

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 9<sup>th</sup> May 2019

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** I will give the Communication later on.

### MESSAGE

#### NOMINATION OF AMBASSADORS AND HIGH COMMISSIONERS

**Hon. Speaker:** Hon. Members, I wish to report to the House that I have received a Message from His Excellency the President conveying his nomination of persons for appointment as Ambassadors and High Commissioners. His Excellency the President, having exercised his powers under Article 132(2)(e) of the Constitution, is now seeking the National Assembly's approval of the following persons for appointment to the offices of Ambassadors/High Commissioners:

- |                         |   |            |
|-------------------------|---|------------|
| (1) Kariuki Mugwe       | - | Abu Dhabi  |
| (2) Peter Katana Angore | - | Algiers    |
| (3) Michael Mubea       | - | Dublin     |
| (4) Flora Karugu        | - | Lusaka     |
| (5) Mwendu Mwinzi       | - | Seoul      |
| (6) Diana Kiambuthi     | - | Stockholm  |
| (7) Njambi Kinyungu     | - | UN-Habitat |

In accordance with the provision of Standing Order No.45(1) which requires that upon receipt of notification of nomination for appointments, such nominations shall stand committed to the relevant departmental committee for consideration, in this case being the Departmental Committee on Defence and Foreign Relations for vetting of the nominees proposed for appointment as High Commissioners and Ambassadors.

Section 8 of the Public Appointments (Parliamentary Approval) Act requires that a committee shall consider a nomination and table a report for debate and decision in the House within 14 days from the date of notification. In this regard, and in accordance with the provisions of Article 259(5)(a) of the Constitution as read together with Section 5 of the said Act, the seven days' notification to the public shall start running on the day following the day the notice is published in the dailies.

Given that the House is expected to proceed for recess today, it is advisable that the relevant departmental committee expeditiously proceeds to notify the respective nominees and

the public, and commence the approval hearings after the seven-day notification period. The committee is also welcome to seek an extension for the period of consideration of the nominees, so as to table its report upon return of the House from recess.

This Message, together with the Curriculum Vitae of the nominees, therefore, stands committed to the said Departmental Committee.

## PETITIONS

**Hon. Speaker:** Let us have Hon. Anthony Githiaka.

### DISTRIBUTION OF TEXT BOOKS TO PUBLIC SCHOOLS

**Hon. Anthony Kiai** (Mukurweini, JP): Thank you, Hon. Speaker. This is Public Petition No.46 of 2019.

I, the undersigned, on behalf of members of the Kenya Booksellers and Stationers Association (KBSA), draw the attention of House to the following:

THAT, Kenya Book Sellers Association has been distributing books in line with the Ministry of Education policy that was formulated in 1998 and a pilot project done in Machakos and Laikipia counties by the Government of Kenya in partnership with the Republic of Netherlands;

THAT, direct delivery to schools allowed for inspection and verification of books by an Inspection and Acceptance Committee and ensured that micro, small and medium enterprises accessed Government procurement opportunities in accordance with the provisions of the Public Procurement and Disposal Act;

THAT, in 2016, the Cabinet Secretary for Education unilaterally revised the policy and resolved to directly supply books to county education headquarters, and not schools, without public participation and due consultations with booksellers as stakeholders;

THAT, the centralisation and direct distribution of books at the county level by the Ministry has resulted in loss of livelihoods of businesspersons and bookstore owners who used to earn a living from supplies to schools;

THAT, the consistent use of data by the Ministry of Education in disbursement of the free primary education and free day secondary education has not been applied in the supply of text books;

FURTHER THAT, a majority of the secondary schools had attained a textbook ratio of 1:1 and hence they did not require more books and where the ratio was below 1:1 schools' requirements should have been considered before supply;

THAT, consequently, the new model of supply has caused an oversupply of text books in secondary schools to the tune of 300 per cent in 2019 due to a replication of the books supplied in the year 2018, which is wastage of public funds in contravention of the provisions of Sections 162(3) of the Public Procurement and Disposal Act, 2015;

THAT, for the last two years, standards Four, Five and Six have not had any textbooks while classes Seven and Eight have only been issued with four out of the six text books required and grades One, Two and Three have only been supplied with Mathematics, English and Kiswahili books since the inception of the new curriculum;

THAT, the failure to supply the aforesaid books has compromised the quality of education in the affected institutions;

THAT, efforts to resolve the matter through the Ministry of Education have been futile.

THAT, the matter raised in this Petition is not pending before any Court of Law or the constitutional body; and,

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Education and Research:

- (i) Recommends that the Ministry of Education reconsiders its policy on book distribution that allows for direct delivery of text books to schools and ensures that micro, small and medium enterprises access opportunities for Government procurement and supply of text books in accordance with the provisions of the Public Procurement and Disposal Act.

And your Petitioners will forever pray.

**Hon. Speaker:** The Petition is committed to the relevant Departmental Committee on Education and Research.

The next Petition is by Hon. Gideon Mulyungi.

INSECURITY AND DISPLACEMENT OF COMMUNITIES BY NOMADIC  
PASTORALISTS IN MWINGI EAST SUB-COUNTY OF KITUI COUNTY

**Hon. Gideon Mulyungi** (Mwingi Central, WDM-K): Thank you, Hon. Speaker. I rise to present Petition No.38 of 2019 regarding insecurity and displacement of communities as a result of invasion of private community land by nomadic pastoralists in Ukasi, Imba and Wingemi locations in Mwingi East Sub-County of Kitui County.

I, the undersigned, on behalf of residents of Ukasi, Imba and Wingemi locations of Mwingi East Sub-County of Kitui County draw the attention of the House to the following:

THAT, the petitioners, who are peasant farmers and who also keep livestock, have lived in Ukasi, Imba and Wingemi locations in Mwingi East Sub-County of Kitui County for many years.

THAT, due to proximity to Tana River County of North Eastern Kenya, there have been conflicts and insecurity occasioned by nomadic pastoralists arising from competition over diminishing grazing land on the border of Kitui and Tana River counties.

THAT, over the years, the national security organs, National Police Reservists and the local community have always stopped or regulated invasion of nomads to Kitui County, hence safeguarding the local communities from displacement.

THAT, in December 2018, a group of over 1,000 nomadic herders, alleging to originate from North Eastern Kenya, invaded Engamba Kalamba Village of Mwingi East Sub-County and evicted the local residents from their land, built makeshift structures and settled there with their families and livestock.

THAT, as a result of the conflict and insecurity, the local residents have been displaced from their private farms; suffered loss of livelihood, injuries/maiming and destruction of property, water points, pasture, forests, farms and farm produce. This is besides losing livestock and personal belongings.

THAT, the insecurity has resulted into hindrance of the right to education of school-going children as evidenced by the decrease in enrolment at Kamuluni Primary School and over 57 pupils leaving and occasioning the closure of Engamba Primary School.

FURTHER THAT, this eviction, grazing and settlement by strangers on private and community land is a gross violation of the rights of the affected people, in particular Article 29 on freedom and security of citizens and Article 40 on protection of the rights of property.

THAT, the intervention by the Deputy County Commissioner of Mwingi East Sub-County on 28<sup>th</sup> March, 2019, directing that the herders leave the area within 14 days and return to their home counties has not been complied with.

THAT, efforts to resolve this conflict and cause the nomadic herders to leave the affected areas have been futile.

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

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security:

- (1) commences investigations into the root causes of the invasion of Ukasi, Imba and Wingemi locations in Mwingi East Sub-County of Kitui County by nomadic herders and establish why the grave violation of the rights of the communities remains unresolved; and;
- (2) recommends a lasting solution to the conflict among the communities at the border of Kitui and Tana River counties.

And your Petitioners will forever pray.

**Hon. Speaker:** The Petition is committed to the said relevant committee for consideration. Let us move to the next Order.

### PAPERS LAID

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

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2018 and the certificates therein:

- (a) The Office of the Attorney-General and Department of Justice.
- (b) Revenue Accountability Statement of the Kenya Revenue Authority.
- (c) Kenya Revenue Authority.

Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June, 2018 and the certificates therein:

- (a) Kitui South.
- (b) Mwingi Central.
- (c) Jomvu.
- (d) Taveta.
- (e) Tigania West.
- (f) Mwingi North.
- (g) Mwingi West.
- (h) Chuka/Igambang'ombe.
- (i) Igembe Central.
- (j) Maara.
- (k) Pokot South.

**Hon. Speaker:** The Vice-Chair of the Departmental Committee on Education and Research, you have the Floor.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

- (a) Report of the Departmental Committee on Education and Research on Sessional Paper No.1 of 2019 on the policy framework for reforming education and training for sustainable development in Kenya.
- (b) Report of the Departmental Committee on Education and Research on a petition on the implementation of delocalisation policy by the Teachers Service Commission, by Hon. Patrick Mariru on behalf of teachers from Laikipia West Constituency.

**Hon. Speaker:** The Chairperson of the Committee on Justice and Legal Affairs.

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

Reports of the Departmental Committee on Justice and Legal Affairs on its consideration of:

- (i) the State of the Judiciary and Administration of Justice Report for the Year 2016/2017; and,
- (ii) the State of the Judiciary and Administration of Justice Report for the Year 2017/2018.

Hon. Speaker, allow me to request my colleagues to have time to obtain copies of this Report at the Table Office, so that they can have time to go through them and when we come back from recess and the HBC allocates time, Members will be able to discuss this very important Report on the Judiciary.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

### NOTICE OF MOTION

**Hon. Speaker:** Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to Give Notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Education and Research Sessional Paper No.1 of 2019 on the policy framework for reforming education and training for sustainable development in Kenya, laid on the Table of the House on Thursday, 9<sup>th</sup> May 2019.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next order!

**Hon. Speaker:** Question by Private Notice by the Member for Samburu West.

### QUESTION BY PRIVATE NOTICE

*Question No.027/2019*

## ALLEGED ABDUCTION OF JOHN KIANO IN WESTLANDS

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Thank you, Hon. Speaker. I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question by Private Notice.

(a) Is the Cabinet Secretary aware that one John Kiano, a minor below four years was allegedly abducted on 5<sup>th</sup> April, 2019 at Tipuana Apartments of Brookside Gardens, Westlands area of Nairobi City County by persons believed to be security personnel?

(b) Is the Cabinet Secretary further aware that the guardians' efforts to have the matter entered in the police records at the Spring Valley Police Station on 5<sup>th</sup> April 2019 at 6.30 p.m. were thwarted by police who declined to enter the abduction record in the Occurrence Book?

(c) Has the Ministry investigated all persons and institutions involved in the matter including the persons who recorded the Occurrence Book entry No. OB.36/5/4/2019 at the Spring Valley Police Station and the Child Welfare Society of Kenya and what is the progress of the investigations?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Administration and National Security. Let us now have Ordinary Questions. We will start with the Member for Borabu.

## ORDINARY QUESTIONS

*Question No.225/2019*

## STALLED CONSTRUCTION OF KEBIRIGO-MOSOBETI ROAD IN BORABU

**Hon. Ben Momanyi** (Borabu, WDM-K) asked the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

(a) whether he is aware that the construction of Kebirigo-Mosobeti Road in Borabu Constituency has stalled despite the contract being awarded in 2014 for completion within eighteen (18) months and part of the contractual payments paid to the contractor;

(b) whether he is further aware that a section of the said road, known as Rurimi area near River Gucha, is impassable and in deplorable state due to the incompleteness of the road; and,

(c) what measures the Ministry is putting in place to ensure that the road is completed without further delays.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied before the Departmental Committee on Transport, Public Works and Housing. The next Question is by the Member for Kirinyaga County, Hon. Purity Ngirici.

*Question No.230/2019*

## INCREASED FIRE INCIDENTS IN MT. KENYA

**Hon. (Ms.) Purity Ngirici** (Kirinyaga CWR, JP) asked the Cabinet Secretary for Environment and Forestry:

(i) whether he is aware of recent fire outbreak in Mt. Kenya Forest and its environs where over 100,000 hectares of forest were destroyed;

(ii) whether he could explain reasons for the increased upsurge of forest fires in Mt. Kenya Forest, its environs and other forests in the country for the last three years; and,

(iii) what measures the Ministry has put in place to mitigate against the rampant cases of fire outbreaks and their effects to the surroundings, including reducing the total acreage of forest being lost.

**Hon. Speaker:** The Question will be replied before the Departmental Committee on Environment and Natural Resources.

The next Question is by the Member for Lugari, Hon. Savula.

*Question No.232/2019*PROGRESS IN DE-GAZETTEMENT OF MAUTUMA  
SETTLEMENT SCHEME IN TURBO FOREST RESERVE

**Hon. Ayub Angatia** (Lugari, ANC) asked the Cabinet Secretary for Environment and Forestry whether he could state the progress made in the de-gazettement of 1,577.86 hectares of Mautuma Settlement Scheme of Turbo Forest Reserve area in Lugari Constituency considering that the necessary procedures for de-gazettement of the settlement scheme were duly undertaken in 2016 and 2017.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied before the Departmental Committee on Environment and Natural Resources. The final Question is by the Member for Meru County, Hon. Bishop Kawira Mwangaza.

*Question No.233/2019*

## PENDING ISSUANCE OF BIRTH CERTIFICATES TO CANDIDATES

**Hon. (Ms.) Kawira Mwangaza** (Meru CWR, Independent) asked the Cabinet Secretary for Education:

(i) whether he is aware that over 370,000 students from Meru County are still awaiting issuance of birth certificates in order to register for their final examinations;

(ii) whether the Ministry could consider extending the period for registration of exams to cater for the 370,000 students in Meru County who are in the process of acquiring birth certificates; and,

(iii) what measures the Ministry has put in place to facilitate the students to register for their final examinations for the year 2019?

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Education and Research.

## STATEMENT

### BUSINESS FOR THE WEEK COMMENCING 4<sup>TH</sup> JUNE 2019

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order No. 44(2)(a), I rise to give the following Statement on behalf of the House Business Committee (HBC). The Committee met on Tuesday, 7<sup>th</sup> May, 2019 at the rise of the House.

As Members are aware, the House is scheduled to proceed on a long recess commencing tomorrow in accordance with the Calendar of the House and a resolution of the House of 26<sup>th</sup> March, 2019. In this regard, the HBC has not scheduled any business for next week.

Upon resumption from recess on Tuesday, 4<sup>th</sup> June, 2019, we will continue with any business that is not concluded today. It is also expected that the Budget and Appropriations Committee, alongside the departmental committees, would have concluded consideration of the Budget Estimates of the national Government for the Financial Year 2019/2020 during the recess period and table its report for debate once we resume. Scheduling of Questions will also continue upon resumption of our regular sittings.

Hon. Speaker, I now wish to lay the Statement on the Table of the House.

*(Hon. A.B. Duale laid the Document on the Table)*

**Hon. Speaker:** Before we proceed, allow me to recognise the presence, in the Speaker's Gallery, students from Mt. Kenya Senior School, Nyeri Town Constituency, Nyeri County; Kaurone Primary School, South Imenti Constituency, Meru County and Life Victory Education Centre, Ruaraka Constituency, Nairobi County. They are all welcome to observe the proceedings of the House.

## COMMUNICATION FROM THE CHAIR

### DECLARATION OF INTEREST

Hon. Members, I had indicated that I have this Communication to make. You will recall that during the afternoon sitting of Thursday, 28<sup>th</sup> March, 2019, the Chairperson of the Departmental Committee on Education and Research, Hon. Julius Melly rose on a point of order seeking the guidance of Hon. Speaker on the very important question of declaration of interest

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during committee sittings in compliance with Standing Order No.90, which proves for declaration of interest.

Hon. Melly noted that during a meeting of the Departmental Committee on Education and Research with officials from the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post Primary Education Teachers (KUPPET) on 26<sup>th</sup> March 2019, three Members of the Committee declared that they had interest in matters before the Committee by virtue of being members of both KNUT and KUPPET.

Hon. Melly further reported that during the course of the meeting, he had to severally interrupt two of the three Members and remind them of their cardinal role as Members of the Committee, apart from being representatives of the unions where they held membership or office positions.

He, therefore, sought the guidance of the Speaker regarding the following issues:

- (i) the need for a clear interpretation of Standing Order No.90 and what it entails and how it can be reinforced;
- (ii) whether a Member who declares possible conflict of interest should be allowed to participate fully in the ensuing discussion of the committee or whether the Member should excuse himself or herself from the committee deliberations; and,
- (iii) whether a Member who declares a possible conflict of interest should take part in the vetting of a nominee for appointment to a public office.

Hon. Members, You will also recall that the Leader of the Majority Party rose in support of the point raised by Hon. Melly and noted that the issue of conflict of interest in committees is still prevalent despite previous guidance from the Speaker on 26<sup>th</sup> July, 2018 cautioning that failure to disclose an interest before the commencement of deliberations creates a presumption that any contribution made to a matter under consideration by the House or a committee, however relevant, advances one's personal interest as a Member.

The Leader of the Majority Party further noted that on account of the continued breach of Standing Order No.90 by the Members, the House may have to reconsider the effectiveness of the Order. He gave an example of a unique circumstance relating to Hon. Wilson Sossion, nominated Member of Parliament, who is a Member of the Departmental Committees on Education and Research, and Labour and Social Welfare while still serving as the Secretary General of KNUT, a trade union.

He further noted that Hon. Omboko Milemba, a former Chairperson of KUPPET and a trade unionist in his own right, is also a Member of both Committees. The Leader of the Majority Party sought the guidance of the Speaker as to:

- (i) the interpretation of Standing Order No.90 including the manner in which Members are to declare interest and in what form the declaration should be made; and,
- (ii) whether a Member who declares conflict of interest should be allowed to participate fully in the ensuing proceedings of the committee or whether the said Member should recuse himself or herself from the committee deliberations.

Hon. Members, you will also recall that the Leader of the Minority Party, Hon. John Mbadi, Hon. Millie Odhiambo, Hon. Kimani Ichung'wah, Hon. (Dr.) Chris Wamalwa, Hon. David Pkosing, Hon. Vincent Kemosi, Hon. Jeremiah Kioni, Hon. Omboko Milemba and Hon. T.J. Kajwang' had all and at length weighed in on the ensuing debate wherefore, I undertook to give a considered ruling on the matter.

Hon. Members, from the point of order raised by Hon. Melly and the debate that followed, I have isolated for determination the import of Standing Order No.90 and the obligations it places on the conduct of Members of Parliament.

Standing Order No.90 on declaration of interest, provides the following:

“(i) A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.

(i) Personal interests include pecuniary interest, proprietary interest, personal relationships and business relationships.”

From the outset, I must note that the Standing Order reminds this House and its Members of the unique responsibilities delegated by the people in the exercise of their sovereignty as provided for in Article 1. Article 73 of the Constitution, under Chapter Six on Leadership and Integrity, states the following:

“(2) The guiding principles of leadership and integrity include—

(a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;

(b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;

(c) selfless service based solely on the public interest, demonstrated by —

(i) honesty in the execution of public duties; and

(ii) the declaration of any personal interest that may conflict with public duties;

(d) accountability to the public for decisions and actions; and

(e) Discipline and commitment in service to the people.”

*(Several Members stood at the Bar)*

Hon. Members, Chapter Six of the Constitution provides clear guidance on and prescribes principles of leadership and integrity which apply to the conduct of Members as State Officers. Article 73(2)(c) outlines the declaration of any personal interest that may conflict with public duties as a key principle of leadership and integrity. The practice of declaring and registering interests held by Members is not unique to the Kenyan Parliament and it is couched on the rationale that the public expects to know whether, in making decisions on their behalf, the actions of their elected representatives are motivated by personal or private influence. I will resume my seat for the Members to walk in.

Hon. Members, I resumed my seat to pave way for you to make your way in quickly, but not to begin registering.

I resume. To put the requirement for declaration of interests into further context, the Constitution, the Leadership and Integrity Act, 2012 and the Parliamentary Powers and Privileges Act, 2017, prescribe instances where the failure to appreciate the obligations imposed on a State officer and to serve in the interests of the public may lead to adverse action, including removal from office. Article 75(1) of the Constitution requires the conduct of a State officer to always accord to the office which an officer holds. It states:

“75(1) A State officer, shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

(a) any conflict between personal interests and public or official duties.”

The requirements of Article 75 of the Constitution on a State officer highlight the primacy that the Constitution attributes to the non-advancement of private or personal interest while holding a public office.

Hon. Members, as ably noted by the Leader of the Majority Party, Article 122(3) of the Constitution precludes a Member of Parliament from voting on a matter in which the Member has a pecuniary interest. This express prohibition is qualified by Article 116 of the Constitution in two ways. First, Article 116(3) allows Members of Parliament to enact a legislation which grants them a collective pecuniary benefit, but defers the coming into force of such a legislation until the term of the Members comes to an end.

On its part, Article 116(4) allows Members to enact a legislation which grants them a general pecuniary benefit that may accrue to them as members of the public. Hon. Members, an example is like Members voting to have a road constructed in a particular area.

Hon. Members, taking a leaf from the example provided in the Constitution under Article 116(3) and (4), one will note that having a personal or private interest in a particular matter is not, in itself, prohibited. Indeed, as mentioned by Hon. Millie Odhiambo, her interest in matters relating to the welfare of children having previously worked with a child welfare organisation, ranks equal with the personal interest of Members of this House who are also parents. On face value, it may, therefore, be argued that one needs to have a personal interest in a matter for it to be properly prosecuted. However, what is prohibited is the failure to declare interest and the consequent influence of the declared or undeclared interest on debate and decisions of the House or its committees.

As you are aware, this House enacted the Leadership and Integrity Act, 2012 and the Parliamentary Powers and Privileges Act, 2017 to implement Chapter Six and Article 117 of the Constitution. Section 12 of the Public Officer Ethics Act, 2003, which was enacted before the promulgation of the new Constitution provides guidance as to what constitutes a conflict of interest and the various obligations imposed on public officers generally. It says:

- “12. (1) A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.
- (2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership of other body, directly or through another person, if holding those shares or having that interest would result in the public officer’s personal interests conflicting with his official duties.
- (3) A public officer whose personal interests’ conflict with his official duties shall-
- (a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and
- (b) refrain from participating in any deliberations with respect to the matter.”

Part (6) states:

- “(6) In this section, “personal interest” includes the interest of a spouse, relative or business associate.”

Quite similarly, Hon. Members, Section 16 of the Leadership and Integrity Act, 2012, provides particular guidance as to what circumstances constitute a conflict of interest and the various obligations that the House saw fit to impose upon its Members and other State officers. It states:

“(2) Without limiting the generality of subsection (1), a State officer or a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in a conflict of the State officer’s or public officer’s personal interests and the officer’s official duties.

(3) A State officer or a public officer whose personal interests conflict with their official duties shall declare the personal interests to the public entity or the Commission.

(4) The Commission or a public entity may give direction on the appropriate action to be taken by the State officer or public officer to avoid the conflict of interest and the State officer or public officer shall—

(a) comply with the directions; and,

(b) refrain from participating in any deliberations with respect to the matter.”

Again, I put emphasis on this paragraph, which states:

“(6) In this section, “personal interest” includes the interest of a spouse, child, business associate or agent or any other matter in which the State officer or public officer has a direct or indirect pecuniary or non-pecuniary interest.

(7) Where a State officer or a public officer is present at a meeting, where an issue which is likely to result in a conflict of interest is to be discussed, the State officer or public officer shall declare the interest at the beginning of the meeting or before the issue is deliberated upon.

(8) A declaration of a conflict of interest under subsection (7) shall be recorded in the minutes of that meeting.

(9) Subject to Article 116(3) and (4) of the Constitution, a Member of Parliament or a member of a county assembly (MCA) shall declare any direct pecuniary interest or benefit of whatever nature in any—

(a) debate or proceeding of the body of which he or she is a member;

(b) debate or proceeding in any committee of that body; and

(c) transaction or communication which the State officer may have with other members of the body, State officers, public officers or government officers.”

Hon. Members, Section 16 of the Leadership and Integrity Act further requires every public entity, and for the avoidance of doubt that includes this House, to maintain a public register of interests in which State officers are to register the particulars of various interests that are outlined in the Second Schedule to the Act. These include directorships of companies, ownerships of shares, contracts for supply of goods or services, funded trips, future expectations of employment, land and property, sponsorships, direct and indirect gifts, benefits or hospitality, pending civil and criminal cases touching on a State officer, business associate or firm and the possession of dual citizenship. Under the Act, each State officer is obliged to update any change in the status of the interests registered with a public entity within one month of such change.

Hon. Members, in addition, this House went a step further and enacted the Parliamentary Powers and Privileges Act, 2017. Section 16(c) of the Act provides that the Committee on Powers and Privilege may find a Member to be in breach of privilege if the Member willfully fails or refuses to obey any rule of Parliament.

A Member who, therefore, decides to willfully disregard the provisions of Standing Order No.90 on declaration of interests may, therefore, be in breach of privilege and subject to disciplinary action as envisaged under Section 17(3) of the same Act. It is also noteworthy that the Act also incorporates in the Third Schedule a Code of Conduct applicable to Members of Parliament.

As Hon. Members will recall, the Code of Conduct, which each Member in this House swore to abide by, provides in Paragraph 4, that Members shall, in the conduct of their parliamentary duties, act in the public interest and resolve any conflict between their personal interest and the public interest in favour of the public interest. Further, Paragraph 6 of the Code of Conduct further provides as follows:

“(1) Members of the House shall—

(a) register with the relevant speaker all financial and non-financial interests that may reasonably influence their parliamentary actions;

(b) before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants, declare any relevant interest in the context of parliamentary debate or the matter under discussion; and,

(c) observe any rules agreed by the House in respect of financial support for Members or the facilities of the House.

(2) A relevant interest is an interest that may be seen by a reasonable member of the public to influence the way in which a Member discharges his or her parliamentary duties.

(3) Members shall ensure that registered interests are accurate and updated within one month of any change in particulars.”

Hon. Members, Standing Order No. 90 does not preclude Members who have procedurally declared their interest in a matter from participating in the debate on the matter in the committee or the House. The only express prohibition to the exercise of a Member’s constitutional role is with regard to voting on a matter in which the Member has a direct pecuniary interest under Article 122 of the Constitution as qualified by Article 116(3) of the Constitution, as I have noted above.

The Constitution, the Leadership and Integrity Act, and the Parliamentary Powers and Privileges Act, outline obligations placed on each Member individually. The responsibilities relate to the discipline of each Member and the House, the Committee of Powers and Privileges and other committees. It is expected that the respective chairpersons of committees shall always protect the dignity of the House in committee and the privileges enjoyed by the Members.

*(Several Members stood at the Bar)*

Once again, Hon. Members, let me resume my seat to allow more Members to make their way in.

*(Hon. Members entered the Chamber)*

Hon. Members, this was to allow Members to make their way in and those who had already got tired of being in the Chamber, to also walk out.

Hon. Members, permit me to refer the House to the ruling made by the Speaker on Wednesday, 24<sup>th</sup> July, 2014. Then, as now, the question arose, in similar framing, as to what is

the effect of failure to declare interest in a matter under consideration, and what ensues after a Member declares a possible conflict of interest on a matter. The Speaker then guided that it was the responsibility of Members to declare any interest that they may have in any matter before the House or a committee.

Let me now turn to comparable jurisdictions. In the Parliament of the United Kingdom, the regime for declaration of interests is wider than registration of Members' interests. It covers not just direct and current interests, but indirect interests, past interests and expected future interests. In the same jurisdiction, interests must be declared not only when speaking, but when giving written notices, including when filing Questions. It also extends to correspondences and meetings with ministers, public officials and other members. Paid advocacy is prohibited. Members are not allowed to engage in any parliamentary proceedings or to seek to influence others in such a way as to benefit exclusively a body outside Parliament in which they have pecuniary interest. Formal lobbying is also attracting the attention of the UK Houses of Parliament. Erskine May's *Parliamentary Practice*, an authority on parliamentary practice and procedure, notes in the 24<sup>th</sup> Edition with regard to the House of Commons:

“The House has two distinct, but related methods for the disclosure of the personal financial interests of its Members: registration of interests in a register which is publicly available, and declaration of interest in the course of debate and in other contexts. The main purpose of the register is to give public notification on a continuous basis of those financial interests held by Members which might be thought to influence their parliamentary conduct or actions. The main purpose of the declaration is to ensure that fellow Members of the House and the public are made aware, at the appropriate time when a Member is participating in the proceedings of the House, of any past, present or expected future financial interest which might reasonably be thought to be relevant to those proceedings... In addition, in the interests of transparency, in certain circumstances, Members are encouraged to declare non-financial interests as well.”

Hon. Members, the US Congress has also very robust laws governing declaration of interests by Members of the US Congress. The rules of the House of Representatives spell out a Code of Conduct for Members of the House of Representatives as contained in Rule XXIII of the 116<sup>th</sup> Congress. According to the Code, Members of the House of Representatives are required to adhere to the rules in performance of their duties as Members of the House of Representatives. It is noteworthy that the Ethics in Government Act of 1978 also contains rules on disclosure of financial interests by Members of the Congress.

It is said that the late Senator, John McCain, whom you would all recall, who was also a presidential candidate, was such a strict follower of rules of declaration of interests that he recused himself from voting on alcohol related legislation even though he ran no risk of being reprimanded by the Ethics Committee.

In the 1980s and 1990s, he is said to have recused himself from voting on Bills requiring producers to provide Government warning labels on bottles because in his view, his wife having been one of the owners of the main alcohol distributing company in the country, posed potential conflict of his interests in the matter. On matters declaration of interest, it is said his conscience led him.

Hon. Members, looking at the Parliament of Australia, in particular the House of Representatives, matters of pecuniary interests of Members are governed by Sections 44 and 45 of their Constitution and Standing Orders 134 and 231, which prohibit Members of the House of Representatives from participating in matters in which they have pecuniary interests. The

consequences are so dire that it can lead even to occurrence of a vacancy in the office of a Member of the House of Representatives.

Further, it is noteworthy that, in terms of voting, Standing Order No.134(a) of the House of Representatives of Australia's Parliament provides that a Member may not vote on a question on a matter in which he or she has a particular direct pecuniary interest other than public policy. The rule allows other Members to challenge another Member's vote on the grounds of pecuniary interest.

Hon. Members, having established the general law and practice on the declaration of interests by Members and examined comparative jurisdictions rules on conflict of interests, permit me to attempt to answer the questions which I had earlier on isolated for guidance. I will start with the first issue, namely, what is the scope of Standing Order No.90 and how it can be enforced... Standing Order No.90 should be interpreted to mean that when a Member who wishes to speak on any matter, be it in the House or before a committee, for which he has a personal interest which includes pecuniary interest, proprietary interest, personal relationships and business relationships, he or she should declare it first and failure to declare interest amounts to misconduct and abuse of privilege. It, therefore, follows that any Member or Members with interest on a matter under consideration should declare the interest before the commencement of the meeting or at any other time during debate, whenever the particular matter arises, and recuse themselves from the ensuing deliberations as may be directed.

Hon. Members, this now takes me to the second matter requiring my determination, namely, after declaring interest, what next? Should a Member who has declared interest be allowed to participate fully in the ensuing deliberations before the committee?

The answer to this Question lies in Article 122(3) of the Constitution which says:

"A Member shall not vote on any question in which the Member has a pecuniary interest." This does not give a Member the leeway to simply declare interest, proceed to participate fully in the ensuing debate and only recuse himself or herself during voting. Each case ought to be considered on its own merit. In this regard, following a declaration of interest, the chairperson of a committee or the Speaker, as the case may be, may require the particular Member to recuse himself or herself during debate on the matter, in addition to barring such Member from actual voting on the matter in question.

Hon. Members, I will now turn to the third issue requiring my response which is: Whether a Member who declares conflict of interest that directly touches on a nominee for appointment into a public office can take part in the process of vetting before the relevant committee or the House. You may wish to note that one of the roles of the National Assembly is to oversee State organs. It is, therefore, my finding that such Members should rely on their conscience, and may participate during the vetting hearing, but he or she should not take part in voting, pursuant to the provisions of Article 122(3) of the Constitution. What if the interest declared includes personal or business relationships with the candidate undergoing vetting in a committee? In such a case, it is my finding that such a Member should not only be disallowed from voting in the committee and the House, but should also recuse himself or herself during the vetting hearings and approval debate in the particular committee and in the House.

Let me now address the issue of the Members of Parliament nominated under Article 97(1) of the Constitution. These are the Members who represent special interests, including the interests of the youth, persons living with disabilities and workers. The framers of our Constitution consciously incorporated this provision in our Constitution, perhaps to ensure that the special interest of the categories of those persons is taken into the proceedings and decision-

making aspects of the National Assembly. However, we must admit that, the Members nominated under the said provision are not exempted from the application of Article 122(3) of the Constitution regarding voting in the House and our Standing Order No.90 on declaration of interest. Whereas their expertise and experience in the particular special interests is expected to guide the proceedings in the committee and the House so as to make informed decisions, they must, however, navigate cautiously to ensure that: “They are not seen by a reasonable member of the public in the streets to influence the way in which they discharge their parliamentary duties.”

In addition, even as they bring to the fore the issues of the categories of the said special interests, they do not offend the code of conduct under the Parliamentary Powers and Privileges Act, 2017. It follows, therefore, that it is not an offence to belong to a trade union. However, it is gross misconduct and out of order to wear the hat of a trade unionist or a workers’ representative and at the same time purport to also wear the hat of a Member of Parliament in the same sitting of a committee or the House. Similarly, it would be gross misconduct on the part of such a Member to use the information obtained through the committee to the advantage of or to advance the interests of those groups outside the committee or Parliament before the matter under consideration is concluded.

Hon. Members, with respect to the matter touching on Hon. Sossion, I wish to remind the House that Article 95 of the Constitution obliges this House and its committees to deliberate on and resolve issues of concern to the people. Such issues are deliberated upon and resolved in the public interest, but not to serve personal interests. Ideally, once a Member declares a personal interest in a matter, he or she has two options. That is to either contribute to deliberations in a manner that does not lead to their interest conflicting with the public interest or where the Member so elects or feels that they cannot resolve their conflict of interest in the appropriate manner, refrain from contributing to the deliberations or recuse oneself. Any other conduct would amount to courting disorder in the House and its committees and should attract the specified sanctions under the Standing Orders.

In this regard, if as alleged, Hon. Sossion declared his interest and thereafter conducted himself in a manner that exhibited a clear conflict, the Chairperson of the Committee was adequately empowered by the Standing Orders to take the appropriate action.

In conclusion, I must stress that to an extent, Standing Order No.90 is deliberately crafted to require Members to introspect each time they seek to contribute to debate. As guided in the Communication issued on 26<sup>th</sup> July, 2018 on the investigatory mandate of House committees and the conduct of Members in committees, which I reiterate and I quote: “That, prior to the commencement of every meeting, every chairperson must require that Members declare their interest in any matter under consideration.”

In this regard, it is incumbent upon every chairperson to ensure, prior to the commencement of every meeting, to ensure that Members declare their interest in any matter falling within the agenda items of that particular sitting. Any Member joining a meeting midstream ought to declare any interest before contributing on matters under consideration, and this should similarly apply to any matter proposed as additional business after the conclusion of the main agenda of the meeting.

In summary, Hon. Members, I guide as follows:

(1) That, as required under our Standing Order No.90, any Member desiring to speak on a matter in the House, for which he or she has interest, must declare that interest. Further, in accordance with Article 122(3) of the Constitution, such a Member shall not take part in the



decision-making on that matter, whether by voice vote or any other form of voting. Chairpersons of committees ought to enforce these provisions in their respective committees.

(2) That, as to whether a Member who has declared interest in a matter should continue to sit and take part in the ensuing deliberations before the particular committee or the House, I will leave that aspect to the sincere conscience of the particular Member and the instantaneous directive of the Speaker or the chairperson of the committee, as they may deem appropriate, on a case by case basis.

(3). That, where the interest declared is of personal or business relationships with the candidate undergoing vetting before a committee or the House, such a Member should not only be disallowed from voting on the approval process in the committee and the House, but should also recuse himself or herself during the vetting hearings and approval debate in the particular committee and in the House.

(4). That, with respect to the Members of Parliament nominated under Article 97(1) of the Constitution, that is, those representing special interests including the interests of the youth, persons with disabilities and workers, they are not exempted from the application of the provisions of Article 122(3) of the Constitution and Standing Order No.90. We hope that the House is now guided accordingly.

I thank you, Hon. Members.

*(Applause)*

Next Order!

## PROCEDURAL MOTION

### REDUCTION OF PUBLICATION PERIOD FOR A SPECIFIED BILL

*(Loud consultations)*

**Hon. Speaker:** Order Members! Those who have finished their session for today and are leaving, please, do it in peace. The Leader of the Majority Party, you have the Floor.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order No.120, this House resolves to reduce the publication period of the Independent Electoral and Boundaries Commission (Amendment)(No.3) Bill (National Assembly Bill No.35 of 2019) from 14 days to one day.

Hon. Speaker, this is an amendment brought by the Departmental Committee on Justice and Legal Affairs, but I do not see the Chair of the Committee in the Chamber. Basically, since we are going on recess, we are required to reduce the publication period so that it will be referred to the relevant committee. During this long recess, the committee will deal with it alongside budget matters instead of waiting until when we come back. So, this is just a Procedural Motion.

I request Hon. John Mbadi to second.

**Hon. John Mbadi** (Suba South, ODM): I second the Procedural Motion, Hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Can we all be back into the House? Let us be in the House.

*(Question proposed)*

*(Question put and agreed to)*

## MOTIONS

### EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEES FOR APPOINTMENT TO MISSIONS

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move the following Motion:

THAT, this House resolves-

- (i) to extend the period for consideration of the nominees submitted by His Excellency the President for appointment to the following Missions: Abu Dhabi, Algiers, Dublin, Lusaka, Seoul, Stockholm and UN-Habitat, by a period of fourteen (14) days from 25<sup>th</sup> May 2019, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011 relating to extension of period for consideration of nominees for appointment to a public office; and,
- (ii) that, notwithstanding the provisions of Standing Order No.42 relating to reading and laying of Messages from the President during the period of the May/June 2019 Recess in the Third Session of the 12<sup>th</sup> Parliament, upon receipt of names of persons nominated for appointment to any State office from the President, the Speaker shall forthwith refer the Messages containing the names to the relevant committee for consideration without having to recall the House for that purpose.

Hon. Speaker, because we are going on the May/June Recess, and 14 days will lapse by 25<sup>th</sup> May, 2019 when we are still on recess, this Motion asks for an extension of 14 days from 25<sup>th</sup> May, 2019 for the Departmental Committee of Defence and Foreign Relations to have ample time to consider and table their report on 4<sup>th</sup> June, 2019 when we resume.

Secondly, in (ii), we are, again, giving the Speaker, in the event the President sends more names of State Officers that require the vetting of the House, authority that he does not need to recall the House just to convey the Message of the President in accordance with Standing Order No.42. If this Motion is passed, it will allow the Speaker to forward the names to the relevant committee for onward transmission and vetting. On 4<sup>th</sup> June 2019, we will receive the reports from those committees.

This Procedural Motion is in two phases: The first one is that it gives the Departmental Committee of Defence and Foreign Relations ample time until 4<sup>th</sup> June, 2019, based on the

requirement of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011, and the second one gives the Speaker leeway. The President, in exercise of his powers under Article 132 of the Constitution, sends names to the Speaker. The Speaker does not require to recall the House just to read the Messages.

I request the Chairperson of the Departmental Committee of Defense and Foreign Relations, Hon. Katoo ole Metito to second.

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I rise to second the Motion.

These names were to be forwarded to the Departmental Committee on Defense and Foreign Relations if the House adjourns this evening for recess as shown in the House Calendar. The purpose of the recess is to do the Estimates by inviting Government Agencies to go through the Estimates for the coming financial year. My Committee oversees the Ministry of Defence, Ministry of Foreign Affairs, the National Intelligence Service and the Ministry of East Africa Community and Regional Development. With that heavy load, we request the House to give us some ample time to finish the Estimates hearing by the end of this month and also to do the hearing for the nominees and probably bring the report to the House around 4<sup>th</sup>, 7<sup>th</sup> or 8<sup>th</sup> when the House resumes.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

APPROVAL OF NOMINEES TO EMBAKASI SOUTH CONSTITUENCY COMMITTEE OF  
THE NATIONAL GOVERNMENT-CONSTITUENCIES DEVELOPMENT FUND

THAT, pursuant to the provisions of Section 43(4) of the National Government Constituency Development Fund Act, 2015 and Paragraph 5 (9 & 10) of the National Government Constituency Development Fund Regulations 2016, this House approves the following nominees for appointment to the Embakasi South Constituency Committee of the National Government Constituency Development Fund, laid on the Table of the House on Wednesday, 8<sup>th</sup> May, 2019:

- |                               |   |   |
|-------------------------------|---|---|
| (i) Stephen Omari Odera       | - | Male Youth Representative                           |
| (ii) Dancan Mulwa Nduva       | - | Male Adult Representative                           |
| (iii) Sabina Warukira Wanjohi | - | Female Youth Representative                         |
| (iv) Linet Mugasiali Madete   | - | Female Adult Representative                         |
| (v) Vincent Odongo Bunde      | - | Representative of Persons living<br>With Disability |
| (vi) Urbanus Mwikya Musau     | - | Nominee of the Constituency Office (Male)           |
| (vii) Lydia Kwamboka Obwogi   | - | Nominee of the Constituency<br>Office (Female)      |

*(Hon. Maoka Maore on 9.5.2019 - Morning Sitting)*

*(Debate concluded on 9.5.2019 - Morning Sitting)*

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Mawathe, now you have a committee.  
Next Order!

MEDIATED VERSION OF THE WAREHOUSE RECEIPT  
SYSTEM BILL (SENATE BILL NO.10 OF 2017)

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) laid on the Table of the House on Wednesday, 8<sup>th</sup> May 2019, and approves the Mediated Version of the Warehouse Receipt System Bill (Senate Bill No.10 of 2017).

*(Hon. Aden Duale on 9.5.2019 - Morning Sitting)*

*(Debate concluded on 9.5.2018 - Morning Sitting)*

*(Question put and agreed to)*

**CONSIDERATION OF REPORT AND THIRD READING**

THE NATIONAL COHESION AND INTEGRATION (AMENDMENT) BILL

*(Question put and agreed to)*

**Hon. Speaker:** Mover.

**Hon. Maina Kamanda** (Nominated, JP): Hon. Speaker, I beg to move that the National Cohesion and Integration (Amendment) Bill (National Assembly Bill No.12 of 2019) be now read the Third Time.

I request Hon. (Prof.) Jacqueline Oduol to second.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): I second.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

## BILL

### *First Reading*

#### THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) (NO.3) BILL

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

**Hon. Speaker:** Hon. Members, I wish to make a clarification that this particular Bill under Standing Order No.127(1) stands referred to the Departmental Committee on Justice and Legal Affairs, and that pursuant to Standing Order No.127(6)(a), the earlier Bill, namely the Independent Electoral and Boundaries Commission (Amendment) (No.2) Bill of 2019 sponsored by Hon. Jeremiah Kioni, MP, and read for the First Time on 2<sup>nd</sup> May 2019, will be referred to the Constitutional Implementation Oversight Committee so that there is no conflict.

It is so ordered!

Hon. Members, I interrupt the business as listed in the second Supplementary Order Paper to allow the Leader of the Majority Party to lay certain Papers, which are important, on the Table of the House.

## PAPERS LAID

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

1. Financial Year 2018/2019 Supplementary Estimates II, Programme-Based Budget.
2. Financial Year 2018/2019 Supplementary Estimates II, Recurrent Expenditure.
3. Financial Year 2018/2019 Supplementary Estimates III, Development Expenditure.
4. Memorandum on the Financial Year 2018/2019 Supplementary Estimates II.

**Hon. Speaker:** Hon. Members, given that this is the Supplementary Estimates II, it is only fair that we give the Budget and Appropriations Committee time to make some comments as well as guide the House as to which one will take precedence; these ones or the Estimates which were laid on the Table.

Let us hear Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I appreciate being given this chance to just comment on the tabling of the Supplementary Estimates II. The House should express its displeasure with the way the National Treasury is treating the business of the House. We are only less than seven or so weeks to the end of the Financial Year and to be tabling a Supplementary Budget at this time of the year, when by last week, you had already committed the Annual Estimates for the Financial Year 2019/2020, is inappropriate.

I am not privy to what is in the Supplementary Estimates II, but I hope they do not occasion additional spending in the current financial year.

The Calendar of this House is not a secret. Everybody in this country knows when the House goes on recess. The National Treasury must have been aware that the House is going on recess today. Having tabled the Annual Estimates for the 2019/2020, it gives Members time to look at them during the recess. That is all I wanted to mention, to just remind Hon. Members, and especially chairs of the committees, that we will have no choice other than process the two concurrently. Should there be anything that needs expenditure in the course of this financial year, unless in your view and in the view of the Leader of the Majority, there is need for a special sitting in between; it means we can only do an Appropriation Bill for Supplementary Estimates II and for the Financial Estimates for 2019/2020 concurrently between the first and second weeks of June. This will leave the spending entities of the Government with less than two weeks to spend the money.

If Supplementary Estimates II is meant to regularise what has already been spent, there is no big problem although we must make it clear to the National Treasury that they should adhere to this House's Calendar so that we do not overwork Members. Committees will be lost on which Bill to give priority, but I beseech them to process both of them concurrently so that we can approve them as soon as we resume at the beginning of June.

I take this opportunity to remind committee chairs that we will be proceeding to a conference with all of them. It is important that we all attend the conference, which starts on Sunday and ends on Wednesday, so that we can agree on the formalities on how to process all these things together. But as I said, it is important that the House expresses its displeasure with the way that the National Treasury and the Executive are treating this House. They must take the business of the House seriously.

**Hon. Speaker:** Yes, Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, it is disturbing that we are getting Supplementary Estimates II from the National Treasury at this time. We should express our disgust - not displeasure - at what the National Treasury is trying to do. We have given a serious indication to the Treasury that our dealing with the Budget Estimates for the 2019/2020 Financial Year will not be business as usual because this country is overburdened in terms of taxation as well as credit and debt levels. Probably, the National Treasury is trying to distract us from focusing on the Financial Estimates for 2019/2020.

Hon. Speaker, I want to make a personal request to you and the Chair of the Budget and Appropriations Committee. I believe that these Supplementary Estimates have been tabled here in line with Article 223 of the Constitution. If that is the case, that Article says that, subject to clauses 2 to 4, the national Government may spend money that has not been appropriated if the amount appropriated is not enough, and if money has been withdrawn from the Contingencies Fund. The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money.

My understanding is that this is money that has been spent. Therefore, there is no hurry in dealing with these Supplementary Estimates. Let us focus on the Annual Budget Estimates. Let us keep these Supplementary Estimates pending because what the law requires is for the National Treasury to seek Parliament's approval. As to when we give that approval, the House can decide. We can finish with the Budget Estimates first and give the approval even in July. This is because Supplementary Estimates have become a way through which the National Treasury introduces expenditures that sometimes are fictitious.

Remember last time we rejected an allocation for the Ruaraka land in Supplementary Estimates. I do not know what the National Treasury has done. Probably, that is what the

National Treasury is trying to do through these Supplementary Estimates. That is probably why they have introduced these Supplementary Estimates at this time.

Hon. Speaker, in order for us to do justice to this country, we must focus on the Annual Budget Estimates. I urge the Chair of the Budget and Appropriations Committee and all departmental committee chairs that we focus on the Annual Estimates for the 2019/2020 Financial Year. Let us deal with the Appropriation Bill by 30<sup>th</sup> June and then we look at the Supplementary Estimates. There is no rush. This House has no time limit in dealing with these Supplementary Estimates.

Thank you.

**Hon. Speaker:** Of course, I hope that in order to fully comply with Article 223, there is also need for indication as to when the expenditures happened because the approval of the House should be sought within two months.

Yes, Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, I agree with you, but it is the seeking of the authority which should be done within two months. The approval can be given any time. That is my understanding. They have already sought the authority. So, they have fulfilled their requirement. It is now for Parliament to play its part. There is no condition for us to give the approval within two months. We can give the approval afterwards. That is why I was asking that if the money has been spent and they are seeking approval, we can put the Supplementary Estimates aside for the time being and deal with the Annual Financial Estimates. We can come back to the Supplementary Estimates later on.

**Hon. Speaker:** Hon. Mbadi, before you finally sit down, if the expenditure happened in January this year and the approval is being sought in May...

**Hon. John Mbadi** (Suba South, ODM): It is unconstitutional!

**Hon. Speaker:** Precisely. That is the point I was raising.

**Hon. John Mbadi** (Suba South, ODM): Exactly! Actually, the Constitution says the approval of Parliament for any spending under Article 223 shall be sought within two months after the first withdrawal. The withdrawal may be continuous covering, say, three months, but two months after the time of the first withdrawal, the Treasury should seek the approval of Parliament. So, we will start calculating from today. If there is expenditure dating beyond 10<sup>th</sup> March, it is unconstitutional.

**Hon. Speaker:** Of course, there is also a limit on the percentage. It is only 10 per cent. Therefore, when the committees consider Supplementary Estimates, they must also try to find out whether any advance expenditure exceeds 10 per cent of what had been voted for.

Let us hear the Leader of the Majority Party.

**Hon. A.B. Duale** (Garissa Township, JP): Hon. Speaker, Hon. Mbadi did not get what you said first. That is the work of the Budget and Appropriations Committee. The Chair and Hon. Mbadi are Members of the Budget and Appropriations Committee. They need to scrutinise and see whether where a Cabinet Secretary has used Article 223 - complied with the Constitution – and whether Parliament's approval has been sought within two months of the advance spending. However, the tabling of the Supplementary Estimates II is within the law. Let me make it clear that the Cabinet Secretary has not broken the law. He has complied with the law and Parliament, in its wisdom, must regularise expenditure incurred under Article 223. Of course, even as we consider the two-month period, we must remove the days we were on recess. It is very clear. Can I finish my contribution? In fact, when the House is on recess, that is when the law allows you to...

*(Hon. Mbadi spoke off record)*

Hon. Mbadi, I gave you time to speak.

If, like now, we go for a long recess, then the Cabinet Secretary can spend within that framework and then come and request the House. After looking at this Supplementary Budget, the end result will be the Supplementary Appropriation Bill. I want to indulge Hon. Mbadi and Hon. Ichung'wah that just because the Cabinet Secretary for the National Treasury has misbehaved, we should not allow the House to misbehave. I want you to start with the Supplementary Budget because it is not big. By the time we come back from recess on 4<sup>th</sup> June 2019, you will table the report of the Supplementary Budget. Maybe, there could be money for the Parliamentary Service Commission (PSC) and the National Government Constituencies Development Fund (NG-CDF).

*(Laughter)*

What I am saying is that we have not looked at the books. If you may allow me, maybe there are some critical sectors even in the Judiciary. So, let us not rush into conclusions. I want to tell the Chairperson and my counterpart, the Leader of the Minority Party, that just because somebody could have misbehaved, two wrongs cannot make a right. I want you to look at the Supplementary Budget so that by the time we come back from recess on 4<sup>th</sup> June 2019 you table both the report of the Financial Estimates and the Supplementary Budget. I am sure the Chairperson and the Leader of the Minority Party are capable. Two wrongs do not make a right. In future, in the next financial year, through the Speaker, we will advise the National Treasury. For now, I think, they have not broken any law. We are only taking caution because they have misbehaved. The Cabinet Secretary called me this morning and he was in Los Angeles in the roadshow for the second Eurobond. So, he is busy making sure that we get resources for investment. We should, therefore, not harass a hard working Cabinet Secretary.

**Hon. Speaker:** Hon. Members, as you may be aware, this is not a debate because there is no Motion. I merely allowed the Chairperson of the Budget and Appropriations Committee to make those comments. Can we move to business? We have business here, and today is the last day before you proceed for recess. It will be better if we can spend the balance of the time now dealing with business. Suddenly now everybody has a point. Let those points be considered during the sectoral hearings. It is not about procedure. The procedure that was followed is correct as it has been clearly pointed out. It is provided for under Article 223 of the Constitution. Nothing has been breached. For the rest of the details, the committees will be looking at things like when the withdrawals happened and such like other details exceeding the permissible limits.

Let us go on with business.

Next Order!

## BILL

### *Second Reading*

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL



*(Hon. Aden Duale on 9.5.2019 – Morning Sitting)*

*(Resumption of Debate interrupted on 9.5.2019 -Morning Sitting)*

**Hon. Speaker:** Hon. Members, the following Members had contributed to this Bill. They were the Mover, Hon. A.B. Duale; the Seconder, Hon. Hon. William Cheptumo; Hon. Makali Mulu, Hon. Joseph Limo, Hon. (Dr.) Victor Munyaka, Hon. (Dr.) Chris Wamalwa, Hon. Mutai Kiplangat and Hon. Kipkoech Tonui, who was on his feet. He has a balance of two minutes. Hon. Tonui, do you wish to make use of your balance of two minutes?

*(Hon. Tonui responded off record)*

Very well. The people of Bomet Central Constituency should be heard.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Speaker. I am ready to proceed. However, you may need to correct my name. I am not “Kipkoech”. I am “Kiprotich”. I do not know where that name is captured.

**Hon. Speaker:** I know you are certainly Tonui, Ronald or Bernard.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you. That is my name. I had already commented on a number of amendments on various Acts. I want to continue with the Merchants Shipping Act. We want to cede the power of this House to the Cabinet Secretary because what we are proposing here, notwithstanding any other provision of this Act, is that the Cabinet Secretary may, on the recommendation of the Authority by a gazette notice and subject to such conditions as they may be appropriate, exempt any Government entity or enterprise from the provisions of this Act where such exception is in public interest. I believe this is ceding power of this House to the Executive to make laws. That is not the way to go. When it comes to the issue of public interest being determined by the Cabinet Secretary, surely that is giving a blank cheque to the CS to write on. Therefore, I oppose this proposal. We should never do such an irresponsible act of handing over the responsibilities of Parliament to another arm of Government.

On the Court of Appeal Act, where we are proposing an amendment to introduce some recesses, it is unfair. Each individual judge of the Court of Appeal can proceed on leave. He can go on holiday, but not the whole court taking leave during a certain period. That will be unfair to clients who are seeking stay-orders from the Court of Appeal. Individual judges should be the ones to take that leave, but not the whole court. That will be unfair since some issues are very urgent to clients who go to courts and they need to be heard. So, if the court will be away on recess for a period of nearly a month, from mid-December to mid-January...

**Hon. Speaker:** Let us have Hon. Nassir Sheriff.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Ahsante, Mhe. Spika. Ningeomba nitumie lugha fasaha ya Kiswahili ili tuweze kufahamikiana. Kabla ya Kenya kuwa na mfumo wa serikali ya vyama vingi na katiba mpya ambayo tunaitumia sasa hivi, kulikuwa na kipengele katika sheria ya State Corporations Act. Kipengele hicho cha 5(a) kilikuwa kinampatia ruhusa Rais wa Kenya ya kuwa, licha ya masuala yote yaliyoko pale, Rais akiweza kupeleka ilani katika *gazette notice*, anaweza kuinua sehemu yoyote katika sheria hii isipokuwa vipengele 17 peke yake. Sasa, tuangalie sarakasi ya marekebisho ambayo yanahitajika kufanywa kutumia Mswada huu kumba kwa lugha ya Kiingereza Miscellaneous Amendments Bill. Hii inajaribu kumpatia uwezo na nguvu Waziri. Wakati ule, ilikuwa Rais wa Kenya, baada ya kuingia Katiba mpya na

mfumo mpya wa Kenya inavyoendeshwa, Bunge hili hili likaamua kutoa kipengele kile kuwa, hakuna yeyote anayeweza kuinua sheria yoyote ya Bunge isipokuwa Bunge lenyewe. Lakini, huu Mswada kisawasawa – lau hawana nia mabaya na hakuna nia chafu katika masuala haya – ilikuwa iletwe kwa kupitia Mswada wa maana si Mswada kumba ambayo kuna uwezekano wa watu kutoweza kuona na kujua ni kitu gani kinachoendelea.

Bunge hili lilikataa ilhali tunaletewa Mswada ili tukubali ya kuwa Waziri akiamua, licha ya mambo yaliyopitishwa Bungeni, anaweza kuinua sheria ambayo imewekwa na Bunge hili kwa kalamu yake. Kuna mambo mengine tutayahisi...

*(Hon. Aden Duale spoke off record)*

Ndugu yangu, Mhe. Duale anasema kuwa hafahamu lugha yangu, lakini ningependa zile dakika zilizobaki niweze kutoa duku duku langu, nisije nikazungumza kwa lugha ambayo pengine ni ya hasira nikaambiwa ni saumu. Ni zile hisia za hawa watu wanaojaribu kutuchukua sisi. Ukienda katika maeneo, anapotoka Mhe. Duale, ni mfano wa kuuziwa mifugo kwa kuonyeshwa wayo wa wale mifugo waliopita. Unaambiwa kwa kuangalia mfugo ule amepita hapa, amewanda na ukiangalia zile kato vile alivyoweza kupita pale... Kule kwetu mfano mwingine unaoweza kutumiwa ni kupelekwa katika bahari kisha uone yale mawimbi yanavyopigwa, mvuvi aanze kukuuzia samaki akuambie hapa kuna sulisuli, kolele, papa na nyangumi nitakuuzia kwa kuangalia tu jinsi yale mawimbi yanavyopiga. Ni muhimu sana Kiongozi wa Walio Wengi...

*(Hon. Aden Duale spoke off record)*

**Hon. Speaker:** What is happening?

**Hon. Abdullswamad Nassir** (Mvita, ODM): Mhe. Spika, wakati mwingine kuna watu ambao hawafahamu zile sheria za Bunge wanaona kwa kuita jina lako wao hutukatiza maneno. Katika hali yaa kutukatiza maneno, hatufahamu nia yao ni ipi. Ningemuomba aache niendelea ama umkataze kuendelea kuzungumza...

**Hon. Speaker:** Hakuna mtu amekukataza kuchangia. Endelea

**Hon. Abdullswamad Nassir** (Mvita, ODM): Ningependa tu kueleza kuwa lau wangekua na nia safi, Mswada huu ungeletwa kwa njia yaa kisawasawa sio kwa njia ya Mswada kumba. Huu Mswada Kumba ukiletwa, njia na madhumuni na nia ilikuwa ni Mswada kama huu ukiwekwa huwa ni Mkusanyiko wa sheria tofauti tofauti lau kuna mabadiliko ya herufi na mambo madogo madogo ambayo hayana uzito wa maana hivyo. Lakini leo kupeleka Mswada kama huu kwa kupitia njia hii, ni njia ya ulaghai ambayo inatumika. Watarejea hapa.

Ningependa kulielezea Bunge kupitia kwako wewe Spika kuwa huu Mswada ukibadilishwa, njia na madhumuni ni nini? Serikali ya Japan ilitoa bilioni 27 kukajengwa terminal mpya kule Mombasa na kukaandikwa mkataba. Katika ule mkataba, walielewana kuwa lau kutakuwa na nia ya kuwa shirika ambalo si KPA kuendesha terminal ile basi kulikuwa kutumike Public, Private Participation, ile Act iweze kutumika. Leo tunajaribu kuletewa mashirika ambayo niya kibinafsi kutumia njia ambayo si sawa.

Lugha watakayotumia ni kuwa njia hii ni kuweza kuleta Kenya National Shipping Line. Mbele yangu, kuna stakabadhi ambazo zimeletwa katika kamati tofauti za Bunge; kuna karatasi zenye kuonyesha hii Kenya National Shipping line ni ya nani. Asilimia 74.3 inafaa kuwa ya

KPA, asilimia 12.5 ni ya Unimar na asilimia 12.5 nyingine ni ya kampuni DEG. Lakini Serikali wamekubaliana na kabla ya sheria kupitishwa, lakini hizo hisa hazijatolewa. Hivi sasa, KPA ina asilimia 53, Kampuni ya AON ina asilimia 23, kampuni ya Unimar ina asilimia 7, na Kampuni ya DEG ina asilimia saba. Sasa wanajaribu...

**Hon. Aden Duale** (Garissa Township, JP): Kwa hoja ya nidhamu, Mhe. Spika.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Ningeomba kiongozi anipatie ruhusa

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

**Hon. Aden Duale** (Garissa Township, JP): Mheshimiwa Spika, Mjumbe wa Mvita na kiongozi wa kamati ya PIC amesema maneno kuhusu vile makampuni tofauti wanamiliki hisa zao. Inawezekana atoe ushahidi ya kutosha kuwa KPA ina hisa za asilimia alizosema? Nasimama katika kanuni za Bunge Nambari 91. Kama hana ushahidi, basi nitamuuliza ayakanushe matamshi hayo.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Mhe. Spika, asante sana. Hii ni barua iliyoandikwa kwa Karani Mkuu wa Bunge. Haya si maneno yangu mimi. Kwa ruhusa yako, Bwana Spika, ningeomba niweke katika meza waweze kuikubali ama kuikataa karatasi hii.

**Hon. Speaker:** Table it.

*(Hon. Abdullswamad Nassir laid the document on the Table)*

**Hon. Speaker:** You can continue as I look at it.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Unajua tatizo hapa ni kuwa kila mmoja hujifanya kuwa Spika katika Bunge hili. Ningeomba tu niweze kutaja jambo lingine hapa kwa sababu katika hisia ambazo wanajaribu kutumia, hawa mabwana; la kwanza na la pili wanasema kutakuwa na nafasi za kazi. Suala lile tunajiuliza sisi, hatukatai na hakuna anayepinga ya kuwa ni sawa tuwe na maendeleo na kuwe na usawa katika nchi. Kwa nini iwe ni kampuni moja pekee yake ambayo imepatiwa nafasi hii bila ya kuwa na mkataba wa maana ambao umefuata sheria? Kwa nini ikiwa tunataka kupeana port yetu kwa kampuni kwa sababu KPA imeshindwa kuiendesha, kwa nini kusiwe na competitive bidding? Natumia lugha hii ili kuwakumbusha na kuwafahamisha Wakenya. Kwa nini kusiulizwe na kuwekwe makaratasi ya kuambiwa ya kuwa kampuni ambayo inataka kufanya kazi hii lazima ihakikishe imeajiri watu elfu kumi kazi. Jambo la pili tunataka kujua ni, mtatoa fedha ngapi kutupatia?

Ukitaka kujua ulaghai, katika Bunge hili hili, kupitia sahihi yako, niliuliza swali hapa na ukapeleka swala hili kwa wenye kuhusika, ya kuwa kuna mashirika ya nje badili ya kuajiri Wakenya wanaajiri watu ambao sio Wakenya licha ya kuwa Wakenya wana uwezo wa kufanya kazi zile. Majibu tuliyoyapata na niko tayari kwa sababu haya majibu yana muhuri wa Bunge. Majibu ambayo yaliletwa na Waziri husika na aliyekuwa msimamizi wa Kenya Maritime Authority ni kuwa wanakubali kuna tatizo na wakaelezea ya kuwa wako katika hali ya kubadilisha sheria.

**Hon. Speaker:** You know I gave you extra time because of the point of order. Let me make this observation. This photocopy of the letter appears to be authentic, but I wish to make the following observation. This letter is written to the Clerk of the National Assembly by the Kenya National Shipping Line Ltd. It relates to appearance before the PIC. I wish to caution. Hon. Abdullswamad is the Chair of that Committee. He has brought the document which was supposed to be before his Committee before the Committee has tabled any report as to their

determination of this matter. I want to caution. If this is the way chairs of committees are going to treat material that is provided to them, or, indeed, even Members, then you are going to make committees become a laughing stock. People will start fearing giving you information. You have not sat as a PIC to deliberate on this and bring a report.

It is quite telling because you are the Chair of the Committee and you have taken the liberty to make a photocopy. I do not know how many of your Members have also made copies and where those copies could be now. They could be all over the streets. This shows bad leadership, because as the Chair of the Committee to do this, we do not know who else has decided also to make copies of this. What you are supposed to do is deliberate as a committee.

On the day you table your report, it becomes public document because the information you will have given will have been processed through your committee. Now as the Chairman, you have decided to pick copies. If this is the way you do it in the committee, then the committee is going to lose credibility. When people start writing to say that they are afraid of providing information, it is because of this kind of behaviour.

Hon. Sheriff, this does not prove anything other than to show shareholding. There was a reason why you wrote. This should be accompanied by a report of what your committee has deliberated on and resolved and recommending to the House. This is premature. So, for purposes of this debate, this particular photocopy is inadmissible, though it appears authentic, for the reasons I have stated.

I want to caution Members. Avoid making photocopies of documents that are presented in committees. Even if you want me to see, please, avoid. I do not want to see until you have tabled your report. I do not need to see. As a committee, you have power under the Constitution and the Standing Orders to seek whatever information. When it comes to you, please, process it as a committee. Do not even bring it to me. If it does not come through me, do not bring it to me. Just process it, because it is meant for you as a committee. When you are through with it and you have done a report, I will see what documents you have seen as a committee.

If we allow that process to go this way, then you are even selling the staff. The staff will also start making photocopies of documents. Where they take those documents, you will never know. How they are used and the purposes for which they may be used out there, we do not know. So, we will not admit this document here. Take it to wherever. I do not know how many copies of this nature you may be keeping, but you can take it back. You have made your point. But, please, desist from this way of transacting business. It is really unprocedural. I am afraid if the staffs serving your committee know that the Chair is in this kind of modus operandi. Do not be surprised when you start seeing documents which you did not think ought to have been somewhere where they are being floated in the streets. It could compromise the integrity of the work of the committee. This is just a word of advice.

Hon. Abdullswamad, I will give you one more minute. Please, conclude.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Asante sana, Mhe. Spika. Nashukuru kwanza kwa mwelekezo wako kuhusiana na karatasi hii. Pili, hii karatasi hawakutupatia sisi tulipokuwa katika kikao cha Bunge. Tulikuwa tumeitwa kama Wajumbe wa Pwani. Katika hali

ya kuuliza, hii karatasi waliitoa pale. Sio kuwa tumeitoa katika kamati. Tatu, nasisitiza tena ya kuwa lao, nia na madhumuni yao ni kuhusiana na mambo ya wafanyikazi. Kwa nini yale maswali yote ambayo tumeyauliza, si mara mora si mara mbili, bali mara tatu, majibu ambayo yameletwa katika Bunge hili wakakubali ya kuwa kuna matatizo na wakasisitiza ya kuwa watabadilisha sheria? Mpaka leo hawajafanya jambo hilo. Licha ya hayo, wamejaribu kupenyeza mambo kwa njia ambayo sio mwafaka.

Asante sana, Bw. Spika.

**Hon. Speaker:** The Chair of the Departmental Committee on Environment and Natural Resources, speak on the areas you have covered in your Committee.

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Speaker for giving me the opportunity to contribute on this important Bill. The Committee on Environment and Natural Resources has been seized of this matter. We have prosecuted it and we have proposed various amendments, especially on the title of the proposed amendments.

The other critical issue is to do with public participation. We invited members of the public who had shown interest in this matter. This is especially to do with issues of conservation. We have proposed further amendments to ensure that owners of conservancies which are around these areas are properly represented in the compensation committees.

With those few remarks, I support.

**Hon. Speaker:** The Member for Kilifi North, you have the Floor.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you very much, Hon. Speaker. I would like to contribute to this Bill, and specifically focus on the Merchant Shipping Act. The amendment that is proposed is a dangerous one because it is unconstitutional. It gives out the powers of this House to a Cabinet Secretary. On that basis, it is dangerous for us to continue to entertain the Bill. This amendment is an attempt to privatise an important Government institution through the back door. We have a whole Privatisation Act in this country. We have the Merchant Shipping Act. To give sweeping powers to a Cabinet Secretary to set aside a whole law just because of certain interests is dangerous and should not be acceptable. It flies in the face of the Constitution that the powers to make laws in this country rest in this Parliament. Today, we are giving an opportunity to a CS to be a law-making organ. As we deliberate on this Act, it is very important to protect the mandate of the House and ensure that separation of powers is preserved as enshrined in the Constitution.

What is also worrying us is the attempt to take away its mandate, dangerously. The mandate of the KPA to manage the Port is being taken away through these amendments. The danger is that the CS can allow the ports in this country to be managed by other entities apart from the KPA. We know that KPA has been making huge profits. They declared over Kshs9 billion profits.

Today, if we give out this berth to another person to run it, we will make more money, but we know the shareholding comes through the Kenya National Shipping Line. People are saying that we will have more jobs and business, but we have seen the attempted take-over of the Kenya Airports Authority (KAA) in Nairobi by a company that is already making losses. It is the same modus operandi to take away an entity that is profitable and give it to people that we know may not even have the experience to run it. Yes, we would like our young people at the Coast to have jobs. We would like the jobs created, but if we are going to run the new terminals under the current management, we will have more jobs created other than trying to throw away Government entities from running ports and giving them to private entities

I would like to suggest and bring this at the Committee stage to request that this section be deleted, so that we have a proper mechanism to privatise, if we must. It is completely unnecessary. To have privatisation through a Statute Law (Miscellaneous Amendment) Bill and remove a whole Act flies in the face of the Constitution. It is unacceptable and we will not sit to watch the powers of the House being taken away by a miscellaneous amendment.

Thank you.

**Hon. Speaker:** Yes, Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I rise to speak on four provisional amendments that are in this Statute Law (Miscellaneous Amendment) Bill. One is on the Micro Finance Act. The Bill proposes to amend to provide for the conduct of business by sharia compliant microfinance business which is a welcome thing. I support that. But the sponsor of this Bill, who is the Leader of the Majority Party, should consider having some of these things come under the Finance Bill, so that he also engages the public through public participation. This will also give people an opportunity to understand how many micro finance institutions are getting into sharia compliant business. In this day and age where people have problems on where to access credit, we should encourage even those sharia compliant institutions to offer micro finance business.

Hon. Speaker, recently when we were in Mombasa for the Leadership Conference, we had a presentation from the Kenya Association of Manufacturers. One of the issues they raised is something I am happy to see being covered under this Statute Law (Miscellaneous Amendment) Bill. This is on the issue of VAT that provides for a tax payer to apply any withheld tax to his credit to offset any other tax liability due from his tax payments.

I want to speak here as an SME business person that one of the things that many of us in the SME sector are suffering from is having very huge credits. Even huge manufacturers like those in the manufacturing industry, like KAM, were saying that they have huge credits in VAT, but are not able to apply them to offset any other tax liabilities that they have. So, this provision will go a long way in helping SMEs, and manufacturers' endeavour to support our manufacturing sector under the Big Four Agenda to offset their tax liabilities against any credits that they may have on VAT.

On the provisions in the Companies Act that seek to amend the Act to keep a register of beneficial owners, again, as we have said in support of what the President said during his State of the Nation Address to this House, we must be seen to be supporting him in the fight against corruption by enacting legislation that seeks to the fight corruption so that we can move away from the vigilante justice and political narratives that we have seen in the past. This is one such legislation that will help ensure that stolen public assets that are being hidden in companies whose owners we do not know are exposed. Now you can walk to the Companies Registry and know who owns a company as much as they are not listed as shareholders and directors of the company. The particular provisions will go a long way in ensuring that we support the Government's endeavours in the fight against corruption by doing what we should be doing in this House; legislating and not pushing political narratives out there.

On the subject that has been spoken to by Hon. Abdullswamad and Hon. Owen Baya from the Coast on the Merchant Shipping Act, this provision seeks to amend the Act to exempt Government entities or enterprises from the provisions of the Act in furtherance of public interest of Government policy.

Hon. Speaker, I am happy you are the one on the Chair today because when you were a Member for Siakago, you had the privilege and honour to chair the Public Investments

Committee (PIC) in the 1990s. I served as the Vice-Chair of PIC in the last Parliament and had opportunity to read your reports, at least, from the 6<sup>th</sup> to the 11<sup>th</sup> of the PIC. A provision just like this one existed in the 1990s before you came to this House.

If you go back to your own reports as the Chair of PIC, you will see the myriad of issues that you had to deal with as Chair of PIC, namely, issues that had to do with theft in NSSF, KPA, the National Bank of Kenya and the East African Portland Cement. Even today, those institutions are still dealing with problems that were created by such a provision in law. You must ask yourself: What mischief is there or what are we trying to cure by bringing an amendment like this that exempts a State corporation from a provision of law? What this amendment is saying is that you exempt a particular State corporation or a number of State entities from the provisions of the Act; the State Corporations Act.

We are here to make laws. How do we make laws and then ask that State corporations that we have created under those laws to be exempted from those laws? We must be good students of history. I studied history in my first and second year in university. That is why when I saw this, I remembered that the reports that I read were authored by none other than yours faithfully, our Speaker, as Chair of the PIC.

That is why I think Hon. Abdullswammad, the Member for Mvita, who is the able Chair of PIC today, is very passionate about this issue. We should not allow this House to be used to create provisions in law that exempt State corporations from the same laws that we have passed. It is tantamount to asking that we exempt Parliament from the provisions of the law and operate like we are in the jungle.

Hon. Speaker, you remember in the 1990's when this provisions existed in law, at least, that time we gave these powers to the then President, because it was believed that the President is elected by Kenyans and he would act in the best interest of the public. Today, we are seeing this amendment being sneaked in through a Statute Law (Miscellaneous Amendment) Bill and we are giving these powers not to the President, who is elected, but to a CS, who owes nothing to the people of Kenya.

I have heard someone say he will be bringing an amendment. I think it is Hon. Owen Baya. I want to state categorically today, that I will support that amendment. If Hon. Owen Baya does not bring it, then I will bring one to remove this particular provision because we must protect our State corporations. This must be in line with what the President said here when he addressed this House. We cannot take a single step backwards in the fight against corruption. If we want to support the President in the fight against corruption, then we must as a House speak loudly to protect our State corporations.

On the National Social Security Fund (NSSF) if you can remember, it is there in the Reports if Members take time to read some very good reports from the 6<sup>th</sup> to 11<sup>th</sup> Report of the Public Investments Committee. NSSF was forced one morning to degazette land which was owned sometime by Kenya Railways Corporation (KR) and the same land was sold and in the evening it was degazetted and people walked away with hundreds of millions. What is it we want to do with this particular provision today?

I read mischief and I want to be counted among the Kenyans and legislators in this House who will support the fight against corruption and support His Excellency the President by ensuring that such retrogressive laws never see the light of day on this Floor. This is very mischievous and I wish we were giving these powers to President Uhuru Kenyatta whom we elected, voted and trust in the fight against corruption. But, Cabinet Secretaries who can walk out of office tomorrow because they owe nothing to any Kenyan and nobody has voted them in as

much we have vetted them, I would rather be more comfortable if these powers were given to the President.

As I conclude, Hon. Speaker, even before we go to the Third Reading, I will oppose and urge Members in this House to oppose such retrogressive legislation that will only entrench corruption in this country.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. I want to contribute to this Bill by identifying three areas. One is the Merchant Shipping Act. Like already indicated by earlier speakers, the Statute Law (Miscellaneous Amendments) Bill or the omnibus as we talked about it in the morning, is being used to sneak in certain laws, which will advantage certain groups of people, maybe business people or companies that have vested interest in certain areas.

On this particular Act, the powers that should be vested in the institution of Parliament are being surrendered to a Cabinet Secretary who can change it anytime. Therefore, from my position of looking at it, we should oppose. I stand alongside other MPs to ensure this particular one does not go through.

Secondly, I want to comment on the Parliamentary Service Commission. Again, this is a major law which requires us to look at it as a substantive law. But, it has been introduced as a minor law within the Statute Law (Miscellaneous Amendments) Bill.

In this case, we want to create extra Chief Executive Officers (CEOs) in the PSC. The PSC like all other commissions is created under Chapter 15 of the Constitution. All these commissions have one CEO but in our case we want to create a multiplicity of CEOs. If we look at Article 127 of the Constitution, the Chair of PSC is the Speaker and the Secretary is the Clerk of the Senate. Whoever made this law must have been very keen to look at the sharing and balance of power between the two Houses. Therefore, enhance checks and balances in the operation of the House. But, now in this Statute Law (Miscellaneous Amendments) Bill, we want to create not only two but three accounting officers in the PSC. Therefore, I think this is an area that requires serious revisiting by the entire House. I almost compare this to the laws that were made somewhere in 1966 when we had Kenya African National Union (KANU) as a political party and the late Jaramogi Oginga Odinga was the Vice-President. To vulgarise the powers of Odinga a number of other Vice-Presidents were created and if you follow your history now that the previous speaker talked about having been a very good student of history, that is how Odinga resigned from KANU and moved to another party and that is a story for another day. I think this law is not in good faith. It is actually supposed to vulgarise the Office of the Secretary to the PSC. Therefore, I do not support it and we shall be making amendments to the extent of opposing.

Lastly, is the amendment that concerns the Court of Appeal, we want to again make a law that will influence the operations of the Court of Appeal. There must be a reason why there is separation of powers between the three arms of Government, that is: the Executive, Parliament as the Legislature and the Judiciary.

For us to pretend that now we want to control or make a law that will in essence change the Act that governs and manages the courts, we are overstepping our powers to manage the court system. This will actually beat the principle of separation of powers. If anything, we shall again be dealing with the laws that deal with labour, that is, the Labour Relations Act which



defines how a worker – because these judges are simply workers- should take and proceed for leave. Therefore, this again will be interference with another arm of Government.

Hon. Speaker, with those many remarks, I want to support but I look forward to these amendments being put forward by other Members and I. Thank you.

**Hon. Speaker:** Member for Pokot South, Chair of the Departmental Committee on Transport, Public Works and Housing

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Speaker for giving me this opportunity to make contributions on the Statute Law (Miscellaneous Amendments) Bill. On the outset, I think the Executive needs to hold some preliminary consultation before they bring this Bill, in as much as we want to support Government business. After we called some agencies for public participation some of them disowned the Bill and said they did not know where it came from. So, it was our responsibility to say where these amendments came from.

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

**Hon. Speaker:** Yes, what is the point of order?

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker. This is a Government Bill, you signed it for publication, and there are letters and a Cabinet Memo from the Government. I really want the Chair to state and go on record on the State agencies which disowned their own Government amendments. If he cannot state their names and position, then he must be forced to withdraw because they cannot defend themselves on the Floor of the House.

**Hon. David Pkosing** (Pokot South, JP): Hon. Speaker, Standing Order and the Constitution give the Chairman an opportunity to interact with the clients and the public through public participation. So, we have a right and as I talk, I am doing so from a position of authority. The Leader of the Majority Party talks to us because when he is doing public participation he does so primarily with us as chairs. It is true that we are the ones who are interacting with the people. Where the rubber touches the road, it is the chairmen. You know that, Hon. Speaker, and you gave us that power. It is true they need some consultation. This is my opinion. We are here as chairs but, of course, for us who are chairs, we are also members of the Jubilee Party and of this Government. This is my Government. This is what I fought for while I was in Pokot South. I fought to make sure that the Jubilee agenda is successful. However, I come to the Floor as Chair representing the Members of my Committee. I am also finding it difficult in my own amendments. That is why I am saying it would not be a sin for the ministry or department to consult so that we tell them what is a miscellaneous amendment and what falls within a substantive amendment category.

I want to be on record on the amendment to the Merchant Shipping Act, which is squarely within my Committee. I have listened to colleagues speak here. Some of them were rejecting the amendment even before I spoke. I think even the information out there on that particular amendment is misleading. Let me plead with Hon. Members to listen to me. What the Executive wants to do is to rehabilitate the shipping line, which is a government programme. Government wants to own ships. We will achieve many things. If we have a government ship, in fact, the prices of importation and exportation will be cheaper. That is point number one.

Point number two; if the Government of Kenya has ships, then we will control the prices of the market. At the moment, the shipping industry is private. So, what is going to happen? Private shipping lines can set their prices the way they want. So, if you want to bring a car from Japan to Kenya, they put their prices. There is no order. There is no equilibrium. There is no standard because the Government itself does not have a ship that people can benchmark with in terms of transport of those items. That is the biggest problem.

The Government is the biggest importer of what they call government building materials. The people of Kenya stand to lose. The Government wants to introduce a very good thing to allow Kenya Shipping Line to operate like any other shipping line but the Merchant Shipping Act, in terms of provision, does not allow the Government of Kenya to own a ship. Why would you block the Government from owning a ship? Where on earth has that happened? It is only in this country. The governments of many countries have ships. So, why do we want to blame and block our own government from owning a ship?

I will give you an example, Hon. Speaker. We have a problem in transport. Come to Nairobi here, there is a problem in terms of fares. Give me some time. I want to explain.

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

**Hon. Speaker:** Just a minute, Hon. Pkosing. I will give you time. Hon. Members, I will not allow that. If a person says something which you do not agree with, there is nothing out of order. This thing of, if somebody says something which is contrary to what you know is a point of order, is not proper. Nothing is out of order. Let him continue. No more interruption.

**Hon. David Pkosing** (Pokot South, JP): Hon. Speaker, the person who wanted to raise a point of order is on record opposing the amendment. So, he wants to oppose it. Let us be honest.

On transport, I will tell you and the people of Kenya the problem we have in *matatus* and buses and hiking fares. If you are going to Kisumu, you pay fares which you might not even afford. If you are going to West Pokot, where I come from, you pay fares which you cannot afford. The Government cannot control those fares. The people of Kenya are at the mercy of what I may call cartels. They can increase the prices. If there is a strike, you find the prices going up. If schools open, the prices go up. Where will Government come in to control? We do not have buses and, therefore, we have no benchmark or standard. We cannot tell the people of Kenya, "do not pay more than Kshs2,000 if you are going to Pokot". How will the Government say like that and yet it does not have a bus to ferry people to Pokot? Governments in some successful jurisdictions in the world have buses.

I schooled in London. I was trained in UK. In that country, the government has transport. Therefore, as you plan to travel, you choose whether to use a private car or a government car. It is cheaper in those countries. When you are above 60 years or 65 years old, you travel for free. You are given a card. So, you go to a government bus terminus and you travel to your destination for free. In this country, everything is in the hands of the private sector. That is why the idea of the amendment of the Merchant Shipping Act is very good. It will enable the Government of Kenya to own ships. Hon. Members are aware of what we are doing with Kenya Airways. We want to help our own carrier. We do not want to look like we are a second-hand country. We want to be a first-hand country as the Republic of Kenya. That is the spirit that led to the revival of the Kenya Shipping Line.

The amendment might not be aligned to the talk that I am giving to Hon. Members. That is why I am pleading with them this afternoon. I am pleading with the country to listen to me. Rejecting this amendment means that we are telling the Government not to buy a ship. Is that the idea of these Hon. Members? No, it is how the amendment has been crafted. Everybody wants to have a ship but the amendment has not been crafted properly. That is why I assure Members that we will do public participation on this Bill. We are calling Hon. Members from the coast region, who have opposed this amendment probably because they do not understand its implications or we do not understand the issues they are raising to support it. When they come to the Committee, we can discuss with them and see if all of us will agree that the Government of Kenya must own a ship. They will then tell us the route to follow for us to own a ship. It is not debatable that the

country must have a ship. It must. Do not ask me what happened yesterday. I was not there but today I am the Chair of the Departmental Committee on Transport, Public Works and Housing. I am responsible. He is a Kenyan. He is responsible. We want to break a record of being the first House to enact a law that helps our country to buy and own a ship. It is history. It is something good, but the amendment, as has been drafted, might not be leading us to that road. That is why we are open for public participation.

On Thursday next week, I will have all people who own shipping lines. If you own a ship or you do business in ships, come to Parliament on 16<sup>th</sup> May 2019. I will be doing it in County Hall. First of all, I have invited Hon. Members from the coast region. Those are the first invitees. I have invited anybody who has any interest in the shipping line, including my colleague, Hon. Sharif, who is likely to be the next governor of Mombasa. I do not know what the people of Mombasa will be thinking, but I will go there and listen. I am also ambitious as he is. I am not saying this so that I convince him to help me in this Bill, but I want to listen to them next week on Thursday. However, what we should not compromise is that we should not block our country from owning a shipping line. It is like you are telling a country not to own a bus. Where do we come from? That is retrogressive thinking. You are telling a country not to own aeroplanes. That is retrogressive thinking.

Therefore, I invite them next week so that we can agree. We might bring a compromise amendment that will facilitate this country to own a ship. We will not block the country from owning a ship. That would be retrogressive development.

With those many remarks, I invite them next week on Thursday. Let us discuss and make our country move forward. It will never go backwards.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Wandayi.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, thank you very much. I also wish to add my voice to this debate. I support this Statute Law (Miscellaneous Amendments) Bill. Even though I have heard most of our colleagues expressing reservations, I do not think the entire Bill is bad. I have heard my colleague, the Chairperson of the Departmental Committee on Transport, Public Works and Housing, lamenting very bitterly that the stakeholders he met during public participation rejected the amendments to the Merchant Shipping Act. That can be re-looked into but we should not throw the baby out with the bath water. There are very good proposals in this Bill, particularly the ones that seek to make amendments to the Kenya School of Law Act and the Legal Education Act.

*(Loud consultations)*

Hon. Kaluma will have a chance to speak. Allow me to continue. The reason I am viewing them positively is because there is need to decentralise the provision of legal education, particularly on the advocates training programme, from the Kenya School of Law to other institutions. Hon. Speaker, as you are very much aware, the Kenya School of Law is congested currently. That obviously compromises the quality of teaching and eventual products of the teaching process. It will be a good thing for the law to allow other institutions such as universities which have the capacity to partake this training of the advocates before they sit the pre-bar examinations.

There is also the issue of regularising the mandate of the Council for Legal Education. It should be the body that examines the students in the Kenya School of Law for the pre-Bar

examinations. There has been a problem in the past and Kenyans do not want to admit it. Because of the haphazard nature that admissions to the Kenya School of Law are undertaken, we end up having people with dubious training getting there. These are people who are purportedly trained outside the country in some funny institutions. They get into the Kenya School of Law and eventually go through the process and end up becoming advocates of the High Court of Kenya. This obviously poses great challenges. Therefore, the proposals contained in these two areas are positive. They can be made better. Therefore, I want to urge my colleagues, even as we continue debating on this Bill, to look at it with objectivity and avoid emotions and a lot of passion that I can see around.

It is also a fact that a lot of very weighty issues were sneaked into such kinds of Bills in the past. This is not the first time that Members are expressing concern here. We cannot do away with the principle of Statute Law (Miscellaneous Amendments) Bills. It is better, as a House, to find a mechanism of ensuring that the final product reflects the wishes of Kenyans and serves the best interest of the people.

Thank you very much. I support the Bill.

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

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I stand to support this Statute Law (Miscellaneous Amendments) Bill. I have just looked at the amendment on the Merchant Shipping Act, 2009 (No. 4 of 2009). Section 4A says:

“Notwithstanding any other provision of this Act, the Cabinet Secretary may, on the recommendation of the Authority, by notice in the *Gazette* and subject to such conditions as may be appropriate, exempt any Government entity or enterprise from any provision on this Act where such exemption is in the public interest and in furtherance of Government policy.”

When we start discussing about the shipping line and the amount of shares somebody will get, I cannot see where that is coming from this. This is in furtherance of public interest and Government policy, and it will be put in the *Gazette*. We can discuss and deliberate on the wording. If we will put it in the Government *Gazette*, it means that it is something that the Attorney-General of the Republic of Kenya and the Kenya Ports Authority (KPA) must have carefully looked at. Members can discuss some few amendments to make this amendment better in terms of wording.

There are also amendments to the Kenya School of Law Act, 2012 and the Legal Education Act, 2012 (No. 27 of 2012). This is opening up the licensing of other education providers to train advocates. After you finish your university education in the training of a lawyer, you have to go to the Kenya School of Law. Everybody competes to go there. This amendment seeks to open up other institutions to offer the pre-entry exams into the legal profession and train the advocates so that they can graduate. We will have schools of law in Kisumu, Mombasa, Eldoret and other places. Therefore, it will reduce the congestion and cost of training of advocates in Nairobi. It has become very expensive and competitive to take children to the Kenya School of Law. There is also congestion in the classes. We have several institutions which offer law degrees, for example, Moi University, the University of Nairobi, Jomo Kenyatta University of Agriculture and Technology and even other private universities. This is a good amendment. I can compare it only with the medicine courses which opened up the training in many institutions. You can go for internship in many institutions within the Republic of Kenya. Therefore, I do not think anybody should oppose this amendment. It is a very positive contribution.

With those few remarks, I support the Bill and wish our Muslim brothers, Ramadan Kareem. Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. I stand to oppose this Bill on principle but not on content. This is my second term in Parliament. The object and purpose of Statute Law (Miscellaneous Amendments) Bill is changing. It is meant to make minor amendments which do not have profound change in the Act involved. That is not what we see. We see many changes. I will go through these examples. Whether they are good or not, that is not my issue, if they are not in the principle of Statute Law (Miscellaneous Amendments) Bill.

When you are dealing with Statute Law (Miscellaneous Amendments) Bill, we do not have as much opportunity as when we are dealing with the other Bills to interrogate them and do serious public participation. The Bill is amending the Merchant Shipping Act by bringing actors who were not before in the Act into operation. It is just being done through the hand of a Cabinet Secretary. Even if you were to do that, it would have been better if we looked at the whole Act. Once you open it, it will be everybody's field. In that context, I do not support this Bill.

If you look at the Public Finance Management (PFM) Act, there was a resolution for the Parliamentary Service Commission (PSC) to have more than one accounting officer. As much as that may be good, that is a major change. Further, I find it unacceptable that we want to use the Statute Law (Miscellaneous Amendments) Bill to legalise the resolution of a commission, which resolution, at the time, was illegal or not in law. That is not acceptable in my mind.

On the Kenya School of Law, I agree totally that it has actually become a bottleneck. There are very many students graduating, but cannot be advocates. We are, first of all, opening it up. So, very many institutions, including private institutions are going to offer training for advocates. That is a major change in law. It is also proposed that the admission requirements into the Kenya School of Law and the other schools of law that will be created are going to be changed. That is a major change in the provision of law. It is the same in the Legal Education Act. This is an amendment we have to look at very seriously. Students study law to get the LLB degree then need to get a diploma at the Kenya School of Law. We are restricting that by opening up so that we have many institutions providing this diploma. The first question we should ask is, what is the difference between the content that is offered in universities offering LLB degree course and the content that is offered at the Kenya School of Law? I know at the beginning it was six months. It was then extended to two years. It has become very expensive. It is now more expensive to go to Kenya School of Law and get a diploma than to get a degree. I agree that is good, but this is the time we should look at those issues and even look at the content instead of just saying we are going to open up. Now we are going to have many institutions providing the training for advocates. We are going to change admission into this institution. That, in my mind, would have required a substantive law, which I will support. However, I do not like that it is being done through a Statute Law (Miscellaneous Amendments) Bill.

The Terrorism Act has provisions on members. That is a very substantive amendment of a very critical area. Whether Members agree with me or not, we do not go through the miscellaneous amendments with the same vigour and focus that we do with Bills.

The Bill further seeks to amend the Companies Act to reduce the percentage of shares which may be offered for sale. This is a very detailed area that needs detailed public participation which we are not providing for. I do not have a problem with the content. I ask colleagues to reject this Bill as a protest so that we bring back the real object and intent of miscellaneous amendments. I suggest that we provide for in our Standing Orders the number of Acts we can

amend in one Statute Law (Miscellaneous Amendments) Bill. We need to have that. We also need to know the extent of amendments in each Act. We have lost in those areas with regard to the miscellaneous amendments.

To that extent, I do not support this Statute Law (Miscellaneous Amendments) Bill. Thank you.

**Hon. Speaker:** Member for Kiharu.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much, Hon. Speaker for giving me an opportunity to contribute to the Statute Law (Miscellaneous Amendments) Bill. Allow me to start with issues that are not very contentious.

First of all, I agree with the amendments as far as the Tourism Act is concerned because it is just a matter to do with semantics. These are the key things we should be handling in the miscellaneous amendments by including universities. Previously, we only had Utalii College offering this kind of training, but now we have institutions burgeoning and many universities are offering courses in the tourism sector.

I also want to side with many speakers before me who have spoken against amending the Public Finance Management Act (PFM) Act. The major problem we have in this country, especially in fighting corruption is to know where to lay responsibility. It is said that what belongs to everyone belongs to no one. Therefore, by introducing more parties, especially in so far as PAC is concerned in terms of the accounting officers... I do not think we need layers and layers of bureaucracy and people who should be answering the difficult questions.

On the Kenya School of Law, I do not think it is right for us to give monopoly to one institution to admit. For a long time, probably, the Kenya School of Law has been usurping powers, especially those of the Council of Legal Education (CLE). Therefore, opening it up for people to be trained in other institutions other than the Kenya School of Law is a timely thing.

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

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

Hon. Temporary Deputy Speaker, I have major problems on two amendments. One is on the Companies Act, and the other one is on the Merchant Shipping Act. One of the issues that I feel we need to look at is the amendment on the definitions of a small company. The kind of private sector we have in the country is dominated by Small and Medium Enterprises (SMEs). We should be doing everything possible to support the small companies to transit from being small to medium and then to large companies. There are many advantages when a company is categorised as a small company, especially with regard to taxation. Therefore, for us to decrease the number of employees a company should have from 50 to 25, we will be taking a lot of advantages from the previously categorised small companies.

Also, one of the major issues I have seen in the amendments on the Companies Act is takeover. Our capital market is shrinking by the day and the Nairobi Securities Exchange (NSE) is diminishing. We have many companies delisting than those listing.

One of the major issues in doing business especially trading in shares is something called violent takeover where a person comes into the company and acquires shareholding with an intention to push, especially the small shareholders out of the register of that book. We have previously seen violent takeovers happening even in our own NSE. A company like Rea Vipingo

a few years ago was taken over by the two original brothers through this kind of an arrangement. Just recently, we saw the delisting of KenolKobil through the same kind of way. Therefore, for us to amend that now you only need 50 per cent plus one to violently take over a company, I do not think we are safeguarding the rights of the minority shareholders. We have many in the pipeline who would want to push out the small shareholders. The major issue around takeover is the pricing and the valuation. Yes, you want to take over these small shareholders but at what cost? Before we pass the amendment as it is, we also need to be mindful of the small shareholders. As you know, when people are making their companies public, most of them leave over 50 per cent plus one with themselves but it will be very hard for anyone with intention of violently taking over a company, the way the Companies Act is now: you need a threshold of 90 per cent plus one.

There is this issue of the Merchant Shipping Act. Listening to the Chair of Departmental Committee on Transport, Public Works and Housing in this Assembly, he convinces us even more not to support the amendments because he was very forthright that the GoK and the public want to amend this Act so that we can give the Government a leeway to acquire ships. This is foolhardy especially given the kind of explanation given by the Chair that it is about stabilising prices and cost of shipping. That was a defeatist argument. We have precedents in this country where we made companies public ostensibly to stabilise prices and they went ahead to do the exact opposite. The reason a company like National Oil was formed was to safeguard consumers for them to be the stabilisers of these prices but that company was swallowed in the same kind of cartel within the old sector. It plays no role because it is not as efficient as the other companies.

If you talk about stabilising pricing, we have examples in the banking sector where we have banks which are majority owned by GoK leapfrog other private entities within the same sector in matters of profitability and in pricing of their products. The work of the Government is to offer platforms, it is not to use those platforms to be capitalistic. The Government already has enough on its plate even on the same transportation sector. They should leave the work of using their platforms to the private sector. There is no guarantee that if the Government of Kenya owns ships, prices will stabilise. The Government should stick to offering platforms but more importantly to regulation. In the oil sector, after realising that the National Oil Corporation of Kenya (NOCK) was not helping and still is not helping in stabilising prices, the Government went for regulation through the Energy Regulatory Commission (ERC). That is how we came up to where we are where the rights of consumers of all products are safeguarded.

I tend to believe that we should force the Government to stick there – regulation and offering platforms. The Government cannot be offering the platform of roads and air and go ahead to offer the means. That is the same problem we have with Kenya Airways. We still want to retain Kenya Airways as a public entity even when it is bleeding cash to the detriment of the Kenyan taxpayers. Therefore, we should never tread on that slippery path of aiding the Government in being in the business of doing business. They should stick to what they do best. We have seen that even by offering platforms, the Kenya Ports Authority (KPA) is one of the most profitable companies and entities owned by GoK. We should not siphon the same profits by opening leeway for the Government to use the same platform to make losses. I believe that is what they will be doing if we...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Your time is over, Member for Kiharu. Hon. Members, I have seven requests.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this Bill. I join my colleague, Hon. Nyikal, to oppose this

Bill. As he has said, it has now become a tradition that whenever you see a Statute Law (Miscellaneous Amendments) Bill, you must read through it carefully because that is where sometimes bad things are hidden. Indeed, even in this one, there are some amendments which have been proposed, which in my own view, are not good for this country. One of them is on the Districts and Provinces Act, 1992. This Bill is not properly before the House. If you read the memorandum to this Bill, it says the Bills do not affect the counties.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Hon. Osotsi, sometimes it is good to justify allegations. What do you mean by saying the Bill is not properly before the House yet it is listed on the Order Paper?

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Temporary Deputy Speaker, I am making reference to the Districts and Provinces (Amendment) Act. The memorandum to this Bill states that the Bills which are contained in this Statute Law (Miscellaneous Amendment) Bill do not affect the counties but when you read through the parent Act of the Districts and Provinces Act, you realise that the provisions of that Act refer to the counties that we have because it talks about Kenya being divided into 47 districts, Nairobi and other 46 districts. We are aware that this country is in the devolution arrangement where we have 47 counties and not districts. So there is some ambiguity in the original Act that we are trying to amend here. Even the amendments are suggesting that they want to come up with a Cabinet Secretary responsible for making regulations.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Osotsi, for you not to mislead the House from your own sentiments, it is good to go the proper way. If you think that is the position, you must raise it in the right procedure and official communication will be given. You cannot just say the Bill is not properly in the House without substantiation. If you have any issue, you can bring it to the attention of the House and it will be debated. Maybe, we can give an official communication on whether the Bill is properly before the House or not. For now, we will debate the Bill as it is on the Order Paper.

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Temporary Deputy Speaker, we know we already have another Act of Parliament called “the National Government Coordination Act” which recognises the 47 counties. However, this one is talking about districts and provinces. We no longer have provinces in this country. So, my concern is that the amendments before this House touch only on one aspect of the regulations; they do not talk about removing districts and provinces and renaming them. I am happy that the committee responsible said that it is going to withdraw this particular amendment.

On the amendment to the Kenya School of Law and Legal Education Act, I agree with the Hon. Members who have spoken before me – that, we have a serious problem that needs to be looked at. We have seen mass failures at the Kenya School of Law and we have been wondering where the problem is. It is time to open up the opportunity to other institutions. They should be licensed to offer courses to prepare students for admission to the Bar, so that we do not have only one institution that has a monopoly to offer the courses. We want competition so that if they are not able to offer good education, its competitors will be able to offer it. I support this amendment. However, I disagree with them because it is important to clearly define who does what. Sometimes you find the Kenya School of Law dealing with issues of examinations that are supposed to be dealt with by the Council of Legal Education under the Council of Legal Education Act. So, we need further refinement of these two laws. It will be better for the Kenya School of Law Act, and the Council of Legal Education Act, to be condensed into one law so that we have one comprehensive law that deals with issues of licensing and bar examinations.



On the proposed amendments to the Public Finance Management (PFM) Act that are seeking to create additional accounting officers for the Parliamentary Service Commission (PSC), I think there is mischief. As Hon. Omboko said, we will bring amendments. We cannot allow mischief to creep into the PSC. If we have a problem with a particular accounting officer, we need to address it administratively. We cannot address the problem by seeking to amend a law. Tomorrow, we may have issues with a different commission. Will we have the benefit of amending the law so that we resolve that issue? On this one, we will stand firm and say: If we have a problem administratively with a particular officer, let us deal with it administratively. It cannot be done by seeking to amend the law. By doing that, it will be unconstitutional. The PSC is established by the Constitution of Kenya, 2010.

On the Kenya Law Reform Commission (KLRC), it is an important commission, especially in its engagement with Parliament. Some of the Bills that come to this House are processed by the KLRC. This Bill is seeking to give clarification on the composition of the KLRC and on the authority to appoint members to the KLRC. We should be clear under which arm of the Government KLRC falls. We have had changes through an Executive Order on where they belong. So, that will help us address the problem we have.

I want to add that the Statute Law (Miscellaneous Amendments) Bill, as it has been proposed by Hon. Nyikal, needs to be relooked. How many Acts can be amended in the such a Bill, and what would be the content of each Bill? At times we introduce substantive amendments to existing laws through Statute Law (Miscellaneous Amendments) Bills, which is supposed to deal with simple issues like definitions, clarifying ambiguities and other minor changes. We need to relook at our Standing Orders so that we deal with such challenges and ensure that mischief is not introduced into law through Statute Law (Miscellaneous Amendments) Bills. We need to have a substantive amendment but, we should not bring them through this Bill. For example, the substantive amendment on the Districts and Provinces Act, what is its intention? Is someone trying to re-introduce the national Government to the county administration? What kind of regulations are going to be made?

I oppose this Bill and look forward to proposing amendments during the Committee of the whole House.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. It is good that you have pronounced yourself on the Bill. You will bring your amendments at the Committee of the whole House stage. That is where we will comb the Bill clause by clause and it will include what you have alluded to.

I now give the Floor to the Member for Funyula, Hon. Oundo Ojiambo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon Temporary Deputy Speaker for this opportunity. From the outset, I have a feeling that this Statute Law (Miscellaneous Amendments) Bill should be referred to as "Mischievous Amendments Bill". Essentially, it seems that the intention of the Executive is to amend laws substantially through such Bill, knowing that it is voluminous. However, many of us believe that a miscellaneous amendments Bill should only relate to minor issues that require to be corrected to align an Act of Parliament with a new policy or the Constitution or to address some pertinent and emerging issues. To generally bring about 10 or so Acts in one Bill means that the Executive is up to something.

That said and done, there are various issues that are obviously coming through that require serious discussion and review before they are considered. One is the amendments on the

Merchant Shipping Act No.4 of 2009. It is, indeed, dangerous to this country. It should not be allowed to go through. Giving discretion to one particular person to vitiate a law in respect of a particular entity, be it government or anything else, is dangerous to this country. We will be creating a rogue system that will misuse the law to confer benefits to individuals and cronies, essentially bringing this country to an economic ruin. A Cabinet Secretary cannot be the keeper or feeler of public interests. Government policy cannot dictate to the extent of punishing the entire population of Kenya. Cabinet Secretaries are not elected and, therefore, they do not represent the public interest; they represent the interests of their appointing authority. So, they cannot purport to measure and gauge public interest. I am so sure I will rally my colleagues during the Committee of the whole House to shoot down this particular amendment. It is offensive; it does not keep the interests of Kenyans at heart.

Second is the amendment to the PFM Act concerning the accounting officers for the PSC. It is a bad amendment. It is an amendment that has ulterior motive and as my colleagues have said, if indeed you have issues with any particular accounting officer, you would rather deal with the accounting officer individually instead of trying to sneak in amendments through the backdoor. It is incomprehensible that one organisation can have as many as three or endless number of accounting officers. We have the Clerk of the Senate in respect to the Senate and then we have the Clerk of the National Assembly in respect of the National Assembly. Indeed, with plain reading of Article 127 (3) of the Constitution, it suggests that the Clerk of the Senate shall be the Secretary to the Commission. Indeed, it is suggesting that he is the only officer authorised to be the accounting officer of the PSC. What is provided in the PFM Act could as well be unconstitutional but that is a matter that needs to be raised by the relevant people who know what is supposed to be done.

I would generally oppose that amendment because it is creating many accounting officers then everybody literally becomes an accounting officer. That in my view is a pure attempt to subvert proper management of public resources and there is a possibility that a scheme could be easily hatched to defraud public funds by using so many other accounting officers.

On the issue of Kenya School of Law Act, I am not an advocate but I sincerely believe we need to maintain standards. We have had problems about the quality of students that we churn from the university, we have challenges in this country about the quality of technical and professional advice being rendered by the so called professionals in this country. I support a stringent approach to generally ensure that people who are given licences to operate as professionals have met the minimum threshold and deserve to work and perform that particular function. I am not worried of mass failure. You can only pass an exam if you are qualified and prepared to pass an exam. Just merely because those unprepared have failed is not the best approach to change the law so that you can have people pass *en masse* simply to please some people. Technically, in a typical organisation we must conform to the normal distribution curve where there must be failures, there must be people at the center and there must be high scorers. Obviously, we might have to relook at it *vis-à-vis* the entire Act and we need to be careful on how we move.

On the issue of the Prevention of Terrorism Act, the list of the people and of the offices that sit there and the process of appointment is not very clear. Is it the substantive office holder that is purported to sit there or the substantive office holder nominates somebody to sit in those particular offices? Probably, we need clarify on that matter.

As I conclude, let me make a comment on the amendments of the Companies Act. By the very nature of SMEs and small organisations and depending on the nature of the work they

are doing, many of them tend to have very many employees because if you are doing labour-based contracts and if the nature of your work is labour intensive, reducing the number of employees as a basis to be declared a small company to 25 is basically being unfair to the so called small companies who are probably under agriculture sector where productivity is low and so you have to employ very many people, or in the construction industry, by the very nature you have a contract that requires staggered engagement of employees. At the particular point, we would insist that we retain the 50 number of employees that are in the original Act instead of reducing 25 per cent because then we will lock out a very large number of people or organisations that generally belong to the SMEs and the rest.

On the issue of Wildlife Conservation and Management Act, we seem to have a problem. I am afraid it might not have been captured here clearly. On the issue of compensation for people who have been injured by wildlife, I have in mind the issue of snakebites in my constituency. So many people have been bitten by snakes and they have filled compensation forms, but it has taken over 10 years with no response and no word at all. We are about to prepare a petition as a community and bring it here for Parliament to consider what to do. Probably, this could be an opportune time that we could as well intervene in the Wildlife Conservation and Management Act to ensure that we put a timeframe on when a claim for compensation as a result of injury from wildlife can be paid instead of waiting forever. As things stand now, we have a problem that we need to address.

With those few remarks, I support the Bill but with reservations and I hope the Committee of the whole House we will deal with those issues that we have raised.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for your kind consideration.

I would just like to add my voice to the reservations expressed by several Members on how increasingly we are using these omnibus Bills to bring very fundamental amendments. As we have known it, these miscellaneous amendments Bills should be focused on correcting anomalies, inconsistencies, outdated terminologies and errors that are minor and non-controversial. Increasingly, we are amending most fundamental sections of our law. I think somebody in the Executive has perhaps discovered that the shortest route to make amendments is through these miscellaneous amendments. Instead of going through the normal process of the other Bills, they lump them together and committees do not get enough time to conduct sufficient public participation. I want to express a very strong reservation on that matter before going into the content of the Bill.

As we start with the issue of the merchant shipping, this is the most blatant and offensive section. If you look at the current law of the Merchant Shipping Act of 2009, Section 4 says that the Minister shall in addition to any powers conferred on him by any other provisions of this Act be responsible for the administration and implementation of this Act. This should be the case. Right now we want to insert a section saying:

“Notwithstanding any other provision of this Act, the Cabinet Secretary may, on the recommendation of the Authority, by notice in the *Gazette* and subject to conditions as may appropriate exempt any Government entity or enterprise from any provision of this Act, where such exemption is in the public interest and in furtherance of Government policy.”

The reason we are elected to this House and the reason the responsibility to make laws lies in this House is because we are the custodians of public interest as elected Members. Taking

this responsibility and giving it to a Cabinet Secretary to determine whether there is public interest or not... we know many times they have said they are doing things in public interest but we do not know which public they are talking about. This House is vested with responsibility to observe interest of the public. We know the public we are talking about. We are talking about the public, who are our constituents. We know which public interest we are observing and we know who we are accountable to. We also know that if you do not observe that public interest, there is somebody who is waiting for you, who employed you to come here to deal with you squarely. The Vice-Chair in making signs to insinuate that I finish, so, I will try.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): No, you are very independent. Let the Vice-Chair not threaten you, being a very strong lady in the House.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for protecting me. I might lose my clout in the Committee if my Vice-Chair is upset. The point I was making is, if there is anybody who is a custodian of public interest it is this House. It cannot be relegated to a CS to determine what is in public interest. So I oppose this amendment.

I would like to shed some more light on the amendment to the PFM Act, having been a commissioner of PSC in the last Parliament. As I said earlier on the Floor of this House, before the new Constitution we had a unicameral Parliament. Of course after the new Constitution, Article 127 is very clear on who the secretary to the commission is. But when we got into the commission, we realised that it was very difficult to have one accounting officer dealing with everybody. You know the interests and the numbers in the National Assembly, for example, are very different from the interests and numbers in the Senate. So if you have just one accounting officer dealing with everybody, sometimes that one accounting officer may be bashed for favouring one House and not the other given that he is a Clerk of one of the Houses. This is how, through an amendment of the PFM Act, we resolved to have two accounting officers, one for the National Assembly and another for the Senate. But even as we progressed, there was always the challenge of who takes care of the Joint Services.

**The Temporary Deputy Speaker** ((Hon. (Ms.) Jessica Mbalu): Order. You know my chairman, the Chair of PAC, is in the House. He is well aware of the procedures.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I was making the point that even when we assigned one accounting officer to the Senate and another one to the National Assembly, there is the hanging function of the Joint Services, those services that are shared between the National Assembly and the Senate. This does not take away the fact that we should be able to deal with this as a substantive Parliamentary Service Bill. What is being said here is that the PSC should on its basis, if they feel that for efficient functioning of Parliament they need an additional accounting officer to serve the Joint Services, proceed and do that. I still agree with those who say maybe we deal with this as a substantive matter as we deal with the Parliamentary Service Bill, so that it does not look like it is mischievous and intended to achieve any other purpose except efficient running of the Parliamentary Service.

Hon. Temporary Deputy Speaker, with those many remarks, thank you very much for this opportunity.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Can we have the Member for Suba North? You always keep moving. Your card reflected and you caught my eye.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I want to agree with Hon. Kaluma. From where we were seated he was saying, to use the language of Homa Bayians, that you are very conjugal, meaning you are very bright and happy. So I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Who is bright and happy?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): You. At the outset, I want to agree with Hon. (Dr.) Nyikal that we should oppose this Bill in totality. It should not even be based on the technical issues but on principle. We finished dealing with Statute Law (Miscellaneous Amendments) Bill yesterday and it took us a long time. Before that we were dealing with another Statute Law (Miscellaneous Amendments) Bill that had 60 pieces of legislation. In effect, if you look at what Members of Parliament are dealing with, we are not doing our legislative work as envisioned by the Constitution of Kenya and by the law, because each piece of legislation should have a given timeline. If you divide the time that every piece of legislation is given through Statute Law (Miscellaneous Amendments) Bill, you will discover that each Member has only one minute, perhaps, to contribute to a Bill. Sometimes it is not even a minute. Where we dealt with 60 pieces of legislation, we had negative two hours in dealing with one piece of legislation.

I must say that I have been a very concerned Member of Parliament. I actually think that Parliament is captive to some cartels that are pushing an agenda in this House. If you look at the processes and the substance, it is one direction. It is either something to do with tenders or it has something to do with control by Cabinet Secretaries. It comes in different forms, but what we are trying to do in this House is to go back to the Chiefs Authorities Act. Where the chiefs had powers, now we are creating the Cabinet Authorities Act through amendments that Members do not know. If you look at what the Merchant Shipping Act does, it is exactly that.

In 2009 I was in this House and I brought several amendments to the Merchant Shipping Act. And I remember the then Minister came and told me he was surprised because he did not think I would know anything about merchant shipping because I pushed a women's and children's agenda in it. I remember it very well. Having taken so long in drafting those serious amendments, why are we in a few minutes trying to push a back door process that gives a Cabinet Secretary the authority to repeal that Act? From what we are doing, he can actually outside Parliament repeal a whole Act by declaring everything in that Act unlawful. So to show the Executive that this House is serious, we should bring this Bill down.

There is a level of impunity outside this House and it is creeping into this House. People are used to corrupt ways. We are now getting degrees corruptly. You can just sit in this House and say 'pinky, pinky, ponky' and you have a PhD. I go in that direction, one year from now I can be a medical doctor. We will not allow the country to go in that direction. When we talk about the legal profession, if you look at what the Kenya School of Law seeks to do, we go through university and get a degree. The people proposing this, why do they not ask themselves: Were we outrageous to do a degree and then do a diploma? Why is it structured that way? If the

issue is just about doing exams, then remove the diploma so that we just do degree and start practising. The practice of law is not about doing exams. All of us do exams from all parts of the country and of the world. There are people who do degrees in Kenya, India, and England. I have studied law both in Kenya and in the United States of America (USA) and they are very different frameworks. If I had not done my LLB in Nairobi, it meant that I may require doing more units because the USA system of law is very different from the Kenyan system of law. So you need one school that standardises that practice. But that is not what KSL is all about. There is a culture in the profession, some of which we have borrowed in this House including the culture of ranking. We are trained at the Kenya School of Law about etiquette. You see lawyers dress in a given way. If you open it so that we can even do it on River Road, River Road will come with its own standards of dressing. Right now I can come to Parliament dressed this way, but I cannot appear dressed like this in a court of law. So we cannot allow the legal profession...and it is not just about the dressing but about standardising the legal profession.

Before I came here, I was an employer and I employed mainly lawyers. I was very concerned about the later day lawyers. It is because we have left it open. You find somebody telling you they have done law and yet what they tell you is something akin to law, but not law. So, we cannot just leave it open because some people had money and gave their children, who had failed, a chance to go and study law. Not everybody must be a lawyer. We also need excellent shoemakers. Let us not condition children to feel that everybody must be a lawyer or a medical doctor. There are people who must also make shoes. We need to train our children to know that when you are a shoemaker you can be excellent but not try and force everybody to be lawyer even when they do not want to.

So, in terms of the content...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Millie. There is a point of intervention by Hon. Opiyo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you. So, based on principle and content, we tell the Executive that we do not like this tendency where Cabinet Secretaries are trying to consolidate power and take this country back to where we have come from. If we consolidate power in one person, we will be creating rogue Cabinet Secretaries. There is a reason why we dispersed power, including through devolution. So, why would we be dispersing and devolving power then come back and concentrate it again on a Cabinet Secretary? We refuse because that principle died in 2010 when we came up with a new Constitution. I want to say that when the Cabinet meets next time, they need to have a keen eye and look at the values of the Constitution under Article 10. Let them not take this country backwards.

With those few remarks, I oppose.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You oppose. This is a House of debate. Thank you, Hon. Millie. The Speaker only has power to moderate debate. Thank you for admitting that the Speaker has to be bright. Yes, we have to be bright for us to deal with the House in matters procedure.

We have an intervention from the Hon. Member for Ugunja. You have already spoken unless it is something different. It must be something that is out of order or un-procedural.

**Hon. Opiyo Wandayi** (Ugunja, ODM): I am rising under Standing Order 95. Given that the matter has been canvassed at length and we have a chance at the Committee of the whole House, and bearing in mind again that we have other businesses...

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Members. Let us listen to him and then I will make a ruling.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Members here must understand that I am a ranking Member. I know these rules and so I am moving that the Mover be called upon to reply so that we make progress.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you. Cognisant of the fact that you are a ranking Member; and, much as we recognise and respect that you are rightly on the standing order, another Hon. Member can do what you have just done.

However, you understand your Standing orders. I will rule that I will not allow you to make such a move. You are out of order.

Hon. Twalib and the Vice Chairperson of Public Accounts Committee, you cannot stand and purport that the Hon. Temporary Deputy Speaker is not catching your eye. You must resume your seat. The Member on intervention is Hon. Kilonzo.

**Hon. Charles Kilonzo** (Yatta, Independent): I do not need to intervene because you have done the right ruling. Hon. Opiyo, being an old Member, should understand the culture but you have ruled and rightly so. So, there is no point of wasting time on the Floor.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Vice-Chairperson, though you are out of order by raising your hands, I see your name on the intervention. Please, use the Dispatch Box.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Hon. Temporary Deputy Speaker, it is fair that our colleagues are also cognisant of the fact that some of us are observing the holy month of Ramadhan and this is the time we ought to break our fast. I am sure many Members will be willing to contribute to this matter. However, cognisant of this factor and being sensitive to the Muslim brothers, it is just fair enough that we conclude this subject under Standing Order 95 and proceed to the next thing. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, you have quoted the right Standing Order. However, I will not rule because of Members wanting to break the fast. This House is not for Muslims only; it is full of Christians and Hindus among others. It is a House for all religions.

Hon. Members, you know quite well that if you have to rise on a point of order, you must be on the intervention. As we have agreed before, Members rising on a point of order must state categorically which Standing Order they are rising on. Hon. Ibrahim rose rightly on Standing Order No.95. This one calls upon the Mover to reply. From where I sit, the only way I would gauge this is for me to put the Question

*(Question, that the Mover be now called upon to reply,  
put and negatived)*

Therefore, let me have the Hon. Member for Mwatate.

**Hon. Andrew Mwadime** (Mwatate, ODM): Thank you, Hon. Temporary Deputy Speaker for recognising that. He just came three minutes ago while I have stayed here for over two hours.

Hon. Temporary Deputy Speaker, please, protect me from the MP for Jomvu.

At the outset, I oppose these miscellaneous amendments though some are good to our country. However, the format or nature they have brought them in is certainly not good. Miscellaneous amendments are expected to correct spelling mistakes. As per what we have read, some of them are substantive amendments. Hon. Members must read and be conversant with the content. For example, on the Wildlife Conservation and Management Act, it is true it has a lot of ambiguities. I remember the Wildlife Act 2016 has not been implemented and yet they have already done substantive amendments. For example, if you are bitten by a snake there will be no compensation. It is coming as miscellaneous amendment of which we are losing the objective, purpose and meaning of miscellaneous amendments.

I am very conversant with shipping. The way this Act has been amended, it requires a lot of stakeholders to sit together and come up with a way forward.

The way, this Act has been amended, it requires many stakeholders to sit together and come up with a way forward. Giving authority to the Cabinet Secretary to handle all these is economically dangerous to the country and is more subjective than objective. Therefore, I will stop after those few comments because I know Hon. Bady is hungry, he wants to break the fast.

Thank you, Hon. Temporary Deputy Speaker, I stand to oppose.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You stand to oppose? Very well you are on record opposing. The next Member on my request list is Hon. Oduol Odhiambo.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute on the Statute Law (Miscellaneous Amendment) Bill. From the outset, I would like to express reservations arising from the key realisation of the separation of powers. Indeed, this is a key role that the National Assembly as the legislature plays in enabling the citizens and other arms of Government to come up with appropriate laws.

It has been indicated and already stated that it is extremely important that we understand the purpose of miscellaneous amendments laws. I have sat here listening to senior and ranking Members. I want to draw as a Member elected to serve in the 12<sup>th</sup> Parliament on the very key induction and preparation for law making, which is what I will use to express reservations on this Bill.

It was clearly imprinted upon my mind as I joined Parliament that one of the key roles I was going to play, other than oversight and representation of the people, was law making. One key take home that I heard was as we make laws we should know that law does not exist in a vacuum. We need to see the extent to which whatever law we make is intended to guide and regulate the conduct and affairs of those to whom it is addressed. In particular, it was clear that for a law to be effective the content and the manner in which it is prepared have to take into account the cultural, economic and socio-political conditions.

Hon. Temporary Deputy Speaker, I therefore look at the Statute Law (Miscellaneous Amendments) Bill as items or various types of changes that are put together, to quickly enable a law that would otherwise not be clean or be providing adequate interpretation of the law as it is, but not one where we are getting substantive amendments. In particular, I am here as a Member of the Departmental Committee of Sports, Culture and Tourism.

I want to agree with (*inaudible*) in regard to the kinds of amendments in this particular Act. As a Committee we looked at what was presented by the different stakeholders and their recommendations. This ensured as we talk about training, which today has been limited to Utalii College and the misuse of the term “college” which excludes universities which are currently



offering courses in tourism and hospitality, we use such miscellaneous amendments to enable a practice that is already taking place within standards to be included.

If we were to look at the distinction between “miscellaneous” and “substantive”, substantive amendments would require that there be a very firm basis in a reality or an important meaningful change that we need to make. Therefore, as I express my reservations, I am in particular making reference to the amendment that relates to the Kenya School of Law. I am doing this from the perspective as an educationist and as someone who has served in different arms including the Executive.

I am aware that there is a sense in which as we look at the way we would want to open up the bureaucracy that could be affecting the School of Law, we would not want to do it at the expense of standards. I refer back to the context that law really needs to be applied or prepared in cognisance of the social condition of the society. It has been said that the key challenge we face now is one with regard to standardisation and the manner in which the School of Law is organised. As has been indicated by the Member for Suba North, Hon. Millie, we see the School of Law serving the intention of ensuring that whatever advocates are going to get – because not all of them are going to be engaged in practice because a number could also go and do different other activities – would all be in a way expected to go through similar standards and would really be in a position, therefore, to be those who have qualifications that all of the different people who work with them or who would need their services would be proud of.

So, I would want that any time we have opportunity to make miscellaneous amendments we deal with areas, as others have indicated, of semantics or maybe changing or adding a comma or just making reference, as has been done in several areas to existing Acts so that people would know and understand better. We need to be very careful in law making to perceive if there is any mischief, intended or unintended, that would in any way impede or affect those that the law is meant for. Therefore, I would want, as I make contribution, to indicate my very serious reservation and indeed indicate that I oppose this Statute Law (Miscellaneous Amendments) Bill for the reasons that have been raised in the Companies Act, the School of Law Act and the Public Finance Management Act. We know that what will happen is that the overall impact of what it is that we would have should we choose then to approve or support it, really would mean that we will in a way have given but then taken back with the other hand.

So, I would want to urge that because of the current challenge and the need to ensure that we have the different arms of government not only checking on each other but being seen by the public to serve the intended role, as we make law as has been said by Hon. (Dr.) Nyikal, we refrain from the tendency that we seem to now lean towards where we look as if we do not understand that there is a distinction between what is miscellaneous, which could be a collection of different types that do not touch substantive issues, from substantive amendments which we then would have enough time not only to reflect and debate on but indeed to feel that we have done justice. So, with that, I oppose.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, I have four requests for the Members who want to speak to this. I can tell that two have already spoken to this. The Member for Mvita and the Member for Ugunja have already spoken to this. So, I will have the Member for Jomvu.

**Hon. Bady Twalib** (Jomvu, ODM): Asante sana, Mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii leo kuchangia Mswada huu. Naungana na wenzangu katika kuupinga Mswada huu *in totality*, vikali na moja kwa moja. Vile vile, naungana na Mhe. (Dkt.) Nyikal ambaye amezungumzia...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Order! Member for Jomvu, as you have chosen to speak in Kiswahili, you very well know your Standing Orders. When you start debating in Kiswahili, you must finish in Kiswahili. You have said “in totality”. You should say *moja kwa moja* as you call it.

**Hon. Bady Twalib** (Jomvu, ODM): Sawa, Mhe. Naibu Spika wa Muda. Kulingana na uwezo wako na kulingana na hali ya Kiswahili, nitazungumza Kiswahili adhimu na sitaunganisha lugha nyingine yeyote. Maana ya “in totality” ni kwa jumla. Kwa hivyo nimejirekebisha na kusema “kwa jumla”. Neno “James” ni katika lugha ya Kizungu sijui niseme *Jemsi* Nyikal. Ni yale ambayo Mhe. Nyikal, na vile vile Mhe. Millie Odhiambo, walipinga.

Katika Mswada huu kuna mambo ambayo yananigusa binafsi. Kama Mbunge kutoka kule Mombasa, tumempa uwezo mkubwa sana huyu Waziri katika mambo ya bandari. Hali hii itatumiza sisi kama wakazi wa Mombasa, ambako bandari ipo. Hivi sasa, mdahalo mkubwa unaoendelea ni kuhusu Kenya National Shipping Line (KNSL) kuunganishwa na Mediterranean Shipping Company (MSC). Jambo hili si la sawasawa kwa sababu hakuna usawa. Katika bandari ya Mombasa hivi sasa, kampuni ya Maersk Line, ambayo yatoka Uholanzi, inabeba shehena asilimia 40 ya shehena za Serikali. Vile vile, Pacific International Line (PIL) inabeba takriban asilimia 15. Nashangaa ni kwa nini KNSL isisawazishwe na zile kampuni nyingine. Ni kwa nini MSC inafanya kazi yote? Naona hata ndugu yangu, Mbunge wa Mvita, Abdullswamad, anapiga makofi kunipongeza kwa sababu ni jambo la sawa. Ijapokuwa ni mimi ninayezungumza, yeye ana fikra hizo hizo: kwamba, ni lazima kuwe na usawa wa mambo haya.

Kabla ya kuingia katika siasa, nilifanya kazi katika bandari. Ni lazima tuangalie kwa umakini kwa sababu pesa zote ambazo zinaingia kwa MSC zinakwenda katika nchi yao ya Italy. Pesa nyingi ambazo zinaingia katika Maersk Line zinakwenda Uholanzi. Pesa zinazolingia katika kampuni za meli ambazo zimefungua ofisi hapa nyumbani zinapeleka pesa zile katika nchi zao tofauti tofauti. Kenya National Shipping Line iliundwa mwaka 1989. Madhumuni yake ilikuwa kuangalia jinsi tutakavyokuwa na laini yetu ambayo itabeba shehena zetu. Kwa hivi sasa, kama alivyosema Mhe. Millie Odhiambo, kuna watu watapeli ambao wanataka kuingia pale na kuona jinsi watakavyopata *commission* na mambo ya tenda.

Mediterranean Shipping Company, Maersk Line, PIL na kampuni kama Global Container Line zipo. Wanafanya kazi kutoka nchi zao na kuja katika bandari yetu ya Mombasa. Nashangaa mpaka sasa hakuna mabaharia ama vijana wetu wowote ambao wameandikwa katika hizo *shipping lines* ambazo ziko hapo. Ile basi ambayo bandari ya Mombasa inataka kutumia, imejengwa kutokana na pesa za ushuru wa mwananchi. Haikujengwa na pesa za ushuru wa mtu mmoja. Haiwezekani kudhaifishwa au kubinafsishwa kwa mtu binafsi akaweza kuifanyia kazi ilhali ni sisi wananchi ndio tunaoilipia kodi. Kwa hivyo, ni lazima kuwe na usawa ili sisi watu wa Mombasa tufaidike katika mpango huu. Kulingana na Katiba ya Kenya, ni lazima kuwe na *public participation*, yani watu kuhusishwa. Katika mambo haya, watu hawajahusishwa kisawasawa. Wasitufanyie ule mzaha ambao kwa Kiswahili unajulikana kama “kiriba goji, goji kiriba” – yani kutuzungusha tu hapo hapo kisha baadaye tunakuwa hatuna mbele wala nyuma.

Ni mwezi mmoja na nusu uliopita tangu Serikali iamue kwamba watu watapata kipato kutoka kwa Mbuga ya Wanyamapori ya Voi. Tukiangalia katika Maasai Mara, watu wanapata kipato kule Kaunti ya Narok. Mpaka leo, hakuna chochote ambacho tunapata kutoka bandari yetu ya Mombasa. Watu wetu hawaajiriwi kazi kwa usawa. Nataka kupiga firimbi hapa leo. Hata kama bandari ni rasilimali ya Serikali kuu, ni lazima watu wahesabiwe ili waangalie wale ambao ni wenyeji wa pale. Ukiwa Mkamba, Mkikuyu, Mjaluo ama Msomali na unaishi Mombasa, ni

lazima upatiwe nafasi ya kwanza katika bandari. Kwa hivyo, hivi sasa tunaona kuna watu wengi sana ambao wanaajiriwa katika bandari na kuna watu wetu ambao wamesoma na hawapati nafasi kama hiyo.

Kwa hayo machache, nashukuru Wabunge wenzangu kwa kukataa Mswada huu kwa sababu utatumiza. Nikimalizia kwa sababu tunataka kwenda kufuturu baada ya dakika tano, nataka kuchukua fursa hii nikiwa Muislamu na Mbunge ambaye anahudumu katika kipindi cha pili cha Bunge hili, kuwaombea Waislamu wote popote pale walipo. Nawatakia Ramadan njema. Wafunge kwa kusaidiana baina ya wenyewe kwa wenyewe na kusimamisha dini ya Kiislamu.

Asanteni na Mwenyezi Mungu atusaidie. Shukrani, Mhe. Naibu Spika wa Muda. Napinga sana Mswada huu kutoka Pwani, eneo Bunge la Jomvu, Kaunti ya Mombasa.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Asante sana, Mhe. kwa Kiswahili sanifu. On my request list, I have the Member for Kinangop.

**Hon. Zachary Thuku** (Kinangop, JP): I do not want to contribute to this Bill, Hon. Temporary Deputy Speaker. I wish to contribute to the next Order. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): There being no other request, I call upon the Mover to reply. Hon. Washiali.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. On behalf of the Mover who is the Leader of the Majority Party, I want to start by thanking all the Members who have contributed to this Bill.

Given that today is the last day of this week and that Members are proceeding to go for recess, I was worried that this Bill would not receive the attention that it has received. I thought that Members would retreat and proceed to go on recess. I am impressed because Members hanged on and debated this Bill exhaustively. We have taken note of the feelings of the Members. This is a Statute Law (Miscellaneous Amendment) Bill that had 15 pieces of legislation. The Mover withdrew one. We have listened to what Members have said. I am sure that they know how to go about it. I am sure they will address this in the Committee of the whole House.

As I finish, Members should not gag themselves. The Statute Law (Miscellaneous Amendment) Bill is allowed by the law. The previous Statute Law (Miscellaneous Amendment) Bill that we considered before was bigger than this one. It covered more Bills than the current ones that are in this Bill. Therefore, Members should not gag themselves. This is a shorter way of addressing quite a number of Bills at the same time. We should not try to discourage the Government from bringing Statute Law (Miscellaneous Amendment) Bill that will address quite a number of issues. Where we find a problem, we have to correct it like I have heard from Members.

I thank you, Hon. Temporary Deputy Speaker. I wish to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, Member for Mumias East. Hon. Members, guided by the procedures and our Standing Orders, I am not in a position to put the Question on Order No. 14 on the Statute Law (Miscellaneous Amendment) Bill (National Assembly Bill No. 21 of 2019) on the Second Reading. I order that the Question will be put in the next Sitting at the most appropriate time.

Next Order.

*(Putting of the Question deferred)*

## MOTION

REPORT ON THE INQUIRY INTO PROCUREMENT AND IMPLEMENTATION  
OF THE EXCISABLE GOODS MANAGEMENT SYSTEM AND AN INTEGRATED  
PRODUCTION ACCOUNTING SYSTEM BY THE KENYA REVENUE AUTHORITY

THAT, this House adopts the Report of the Public Investments Committee on the Inquiry into Procurement and Implementation of the Excisable Goods Management System (EGMS) for printing, supply and delivery of security revenue stamps complete with Track and Trace System and an Integrated Production Accounting System by the Kenya Revenue Authority, laid on the Table of House on Tuesday, 30<sup>th</sup> April 2019.

*(Hon. Abdullswamad Nassir on 8.5.2019)*

*(Resumption of Debate interrupted on 8.5.2019 – Afternoon Sitting)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, this is resumption of debate interrupted on Wednesday, 8<sup>th</sup> May 2019 in the Afternoon Sitting.

Hon. Member for Ugunja, do you want to speak to it?

**Hon. OpiyoWandayi** (Ugunja, ODM): Hon. Temporary Deputy Speaker, I do not wish to contribute to this Motion. I will be speaking on the next one. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Kinangop, Hon. Thuku.

**Hon. Zachary Thuku** (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak on procurement of EGMS. I am a Member of the Public Investments Committee. We sat and went through all evidence and interviewed witnesses who appeared before the Committee.

From the foregoing, we found out that many issues came up in the process of procurement. We found out that it was a very important procurement that Kenya Revenue Authority undertook. I wish to support our Report and the recommendations thereof.

Of importance is public participation. Going forward, we wish to see a more broad form of public participation. There was an outcry that there was no public participation that took place because it was structured. So, as a House, we need to legislate on the form and mode of public participation because it is an issue every time there is an issue of public interest because some of the people who gather for it have no interest in the matter. Because it is just a formality to show that public participation happened, it has become a big issue.

Finally, I wish to see a situation where KRA consults with like-minded agencies like the Anti-Counterfeit Agency and Kenya Bureau of Standards (KEBS) so that even after procuring this system, it can be used by the relevant agencies. The KEBS should not go ahead to procure a system that is similar to the one procured by KRA.

I support our Report. Public Investments Committee is doing a good job. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Wanga, do you want to speak to the Motion? Where is your card?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): My apologies. I had raised my hand.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): We do not lift hands. But because you caught my eye, you have the Floor.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for the opportunity. I submit that I support the Report very much. I thank the PIC led by the able Chairman, the Hon. Member for Mvita, the Vice Chairperson and its membership.

The most important point in the Report is that many people still believe that public participation means concurrency. That is not the case. You can discuss and give your views, but if the Committee or whoever you are giving your views does not concur with what you have to say it still qualifies as public participation. Therefore, one of the key recommendations is the need for a law to guide public participation so that the public is guided.

The other recommendation we made is on exception of taxation on plain drinking water. One of the excisable goods under this system is drinking water. We propose the exception of plain drinking water from taxation because this is a constitutional right. Kenyans are entitled to safe drinking water by the Constitution.

With those few remarks and because of constraints of time, I fully support this Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): With no other Member showing interest to contribute, I call upon the Mover to reply.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you, Hon. Temporary Deputy Speaker. I once again take the opportunity to thank each and every one of our able Members for having been able to bear the might of such a heavy task. It is in the interest of every single Kenyan in this House to adopt this particular Report. I want to re-emphasise that taxation on pure drinking water should be zero-rated. There should not be taxation on water.

Secondly, we have insisted that it is important for this House to come up with laws that will govern what entails public participation. We are also saying that there is no need for an extra cost to manufacturers. The same system being used by KRA should be sent over to the other State agencies. Even after this contract expires, the Anti-Counterfeit Agency, the Kenya Bureau of Standards and the KRA should come up with one system so that we do not have duplication of jobs.

With that in mind, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me appreciate the work you have done even as you consult your Vice-Chair. The Vice-Chair will not speak because the Chairman has spoken. The Vice-Chair cannot speak after the Chairman has spoken but I appreciate your consultations.

Hon. Members, guided by our Standing Orders and procedures of the House, I am not in a position to put the Question. I, therefore, order that the Question to this Motion be put at the right sitting as it will be slotted in the Order Paper.

*(Putting of the Question deferred)*

Next Order!

REPORT ON EXAMINATION OF FINANCIAL STATEMENTS FOR THE NATIONAL  
GOVERNMENT FOR 2015/2016

THAT, this House adopts the Report of the Public Accounts Committee on its examination of the Report of the Auditor General on the Financial Statements for the National Government for the Financial Year 2015/2016, laid on the Table of House on Tuesday, 23<sup>rd</sup> April 2019.

*(Hon. Opiyo Wandayi on 30.4.2019)*

*(Resumption of Debate interrupted on 8.5.2019 – Morning Sitting)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): On my request list is Member for Mvita. Do you wish to speak to this?

**Hon. Abdullswamad Nassir** (Mvita, ODM): No, Hon. Temporary Deputy Speaker, I do not wish to speak to this. I just want to re-emphasise that I, and by extension hopefully the whole Parliament, with our strength together with our Chair, we are asking him to reply as per the Standing Orders.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are out of order. When you stand to ask for anything either within the Standing Orders that is out of order or on a point of order, you must know the procedure. But I get that you were not ready to speak to this. The next request is the Member for Wajir North, Hon. Ibrahim Abdisalan.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Hon. Temporary Deputy Speaker, as I had said earlier, this is like injury time for those of us observing the fast. Indeed, this is the time we ought to break our fast.

First, I have to add my voice to this Motion. Indeed, I congratulate the Public Accounts Committee for a job-well-done. They have submitted a number of Reports to this House. Indeed, they did so timely. Of course, that does not mean that the Public Investments Committee has not been submitting timely Reports. Government agencies are obliged to minimise wastage as much as possible and ensure that resources are utilised efficiently so as to deliver what is expected of them by taxpayers.

Hon. Temporary Deputy Speaker, as I support the Motion, I request that the next speaker also takes one minute or so, so that we call upon the Mover to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Wajir North, you cannot dictate the next speaker to take a minute or so. This is a House of procedure. You know how much time each Member is entitled as he contributes to debate on a Bill or Motion. So, any Member willing to speak is free to use the time they are entitled.

Hon. Members, as per our Standing Orders, a Motion is moved, seconded and proposed. The Motion on the PAC Report has been moved, seconded and proposed, and Members have been contributing to it. However, at this juncture, I need to pronounce myself that I have no request from any other Member. Therefore, I call upon the Mover to reply to debate.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Temporary Deputy Speaker, I wish to thank all the Members who have contributed to this very important Motion. As I mentioned while moving this Motion, this is a Report that carries a lot of weight in terms of determining how the national revenues are to be shared between the national Government and the county governments. The PAC is on track and committed to ensure that there is no excuse whatsoever in terms of allocation of revenues to the counties by partaking its work and submitting its Reports on time. We are also on course to clear the very heavy backlog that we inherited from the last

Parliament in terms of examination of the reports of the Auditor-General on Ministries, State Departments, constitutional commissions and independent offices.

We have highlighted a number of issues in this Report. I am happy that the Members who have contributed to this Motion have also reiterated the same facts – that, public funds must be utilised in an effective manner to ensure that they bring value to taxpayers; and that anybody found to have misused public funds must be held to account at the individual level. That is the important thing that has come out of this Report, to which Members have agreed. So, we look forward to further engagements with Ministries and State Departments with regard to the 2016/2017 Financial Year audit reports. We remain hopeful that before the end of the Third Session of this Parliament, we shall have submitted a Report on the 2016/2017 audit reports.

With those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, Chairperson of the PAC.

Hon. Members, guided by the same procedures and the Standing Orders of Parliament, I am not also in a position to put the Question on Motion No. 16 which is the Report of the Examination of the Financial Statements for the National Government on the Financial Year 2015/2016 by the Chairperson of PAC. I, therefore, order that Question be put at the right as it will be slotted in the Order Paper.

Next Order!

*(Putting of the Question deferred)*

## BILL

### *Second Reading*

#### THE LAW OF CONTRACT (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Mover, Hon. Francis Waititu.

Majority Whip, do you want to say something?

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Temporary Deputy Speaker, through the leadership, we talked with Hon. Waititu who is currently not feeling well and we agreed that this Bill should appear on the Order Paper immediately we resume sittings in the next Session. I, therefore, request that we step it down until we resume sittings in the next Session.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. With communication from the House leadership, I direct that this Bill is deferred to the next available time.

*(Bill deferred)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, there being no other business in our Order Paper for today, I need to give a notification of recess from 10<sup>th</sup> May 2019 to 3<sup>rd</sup> June 2019.

The time being 6.59 pm, the House stands adjourned until Tuesday, 4<sup>th</sup> June 2019, at 2.30 p.m.

The House rose at 6.59 p.m.