sir, for giving me an opportunity to support this Bill by Sen. Poghiso.

Mr. Speaker, Sir, this is a very timely Bill. I get excited when I see Bills which give work to the CECs in county governments. I also get excited when I see potential for revenue generating activities in county governments. Before I commented on this Bill, I had to go and talk to my dear friend, Sen. Poghiso, because I would wish to bring a few amendments to this Bill. This is because technology will help this Bill.

Mr. Speaker, Sir, one of my pet peeves is seeing how the big multinational corporations in Kenya paint buildings built along the highways. The minute you leave Nairobi County and get to Kiambu County, every building there has paintings of Safaricom, Airtel, East African Breweries Limited (EABL), *SportPesa* or even *Betika*. This is being done in a very awkward way and county governments are losing revenue, which they should get so as to improve our counties.

Mr. Speaker, Sir, I highly support this Bill because I see an avenue where county governments can use location-based data analytics technology. This technology will help us to clearly indicate that, ‘in this county headquarters, these are the areas that we have designated for advertisements.’ Those are some of the amendments I would wish to introduce, of course in consultation with the sponsor of the Bill. These amendments are meant to further expand this Bill to include technology, such that before you introduce any advertisements in any county, that county should say ‘this is our spatial plan.’ The physical planning will enable you to see where there is a lot of traffic. In this traffic, because you do not want anything to hinder any sort of development, we can designate specific locations as areas where we could have a 20 metre billboard.

Mr. Speaker, Sir, what is happening right now in Nairobi, for instance, is that there are huge billboards in every roundabout. Nairobi is doing very well. I know that the Women Representative for Nairobi came up with project ‘adopt-a-light.’ That was the first time I saw a county or a city council then benefiting from outside advertisement. This Bill will now give other county governments an opportunity to tap into this market, whose research in Kenya currently shows that earnings are far lower compared to what all these local governments can tap into.

Mr. Speaker, Sir, all of us – including myself – spent millions paying for billboards during the campaigns. That is the only time you can say that somebody in that business was benefiting. However, how much of that money went into the county government coffers? To have a billboard in Nairobi and even in Narok during the

campaign period cost Kshs130,000 a month. In fact during the first month, it costs about Kshs200,000; but in the subsequent months, the figure reduces to about Kshs130,000 because there are no costs of printing. However, out of that figure, how much did the County Government of Narok get?

Mr. Speaker, Sir, we need to look at all the opportunities that are out there and ensure that we increase local revenue collection. Setting up clear areas and guidelines on how these advertisements should be brought in place will help us. With the current technology that we have in this world, Narok County can benefit by tapping into it. The CEC in charge of the transport sector can sit and say, ‘we are losing revenue here;’ so that when a marketer comes in and says ‘I want a license to put up an advertisement,’ you can clearly say these are the only remaining positions.

Mr. Speaker, Sir, this business of these companies coming into county headquarters and erecting huge billboards in front of expensive commercial properties is done because we do not have a Bill to control it. Nairobi County, as it is, has been one that I have been observing and learning from quite a lot on how we can improve. This is because when you go to Kirinyaga County, for instance – and it is also happening in my county of Narok – when you enter the county, you will find advertisement after advertisement. The town is literally littered with streams of signs with no order.

In fact, you will find that from time to time, the Governor or the county government has gone in and marked a lot of Xs on these advertisements. Why not then move forward, Sen. Poghio, and consider including a provision in this Bill that will clearly give the CEC in charge plus the department of physical planning, an avenue to say, ‘this is the plan that we have for Narok Town, for instance; let us put these areas and designate them clearly.’

We have been having these problems where county governments are over-estimating or under-estimating their revenue collections. When the County Executive Committee (CEC) Member in charge and the department of planning is in the picture, they can accurately determine, for example, that in terms of advertisement revenue, in a particular line item in their budget, they estimate to collect “X” amount of Kenya Shillings.

Mr. Speaker, Sir, when we look at the statistics out there, it shows that the advertisement sector in Kenya has been growing at the rate of about 8.5 per cent. In fact, by 2016 the entire advertising sector had raised about Kshs1 billion. It is now projected that on a yearly basis, it will keep increasing at a rate of 8 per cent.

Sen. Wetangula: It is about Kshs12 billion.

Sen. Olekina: It is about Kshs12 billion. I got the information from the backdoor, but by 2017, Kenyans spent about Kshs217 million on advertisements. How much of that was spent through outdoor advertisement? It is projected that by 2021, annual advertisement revenue will go up to about Kshs3.2 billion a year. We need all counties and not only Nairobi, Mombasa, Kisumu, Nakuru or the major cities. This is because even in Turkana people drink beer. The East African Breweries Limited (EABL) will be competing maybe with Keroche Breweries or another company. People in Turkana also use mobile phones to communicate. We have all these companies.

Mr. Speaker, Sir, one of the things I like, and Sen. Poghio has left out, is the provision for each county to come up with their own legislation on how to control the advertising. It will help us not to set very high standards that we cannot reach. We will be able to live within our means and also encourage more people to come.

I am very passionate about this Bill because it will discourage the scenario where these big corporates, for example, decide one day to paint Narok with the colours of SportPesa and another day Safaricom. It is so ugly. I am not saying that those companies' colours are bad, but we need law and order.

Mr. Speaker, Sir, on the issue of how long a license should be granted, Sen. Poghio should consider making it annual. This is because when we have a situation where we advertise for a period of time and change and get a new licence, it may not put proper order. Any business entity applies for a licence for a whole year. I would, therefore, request that Sen. Poghio considers encouraging people to apply for licences for the entire year, so that it can become a business. I see opportunities where young people can venture into graphic designs and then we also encourage local companies to come up with advertising companies.

In fact, the CEC Member in charge of lands should give priority to local companies, particularly the youth and People with Disabilities (PWDs), to set up advertising companies. By so doing, they will ensure that they continue protecting their environment.

Mr. Speaker, Sir, the day I will see all those advertisements that are put in the main street of Narok out - a signboard after another - I will believe that the county government is making money. As I speak now, if today the distinguished Senator for Nairobi decides to rent space in one of the beautiful malls that we have in Narok, he will just go there and advertise: "Sakaja Enterprises," without any order.

I have to commend a company like Magnate Ventures Limited because I have seen what they have done. You give credit where it is due. In some places they would go and put up very big signage. In one signage all the business in that building will be advertised. Rather, they will an opportunity to lease space. We can learn from Magnate Ventures Limited and use technology to ensure that not only the businesses benefit, but also the county governments.

Under Clause 4 (2), it is important for us to add Global Positioning System (GPS) reference to the site. When we introduce the element of using technology, with GPS we can get into Google at any given time, put in the Internet Protocol (IP) address and be able to see what sort of advertisement is put in there.

On Part II, Clause 6, we might want to consider the kinds of advertisements which are in high demand. For instance, whenever we have the Safari Rally or Rhino Charge, the advertisement will be put for that particular cause. In Nairobi here we have the Stanchart Marathon. Sen. Poghio, you might want to consider adding a provision in this Bill that clearly states that when designating the sites to be used for advertisement, the CEC Member will be able to clearly indicate that a particular area is of high demand and charge more. We can then know how much each of the county governments can make.

Mr. Speaker, Sir, I would finalise by re-emphasising the need of tapping into the companies that use location-based analytics data, so that it is easy for county governments to know how much revenue they are supposed to get. When one gets on Google, at one point, there were issues of privacy being raised. However, in countries that uses addresses--- I lived in 160 North Beacon Street in Brighton. The moment one enters that on Google, it brings up a picture and shows that street. This is how technology will help us.

Mr. Speaker, Sir, with those may remarks. I support this Bill and hope that my good friend will consider the suggestions, so that we can not only put in order, but also make some little money. It is all about money. If our counties can generate more revenue, we can reduce the amount of debt that we have in this country. The reason we are borrowing is that you will find counties such as Tana River, for lack of a better example, a few years ago was only collecting Kshs26 million a year, yet they are being allocated up to Kshs4 billion. Therefore, I fully support any legislation that encourages county governments to be creative in terms of revenue collection.

Mr. Speaker, Sir, I support.

Sen. Wetangula: Thank you Mr. Speaker, Sir, for the opportunity to contribute to this Bill. I congratulate the Senator of West Pokot for bringing the Bill. When this Constitution 2010 was being framed, outdoor advertisement was under the Fourth Schedule, placed under Counties. It does appear that as we framed the Constitution, we had a dimmed view of outdoor advertisement being generally described in Article 3 of Part (II) of the Fourth Schedule that counties will be in charge of control of air and noise pollution, other public nuisances, and outdoor advertisement.

It was out in a category of all negatives; it was not seen as a positive activity because when you are talking of air and noise pollution, public nuisances this includes noise from dogs and all other animals. This is in reality not the case. Statistics show – I want to correct my good friend from Narok – that last year outdoor advertisement generated revenue of over Kshs12 billion. This is money that is supposed to be exclusively collected and appropriated by county governments.

Obviously, Nairobi leads as well as other big municipalities and urban centres like Mombasa, Eldoret, Nakuru, and Kisumu will fall in that order. As they do so, this House has duty – and the Senator of West Pokot has done the right thing – to give some direction of regulation in the industry but sufficient enough to leave the county assemblies to also regulate through their own legislation and regulations. This is because what is obtained in one urban centre is not necessarily what you find in another.

As we pass this Bill, I would want to encourage Sen. Poghio to include provisions that would protect owners of sites a little better. If you look at the advertisement structures; and last elections I used to see a lot of billboards of candidates who would pay an average of Kshs120,000 every month. On the third day of the month it is pulled down to give way to another. You would find that the owner of the site that makes Kshs120,000 every month for a year has paid the local authority, now county governments, a licence fee of Kshs2,000 or Kshs3,000 or probably Kshs5,000 or Kshs6,000.

This Bill should give some direction because county governments must generate revenue to provide services. Sen. Poghio at the Committee stage should attain to define some percentages. What percentage of the overall fee payable for the site per month would go to the county government and which will go to the owner of the land or building on which the site stands. If you go to the villages, you will find many owners of properties with billboard sites hardly get anything. People would come and tell you they want to pay your building with Safaricom colours. The owner of the building thinks that they are making his building beautiful but they are money out of it. Next time you find it is another colour and another colour.

We need to help people who do not have sufficient knowledge on how to innovatively generate revenue from their assets. This is because if you look at the Constitution, land – which includes buildings – is described as a tool of production. A tool of production must be accompanied by the knowledge that it is a tool of production.

Sen. Poghio, I also wish to look at advertisements that are painted on rocks. You find that someone has land that is rocky. He thinks it is waste land. Someone comes around and says that they want to make the rocks beautiful and he draws a big picture of Tusker beer or, of someone holding a mobile phone. He is charging the beer company or the mobile phone Kshs100,000 a month. The owner of the rock does not even know; he thinks that someone is making his land look beautiful with paintings on his rocks and he is losing income. Some civic education needs to be done.

The starting point is to obligate the companies that do this business, that when you go to paint a rock on Sen. Milgo's land with a beer bottle, she is entitled to at least 5 or so per cent of the outlay of the advertisement. So even when you are soliciting for the concurrence of the owner of the land, there is a provision for the signature of the owner of the land and an amount payable to the land owner for giving the consent for a construction site on his land.

That way, we will be helping people in the rural areas. When you are driving to western and you see on someone's land along the highway a huge billboard that is costing quite a substantial sum of money for those advertising there. The owner of the land does not even know that they are entitled to get any money out of it.

Another area of regulation that Sen. Poghio needs to look at in this House is the nuisance that some of these billboards provide. I know there is a general provision you have given, but you will find that the licensing authority either neglect or they do not have the capacity to police order. So, you put your billboard and they licence someone to come put another one in front of yours, and a third one and a fourth. For them, once they have received payment, the end justifies the means. They are doing a disservice to people who are paying money.

We need some degree of order that when you are given an opportunity to put a billboard at a popular site, even the height of your billboard must be described and prescribed. So that when you want to put your billboard at two meters, you find them telling you that two meters is already gone, put yours at four meters or a little lower so that everybody gets value for money. If you just get a licence to go put a billboard and you go and obstruct somebody who has paid like during the campaign days when you

have nuisance youths who every time you put up a post of Sen. Poghiso the next day his opponent's poster is pasted on his. And it continues like a running war.

We also need a provision, which Sen. Poghiso has not defined clearly, for penalty for people who mutilate billboards and advertisement material. This particularly comes in handy during trade wars and political competition. You have seen how East African Breweries have elbowed Keroche Breweries out of the market in some areas. You go and visit a place and find there is a painting of a Tusker beer; the next day there is a reinforced painting of another drink, and the victim here is always weaker economically. We need to protect particularly local companies against marauding multinationals.

There is no way Telkom Kenya can compete with Safaricom without proper regulations. There is no way Keroche Breweries can compete with East Africa Breweries Limited (EABL) without proper regulation. There is no way Kenya Cooperative Creameries (KCC) can compete with Brookside without proper regulation. We need to have some order. Let the strong have their way but let the weak also be seen. Let the weak also be heard so that it is through advertisement that you get growth.

The penalties being provided should also cover the agencies that licence. If you go to a county government and you get a licence for a site then the same county government licenses another person for the same site that is fraud which should be punished. This is because unjust enrichment is not acceptable under fair practices in business and under natural justice. Sen. Poghiso should expand Clause 18, at the Committee stage, so that the penalties being provided cover all scenarios including those who fraudulently cheat owners of properties and erect sites without paying them. When they are discovered, they need to be dealt with by the law.

In such a case, I would want the law to provide that the fines levied against such characters go to the owners of the land to compensate them for the loss suffered so as not to have the money collected and put away without helping the people who have lost.

We also need to encourage county governments to be innovative in generating revenue. The philosophy of devolution is not that money will always move from the centre to the counties. There is a philosophical thinking that at some point, rich counties will be contributing money to the national Government. If you go to Australia, Western Australia gives more money to the national government than the reverse.

We need to find a way of helping counties to know that when somebody paints Sen. Mwangi's shop in Nyandarua, the money that is given to Sen. Mwangi must be shared with the county government for it to provide services. Most county governments do not know that when an advertisement is put on a private shop, they have a duty to levy some revenue. This should be clearly defined in the law for them not to rob the owner of the property and to also avoid a scenario where the owner of the property gets away with everything. It is that revenue that will then clean and light up our towns as well as help in other devolved functions that we are looking at.

In fact, if sufficient revenue is collected and shared, I do not see the reason as to why we should have the national Government take the responsibility for things such as classrooms in primary and secondary schools. What business does the Cabinet Secretary, hon. (Amb.) Amina, in Jogoo House, have to do with a school in Chepareria whose roof has been blown off by gales and wind? It should be something that can be done by the

county governments. Since resources must follow functions, the talk of relooking at the Constitution should involve adjusting some of these functions back to the counties for the counties to deal with these matters.

There is a provision that the Senator for Narok County has been talking about on the licences that should take one full year. I agree that when one takes a site and they are businessmen who have projected to get some revenue, having a site for a month or two months is not good business. We should have it for a year but also go further and make sure that the county government shares the month to month changes of advertising material and revenue generated from that. Once you have paid the Kshs5,000 fees to the county government, you can do what you want with the site. When you go to advertise something, you negotiate with the county government.

The county government should be in a position to also have a say in what the agency and their client are trading with the site such that if you have somebody paying Kshs50,000 this month and next month, you have somebody paying Kshs100,000, the difference must be accounted for in revenue for the county government. I say this because county governments need to do much more than what they are doing.

Those of us who sit in the Committee on Finance and Budget know, and this House should know, that for a long time now, county governments just gets recurrent expenditure disbursements. There is no development going on. They are just disbursing money for salaries to stop workers from rioting and giving the country a bad image but county governments are not receiving enough money to mount development to give the people of Kenya the dream of devolution that they all rose to vote for when they voted for this Constitution.

This kind of innovative thinking helps in a small way in making sure that counties, even those that are in far flung places, where you are unlikely to find big advertisements, get something. If you go to Wajir County, because of the structure of our religious feelings and so on, you are unlikely to find billboards that generate a lot of money like the ones for beer and other things. When Safaricom and others go there, they should pay.

The betting companies are making obscene profits in this country. The other day, I saw that Sportpesa is now accounting for 27 per cent of the transactions of Mpesa for Safaricom and other providers. Are they paying taxes on this? They advertise everywhere and you see billboards all over. We should also have differentiated licensing for bluechip companies, struggling companies and emerging companies. I do not expect Sen. Omanga to be levied the same revenue when she wants to start a business, as what you are levying Safaricom or Sportpesa.

We need this differentiated approach for us to help those who are emerging to grow as we sustain those who have already grown. This is ridiculous, and it is the same thing that happens when a fresher from university is applying for a job and he is told that they are looking for ten years' experience yet he has just left university the same year. In most cases, you will get that they are qualified just like everyone else. Those positive discrimination that come in processes of public management of affairs have to be relooked at. If we manage this well, in another five years, this industry can grow to more

than Kshs100 billion. That kind of money will make a big difference in the management of our public affairs.

As we enable the counties to generate revenue, Sen. Poghiso should also have some clauses that will have cross reference to other existing laws about accountability. How much money is being collected? We want a clause, in this Bill, where counties have to make returns, even if it is to the county assemblies, indicating the amount of money that they are collecting. This is because this will be a cash cow for well-placed persons in some counties. We do not want this House to generate and pass laws that will enrich individuals instead of helping the members of the public and Kenyans who toil and moil from morning to evening to make a decent living.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I rise to support the County Outdoor Advertising Bill, Senate Bills No.19 of 2018. I also want to disclose to the proposer of this Bill that I proposed this Bill in the last Senate. It is, therefore, like *déjà vu* for me, just like Sen. Wetangula said. However, it did not go far.

The intention remains the same. Just like Sen. Wetangula has said. there are opportunities for counties to advertise outdoors and make money; own source revenue. Therefore, this Bill attempts to find a uniform method of doing so.

Mr. Speaker, Sir, I do not know whether this has happened in the new Committee, but we received a memorandum indicating that the various bodies have different charges for outdoor advertising on the highway; whether it is in Nakuru, Mombasa or Makueni. This Bill is an attempt to make sure that these charges are uniform. Recently, the City County Government of Nairobi had a dispute with the Kenya National Highways Authority (KeNHA) on outdoor advertising. This, once again, is supposed to demarcate areas where counties can advertise and make money. Similarly, the practice where Coca Cola or marketing companies advertises on their vehicles, for example, moving from Mombasa all the way to Nakuru, they will now be charged in every station or stop. That issue is addressed in this Bill.

Mr. Speaker, Sir, the menace of billboards in Nairobi is something that we must deal with. There are certain billboards along Uhuru Highway that must be declared a menace and an offence of whatever nature; traffic or otherwise. At night, there are blaring lights from these billboards and they are an environmental disaster. In other countries, for example, in Europe, they do not do the sort of things that we see here in Nairobi. In Europe, you will see outdoor advertisings on buildings, for example, on the Kenyatta International Convention Centre (KICC). That is not a good example because it is round. However, you would use that space in a digital format to advertise without necessarily making it a nuisance. The people who erect these billboards have put them in people's residences sometimes even without their consent. They sometimes even block electricity and, therefore, other than the idea of bringing in revenue for counties, county outdoor advertising will make sure that anybody who wants to advertise can do it.

The second one, Mr. Speaker, Sir, is the environmental issue that has been brought about by the reckless erection of billboards all over the roads, highways, people's residences, *et cetera*. In some cases, these people do not even bother to ask the owners of these premises whether they can erect them.

Even the question of payment arises. For example, how much money do the people advertising on these billboards pay to the owners of the land? Is there something else that they can do, as part of their corporate social responsibility (CSR) that should be included in this Bill so that they can compensate for the environmental issues, disasters and inconveniences they cause?

Mr. Speaker, Sir, the design of billboards is another issue. We must have billboards that are acceptable. There are certain billboards which were put up in the public and complaints have been raised whether their contents were checked by the responsible persons. In the approval of a billboard, this Bill will provide a platform for the person who is proposing to have a billboard to show what they are going to advertise. That way, they will use them to advertise contraband or things that would ideally be considered pornographic or otherwise.

Mr. Speaker, Sir, if you look at the Fourth Schedule of our Constitution, like Sen. Olekina has said, this is a Bill that it is going to keep the county executive, county governments and county assemblies busy. This will make them stop this idea of impeaching speakers because I think they are idle. This is one of those methods where these committees will make sure that our assemblies and executives are busy trying to get money.

Mr. Speaker, Sir, we must continue looking for methods which can help to bring money into our counties. This morning, we had an issue and we must talk about own source revenue. Counties must be facilitated; they have not received their financial release for development for this particular quota and this Senate has not said anything. Counties are paying Kshs200 million for medical equipment, yet this Senate has yet said nothing.

Mr. Speaker, Sir, I am told that in one of the Big Four Agenda on Universal Healthcare, four counties are now to be charged – including, Isiolo and Nandi –Kshs2.5 billion. Where is this money coming from? I have heard Sen. Cherargei complain about the Kshs200 million that the County of Nandi is supposed to pay to a bank. Where is all this money coming from? Why are we not raising this issue?

Therefore, Mr. Speaker, Sir, as we continue finding innovative methods for counties to make own source revenue, I would urge the Committee on Lands, Environment and Natural Resources chaired by the prominent and distinguished Sen. Mwangi Githiomi, to look into this issue.

In terms of property rates, when you think about outdoor advertising, counties must begin to collect revenue from property rates. Kenyans must start to pay rates for their properties. Those people who own big tracts of land where there are horses, they must begin to pay property taxes to counties---

(Laughter)

(Sen. Olekina consulted loudly)

Whether it is Sen. Olekina with his large tract of land, he must pay property tax. I am not talking about leasehold property. I am talking about property tax so that counties can

begin making money because sources of revenue for counties have reduced. We are taxing the wrong people; we are leaving out the people who have the ability to pay taxes from paying money to counties.

Mr. Speaker, Sir, the national Government must begin to pay for the property they hold in Nairobi.

Hon. Senators: Yes.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, before the advent of the new Constitution, the Government of Kenya used to pay taxes for the buildings they own in the City County of Nairobi. Why have they stopped paying for them? Why are we not asking these questions? I was hoping that the Senator for City County of Nairobi, who was here just a few minutes ago, would support me on this issue. However, we must begin to raise these concerns, together with this one, because that is the only way we are going to support counties to make revenue and become independent. Therefore, Sen. Poghisio, we will support you.

Mr. Speaker, Sir, I am glad that the Bill has now moved to this side of the House, and I hope it is going to be a blessing. You are going to speak to our brothers in the National Assembly to make them see the sense of having a Bill where we can regulate advertising in counties. That way, counties will be given an avenue of making some little money so that the people we serve out there in the villages can begin to see the value of devolution other than paying small little taxes from chicken and other things, while there are people who can afford to pay by advertising.

Thank you, Mr. Speaker, Sir. I beg to support.

[The Speaker (Sen. Lusaka) left the Chair]

[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senator. Proceed, Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity.

From the outset, I thank the distinguished Senator of West Pokot, Sen. Poghisio, for this Bill. This will empower our counties to increase the revenue sources. There have been a lot of concerns on how our county governments can be sustainable because they mostly depend on the revenue allocated by the national Government.

Mr. Deputy Speaker, Sir, under Article 209, the national Government and the county governments have been given powers to impose taxes and ensure that they earn in line with Article 210 on imposition of tax and raise revenue according to Chapter 12 on Public Finance. One of the principles of public finance is to ensure that our Government institutions are sustainable and able to do their work.

I support Sen. Poghisio for giving county governments an opportunity to ensure that they diversify the raising of revenue. The growth and nourishment of county governments comes with a lot of immense opportunities of putting in place legislations that will help raise revenue. The County Outdoor Advertising Control Bill will

disapprove the wrong notion that advertising only happens in cities or city counties like that of the Super Senator ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! What did you just say?

Sen. Cherargei: Mr. Deputy Speaker, Sir, I am referring to the Senator of Nairobi, Sen. Sakaja.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, that is how it should be all the time.

Sen. Cherargei: Mr. Deputy Speaker, Sir, I stand guided. I was referring to counties of Sen. Sakaja, Sen. Fred Outa and Senator 001, Sen. Faki. There is a wrong perception that advertising is being done in city counties. I agree that there is a crisis, chaos and disorder in the City County of Nairobi. However, as much, we should demystify. That is why if you go to a village in the middle of nowhere, somebody has erected a big billboard without receiving authorization from any agency.

I thank Sen. Poghiso for being precise and concise in ensuring that the law is put in place. People erect billboards on alcoholic drinks, for example, somewhere in the middle of Naivasha, Nandi or Tharaka-Nithi counties yet the Alcoholic Drinks Control Act of 2010 provides that some institutions should not be closer to some of these advertisements that are deemed not to be morally upright.

Mr. Deputy Speaker, Sir, we are now giving the County Executive Committee (CEC) Member in charge an opportunity to decide. In Clause 5(a), it states-

“The effect the advertisement will have on the general characteristics of the area, including its effect on any features of historic, archaeological, architectural, landscape, cultural or other characteristics”

So, if an advertisement is done in Garissa, or Mandera, it should be inspired by a camel. If an advertisement is done in Nandi County, it should be inspired by a cow or maize. We should brand our counties based on that. An advertisement done in the City County of Nairobi should have the best, latest *swag* because of the general populous that is in the City County of Nairobi These are the things I agree with. We should not have this culture of using wholesale western style of doing things to look trendy and classy. We can domesticate and use our general way of doing things by ensuring---

Sen. Sakaja: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Sakaja?

Sen. Sakaja: Mr. Deputy Speaker, Sir, the official languages to be used in this House are clear; they are English and Kiswahili. I have heard Sen. Cherargei say that if a person advertises in Nairobi, he or she must use *swag*.

First of all, I know that is not a word that is common in Nandi County. Therefore, could the Senator kindly tell us what he means when he says *swag* and how he came about it?

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Cherargei, you know the rules. However, in the meantime, Sen. Sakaja, I thought you should have stood on a point of order earlier on to contest the reference that Sen. Cherargei made about you as a super Senator because we do not have a super Senator in this House.

(Laughter)

Therefore, you cannot bring the attention of the Deputy Speaker to things that are only convenient to you. Next time, if you do not protest, I will hold you accountable as an accomplice, abetting and aiding the mischief.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I note what you say. When the good Senator from Nandi County used the superlative description of ‘super’, he did not finish his sentence. Therefore, I did not know whether he was referring to me as is common outside the precincts of this House or about something else. However, since he has clarified, I warn him that he should not call me super Senator without finishing the word ‘Sakaja’ outside the House but not on the Floor.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! The House does not care how you refer to yourself or how other people refer to you outside this Chamber.

Sen. Sakaja: I stand guided, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): In this Chamber, the rules say that a Senator shall refer to the other Senator as Senator so-and-so. So, Sen. Cherargei, what is ‘swag’?

Sen. Cherargei: Mr. Deputy Speaker, Sir, I appreciate the fact that language is dynamic. I meant that an advert done in Nairobi is different from an advert in Tharaka-Nithi. It must be trendy, latest and up to date unlike in other counties where we come from where people are more conservative. A person cannot wake up one day and put up an advert of a half-naked lady somewhere in the middle of Nandi County but we can do it here in Nairobi. That is what I meant.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! So, is ‘swag’ an English or Kiswahili word?

Sen. Cherargei: Mr. Deputy Speaker, Sir, it is a connotation of both.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! While addressing the House and contributing to Motions, a Senator shall use either English or Kiswahili. There is no language known as connotations. Therefore, avoid eclectic references of mixtures and concoctions of language inputs. Is that okay?

Sen. Cherargei: Mr. Deputy Speaker, Sir, I stand guided.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is so ordered. I have also realized that it is not just you. Other Senators like throwing in a word from *sheng* and that should not be the case. Also, if you start in one language, you must complete in that language. Sen. Faki is not here today. He is one of the victims of using English while he has started in Kiswahili.

Proceed, Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir. I stand guided. You know that my generation grew up using both English and Kiswahili which is a language called *sheng*.

As I was saying, I like Clause 5 (a). We should brand our counties based on where we come from. Before independent and other advertisers do an advertisement, for example, in Kisumu County, Kisii County or Narok County, they should learn the salient features so that when they come up with advertisements, they assist in branding some of these issues.

Mr. Deputy Speaker, Sir, in that part, there is also the protection of environmental issues. It is important that the Chair of the Committee on Roads and Transportation, Sen. Wamatangi, handles the issue of roads *vis-a-vis* environment and development.

There was a contestation regarding the Standard Gauge Railway (SGR) passing through the Nairobi National Park. The issue of environmental conservation *vis-a-vis* development became a serious debate and discussion.

Mr. Deputy Speaker, Sir, even as we advertise, we should also protect the environment. There should be a way that the National Environment Management Authority (NEMA) and other organs that protect the environment are involved. We know that the materials that are used for advertising can become toxic and affect the environment, when they come into contact with adverse weather conditions. The good Professor of Chemistry, Sen. (Prof.) Imana, would understand this better.

All of the 47 counties can benefit from advertising. With the expansion of devolution, we would want as many organizations and companies as possible, to go and advertise even in places that were not deemed to be viable before.

Mr. Deputy Speaker, on Clause 6, Sen. Poghio should relook at the issue of issuance of licence, because we have seen the mess that licensing of alcohol establishments in our counties has brought. We should shorten the time from 14 days to about three or seven days. We should bring these things under one roof, so that when you get a license, you do not need to go different offices, for example, public health offices and NEMA. The country is working towards having more Huduma Centers, where you get everything that you need. I do not understand why licensing should take more days.

Mr. Deputy Speaker, Sir, under Clause 10, a licensee may at least one month before the expiry of the licence, apply to the County Executive Committee (CEC) Member for renewal of the licence. This is timely. There are so many cartels in this country. We have them in many sectors, including maize, sugar, water, *matatus*, relationships and marriages. We also have cartels in the advertising sector, especially in this city. As a result, whenever someone erects billboards, some of them are defaced or removed.

I am happy that under the Bill such actions are punishable. However, that punishment is too lenient. I hope that Sen. Poghio will review the punishment upwards in order to do away with these cartels.

On the issue of discretion, we should not give too much power to the CECs because we know how politics and business interests operate in this country. Under Clause 19, the county assemblies may enact specific legislation for the implementing the Act in the respective counties. Many of them, including the county assemblies of the City County of Nairobi, Kakamega and Homa Bay have experienced crisis and chaos. They have been busy impeaching speakers. I hope that they will find time to enact this legislation.

Mr. Deputy Speaker, Sir, Clause 18 states-

“A person who contravenes any provision of this Act for which no penalty is provided is liable, on conviction, to imprisonment for a term not

exceeding six months or to a fine not exceeding two hundred thousand shillings or to both.”

I propose that the fine of Kshs200,000 should be increased to Kshs5 million, so that we do not have people who deface or destroy other people’s advertisements worth millions of shillings. During the campaigns, as Sen. Wetangula said, people spent a lot of money to advertise on billboards. Why should we make it cheap for somebody to deface adverts? The punishment should be painful.

Mr. Deputy Speaker Sir, let us also urge the companies that advertise, to do it with decorum and morality that it deserves. I know that in the City County of Nairobi, people may appear lenient, but we should ensure that the adverts are conservative and adhere to the African values. Yesterday, I asked the Kenya Union of Post-Primary Education Teachers (KUPPET) about the rise in cases of teenage pregnancies and they blamed it on social media and the internet.

Our children are now on long holiday and we do not know what they are doing on the internet. Even as we discuss about the issue of teenage pregnancies, we must also agree that the advertisements must be within our morals. They must be respectful and godly, so that we can prevent early teenage pregnancies in this country and empower women. We may discuss about affirmative action and how to increase the number of women in leadership positions in this country, but if our girls get pregnant in their early years, how will they become leaders in this country?

Mr. Deputy Speaker Sir, I urge the Members of National Assembly that there are more important things than the quality of food that we eat in Parliament. Let us look at the quality of legislation. Nowadays, they discuss how tea does not have sugar. They should concern themselves with the quality of the Bills that we are giving them, and not the *githeri* that we eat in Parliament. Those are some of the issues---

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Senate Majority Leader?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker Sir, is it in order for Sen. Cherargei to try to insinuate that it is not important to consider the quality of the food that parliamentarians eat? Is he in order to cast aspersions on the wisdom of the Members of National Assembly, by demanding that the services that we pay and sign for all the time should not be quality?

The Deputy Speaker (Sen. (Prof.) Kindiki): Even before I call upon Sen. Cherargei to respond, I did not hear him say that it is not important to have quality food. What he said is that the quality of Bills is more critical and important than the quality of food.

What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, of equal importance is the fact that Kshs13 million was spent to go and find out what kind of food we should have. So, what Sen. Cherargei is saying is correct; that what we are doing here is very important, and we should not glorify food. I think we should disassociate ourselves from that argument because it is as if all of us went to England to look for a menu.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is another version.

(Sen. Murkomen stood up)

Sen. Murkomen, are you still on the quality of food?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I think this is an important point. I am saying so because I saw a headline in one of the newspapers that parliamentarians want to get five-star food. That was erroneous and that is why I did not want Sen. Cherargei to fit into that lie out there.

It is important for the public, because they are watching, to know that all parliamentarians pay for the food they eat while in Parliament. We sign for that food which means we pay for it. When Members of Parliament (MPs) demand from members of the Catering Department that food must be quality, because it is expensive, it is not because they are asking for an extra pay from the taxpayer. They mean Parliament can save a lot of resources from MPs and visitors who come to Parliament, who would otherwise go and eat elsewhere, to eat in Parliament if food was as quality as it should be because of the payments they make.

The reason I stood on a point of order is to stop this narrative that fits into the argument that when MPs demand quality services from their own staff, the Parliamentary Service Commission (PSC) and the Catering Department, it has to do with lack of quality in other areas. I am saying this because one of my constituents called me after they read the article in the newspapers and they asked whether it is true that we are asking for five-star hotel kind of food. When I explained to them that every food served in Parliament is paid for from our own salaries, they were satisfied.

To avoid that misrepresentation, having answered such questions to my constituents, I stood to request my colleague not to fit into that kind of narrative.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, this is not a food debate. Secondly, this House is oblivious to what newspapers write about any topic, including food.

Having said so, Senate Majority Leader, is there anything out of order from what Sen. Cherargei said, namely, that the processing of legislation is a much more critical agenda for this House than food? Are you still contesting that statement?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I completely contest that kind of approach because there is no correlation between our work as legislators and our rights as citizens of this Republic to get quality services. To try to insinuate that one would compete with the other or one would make one feel to do the other is completely out of order.

The Deputy Speaker (Sen. (Prof.) Kindiki): So, are they equal?

The Senate Majority Leader (Sen. Murkomen): They are not equal. They are parallel and unrelated. You cannot even compare a discussion on food and a discussion on quality legislation because there is no correlation.

Secondly, we cannot also cast aspersions on what happens in the National Assembly because it is against our Standing Orders to question the wisdom of a debate that was taking place in another House.

The Deputy Speaker (Sen. (Prof.) Kindiki): There is a caveat on that Standing Order you are applying. It is not true that you cannot mention or discuss anything that happened in the National Assembly.

Sen. Cherargei, what do you have to say?

Sen. Cherargei: Mr. Deputy Speaker, Sir, Sen. Murkomen was my lecturer. So, I do not want to doubt his wisdom on this matter but---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You can doubt your lecturer's wisdom in matters House but not in matters what they taught you.

Proceed.

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir. Are you saying that yours truly should start doubting their Chair on matters of the House and not what he taught them in the university?

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Murkomen, you did not get the Chair's point. The Chair's point is this. If Sen. Cherargei stood up and said the Senate Majority Leader is my party leader and I do not doubt his wisdom, that is applicable because this is a House of law-making and is composed of political parties, but he cannot introduce historical issues in this House and bring a hierarchy that does not apply here to matters of the House.

Sen. Cherargei, please, proceed. I think the Senate Majority Leader is satisfied that he is still respected in this House as the Senate Majority Leader. As to his respect in his previous life, he can claim it elsewhere and not here.

Sen. Cherargei: Mr. Deputy Speaker, Sir, what I meant is simple; that the critical and most important thing is the quality of legislation that we churn out and the attention it deserves. If food deserves more attention than the quality of legislation, then where are we as the Parliament? That is why I said the National Assembly should prioritise such Bills over the issues of food because there are better forums that we can discuss food. I am told there is a food television channel that you can watch using your DSTV decoders. I encourage them to watch such channels.

I agree with my lecturer and the Senate Majority Leader. It is hard to doubt his wisdom because he taught me a lot. He is a good mentor, and I agree that we should ensure that we strike a balance.

Finally, I urge Members of County Assemblies (MCAs) because there is a part that they will play but that cannot happen with the chaos, disorder and anarchies that we are witnessing in our county assemblies. Sen. Sakaja is here, and I hope he heard what his MCAs said about the office of the Senator and the governor. He should stabilize the City County Assembly of Nairobi such that they pass critical legislations like this. They do not have to be discussing about impeachment and other issues that are not relevant in terms of discharge of their mandate.

I thank you, Mr. Deputy Speaker, Sir.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I wish to join my colleague Senators in supporting this Bill and congratulate the Senator for West Pokot, Sen. Poghismo, for bringing it before the House.

I have had the privilege of speaking to this Bill in the Eleventh Parliament. I recall that this Bill was sponsored by Sen. Mutula Kilonzo Jnr, and I laud Sen. Poghismo for picking it up and bringing it because it is a Bill that addresses a real need.

In Parliamentary practice, plagiarism does not apply especially when you are talking about events happening at different tenures of Houses. So, Sen. Poghismo is

perfectly within his rights to pick the original thinking of Sen. Mutula Kilonzo Jnr. and to make it even better and bring it before this House.

The objectives of the Bill are well stated in the Memorandum of Objects and Reasons. This Bill addresses the Fourth Schedule of the Constitution of Kenya, which Sen. Wetangula had alluded to earlier, where outdoor advertising and other nuisances and pollution are lumped up together and then allocated to the county governments.

There has been a problem in assigning responsibility and defining what outdoor advertising is all about and what county governments ought to take up. For this reason, the Kenya National Highways Authority (KeNHA) took the City County of Nairobi to court. They are fighting over advertising revenues over what they called national highways. If you recall, that matter went to court which was eventually ruled in favour of the City County of Nairobi. The KeNHA argued that it was the owner of certain roads and the furniture on those roads had to be controlled by the Authority.

Mr. Deputy Speaker, Sir, if you look at the outdoor advertising that is taking place in national highways particularly in Nairobi City, you are talking of Uhuru Highway, Waiyaki Way, Thika Road and Mombasa Road. These are areas that generate hundreds of millions of shillings in terms of advertising revenue. It is a relief to those who believe in devolution and those who believe that counties should undertake outdoor advertising that the courts ruled in favour of the City County of Nairobi and ruled that the City County of Nairobi had the legitimate duty and authority to levy rates on outdoor advertising on those roads.

Even though KeNHA lost in that case, this matter has still been lingering in the discussion on the roads Bill. In the last Parliament, I was fortunate to be a Member of the Committee on Roads. I recall that as we did the public participation sessions and tried to redefine the role of KeNHA, Kenya Urban Roads Authority (KURA) and the Rural Roads Authority (KeRRA), one sticking issue was outdoor advertising and parking rates. These entities kept arguing despite the court ruling, that when I build a road, I must control any furniture that is placed on that road.

To further that argument, the KURA argued that they have a duty and a right to collect advertising revenue out of all the urban roads and by-passes in Nairobi City County. It went further. The KeRRA argued that they have a duty to earn revenue from all the rural roads that they build and maintain. That meant that county governments were not going to earn anything out of outdoor advertising on major roads. The matter is settled and counties should now proceed and collect revenue out of outdoor advertising on those roads.

Secondly, Mr. Deputy Speaker, Sir, my colleagues have talked about county revenue raising measures. As we speak, the National Assembly is considering the County Governments Revenue Raising Regulation Process Bill. I hope when that Bill comes to this House, we will look at it properly and also take into consideration the views that have already been stated by Council of Governors (CoG) and governors who argue that the national Treasury cannot take away their right and responsibility to impose duties and taxes in their respective jurisdictions. Even though counties have that right and duty in the Constitution, it has to be exercised in a manner that does not frustrate legitimate business people.

The City County of Nairobi generates Kshs700 million out of outdoor advertising. Those were the figures that were captured in the Financial Year 2016/2017. In the Financial Year 2017/2018, the numbers dipped a little bit. However, the potential for outdoor advertising for the City County of Nairobi is Kshs2 billion. You can imagine how much the City County of Nairobi would do with that kind of money.

Many counties have taken a jack fruit approach to development. I never saw a jack fruit until I went to Uganda. It is a humungous fruit. It is big!

(Sen. M. Kajwang' gestured at Senators)

It is bigger than the heads of many Senators here.

(Laughter)

A jack fruit is---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! What do you mean by comparing the so-called jack fruit with the heads of Senators?

(Loud Consultations)

You did not have another example you could use?

Sen. Sakaja: On a point of order, Mr. Deputy Speaker, Sir. This is really out of order because when he was making that comment, he looked around until he settled. I do not know which head made him make that assertion that, that fruit is bigger than the head of some of the Senators. Could he substantiate who he is talking about?

The Deputy Speaker (Sen. (Prof.) Kindiki): He did not only look around, Sen. Sakaja. He looked at everybody including the Deputy Speaker.

What is it, Sen. (Dr.) Zani?

Sen. (Dr.) Zani: On a point of order, Mr. Deputy Speaker, Sir. Sen. Sakaja is declaring Sen. M. Kajwang' out of order. He is also out of order himself by stating that the other person is out of order. That is the preserve of the Speaker.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is true. Sen. Sakaja, you should ask if he is in order but you cannot declare him out of order.

Sen. M. Kajwang', what business do you have comparing some fruits with heads of distinguished Senators?

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, indeed, it is true that I looked at Sen. Sakaja and the Deputy Speaker as well. In no way did I mean to compare the heads of the two very distinguished Senators who happen to have gone to a very fine school whose name I will not mention. I never meant the content but the form.

The Deputy Speaker (Sen. (Prof.) Kindiki): Could you not get a better comparison? Fruits and distinguished Senators; how they get compared in terms of sizes baffles the Chair. Nevertheless, proceed, but restrain yourself from introducing distinguished Senators into a discussion about fruits and other things.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I will stay away from sizes of heads and fruits. Indeed, I said that I first saw the jack fruit when I was grown up. It is a huge fruit and cylindrical. The jack fruit approach to development is something that we discussed while in Uganda. Sometimes we had this feeling that because of the jack fruit and the manner in which it matured and grew in certain parts of the country, it was possible to wake up in the morning, go and sleep under a tree and go back to your house in the evening and do absolutely nothing because if one jack fruit fell, it was sufficient to feed you for the next three or four days.

Now, our county governments are in that state because they are assured of revenue from Nairobi. They can afford to do nothing else. They are sure that they will get Kshs300 billion and when they do not get it, it is Sen. Murkomen and the Deputy Speaker who will make the loudest noise for counties to get that money. It is a very lazy approach to development. It is time we started giving proper targets and incentives for county governments to raise revenue. We currently have a 2 per cent fiscal responsibility but that is not enough. I think we need to raise it.

This Bill will allow the City County of Nairobi County to optimize its outdoor revenue. It will also allow other counties to do so. The Senator for Nandi County has already stated that there is a presumption that outdoor advertising is the preserve for cities and the big counties. However, all counties have that potential.

Mr. Deputy Speaker, Sir, let me note that certain counties have already passed their own legislation. The City County of Nairobi has passed legislation on outdoor advertising. I think Nakuru and Mombasa counties also initiated something. We encourage the remaining counties to come up with their own legislation because this Bill by Sen. Poghio allows counties to come up with specific county legislation which will be more details and prescriptive than what we have here that is already prescriptive.

Allow me to just talk about three specific issues on this Bill. Clause 6 of this Bill talks about licensing. It is clear that licensing shall be the responsibility of the County Executive Committee (CEC) member who within 14 days of receipt of an application, consider the application and may do certain things as prescribed in the Bill.

The question I have in mind is; is issuance of licence procurement? This is because there is serious money involved. If the City County of Nairobi was to issue Moses Otieno Kajwang' and Sons a licence to do outdoor advertising in Nairobi City, will my company be required to defend itself at some point or will the County be required to defend itself on the procurement procedures? We need to think through this very carefully.

If we are going to give Esther Passaris a licence to carry out outdoor advertising in Nairobi, can someone challenge that? Through this licensing, are we trying to defeat the Public Procurement and Disposal of Assets Act? This is something that we need to ask; what does a licence do? Once you have been granted a licence, does it mean that you can go to Mombasa Road?

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. M. Kajwang', we know you; but who is Esther Passaris? Or is it just an example?

Sen. M Kajwang: Mr. Deputy Speaker, Sir, it is an example of an enterprising lady in this Republic who has made a very good name in outdoor advertising---

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you assuming that she is known by the House because of her enterprise? I have told you that we know Sen. M. Kajwang' as a Member of this House. We take judicial notice of that, but who is Esther Passaris? Or is it just an example?

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, it is just an example. However, if it suits to use an example that is recognised by the House, I could use Sen. Shiyonga and Daughters Limited.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, something like that. Proceed.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, if you grant Sen. Shiyonga and Daughters Limited a licence, is it akin to a procurement process? In my mind, I am still not very sure about this because there is a lot of money involved here.

Mr. Deputy Speaker, Sir, you will recall that in the run up to the last general elections, we found situations where some governors were not allowing their opponents to do outdoor advertising because they controlled the service providers. We, therefore, need to be very careful and make reference to the Public Procurement and Disposal of Assets Act, so that a CEC does not form a company and grants it a licence; nor does he revoke the licence of another company without following the due process.

Secondly, Mr. Deputy Speaker, Sir, Clause 17 talks about vandalism and introduces penalties for it. It says-

“A person who willfully or recklessly destroys or damages any advertisement belonging to another person, commits the offence of vandalism and is liable, upon conviction —

(a) in the case of a first offence, to imprisonment for a term not exceeding nine months, or to a fine not exceeding two hundred thousand shillings, or to both;”

We are going to find ourselves in a tricky situation where our remands and cells will be full of people who maybe went and wrote something on a poster. For example, if one finds a poster somewhere talking of a witchdoctor from a certain part of the country, and one then writes something on it, that is vandalism and one can be jailed for nine months. We probably need to make references to the Penal Code, which already has provisions to deal with such matters.

Finally, Mr. Deputy Speaker, Sir, on the issue of county legislation, I think it will be very useful for this Bill to allow counties to come up with their own legislation. My colleagues have talked about the issues of relevance of advertisements to the lives of the people; these are issues of content and context. In Kenya, one will find advertisements on alcohol, cigarettes or farm products that might not be acceptable to that particular persuasion, in the precincts or neighbourhoods of a Church or Mosque. Who is going to police issues of content and context?

Mr. Deputy Speaker, Sir, I have taken a little bit of time to look at the relevant City County of Nairobi Act, which has already been signed into law. The CEC has been given some powers that are close to censorship. This is an area that we must tell the Kenya Film Classification Board (KFCB), led by the indefatigable Ezekiel Mutua, that he also needs to decide where he wants to sit. This is because we have sometimes seen him taking a hardline position when it comes to advertisements.

However, Mr. Deputy Speaker, Sir, for those of us who leave this Senate at 6.30 p.m. and by the time we get home, it is 9.00 p.m. We have little children with whom we would want to spend a little time with before they go to sleep. However, at 9.00 p.m., the televisions are flooded with advertisements of alcohol and one betting company after the other. We need to have a conversation, as a country, and decide what it is that we want to project to our people. In the past, it was insurance companies, banks, telecommunication and manufacturing companies that used to advertise. These included Unilever Kenya Limited, who used to advertise Blue Band, Omo, Roiko *et cetera*.

However, nowadays, when we switch on our televisions, it is advertisements for one betting company after the other, followed by an alcohol producing company. We need to have that conversation although I know it is beyond the purview of this Bill. However, even when it comes to approval of outdoor advertising, we must give the CEC certain powers and allow them to work with certain bodies that will regulate the content and the context of the outdoor advertisements.

Mr. Deputy Speaker, Sir, I beg to support this Bill. I am not necessarily looking at your head, but I fully support this Bill.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Thank you, Sen. M. Kajwang'. The Speaker does not participate in debate.

Is anyone holding brief for the Mover of this Bill? This is because there is a legal issue which has been raised by Sen. M. Kajwang on whether a Bill can introduce a bypass and roundabout way of procurement, given the framework that exists in the Public Procurement and Disposal of Assets Act, which is a framework law on all procurement matters. The licensing process is not just an administrative issue where you write to the CEC, who approves your application. It is something that has procurement aspects which must be weaved into this Bill for it to stand the legality.

Therefore, that is something that needs to be looked at because you can create an alternative or a bypass to procurement, whereby an issue like this through which a county generates a lot of revenue, is reduced to a purely and administrative one. Consequently, this can even bring conflict of interest and improper procurement of services. As I said earlier, the Speaker does not participate in debate. However, that is something that should be brought to the attention of Sen. Poghio. I said that because he is not here.

Secondly, Leader of Majority, there was an issue you had canvassed at some point, about imputing improper motives on; or rather discussing proceedings in the National Assembly. I know that you were referring to Standing Order 96(5), which exempts discussions on roles and structures of the National Assembly or county assemblies. If, for example, a Senator wants to ask, "Is this what the National Assembly should be doing?" That is completely in order and it is not out of order.

Very well, Hon. Senators, we have two other requests. One is by Sen. Sakaja, who likes the superlative.

Sen. Sakaja, you have the Floor.

Sen. Sakaja: Thank you, very much, Mr. Deputy Speaker, Sir. Allow me to start from where you left off, noting that the Speaker does not debate or speak. However, in this particular instance, a question has been raised by Sen. M. Kajwang' on the difference between licensing and procurement with respect to such a service. In as much as it is still

debate, I will not purport to answer him. However, I will just let him know that the way it works, it is really a licensing issue not a procurement one.

Mr. Deputy Speaker, Sir, once a company has been guaranteed permission to operate within certain parameters, for instance in the *Matatu* sector, where when we license a specific number of matatus to operate within a certain road, it is up to them to get clients or passengers. However, we have limited the provision of that service to that specific road. It is similar to licensing *matatus* to operate on Ngong Road or Uhuru Highway. Therefore, once a company is licensed to provide outdoor advertising services in a certain area, that does not guarantee them clients. In fact, they are not giving a service to the county government. Therefore, it is licensing where they are allowed to operate within certain areas in the same way you license restaurants and limit them. This is because licensing brings a connotation of limiting and regulating the provision of a certain service to the community.

I understand the history that has been there between the national Government and the county government---

(Sen. Poghiso consulted the Deputy Speaker (Sen. (Prof.) Kindiki))

I do not know if you heard the point that I have just made on licensing.

The Deputy Speaker (Sen. (Prof.) Kindiki): Could you repeat it for the benefit of the Chair?

Sen. Sakaja: Mr. Deputy Speaker, Sir, what I said is that this exists within the same paradigm of a government regulating the operation of a certain business enterprise. It is not a service being offered to the county. In the same way, the Government regulates and limits the number of *matatus* going to Tharaka Nithi from Nairobi by giving them a licence, for they can only give the licence to a certain number of *matatus*. Once that licence has been issued, it is up to the operator of that *matatu* to find clients. It is not a guarantee of income.

Procurement on the other hand is a guarantee of income for it is a service being procured by a procuring entity according to the Public Procurement Oversight Authority Act (PPOA), 2015. Therefore, it is completely different though we understand that it is an area that is lucrative and there needs to be a better process through which that licence is granted to a company just as is the case with any other licence such as that of casino, *matatus* or outdoor advertising. It does limit the number of people to whom that service is available.

There was a history of back and forth between the national Government and county governments especially with the agencies on roads in regards to the ownership of certain infrastructure that had been preventing counties from receiving revenue but that has been resolved. Today, if you want to participate in this industry, you will get what we will call a no objection from the Kenya Urban Roads Authority (KURA).

In fact, I have just told Sen. Poghiso that they need to amend the Bill because they are talking about the Kenya National Highways Authority (KeNHA) which does not licence anyone or give objections. Their policy says that one should not advertise on highways. We have more advertisements on the other roads. They are really restrictive.

There is KeNHA, KURA and the Kenya Rural Roads Authority (KeRRA) who will give you a letter of no objection once they have looked at the specific requirement of that specific road. They check if the advertisement that you are proposing will affect visibility on the road and whether it is the prescribed size. For you to get that service, you might need to pay a minimal fee. When they give you the non-objection, you go to the relevant county government which can only licence you if you have a non-objection.

It is the same logic that applies when I want to put up a billboard along Kirichwa Road where Sen. Mutula Kilonzo Jnr. likes to hang around. I cannot just go and put up a billboard in his compound. I have to get a non-objection indicating that he agrees that I can do it then we can possibly get into a rental agreement. In fact, all of those who have billboards on their premises, whether it is a private building or schools, are receiving income from the companies that are participating in that.

This is an area that has potentially high revenue for counties. As you have stated, in 2016, there was around Kshs700 to Kshs800 million from Nairobi City County but the potential is much higher and that is why we welcome such regulation. However, it should not inhibit business but it should regulate it so as to make sure that aesthetics are taken into account. The kind of advertisements being done should be taken into account and we must support controls that ensure that counties get revenue.

This is an industry that thrives and employs very many young people. We have those who put up those facilities and bring them down, those who design and those who are in graphics. Therefore, there is a lot of merit in having such a law though this law provides a legal framework for the counties whose assemblies have not legislated. Nairobi City County already has a law though in the hierarchies of laws, their law is null and void to the extent of contradiction, if any, with this Bill. Therefore, there will then be need for them to analyse where their law might contradict this one, if it is passed by this good House.

The main issue that is coming out, when you listen to Senators talk, is that of the potential of counties to raise revenue being either diminished or not being allowed to happen based on the lack of proper legislation. Before we even discuss that, we have the issue of delayed disbursement to counties. In the last two months, my Committee has toured six or so counties and that is the cry everywhere. They are saying that they have not received their disbursements. The Committee on Finance and Budget needs to tell us if it is a problem of cash flow.

We need to know if there is money or it is not there. Is it something that the county governments are not doing? They tell us that they have not received a single disbursement in the entire quota, yet we go there to oversight asking them: 'Why have you not paid this? Why are you not doing this?' That leaves the Senate with a lot of egg on the face. They keep saying that the Senate has not discussed this.

We passed the Cash Disbursement Schedule in this House. I was very proud of that and I went to the streets of Kayole and Dandora and told Nairobian that: 'As your Senator, I have secured Kshs15.8 billion because that is the work of the Senator. However, the County says that my statement is a lot of hot air, in English, because I am talking of Kshs15.8 billion yet they have not received even the first tranche that they are supposed to receive. The conversation on own sources is very welcome and Article 209

of the Constitution is very clear about what the national Government can levy and what the county government can levy. We have condoned a lot of practices that are inhibiting our counties from getting money.

We are in the days of transport crisis and I hope that it has been resolved. We have Uber, which is a service that raises billions but the Kenyan Government or Nairobi City Government does not get a Shilling from it. I do not know if you are aware of that. If you get into an Uber taxi today and you pay Kshs1,000 or Kshs2,000, 25 per cent of that immediately goes to the Netherlands. The driver is only left with 75 per cent which is below the Automobile Association (AA) rates. Our drivers are suffering and the county governments and national Government are not getting a Shilling from that billion shilling industry. As a Senate, we need to look at this because it is potential revenue for our counties.

I am sure that you have ridden into taxis across the world. When you get in to a taxi in Washington. D.C, you are immediately charged US\$2.5. Where does that money go? It goes to the local government though Washington D.C may not be the best example because of the no taxation without representation. However, that is what happens in any other part of the world.

Today, we have a situation where we have drivers who cannot get into Uber service because their cars are old. They cannot get into that service because their cars must only be eight years old yet they are being undercut and they do not have a way to equalize the amount of revenue that they get. This is something that we must look at. These drivers are suffering. The Uber drivers are suffering and I will ask the Senate Majority Leader, because I know that he gets things done, to walk with me to the car auction yards in Nairobi. He will find hundreds of cars which were formally on Uber being auctioned because the drivers cannot afford yet when you go to the banks, there are people lining up for loans to buy the same cars so as to put them back in Uber. It is a vicious cycle.

There is a lot of potential for us to give revenue to our counties. In fact, it is amazing what the world has become. The biggest transport company today is a technological company based in the Netherlands. We should find a way where we can provide for our drivers the minimal. We have competition laws which should tell you what you need to pay per kilometer.

I will give you the last example. If a young student going to the United States International University-Africa, (USIU) gets off at Thika Road Mall (TRM) and wants to go to USIU, a *boda boda* will cost him or her Kshs150 or Kshs200 but an Uber that takes four students will cost Kshs200. They are now being used as handcarts yet we are pushing out our *boda boda* riders and handcart pullers and we are not getting revenue from it.

Not understanding technology should not prevent us from sorting this out. Let us fight for the drivers who are suffering every day, those who work for long hours which make them to cause accidents so as to sort out the transport issues. This is one way of getting more revenue for our counties. Let us look at the Uber and our transport industry. Kenya is one of the 21st century countries where the only public thing about public transport is the passengers. That is the only thing that makes us call it public transport.

Everywhere else, it is public transport because it is regulated, supported and there is a plan. Today, as Cabinet Secretary (CS) Matiang'i tells public transport operators to not come back on the road without complying with the law---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, the road is also public.

Sen. Sakaja: Exactly, Mr. Deputy Speaker, Sir. The road and the passengers are public. However, we have not provided an alternative. I agree that people should get safety belts and comply with the law. However, we should have a vision and plan for a mass transit system that is cheap, affordable and that will bring revenue to the county and the national Government. We cannot exist without a plan which is not just drawing red lines on Thika Road. The Japan International Cooperation Agency (JICA) and the Nairobi Integrated Urban Development Master Plan (NIUPLAN) did a very good plan across this city for light rail.

If you go to Addis Ababa today, you will be embarrassed as a Kenyan. They have done their tram system in less than three years yet people say that there is no space. Dubai Metro was constructed in three years and it cost Kshs45 billion. They also have the Air Train. Therefore, we can also do it. The measures that we have are hurting the common *mwananchi* and they are just cosmetic solutions. We need to go into serious solutions.

I have already discussed with Sen. Poghio certain amendments that I will be proposing to this Bill. I want to get clarity on the various agencies. We know that there is a Roads Bill that will possibly change the names of, for example, the Kenya National Highway Authority (KeNHA).

Mr. Deputy Speaker, Sir, without anticipating debate which is in contravention of our Standing Orders, it will be easier, for instance, in Clause 2 and the rest to say that 'the national authority in charge of the specific road or facility'. It will also be important to make sure that we secure those private owners especially of properties who might not have the clout to deal with some of the big operators in this industry.

Mr. Deputy Speaker, Sir, with those very many remarks, I support this Bill.

Sen. Ochilo-Ayacko: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to make a few remarks on this very important Bill.

Mr. Deputy Speaker, Sir, society must be regulated at all times for it to be orderly, productive and progressive.

I take this opportunity to thank Sen. Poghio and the relevant Committee for thinking about regulating outdoor advertisements in counties. It is important to standardized the thinking of counties. We should have a standard framework in Turkana, Mombasa, Migori where I represent, Kwale, Homa Bay or any other county including the county of Mr. Deputy Speaker. This will ensure that we are treated equally, fairly and approach the law or order from a position of certainty. It is encouraging and important that this August House considers standardizing and regulating this sector.

Sen. M. Kajwang' pointed out that certain county governments do as they wish when it comes to people they perceive to be their competitors. It is important to have situations where a person is not treated differently just because of how they think, look or have a different political or religious persuasion from those who have the authority. This is a good Bill in the context that it seeks to standardize outdoor advertising.

Mr. Deputy Speaker, Sir, I have looked at the areas where exemption from the application of this Bill is provided for and there is need to fine-tune them. Areas of exemptions are so wide. Therefore, it is possible that the exemptions may negate the spirit, intention and output that this Bill is expected to deliver. As we approach the amendment stage, it is my preposition that we look again at the areas that the Bill proposes to exempt and ensure that the provisions for exemptions do not create a wide highway that will defeat the intention, spirit and the object of the Bill.

Mr. Deputy Speaker, Sir, I state that advertisement has a potential to give counties revenue like it has done in most counties. Therefore, there is need to ensure that it is vibrant and that the various salient and competing interests are attended to without hurting the industry and creating a situation that would lead to cacophony or unhealthy competition among the industry players, so that there is order in this particular sector.

What has not been captured in this Bill and is likely to be abused is in addition to what Sen. M. Kajwang' had indicated; that is the denial of competition from advertising. It is also possible that if it is for political purpose that may open business to some entity that is not liked, the right to licence may be abused. Therefore, it will be important to ensure that there is a process equivalent to fair administration of justice so that a particular licensing authority like the office of the County Executive Committee (CEC) Member, that is mentioned here, does not abuse the process of license and deny a different group an opportunity to benefit from the right to access the licence.

Mr. Deputy Speaker, Sir, I conclude by thanking Sen. Poghisi. Regulation is the way to go. Therefore, it is my sincere prayer that the process of regulating is enhanced by having an establishment or a Committee that integrates the wisdom of industry players. If we have a regulatory agency, for instance, a public body which is largely executive and governmental, it may be staffed by people whose orientation is cohesive and might decline licences. However, if we have a regulatory framework where the regulatory agency or body has input of professionals from that sector, its opinion when it comes to issuance of licence will be balanced because players who have interest of the sector at heart are part of it.

In the world over, it is trendy to move away from executive regulatory framework to professional regulatory framework. If you look at professions like in law, human resource, finance and company secretariat, there is a galaxy of practitioners who are eminent in that area put together with the executive so that the debate and progress in that particular industry is balanced well.

I propose that in this particular Bill, there should be inclusion of that kind of framework so that it is not left to the whims of just the CEC, Member of the county. The role should also be played by industry players who want this particular industry to develop and at the same time, protect the stakeholders and the users as members of the public.

Mr. Deputy Speaker, Sir, with those many remarks, I support. I thank you for the opportunity to contribute to this Bill.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, Sen. Ochillo-Ayacko. Next is Sen. (Eng.) Hargura.

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, from the outset, I support this Bill. Part 2 of the Fourth Schedule of the Constitution has an aspect of controlling and regulation which we have to balance with other aspects of safety, noting that most of the advertisements are done along road reserves.

I remember when we started setting up county governments, there was a misunderstanding between county governments and the national Government's state agencies dealing with roads. The state agencies wanted to have a say in what should be advertised on the road reserves. The county governments just read the Constitution as it is and said that it is their function. They had to take each other to court for interpretation of that.

This law will go a long way in creating a working relationship so that state agencies managing roads ensure that there is always safety on the roads. When roads are constructed, normally we have what we call side distances where when one is moving from one section to another, there is a minimum distance you have to see ahead of you. If the advertisement boards are not regulated, they will obstruct that vision. That is why the state authorities are coming in.

It is good that Sen. Poghio has clearly indicated that the licensee has to clear with the relevant authority. I would like to note that in Clause 4(2)(b)(ii), they should have stated the state agency in charge of a particular road type. That way, we will make sure that the law is applicable even when we come up with changes in the road sector. In the case of other surveillance equipment, you have to clear with the police to make sure that you do not obstruct any of the surveillance equipment on the roads.

[The Deputy Speaker (Sen. (Prof.) Kindiki) left the Chair]

[The Temporary Speaker (Sen. Lelegwe) in the Chair]

Mr. Temporary Speaker, Sir, there is need to regulate advertisement because we have seen proliferation of signs on the roads. You will always find "X" marks on them showing that they were not properly licensed. To avoid that, we have to give clear guidelines on how to get licences. Sometimes those officers are not aware of the process but if we have a clear law, then we will easily avoid the mushrooming of advertisement and billboards on our roads.

On the issue of revenue, it will be a good source of revenue for the counties. However, as the Bill is, it is not something that counties can initiate. It will depend on the interests of the advertisers and those interested to advertise in a particular area.

Counties need to look at this Bill. If they need to domesticate it, that is well and good, so that it specially applies to their counties. It is a good law which will ensure that there is harmony in this sector.

I thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Lelegwe): Thank you, hon. Senators. I now call upon the Mover to reply.

Sen. Poghio: Mr. Temporary Speaker, Sir, I would like to use this opportunity to thank all Members who have contributed to this Bill because all of them were in

support. I have taken note of the proposals and some of the changes recommended. It will be a much richer Bill.

I appreciate the fact that new insights have come out from their contributions. Some of the new insights include widening the definitions to include other agencies like the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KeRRA). They also proposed to have provisions in situations where people paint old buildings sometimes without recourse to regulations. What they have raised will be considered in the next phase of the Bill.

I thank everybody and I beg to reply.

Mr. Temporary Speaker, Sir, pursuant to Standing Order No.61(3), I request that you defer putting of the question on this Bill to a later date.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, I therefore defer putting of the question. The question will be put tomorrow.

(Putting of the question on the Bill deferred)

Let us move on to the next Order.

BILLS

Second Reading

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.52 OF 2017)

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, I defer Order No.11 to tomorrow.

(Bill deferred)

Let us move on to the next Order.

Second Reading

THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.3 OF 2018)

The Senate Majority Leader (Sen. Murkomen): Mr. Temporary Speaker, Sir, I beg to move that The Land Value Index Laws (Amendment) Bill (National Assembly Bills No.3 of 2018) be now read a Second Time. This is an extremely important Bill particularly at this time when we are discussing matters development in our country.

The amendments to the Lands Act of 2012 have been necessitated by the desire to ensure that we regulate the sector in a manner that is responsive to the interests of land owners and the beneficiaries and also on the other hand take care of the interests of

Kenyans on matters development. The background to this Bill is the challenges we have as a country when it comes to dealing with mega projects in this country.

Mr. Temporary Speaker, Sir, you know very well, because you live along the power station of electricity from Loiyangalani to Nairobi, the negotiation problems that the Kenya Electricity Transmission Company Limited (KETRACO) was struggling with when it acquired land just for purposes of electricity poles and electricity wires to pass.

It is said that the cost that went into that was so high that it was almost half of the amount it required to construct the line itself. Considering that there was already a problem with that project with regard to dealing with loans that had been acquired and the first contractor became broke at some point and work had to be given to another person, that costs a lot for the people of Kenya.

Mr. Temporary Speaker, Sir, Sen. Mutula Kilonzo Jnr. is aware of what happened in the Standard Gauge Railway (SGR). I think the SGR is the worst example in this country when it comes to matters land acquisition and compensation of people, who by virtue of knowing that the SGR would be constructed, rushed to purchase property along the line. They then started asking for ridiculous and exaggerated amounts of money, most times in collusion the National Land Commission (NLC) staff and persons working with the railway. It was eventually discovered and many people were suspended and charged in what is now being called land acquisition scandal within the SGR.

If this problem continues, it will become impossible to attract investors. They are running away to neighbouring countries because they have an assurance of a determined figure of money that can be paid to citizens of property owners for purposes of development. You will see what the law says when I start referring to the specific provisions. You will realise that in some parts of this country, as a result of a project being initiated in a particular area, suddenly the property owners will start asking for ridiculous amounts of money for compensation.

I know that because we are dealing with many of those projects in Elgeyo-Marakwet County. One of them is an electricity generation project that is supposed to be done on Aror and Kimwarer dams. Of course, one of the challenges is that our people demand to be compensated. However, it must not be ridiculous amounts of money. It must be compensation that is worth the property that is situated in that area. People are even asking for up to a share of the profits that will come from the project itself, not as compensation but even over and above.

Mr. Temporary Speaker, Sir, the first amendment is that of what a just compensation is. Section 2 of the Land Act, 2012 is being amended to allow a definition of what is fair compensation to mean that which has been assessed via the criteria established under this Act. Again, there is also a definition of what is prompt because the law says there must be prompt compensation. The amendment makes it clear that the prompt compensation is to be paid within a reasonable period of time, but not later than a year after a written undertaking between the Commission and the individual, authority or agency that is acquiring the land for purposes of development.

This law is also being amended to ensure that if land is required for public purpose---I agree with most of the provisions, but since this Bill came from the National Assembly, I also have an obligation to point out a few things to the Senate and the

Committees. One of such position is when it comes to the reference of Section 31 of the Land Act, 2012. That Section is important when it comes to protection of the interests of land owners and in relation to forfeiture of lease, if rent is unpaid or there is a breach of a covenant in a lease. There is a proposed amendment to Section 31(3) of the Land Act, 2012 which says that-

“If the court has declared a lease to be forfeited under subsection (2), the Commission may re-enter upon the land.”

That is once a court has made that declaration.

Section 31(4) of the Land Act provides that-

“In exercising the power of granting relief against forfeiture under sub-section (1), the court shall be guided by the principles of the doctrines of equity.”

Now, there is an amendment to Section 31 which states-

“Despite subsection (4), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the grantor makes good the default.”

Mr. Temporary Speaker, Sir, that is also important, but I think there is an extent to which we can direct to the courts in terms of making the discretion of the charge; being a constitutional office holder and final authority interpretation of the law and the Constitution; being directed as to whether or not they can do or not do, grant certain orders or not.

Section 32 of the Land Act, 2012 is also being amended to ensure that if land is required for public purpose, the court may not grant relief against forfeiture. That is an area that spots Section 32, forfeiture of license and lease. What is being done here is to try to control the courts. I know the frustration that public officers and the Executive – and even all of us, as persons who are interested in the development of our areas - have had with the courts in so far as court orders that stop projects and inordinate delays in decisions of the court.

However, I think our reaction constitutionally is not to try to limit the ability of the courts to entertain any relief that may be sought by any person in regard to land compensation and matters related. This is an area that I think is better left to the discretion of the courts, even though we must continue having a conversation in the country on how to ensure that decisions of the court are expeditious, but also take into regard public interest.

Mr. Temporary Speaker, Sir, in so far as forfeiture of lease and licence in Sections 31 and 32 of the Land Act, 2012, I think the relevant amendments--- I hope that when the Committee comes up with its amendments, they will agree with me that matters of the courts’ discretion as to whether or not they will grant relief should be left to the courts themselves to make that decision based on the circumstance. This is because if a licensee or leaseholder has defaulted, the leaseholder themselves may not even be aware that they are in default.

The consequence of that default may be that families, infants or beneficiaries – people who have large communities and families – may be affected. For that reason,

therefore, it should be left to the discretion of the court, because Parliament cannot imagine all the circumstances and situations that may require that kind of approach.

Section 107 of the Land Act, 2012 is also being amended to establish the mechanisms or how the Commission will acquire land for purposes of development or use in public by both national and county governments. Remember that acquisition of land is anchored in Article 40 of the Constitution, which provides for the protection of property. Property is being protected because it is a constitutional duty of the State to ensure that no one is deprived of his or her own property and that every Kenyan has a right to acquire land in any part of the country, and Parliament shall not enact legislation that will ensure that there is arbitrary acquisition of land.

However, in subsection 3, there is a qualification to that acquisition, deprivation or ownership. It is noting that if the acquisition of land, an interest in land, conversion of interest in land or a titled land is in accordance to Chapter 5 of the Constitution which is related to land including end of a lease period of 99 years; if it is a lease holding property and so forth, that is for public purpose or interest and is carried out in accordance with the Constitution or an Act of Parliament, that requires prompt payment in full or just compensation for every person.

I had already referred to the definition of what is prompt and just in these amendments that allows any person who has any interest in it or right over that property, a right to access a court of law. That is why I was saying that we cannot talk about limitation or granting of relief by courts or access to courts because the Constitution says that when one is aggrieved as a result of that acquisition, for public use, they have a right to go to court and ensure that they get the necessary relief whether it is lease or license or any other form.

Therefore, to give flesh to Article 40(3) of the Constitution then the Commission must do a few things that have been provided from in this Act.

(1) They must map out or cause the land to be mapped out and valued by the Commission using the valuation criteria established by the Act; and,

(2) They must establish that the acquiring body has identified the number of and maintain a register of persons in actual occupation of land for uninterrupted period of 12 years and their improvements.

Mr. Temporary Speaker, Sir, that is particularly when dealing with situations that have no titles and it is a place where people have just occupied land for purposes of adverse possession, they must have occupied the land for over 12 years.

Mr. Temporary Speaker Sir, sub-section 5 states that the notice that is going to be provided will include the following-

(a) The purpose for which the land is to be compulsory acquired;

Before acquiring the land, there must be an explanation as to what purpose.

(b) The location, general description and approximate area of the land.

This is so that one also becomes a general issue of concern and once that is done, then it is the duty of the Registrar in so far as the Land Registration Act, 2012 is concerned to issue an order.

Clause 5, (5B) of the Bill states that-

“Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76(1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land thereof, until it vests in the acquiring body.”

This is once that has been declared to be property supposed to be acquired or for purposes of compulsory acquisition.

Mr. Temporary Speaker, Sir, how then will you determine the value of land? How will one arrive at the value of land? The reason this section is being provided for is to cure the particular moles that we have at the moment where digression has been left to a commission to think through what the amount is, and how to go about it---

So, to a great extent this law is attempting to ensure that there is criteria for assessing the value of land before it is compulsorily acquired to avoid situations of insider dealings where you have “insider dealing” which is a term used in capital markets. Since you are an officer in Government or a Cabinet Secretary (CS) in infrastructure or a top-notch politician in the party leadership, you have understood the manifesto and you know the mind of the President, the Cabinet and the Government as to which projects they are going to do and when.

As a result of that, you quickly rush to Samburu Town and out of nowhere, someone who comes from Elgeyo-Marakwet County or Mombasa, with no interest at all in Samburu Town, rushes to purchase property in Maralal or Kisima towns and suddenly holds for the day because they have insider dealings.

They are assured that the government will build the biggest airport, football stadium or electricity project in that area. You then go and acquire that property and come around and say that you want to be compensated. You then realise that people are getting Kshs200 million or Kshs500 million, and it is even impossible to probe these transactions because it is based on a willing buyer-willing seller environment. Therefore, this law or this amendment of Section 107(A) is trying to address the situation on how to determine land value. It states-

“(1) Valuation of freehold land and community land for purposes of compensation under this Act shall be based on the land value index developed jointly by the national government and county government for that purpose and the provisions of this Part.

(2) For purposes of this Part “land value index” means an analytical representation showing the spatial distribution of land values in a given geographical area at specific time.”

Therefore, county and national governments will have an index that will show the general value of property in a particular area, which maybe a ward or a location. This is to mean that plus or minus a certain amount of money, that is what is called a land value index. This index will demonstrate that the cost of land in area “X,” will not be more than this much in a particular period of time.

Consequently, when the Government is acquiring land compulsorily and investors are engaging with the Government on a Public Private Partnership (PPP), they will know for sure that when it comes to land as a factor of production, as an impetus of development and as a basis of investment in a particular area, that index will show the

cost of property in that area. We will deal with the Public Private Partnerships (Amendment) Bill (National Assembly Bills No.52 of 2017) and the role of county governments in PPPs tomorrow. This is another law which will require a few more amendments to also accommodate certain concerns of counties.

Clause 6 (3) states-

“In addition to any other principle that may be employed in calculating the land value index, the declared value of the land for purposes of payment of rates, rents or stamp duty shall be taken into account.”

This is another very interesting story. Initially, before the Standard Gauge Railway (SGR) was established – even a year before – you will find that the land rates and stamp duties of the acquired properties along the SGR area being paid by all the buyers and sellers around that area indicated the worth of that property. However, suddenly because of the development that was going to occur in that area, the value suddenly ballooned.

Therefore, in calculating how much is going to be paid, those are some of the factors that must be put into consideration, and this is the reason; it will deter such practices. If you impose or force and say that the rates you should have been paying is this much in this area, there is nothing wrong with the Kenya Revenue Authority (KRA) coming after you to ask for rates for that land for the many years before. This is because you have exaggerated the value of that property.

Clause 6(4) states-

“In assessing the value of freehold land and determining the just compensation to be awarded for land acquired under this Act, an increase in the value shall be disregarded if—

(a) the increase in the potential value of land is occasioned by the intended use or development of the land to be acquired;”

As the result of that development, the value of land will go up. You cannot, therefore, speculate that as a result of this development coming up, you want to ask for the value of the land, which is a result of the development and the basis of compulsory acquisition.

Clause 6 (4) (b) states-

“The increase in the actual value of the land as at the date of publication of the notice of intention to acquire is likely to accrue from the use to which the land will be put when acquired;”

You cannot also say that the value of land will go up because the person who will develop the land will build a dam, which will bring a lot of money or electricity. Therefore, you cannot ask for an amount of money that is equivalent to a situation where the dam is there already. You cannot lease the intended use of that property to ask for a higher amount.

Clause 6 (4) (c) states-

“The increase in the apparent value of land is occasioned by any development or improvement to the land if-

(i) the improvement was made on the land within two years prior to the date of publication in the *Gazette* of the notice of intention to acquire the land, unless it is proved that the improvement was made *bona*

fide and not in contemplation of proceedings for the acquisition of the land:

provided that where the national Government or the county government makes changes in the use of the land compulsorily acquired to affect other land owners, these owners shall be excluded from the application of this provision.”

As I said, these two years are very important, because it is just assumed that a lifespan of a government is five years and it has a manifesto and planned to do this and that. Some people who have insider information could use it within a certain small span of time to quickly improve that property for purposes of ensuring that when compensation happens, they will get an extra amount of money. Again, that is subject to the qualification provided in that Act; that the improvement was *bona fide* and was never intended.

Mr. Speaker, Sir, if you acquire my land, and you are my neighbour, this provision will only apply to me on the property that has been acquired. If your property, as a neighbour, will be required later and it will have benefited from the intended use in the specific land, then you will not be punished as a result of the investor improving that land. That does not apply, or in other words, it does not affect the neighbours.

With regard to improvement being done after the date of publication in the *Gazette* of the notice of intention to acquire the land, if that specific land which an announcement was already made, of the intention to acquire, then that cannot affect the neighbouring land.

If the improvement in that land is contrary to any law--- For example, if you are building on riparian land or using it as a dumping site for waste, it cannot be a basis of compensation to claim that you will have a higher value, because that improvement is contrary to the law and public health.

Mr. Temporary Speaker, Sir, there are other factors that may not be taken into consideration in determining the value of land. That includes the degree of urgency, which has led to the acquisition. You cannot say because the Government is in hurry--- In private dealings, people may say: “That guy has a problem. Charge him higher because he has the money. He is under pressure; he must build a house.”

The degree of urgency with which the Government needs to develop a particular property, cannot be a basis for increasing the cost. The Commission has always been saying that the Government is in a hurry and must meet the one year plan to finish the Standard Gauge Railway (SGR) and, therefore, they had to pay those people that amount of money. The degree of urgency by the Government cannot be a basis for increasing the cost of land that is being acquired for public development.

Still on freehold, there are matters that must be taken into consideration in assessing the value of the land. One of them is the damage sustained or likely to be sustained by persons interested at the time of the Commission’s taking possession of the land by reason of severing the land from other land. For example, if I have 10 acres of land and you only need two acres, the damage that I will undergo for purposes of subdivision and so forth, must be taken into consideration.

Two, damage will largely be sustained by the person who is using the land at the time the Commission takes the possession of the land, injuriously affecting other properties whether movable or removable for instance houses, wheat, and maize. Those are the factors that can be considered.

Mr. Temporary Speaker, Sir, Clause 6 (6) (c) states-

“If in consequence of the acquisition, any of the persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expense to be determined by the Commission.”

For instance, if I was having a business or doing something that is valuable to me in the land, the inconvenience that is occasioned by the acquisition of that land, like moving out, buying land and establishing business elsewhere or even moving cows from the land that must be considered. The damage genuinely resulting from diminution of the profits of the land between the date of publication and the intended acquired---

Another thing that must be considered is that your business might suffer because people may no longer come to your land for whatever reason, because they know that the property will no longer be valuable. They even may start getting acclimatized to other businesses or areas and the effects of express of the implied condition of title deed or law which restricts intended use of land.

Mr. Temporary Speaker, Sir, in dealing with those profits, you must give proof of evidence and that evidence must not only contain the profits you make, but also the tax returns that you file. There is nothing that people fear than taxes in this country, because if you walk backwards from the taxes you pay to the profits you make, there are people who will run away.

Mr. Temporary Speaker, Sir, on the rules that will affect the compensation of pieces of land which do not have title deeds, people are occupying many pieces of land across the country in good faith, and they may not have title deeds. There are, therefore, certain considerations that must be made, like the number of persons that occupy the land for an uninterrupted period of 12 years, if it is not community land.

This is, therefore, addressing squatters who have been living in a particular area and these 12 years is for purposes of adverse possession. That ultimately, is a place that they would have owned under the law. In addition, the improvements done in the land, the damage that has to be sustained by the occupants and consequences to the occupants like it has been mentioned in free hold land, must be also considered.

Mr. Temporary Speaker Sir, on ancestral land, the boundaries of that land must be ascertainable, prompt and payment made in full of just compensation which may be made and the value of the land assessed in accordance with this Section, at the date of publication in the Gazette, of the notice of intention to acquire land. This must be considered. In as far as land that is under lease, the rules apply almost *mutatis mutandis* although with some little modification to suit matters of lease hold.

Mr. Temporary Speaker Sir, regarding the form that compensation will take, it can be, first, allocation of alternative land. This is the most preferred position of many people in this country in the rural areas. This is because we are moving a whole community and they will require a preferred land. Where I come from, in Embobut, about

2,000 Kenyans were told to move from the Forest and each one was paid Kshs400,000. All that money got lost within Embobut because the people thought it was a lot of money. For somebody who has never held Kshs5,000 or Kshs10,000, they were suddenly having Kshs400,000. Therefore, most of them misused that money or it got swindled by very dishonest individuals, including those they depended upon as family.

However, Mr. Temporary Speaker Sir, when you have exchanged land for land, it becomes very easy. That is why there is a lot of demand now - even in the compensation at Arror and Kimwarer dams in my county - that the compensation should be land for land, because it will take care of families. This is important, especially where you are dealing with people who are living in ancestral land. Of course, there will be situations of monetary payment.

When dealing with the issue of land for land compensation, the law applies when they go to acquire the other land for purposes of compensation. You go back to the processes of how the Government acquires land in another area for the purpose of settling those who have moved from one area.

Secondly, Mr. Temporary Speaker Sir, is compensation by monetary payment, either in lump sum or by installments spread over a period of not more than one year. Thirdly, is compensation by issuance of Government bond. One can just decide to take a Government bond instead of taking money. There can also be grant or transfer of development rights, as may be prescribed. One can say: "Develop my property here; you can take the other part of it, but build a house for me here" and that settles the question of compensation.

Mr. Temporary Speaker Sir, compensation can also be award of equity shares in Government owned entities. One can say, for example, that they want to be a shareholder at the Kenya Power (KP) Limited. One then gets a certain amount of shares and then takes the market value of the shares and any other lawful compensation. However, the qualification there is that it is the owner to decide the form of compensation, and not the Commission, Government or entity.

Mr. Temporary Speaker Sir, there is also a very important provision there which has been informed by practice during the last few years in so far as compensation payable in other cases, including alternative land. There are situations where it may not be possible to identify exactly who should be paid the compensation or where the families may be fighting. Alternatively, the owner could also be of unsound mind at that point in time or they could be minors who cannot hold titles. The law has said that the Commission will hold the titles or the money in such land in trust for the beneficiaries. A trust account has been proposed here for the Commission to ensure that they have it to protect the interests of those who are unable to take care of themselves.

Mr. Temporary speaker, Sir, I disagree with Clause 14(b), which states that-

“(3A) Upon the formal taking of possession of land by the Commission-

(a) no order stopping any development in the land may be issued by any court if public funds have already been committed; and”

This is provided that due process has been followed in the compulsory acquisition of the land.

This is ridiculous and must be deleted because it is encroaching on the independence of the Judiciary. We cannot direct the courts as to whether they will issue orders on development of land or not. This is because the development of that property is affected by many other factors, and not just the process of its acquisition.

There are many other factors which include the one who is challenging the amount that you have provided and whether it is adequate. More importantly, it also includes environmental concerns. Kenyans can go to court and say that this property must not be developed because it will have adverse effects. The conversation around acquiring a particular land is not the same as the conversation on what is to be done with that land. On that, the courts have a right to issue court orders. It must be left to the discretion of the courts however frustrated we may be with the processes of the courts or the disagreement that we might have with the judicial officers and judges in so far as decision making in the past is concerned. Many other provisions have been done there to change typo errors.

Finally, we have Part VIIIA on the Land Acquisition Tribunal (LAT). It has established the Tribunal and the members of the Tribunal will be appointed by the Judicial Service Commission (JSC). Two of the members will be registered valuers, we will have one surveyor and the others will be advocates. The idea is to establish a tribunal. The term of office of the Chairperson is four years. This Tribunal will determine all appeals from decisions of the Commission when one is dissatisfied with decision of the Commission. Those appeals must be heard expeditiously in a prescribed time and in a manner that will be determined by the rules of the Tribunal.

Time is much gone. I want to stop there. This is an important Bill and we need it urgently to salvage our country from the looting that is taking place with regards to land that is being acquired for purposes of development. I want to invite the Senate Minority Whip, Sen. Mutula Kilonzo Jnr., to second.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. I rise to second the Bill, the Land Value Index Laws (Amendment) Bill (National Assembly Bills No. 3 of 2018). I hope that I can rush through the proposals as quickly as I can.

I had an experience of land acquisition in Makueni for the Standard Gauge Railway (SGR), the Kenya Electricity Transmission Company Limited (KETRACO) for the power line and the Thwake Dam for the Thwake Project. This is a very disturbing issue. In determining this issue, we must be careful so as not to infringe on the rights of property of Kenyans under Article 40.

To the clauses, I would like to say that the framework is good because a lot of people have been affected but we must follow the Constitution under Article 40(3) and (4) in paying for and acquiring land. The State must pay promptly and in full for that is what the Constitution says.

As I second this Bill, I will propose the amendment of the word ‘prompt’. In the definition, Clause 2(i) says, and this is contrary to Article 40, that the payment shall be done-

‘within a reasonable time of the taking of possession of the land by Commission; or.’

That is a “no” and it is not possible. We will not allow acquisition of land where they take possession of the land before they make the payment. In fact, once you follow what has been said in the other clauses, it appears very contradictory. This definition of ‘prompt’ in the Bill is wrong and we must amend it.

Clause 2(ii) says-

“a written undertaking indicating the appointed dates, not being more than one year from the date of undertaking, when compensation is to be made.”

When you go to Mwikali in Kathonzi and you tell her: “Please leave your land, we are going to acquire it. We will pay you after one year and this is an undertaking.” That is mistreatment of Kenyans and a violation of their rights. To that extent, I disagree.

In Clause 4, there appears to be a bar on the court and the reliefs that it might grant. I will suggest that we delete that clause for we cannot limit the power of the court to issue any orders.

Mr. Temporary Speaker, Sir, in Clause 5(a), I disagree with the idea that the Commission will value land. We must allow independent valuers to also have an opportunity. That is why there is a Tribunal consisting of the Surveyors Board of Kenya (SBK). If in the valuation of land, we have not given an opportunity for the SBK to have a say on the valuation, what is the basis of putting them in the Tribunal? The Commission cannot be the one to pay, acquire and value. In a proper inquiry on acquisition of land, private valuers must be allowed to value.

In terms of what is supposed to be in the notice, this particular proposal on legislation omits a very important feature. This is what caused the problems where Prof. Swazuri and his friends have been charged. Land must have the acreage. What they are now doing in the National Land Commission (NLC) so that they can get into this fraud is leave it blank then they assign their own values and nobody knows what they have done. Eventually, you find out that the land was acquired twice and the initial purpose of the land that was to be acquired is possibly one acre, but they acquired 50 and paid for it. Therefore, we must stipulate. The court has ruled that the notice must indicate the acreage in exact terms that they want to acquire.

Clause 6 on amendments of Section 107A on the criteria for valuation is not very interesting. When a person is told that if they build a House in a particular place two years prior to acquisition, it will not be paid for, there is something wrong with that. How is an ordinary Kenyan supposed to know that the Government is supposed to acquire their land for purposes of, for example, a dam? Therefore, when a caveat of two years is put prior to gazettment, it means that if I have a piece of land in Makueni County and the Government intends to do the express way, I cannot do anything because, one, the two years period is already covered. Two, I will not be paid if I decide I want to build beautiful flats if I have some money. It is wrong.

The period for acquisition must be the period when the notice is issued unless the Government now changes tact and says that for the next five years; it will acquire land in “X “number of places.

I went to Elgeyo-Marakwet where they want to do a dam but it will not be possible. However, the Government can plan well and get into an agreement. Where a

person has done some apartments, the land must be valued and paid for so that it does not limit Kenyans.

We had a case in Makueni recently where the Government had issued a notice to acquire land for Thwake Dam. The person has not been paid or moved but is now dead. We were at a discussion on what to do. Do we bury the person on the land or take the money in advance from the NLC which again is against the custom because we cannot build a house for a person or bury him in a bush where he or she has no home? Therefore, there are serious issues.

I was praying that the Committee on Land, Environment and Natural Resources would have brought the proposals so that we can understand whether there have interrogated some of these Clauses because they were dangerous to Kenyans.

Clause 6 (4) (c) (ii) states that-

“The improvement was done after the date of publication in the *Gazette* of the notice of intention to acquire the land, unless the improvements were necessary for the maintenance of any building in a proper state of repair”.

The NLC is putting itself into crossfire with owners of land. A person cannot own a particular land and do whatever they want and at the same time be asked why they painted their house and not leave it in a state of disrepair. People should be allowed to continue using their land until the acquisition is done.

Mr. Temporary Speaker, Sir, I have an experience in issues raised in Clause 6 (6) (c) which states that-

“Despite subsection (1) and (2), the following matters may be taken into consideration in assessing the value of land-

(c) if ,in consequence of the acquisition any of the person interested in the land will be compelled to change residence or place or place of business, the payment of reasonable expenses to be determined by the Commission”.

Again this is dangerous. In the current legislation, we have 15 or 20 per cent which is called disturbance allowance which helps a person to move. What will happen is that the person will go to the Commission after they have acquired their land and they will tell them to hire a lorry for Kshs1000, put their belongings and their family and move to point “X ”as opposed to saying that a certain percentage of money will be given to every person who will move their business or residence so that they can, at their own time, move the business or residence. This will put many people into conflict.

I want you to look at Clauses 6 and 7 and tell me whether they can apply in places like Samburu.

Clause 6 (7) states that-

“In determining the damage resulting from diminution of the profits of the land, the Commission shall require proof of the existence of the profits including evidence of tax returns.”

What are you talking about? Tax returns? There are many people out there who do not know what you mean when you mention tax returns. Some of the clauses are unnecessary for purposes of ensuring that we acquire land.

The purpose of this law should not be to put procedure and propose amendments to KETRACO. I would like Sen. Murkomen to know that KETRACO pays 30 per cent of the value of land. You retain your land but they have 30 metres and pay you 30 per cent to put the pylons. You are not supposed to have a fruit tree that grows up to 30 metres or something like that. So, there should be no issue.

I think Kenyans should be paid more for not being able to use their land because you cannot build anything 60 metres next to the pylon but they require 30 metres. In essence, you lose 30 metres plus 60 metres but you are only paid for 30 metres, which you are allowed to use but you are warned that you might get cancer if you use. Why not acquire the whole piece of land so that people do not have to use it and be exposed to high power voltage lines which are said to cause cancer because of radiation?

These are things we need to talk about so that in acquiring of land, the question of Environmental Impact Assessment (EIA) as a result of some of those things is made part and parcel of the compulsory conditions for acquiring land.

I like the idea of buying land and relocating people but it has not worked before. In Makueni, we have two cases of Nguu and Masongaleni settlement schemes where people were relocated to a piece of land which the Government had acquired but they never had titles deeds. Title deeds have come 30 years down the line. Therefore, I hope that the Committee on Lands, Environment and Natural Resources will interrogate the question of alternative pieces of land. If an alternative piece of land is there, it must be identified, demarcated and beacons so that a person is given a title deed to go to a piece of land which has been acquired.

We also have a case of Manooni Dam where land was acquired to build the dam in Makueni County. People were given an alternative piece of land but they found other people on that land who chased them with bows and arrows. Now they are back to where the dam is and camping there. They have not been paid and they do not have land.

(Sen. M. Kajwang' spoke off record)

The Temporary Speaker (Sen. Lelegwe): Order Sen. M. Kajwang! Sen. Mutula Kilonzo Jnr., you may continue.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, in the compulsory acquisition of land for the Standard Gauge Railway (SGR), schools and public bodies were not compensated. What they did in the case of schools is that the schools were rebuilt on alternative pieces of land acquired. It should be compulsory that if it is a school, it should be relocated instead of giving them money.

What happened is that boards of management and head teachers of some of the schools in Makueni County started making profit out of that but we pushed for allocation of alternative pieces of land. If it is a public body, why does the Government not pay money?

The Temporary Speaker (Sen. Lelegwe): Sen. Mutula Kilonzo Jnr., you have a balance of seven minutes, which you will get when the Bill appears on the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 14th November, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.