

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 8<sup>th</sup> May 2019

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** Member for Mukurweini, Hon. Githiaka. We have a Petition by the Member for Nakuru Town East, Hon. Gikaria. Do you not have a card again?

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Speaker, we really need some tutorials.

**Hon. Speaker:** It is your Petition.

### PETITION

#### POOR DRAINAGE DESIGN OF THE NAKURU-NYAHURURU INTERCHANGE

**Hon. David Gikaria** (Nakuru Town East, JP): I, the undersigned, on behalf of residents of Nakuru Town East Constituency, draw the attention of House to the following:

THAT, an efficient and well-designed road infrastructure and network is a catalyst for economic growth facilitating rapid movement of goods, people and services and reducing traffic snarl-up;

THAT, the Government through the Kenya National Highways Authority (KeNHA), commenced an elaborate programme of eliminating roundabouts and T-junctions on major highways across the country;

THAT, among the targeted junctions was the Nakuru-Nyahururu T-junction, where KeNHA built an interchange that became operational in May 2018;

THAT, instead of reducing traffic within the Nakuru Town Central Business District as was hoped by the residents, the lack of a connecting road between the interchange and Oginga Odinga Avenue has negated the expected benefits of the interchange;

FURTHER THAT, in addition, the Nakuru-Nyahururu turn-off interchange drainage system overflows with water from the uplands of Bahati Constituency, Milimani and Kenya Industrial Training Institute (KITI) areas and drains immediately after the interchange around Kivumbini, a densely populated residential area;

THAT, the volume of rain water has increased after the construction of the interchange, which directed the waters to the densely populated areas in Kivumbini Ward, hence causing death and destruction of properties;

THAT, so far, there has been no information from the relevant authorities on whether a connecting road will be constructed and drainage improved to re-direct the water away from the interchange;

THAT, efforts to have the matters raised in this Petition addressed by the Kenya National Highways Authority, the Kenya Urban Roads Authority and Kenya Railways have not yielded any fruit;

THAT, the issues in respect of which this Petition is made 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 Transport, Public Works and Housing:

- (i) Intervenes and recommends to the Ministry of Transport, Public Works and Housing and other relevant agencies to revisit the design with a view to resolve destructive drainage problems;
- (ii) Recommends to the Ministry of Transport, Public Works and Housing the relevant Government agencies to assess the damage caused to residents by the waters and have affected families duly compensated, and;
- (iii) Makes any other recommendations it may deem fit, in the circumstances of the Petition.

And your petitioners will ever pray.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Petition is referred to the Departmental Committee on Transport, Public Works and Housing. The other Petition is by the Member for Mukurweini, the Hon. Anthony Githiaka, for the second time before we move out of that Order. The Member is absent, not desiring to be present.

The matter is deferred.

*(Petition by Hon. Anthony Githiaka deferred)*

Next Order.

## PAPERS LAID

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

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

The Engineers Rules, 2019 and the Explanatory Memorandum.

The Report 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) Commodities Fund;
- (b) Pyrethrum Processing Company of Kenya;
- (c) Pest Control Products Board;
- (d) Railway Development Fund (Operations Account);
- (e) Civil Servants Housing Scheme Fund;
- (f) Ministry of Tourism;

- (g) State Department for Investment and Industry;
- (h) Tana River Services Board;
- (i) Department of Transport;
- (j) State Department of Housing and Urban Development;
- (k) State Department of Infrastructure, Vote 1091, and;
- (l) State Department for Natural Resources, Vote 1106.

Thank you, Hon. Speaker.

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

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

Report of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bill No.10 of 2017).

**Hon. Speaker:** Chairperson of the Justice and Legal Affairs Committee, Hon. Cheptumo.

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

The Report of the Departmental Committee on Justice and Legal Affairs on its consideration of the Statute Law (Miscellaneous Amendment) Bill (National Assembly Bills No. 21 of 2019) volume 1.

The Consolidated Reports on Consideration of the Statute Law (Miscellaneous Amendments) Bill, 2019 (National Assembly Bills No. 21 of 2019) by the following departmental committees:

1. Administration and National Security;
2. Environment and Natural Resources;
3. Finance and National Planning; and
4. Sports, Culture and Tourism.

Volume II

**Hon. Speaker:** The Leader of the Majority Party you are the one tabling the one on mediation.

**Hon. Aden Duale** (Garissa Township, JP): *(Off record)*

**Hon. Speaker:** Very well, next Order.

## NOTICE OF MOTION

### ADOPTION OF REPORT ON THE WAREHOUSE RECEIPT SYSTEM BILL

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

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. Speaker:** Next Order.

**QUESTIONS BY PRIVATE NOTICE**

**Hon. Speaker:** Member for Isiolo South Constituency, Hon. Abdi Koropu Tepo. Is Hon. Abdi Koropu present? Member for Isiolo South Constituency.

The next Question is by the Member for Buuri Constituency, Hon. Mugambi Murwithania.

*Question No. 024/2019*

**PROGRESS REPORT ON INVESTIGATIONS INTO DEATH OF MR. RONNY KABURU MAINGI**

**Hon. Mugambi Rindikiri** (Buuri, JP): Hon. Speaker, I rise to ask Question No. 024/2019 to the Cabinet Secretary for Health.

- (i) Is the Cabinet Secretary aware that one Ronny Kaburu Maingi of National ID No. 218955999 from Kiambogo area of Buuri Constituency was hospitalised at Nanyuki Teaching and Referral Hospital on 22<sup>nd</sup> January, 2019 and while receiving treatment at the said hospital, the patient was attacked and killed by another patient suffering from mental illness on 25<sup>th</sup> January 2019?
- (ii) Could the Cabinet Secretary provide progress of investigations on the death of the patient, and state what action the Ministry is taking to ensure that such incidents do not re-occur?
- (iii) Could the Cabinet Secretary consider compensating the family of the deceased patient in view of the fact that his death was due to negligence?

Thank you, Hon. Speaker.

**Hon. Speaker:** That will be responded to by the Departmental Committee on Health. The next Question is by the Member for Bumula, Hon. Mwambu Mabonga.

**ORDINARY QUESTIONS**

*Question No. 211/2019*

**DELAYED PAYMENT OF SERVICES RENDERED UNDER THE NATIONAL YOUTH SERVICE  
YOUTH EMPOWERMENT PROGRAMME**

**Hon. Mwambu Mabongah** (Bumula, Independent): Hon. Speaker, I rise to ask Question No. 211/2019 to the Cabinet Secretary for Public Service, Youth and Gender Affairs:

- (i) Is the Cabinet Secretary aware that youth and women from Bumula Constituency who were engaged under the Youth Empowerment Programme of the National Youth Service are yet to be paid for the services rendered during the Financial Year 2017/18?
- (ii) When will the youth and women who rendered services under the programme in Bumula Constituency be paid?

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. To be responded before the Committee on Labour and Social Welfare.

Hon. Members, the next Question No. 220 by the Member for Bonchari is deferred at his request due to his inability to be present at this time. He wrote a letter requesting that it be deferred. It is accordingly ordered.

*Question No.220*

MEASURES TO FACILITATE INTERNSHIP AND ATTACHMENT OPPORTUNITIES IN PUBLIC SERVICE

*(Question deferred)*

The next Question is by nominated Member, I hear now nominated Members are called specially elected Members. Specially elected Member, Hon. Godfrey Osotsi.

*Question No. 223/2019*

STATUS OF THE LIFESTYLE AUDIT OF PUBLIC OFFICERS

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Speaker, I rise to ask Question No. 223/2019 directed to the Cabinet Secretary for National Treasury and Planning.

- (i) What is the status of the lifestyle audit of public officers that was ordered in 2018, particularly, for heads of accounts and procurement departments in public institutions?
- (ii) In reference to (i) above, what action has been taken so far on officers whose lifestyle audits raised queries, if any?
- (iii) Are there plans to ensure that all State officers undergo the same audit in line with the Leadership and Integrity Act?

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well, that Question is to be responded before the Department Committee on Finance and Planning. The next Question is by the Member for Kathiani, Hon. Mbui.

*Question No. 225/2019*

COMPENSATION FOR VICTIMS AND SURVIVORS OF THE KYANGULI FIRE TRAGEDY

**Hon. Robert Mbui** (Kathiani, WDM-K): Hon. Speaker, I rise to ask Question No. 225 of 2019 to the Cabinet Secretary for National Treasury and Planning.

- (i) Is the Cabinet Secretary aware that the parents/guardians of the victims and survivors of the Kyanguli fire that occurred in Kyanguli Secondary School are yet to be compensated despite the High Court ruling of 3<sup>rd</sup> March 2016?
- (ii) What steps has the Ministry taken to ensure that the parents/guardians are compensated?

The reason I asked this Question is that the Committee dealt with the petition and it said this may be an easier way to get answers. That is why we brought it back as a Question.

Thank you.

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Finance and National Planning.

### QUESTION BY PRIVATE NOTICE

*Question No.023/2019*

EXPLANATION ON WHEREABOUTS OF MESSRS. MUHAMUD ROBA GOLOLE  
AND ALI WARIO GUYO SOUGHT

**Hon. Speaker:** Hon. Members, for the second time, Question No. 023 by the Member for Isiolo South Constituency, Hon. Abdi Koropu Tepo. He had listed it as a Question by Private Notice.

Well, the Member being absent, not desiring to be present, the Question is, therefore, dropped.

*(Question dropped)*

Next Order!

### BILLS

*Second Reading*

THE NATIONAL COHESION AND INTEGRATION (AMENDMENT) BILL

*(Hon. Maina Kamanda on 8.5.2019)*

*(Debate concluded on 8.5.2019 - Morning Sitting)*

**Hon. Speaker:** Hon. Members, debate on this Bill was concluded earlier in the day. What remained was for the Question to be put which I hereby do. Member for South Imenti, you must be in Imenti. I will repeat.

*(Question put and agreed to)*

*(The Bill was accordingly read a Second Time and  
committed to a Committee of the whole House tomorrow)*

Hon. Members, I wish to draw the attention of the House to the fact that I have learnt that a number of you contributed to this Bill. Because of its urgent nature, I have directed that the Bill be put on the Order Paper for tomorrow to be considered in the Committee of the whole House.

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So, if any Member desires to propose an amendment to that Bill in its current form, please, prepare the amendments so that they are considered tomorrow.

Next Order!

## PROCEDURAL MOTION

### EXTENSION OF PERIOD FOR CONSIDERATION OF SPECIFIED PETITIONS

**Hon. Speaker:** Hon. Ali Wario, Chairperson of Departmental Committee on Labour and Social Welfare.

**Hon. Ali Wario** (Bura, JP): Thank you, Hon. Speaker. I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 227(2)(Committal of petitions), this House resolves to extend the period for consideration of the public petitions specified hereunder by the Departmental Committee on Labour and Social Welfare by a further period of sixty (60) days with effect from 8th May, 2019-

- (i) Unfair dismissal of Ex-Corporal Benjamin Chelang'a by the Kenya Defence Forces; and,
- (ii) Non-payment of terminal dues to former employees of the African Safari Club.

On the first Petition, we are asking for extension because we want to meet more stakeholders and get more evidence on the same.

On the second Petition, we had already met the Minister for Labour and the petitioner, however, as a Committee we resolved to visit Mombasa to meet the Ex-employees of African Safari Club to get more facts on the same. With that, I request *Mhe*. Sankok to second.

Thank you.

**Hon. Speaker:** Specially elected Member, 001.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. Again, I wish our brothers and sisters of the Muslim faith Ramadhan Kareem.

This is a Procedural Motion. After meeting the Cabinet Secretary, Principal Secretary of defence and the petitioner, the Committee would like to meet more stakeholders so that we come up with a conclusive report for this House.

I beg to second.

**Hon. Speaker:** Did you say that you beg to support? You said, "to second".

*(Hon. Member walked into the Chamber)*

Hon. Member, you assume you are in Kilifi. Obviously, you can walk majestically like that in Kilifi, but not here.

*(Question proposed)*

It is the desire of the House that I put the Question.

*(Question put and agreed to)*

Hon. Members, it is fair to announce that all chairpersons of committees to whom petitions have been referred to and, for one reason or the other, may find it is not possible to conclude consideration of those petitions within the initially specified period of 60 days, may consider bringing to the House such procedural motions. As you know, the House will be proceeding on recess according to the calendar. Just as the Chairperson of Departmental Committee on Labour and Social Welfare has done, give reasons. The House does not want to give an extension for the sake of it. Be ready to give reasons as to why you are not able to conclude within the stipulated time of 60 days.

Next Order!

### PROCEDURAL MOTION

#### RESOLUTION TO HOLD A SITTING ON THURSDAY MORNING

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

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

THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold a Morning Sitting on Thursday, 9<sup>th</sup> May 2019 commencing at 9.30 a.m. for purposes of considering priority business ahead of the May recess.

The House Business Committee that you chair, in its wisdom, last night, felt that there are certain important committee and Government Bills and Motions that need to be concluded before we go for the long recess. That will give our departmental committees an opportunity to look at the Budget Estimates for the Financial Year (FY) 2019/2020. Part of the reasons we will have a Morning Sitting is to consider the National Cohesion and Integration (Amendment) Bill (National Assembly Bill No. 12 of 2019), the issue of the Division of Revenue Bill mediated version and the Statute Law (Miscellaneous Amendments) Bill, which we may not be able to finish today. So, it is just for tidiness and to make sure that by the time we are leaving for recess tomorrow we have concluded business that is of priority to the nation and the House.

I will ask the Leader of the Minority Party, who was also in the HBC meeting, to support me. Members need to wake up tomorrow early in the morning so that we are here at 9.30 a.m. and then finish all pending priority business by the afternoon session.

I beg to move and ask Hon. Mbadi to second.

**Hon. Speaker:** Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, I want to second this Procedural Motion. In yesterday's HBC meeting, we actually agreed on the issue since we are likely to proceed on recess from tomorrow, based on our calendar all the way to 3<sup>rd</sup> June that is cumulative three weeks, during which time the Budget and Appropriations Committee together with the Departmental Committees will be considering the Budget Estimates. Before we break there are some urgent businesses that the three sittings of today morning, afternoon and tomorrow afternoon would not have been sufficient. So, we request this House to allow an extra

sitting tomorrow morning. I hope that what happened this morning, where we had no quorum but did not necessarily ring the Quorum Bell, will again obtain tomorrow so that we do justice to some of the issues that will come up.

More particularly, I can see the Chair of BAC walking in, if we are able to discuss the Division of Revenue Bill, which has been referred from the Senate with amendments, possibly we would be able to conclude this Bill before the end of tomorrow and any other issue that is outstanding. So it is my plea that this House supports the HBC in its decision to have an extra sitting tomorrow at 9.30 a.m.

Thank you, Hon. Speaker.

*(Question proposed)*

**Hon. Members:** Put the Question.

**Hon. Speaker:** It is the desire of the House that I put the Question.

*(Question put and agreed to)*

I hope, Hon. Members, you can rearrange your diaries and especially what you normally do on Thursday mornings. So you have to wake up a little earlier than normal to be here at 9.30 a.m. to consider what has been said to be priority business.

Next Order.

## MOTION

### SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL

**Hon. Speaker:** Chair of budget, are you ready to move?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Yes, Hon. Speaker. I beg to move the following Motion:

THAT, the Senate amendments to the Division of Revenue Bill (National Assembly Bill No.11 of 2019) be now considered.

Hon. Speaker, the communication that was sent to your office from the Senate has a number of amendments that were proposed to the Division of Revenue Bill that we had adopted and passed in this House sometime before the short recess. They have proposed a number of amendments. Instructively, some of them relate to issues that had been canvassed by the Budget and Appropriations Committee (BAC) and adopted by this House. For instance, they have proposed an amendment on the leasing of medical equipment. They are proposing to remove the amount that we had provided for. They have also a proposal on the sharable revenue between the national and the county governments to increase it from the proposed Kshs310 billion by a further Kshs25 billion to a figure of Kshs335 billion amongst many other amendments that they have proposed.

It is instructive to remind Members that the National Assembly, being the House that is charged by the Constitution with appropriating national resources has a vibrant BAC that considers many of the proposals that come to Parliament. Therefore, we have an opportunity to holistically look at the fiscal framework of our country. When the Senate makes amendments

that will have a very huge impact on the fiscal deficit and the Budget Policy Statement that we passed in this House at the beginning of March; the proposals will also have an impact on the entire fiscal framework of the country and the economy. They have not had the opportunity to interrogate issues that this House, through the departmental committees interrogated. This then leaves us in a very awkward situation.

Therefore, I want to urge the House that we reject all these amendments that are proposed by the Senate. We understand where the Senate is coming from because they have a constitutional mandate to protect the counties. They have a duty and a responsibility to protect the interests of the counties, but the interests of the counties cannot and should never override our national interests.

When Hon. (Maj.) Waluke sits on the Departmental Committee on Defence and Foreign Relations or the Departmental Committee on Administration and National Security, there are huge national interest considerations that that Committee takes into account in considering how much money to appropriate to those sectors of the national Government. Therefore, as much as we understand where the Senate is coming from, I want to urge the House to reject totally all these amendments. This may give both Houses an opportunity to go into mediation and be able to reason together and see – in a give and take situation – what we are able to give and what we are able to take back from them. I, therefore, urge the House to reject all these amendments. That will give us a second opportunity to sit with our colleagues in the Senate, not to fight, but to reason together. This is because even the holy book tells us that if we reason together.... I am certain that we will be able to reason together with our colleagues in the Senate and arrive at figures that will not distort the fiscal framework that we have and will not distort the Budget ceilings that we passed in the BPS.

With that, I beg to move and plead with Members that they do agree with us that we reject all these amendments in totality.

I want to ask Hon. Makali Mulu to second. Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I rise to second this important Motion. Even before I do that, I want to take this opportunity to wish our Muslim brothers well during this time of Ramadhan.

Getting to the subject matter of this Motion, what the Senate has done, as my able Chair has said, is to disagree with the National Assembly in terms of the Division of Revenue Bill. They have proposed changes which we had not agreed on as the Budget and Appropriations Committee (BAC), and which were adopted by this House. There is an amendment to Clause 5 which talks about a situation where there is a shortfall in revenue collection. It says that the shortfall should be borne by the National Government, but the person to determine the threshold will be the Cabinet Secretary. So, we need to delete the word “Cabinet Secretary” and replace it with “regulations.”

We need to be clear in terms of the regulations we are talking about here. Are they the regulations contained in the Public Finance Management Act? If so, are they not static? I imagine it to be a dynamic situation that has to be reviewed annually based on the collections of each year. The other issue is that of moving the county’s equitable share from Kshs310,000,000 to Kshs335,670,000, meaning that they have increased the equitable share by Kshs 25,670,000. We agree as a House that counties need to be given more money. I think there is no dispute on

that. However, the most important question is that you cannot give counties money when you are not saying where the money will come from. So, I would have wished to see a situation where the Senate increases an allocation and also tells us where the additional amount will come from so that we do not interfere with the Budget deficit. This is because the percentage of the Budget deficit was not fixed when we were preparing the normal Budget. So, when they propose changes, it is a matter of saying remove money from here and increase here. That is not coming out clearly.

The other thing is that the programme of leasing medical equipment has its own challenges. We need some audit to determine whether we are getting value for money. When you delete a whole budget line for a particular year, you should bear in mind that there could be some contractual issues. Contracts have been signed. I am sure there are annual commitments. We want to also hear when they say we reduce the amount to zero, what happens to these contractual agreements. So, even as we discuss this, I urge the House to note that if we just passed these amendments the way they are, we will have serious issues in our hands in terms of how to balance the Budget considering the Budget deficit.

Therefore, as we move forward, there is a situation where we are going to reject these amendments, and that will trigger a mediation process where we can come up with a figure that is agreeable to both Houses – a figure which should factor in all the micro-economic variables that are considered as we prepare our Budget. Otherwise, we are likely to interfere with one area and destabilise the micro-economic variables. Those of us who are economists know what happens when the micro-economic variables are destabilised. Such a situation would have serious implications to the economy, leading to worse results. So, the Senate ought to know that we all support increasing funding to the counties but this must be done in a structured manner so that at the end of the day we achieve our goals without destabilising the economy. Therefore, I urge this House to reject these amendments so that we can proceed to a mediation process.

With those remarks, I second.

*(Question proposed)*

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I totally support the Committee and reject the Senate amendments to the Division of Revenue Bill. Article 203(2)(3) of the Constitution provides that for every financial year, the equitable share of the revenue raised nationally that is allocated to the county governments shall be not less than 15 per cent of all revenue collected by the national Government. The amount referred to in Sub-article (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

Why is the Constitution very explicit in Article 203? There must be a reason. These provisions were to ensure that allocations to counties are predictable. That is why it says “not less than 15 per cent.” This provision in the Constitution makes allocations to county governments to be very predictable. This is dully adhered to in the current Division of Revenue Bill that this House approved. It allocated 30 per cent of the most recent audited and approved revenue. So, we have gone above the 15 per cent to 30 per cent.

Secondly, the Senate must listen to this. The Budget is not formulated in a vacuum. The national Government Budget for the Executive, Parliament and the Judiciary, and the county government's budgets, are not formulated in a vacuum. They are based on a framework that considers the current macro-economic environment and the policy agenda of the current administration of Jubilee. This Government has an agenda. The Budget must be formulated on the basis of the policy framework of the Government. Above all, this House has approved the 2019 Budget Policy Statement. So, everything that we do must be within the confines of the BPS approved by this House.

More importantly, there was rationalisation of spending to fund the Big Four Agenda: enhancement of food security, provision of universal healthcare, supporting value addition and providing affordable housing for all Kenyans. It is very interesting to note that whereas everyone knows that achieving the universal healthcare goal requires investment in medical supplies such as medicines, medical equipment and personnel, the Senate has removed the conditional allocation on leasing of medical equipment. Are we reading from the same script? The programme of medical equipment is a contract between the national Government and the suppliers. So, as the Senate removes this money, they should give us a way forward. What happens after that? This is a contractual obligation between the national Government and suppliers to the various county hospitals.

Finally, the risks involved in the counties are increasing, as reported by the Office of the Auditor General. Not every coin reaches the beneficiary. It is not enough to justify misappropriation of funds with a notion that the same is happening at the national Government level. That, every time you rise there is misappropriation of funds in the counties and the only answer you get is that even the national Government is misappropriating funds.

As a House we need to ensure that both the national and county governments account for each and every penny they have. That is, if you lose one shilling in the county and another person has lost another three shillings, both of you are culpable of an offence and the Auditor-General must raise this matter.

The route to go is mediation and I am sure the people who will be selected to mediate with the Senate must be prepared to face it on the three matters; one being the increment. There is an institution called Intergovernmental Budget and Economic Council (IBEC) chaired by the Deputy President which brings all county governors, Chairs of Committees of Senate and the Budget and Appropriations Committee (BAC) of this House together and they have agreed in principle that this is the amount.

Now, the Senate has increased the Division of Revenue Bill with over Kshs20 billion. They need to tell us where that Kshs20 billion will come from; which sector? Is it from the National Government Constituencies Development Fund (NG-CDF) or the road infrastructure? You cannot just increase Kshs20 billion and not tell us where it will come from.

Therefore, my final remark is that, I categorically reject the message on the Division of Revenue Bill 2019 from the Senate. I urge my colleagues to reject it and send it to the mediation committee as provided for in Article 113 of the Constitution.

**Hon. Speaker:** I proposed it and it is debate now. Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. I am used to Duale seconding Bills or moving.

**Hon. Speaker:** By the way it was seconded by Hon. (Dr.) Makali Mulu.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. I want to contribute to this Motion. First, I want to move an amendment.

I beg to move:

THAT, the Senate amendments to the Division of Revenue Bill (National Assembly Bill No.11 of 2019) be considered and rejected.

My reason for moving this amendment is to avoid any ambiguity. If we go the way the Motion is framed, then chances are that Members may end up even approving it without knowing they are doing so. We want to be clear that the National Assembly's intention is to reject the proposed amendments by the Senate. Let me explain why there is need to reject the amendment.

**Hon. Speaker:** Hon. John Mbadi, I had approved your proposal to amend. Maybe somebody could second you.

**Hon. John Mbadi** (Suba South, ODM): Then, how will I proceed to contribute?

**Hon. Speaker:** This is an amendment. You have not lost your right. Hon. Jared Okelo.

**Hon. John Mbadi:** No! I am the one choosing my seconder. I want Hon. Mbarire to second.

**Hon. Speaker:** Hon. Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP) seconded.

*(Question, that the words to be added  
be added, proposed)*

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

*(Question of the Motion as amended proposed)*

**Hon. Speaker:** So, the Motion can now be debated as amended. Hon. John Mbadi, proceed and contribute to the Motion as amended.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. Let me start by saying that I still want to go back to where I was in 2013. You will remember then I had serious reservations as to whether Division of Revenue Bill should be dealt with in the two Houses or it is a preserve function of the National Assembly.

My reasoning then was drawn from Articles 95 and 96 of the Constitution. If you read Article 95 of the Constitution on the functions of the National Assembly, it is clear that the National Assembly

“(a) determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter twelve”.

It means between national and county governments. When you go to Article 96 on the role of the Senate, there is no provision where it says that the Senate shall determine the allocation of national revenue between the two levels of Government. It just says that:

“96(3) the Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments”.

I know I was attacked that time and condemned in equal measure that I was trying to reduce the powers of the Senate. But, my argument was that if the people of Kenya wanted the division of revenue between the two levels of Government to be a function of the two Houses, it was not difficult to put it under the two Articles of the Constitution. It was very easy, we would have just started by putting it under Article 95 and again the same function would have been put under Article 96.

Hon. Speaker, we are where we are because of the advisory opinion from the Supreme Court which I did not agree with. I think we need to draw parallels and learn from other jurisdictions where we have bicameral system of Government on how revenue is divided and this is critical. An important Bill as Division of Revenue cannot be made an ordinary Bill under Articles 110 to 113 of the Constitution. This is because those articles envisage where a Bill can be lost. How on earth would you allow a Bill of this nature to be lost, if we are a responsible country?

If, the Division of Revenue Bill would have been a function of the two Houses, the Constitution would have classified it as a Special Bill under Article 110. When you go to definition of Special Bills, you will find County Allocation of Revenue Bill as one. That is why for this House to override the Senate, we have to garner two-thirds. Clearly, the veto power is given to the National Assembly with a very high threshold in this case. Now, Division of Revenue Bill after the advisory opinion of the Supreme Court was made an ordinary Bill which has to go to mediation with that inherit risk of being lost.

I still want to register my frustration that we are now subjecting this important Bill to discussion between the two Houses. I want to talk to the two amendments the Senate has proposed. The issue of the medical equipment is something we pronounced ourselves as a National Assembly last financial year. I remember this House saying categorically that we had our doubts with this contract between the Government and the providers of this equipment. In fact, if you look at our reports we felt this matter needed thorough auditing. How I would have been happy if the Senate had looked into this matter in detail and come up with a clear report on it and even a way forward. It is not just a question of removing the budget. Removing the budget may be good but what next? This is because when you remove the budget and that equipment is still at the counties, are we not going to breach contractual obligations? That is a question that this country must ask. There is a possibility that the people who had a contract between themselves and the Government may easily go to court and get a lot of payment from the Government.

So, even as we consider that this is fraud... I agree with the Senate that this looks like a fraudulent arrangement. We have said as much, but I want to ask the Senate; before we make a decision to take away these funds from this budget line, we need a clear report that is detailing the kind of arrangement we are in with these contractors and how much we have lost. Once we deny the Government money to pay for the leasing of this equipment, how then do we proceed? Do we return the equipment or what do we do? That is something that the Senate needs to do. It is not just a populist step to take away the budget from that budget line. That, to me, is desirable but what next? What do we do after removing the money from that budget line?

On the issue of money, I think the Senate has a point in terms of how much should go to counties. As the budget and revenue increases, whether it is estimates or actual revenue, we need to start thinking of also giving counties more of this money. However, the problem we have

found ourselves in is that we are shouldering the work of other organs of Government. There is an organ of Government we call the (IBEC) which is chaired by the Deputy President. That is where the counties are represented. The governors and their CECs are sitting there. The Senate, the National Assembly and the Treasury are represented. How come they cannot resolve the issue of how much to give to counties? Why do they give this burden to Parliament to deal with? Some of these institutions are abdicating their responsibilities. There is also the Summit chaired by the President. In my view, it is late in the day to start amending how much should go to the counties. I can see this going to the mediation committee. As we go there, we need to agree with the Senate that Parliament should not be made to shoulder the burden of IBEC. The IBEC should perform its functions and conclude them effectively so that there is smooth running of the budgetary process.

I support the Motion as amended. Thank you, Hon. Speaker.

**Hon. Kanini Kega** (Kieni, JP): On a point of order, Hon. Speaker.

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

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I rise under Standing Order No. 35. Going by the mood of the House and also considering that we also have another opportunity to deal with this matter after mediation, can the Mover be called to reply?

**Hon. Speaker:** The Member for Kieni claims that going by some mood he has noticed in the House, whether the Mover may be called upon to reply. I see the Member for Kiminini desirous of contributing. Let me just hear a few of you.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. We do not have a *moodometer* in this House to measure the mood of the House. This is a House of debate. It is indeed important that you allow us to raise some of the issues that we have.

The Division of Revenue Bill goes through a serious process. We have the Commission on Revenue Allocation (CRA) and IBEC. We have seen the budget going up. When the budget goes up, it goes without saying that the sharing amount should also go up. I was looking at Article 203(e) of the Constitution which says that as you do the Division of Revenue Bill, you should ensure that the county governments are able to perform their functions that are allocated to them. As we are doing this, have we done any cost benefit analysis to see whether the county governments will be able to perform? We know very well that the county governments have a lot of pending bills. It is unfortunate that we were not given full details by the Chair of the Budget and Appropriations Committee.

We know there was a deficit of Kshs9 billion and the Public Finance Management Act is very clear. When there is any shortage, it is the national Government to take responsibility. When we continue subtracting this money from the counties, we are getting worried that devolution might fail. It is really important for us here to differentiate between money meant for counties and maybe that meant for the governors who are corrupt. Any governor who might be corrupt in one way or another will face the law, but that should not be the reason that we should subtract money from the counties to negate devolution. That is our big concern.

This matter came up in 2013. It went to the Supreme Court which gave an advisory. If you read Article 96 of the Constitution, it clearly stipulates that the Senate plays a critical role in representing the counties and county governments. So, to me as an individual, I see that the Senate was in order to do whatever it did. I do not want to differ with my leader because he was passionate about this and I remember very well in the last term he was also very passionate, but

when you interpret Article 96, it is clear. It says that the responsibility of the Senate is to represent the counties and their interests. So, what is the interest of the county governments? One of the critical interests is more money to go to the counties so that devolution can work.

When you look at the Fourth Schedule of the Constitution, the functions that have been devolved are not proportional to the money they have been allocated. More functions are devolved to the counties, but the money that is allocated to them is not proportionate. It is difficult when it comes to division of revenue, dividing the revenue vertically.

In other jurisdictions, they base it on the budget, but here we are basing it on the audited accounts which are about two to three years old and we are talking about those of 2015/2016. As we do this and as people move to mediation, it is important for us not to throw out this baby with the bathwater. Devolution is here to stay. It has done very well. I am aware that we have some governors who might be corrupt and instead of money going to the ground, it is going to people's pockets. We should not mix the two. My humble request is that we must debate with sobriety. As we move to mediation, those of you who will be in that committee must look at this issue objectively and put devolution ahead of us. In my opinion, I strongly feel as per Article 96 of the Constitution that the Senate has a role to defend the county governments.

In other areas, devolution has done very well. The last time we were in Kakamega County, we noticed that Governor Oparanya has done very well. We are calling upon other counties to go there and try to benchmark. There are other counties where monies have been misappropriated but the Ethics and Anti-Corruption Commission, Directorate of Criminal Investigations and Director of Public Prosecutions are there to take care of that. Hon. Members, as we debate, please I kindly request that we should not kill devolution.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, even as I gauge the mood, I will not be the kind of equipment that I overheard Hon. T.J. Kajwang' suggest that the Speaker is. Just to inform the House, Hon. Members - and I am saying this for the benefit of Chris Wamalwa - in 2013, the Senate went to the Supreme Court purporting to seek an advisory opinion. Mark you; I am using my words very deliberately. Among other prayers was that the process used to arrive at the then Division of Revenue Act, 2013 was unconstitutional, faulty and, therefore, the result was null and void. I invite every one of us to just go and read that advisory and you will find, among other things, that the Supreme Court cleverly avoided the last bit on whether the result, which was the Division of Revenue Act, 2013 was null and void or unconstitutional. They deliberately cleverly avoided making a determination of those two limbs of the prayers sought by the Senate. I suspect that once you read through that advisory opinion, you will then make your own guess as to why they did not do so. If, indeed, the process used was faulty, then why not make a determination?

Hon. John Mbadi alluded to this when he addressed the roles of the National Assembly in Article 95 (4) (a). You can even add Article 94 (4) (b) on who appropriates funds to national State organs and compare that with Article 96 (3). If you read that opinion, you will find that the Senate was trying to invite the two Houses to be considering every Bill. Obviously, that would not be possible because the Constitution did not anticipate that. It is a well-known fact, even if you read the Constitution from whichever angle, that the Senate of Kenya has no power to make any law on its own without inclusion of the National Assembly. There is no Bill they can pass. Even those ones they are supposed to deal with like the ones that you know, when they consider

them they still must involve the National Assembly. That is because the Constitution itself is very clear, particularly Article 95, on the roles of the National Assembly.

We cannot, of course, fail to appreciate that they have referred the Bill back to us. It is for us to now consider it. The amendment proposed by Hon. John Mbadi is appropriate and timely. We cannot just consider it. What is our resolution? The resolution should be as proposed by Hon. John Mbadi, which was largely the substance of what the Mover, the Chair of the Budget and Appropriations Committee and the Seconder, Hon. Makali Mulu, did. After you consider, you reject after which will kick in the provisions of Article 113.

I can see there is still interest in this. Let us have the Member for Bomet Central, Hon. Tonui.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Speaker for this opportunity to add my voice to this. I want to make it clear that I support the position of the Senate 100 per cent. As a House, we have never agreed on a position with regard to this Bill. We always embrace whatever is forwarded by the Executive to this House without thorough scrutiny of the same.

The idea of adding Kshs20 billion to the counties under this Division of Revenue Bill is quite welcome. The key functions in the Constitution are devolved. Issues of water services, access roads and agriculture are devolved. Those are the key functions which touch the common man. Those are the most well-funded. We also have an issue where resources remain in the national Government, especially in the Ministry of Health, where majority of those services are provided in the counties. In the national Government, there are only four hospitals funded with over Kshs70 billion which we let lie idle in the Ministry of Health. That is why the Ministry of Health is able to misuse those funds by buying unnecessary items like the containers which are rotting in Mombasa and have been there for five years. We are defending that so that we have idle funds lying there.

I was in the 11<sup>th</sup> Parliament when we approved the issue of leased medical equipment. We were misled because we were fighting the courts and the Jubilee Government. On this side we could be whipped by the Majority Party to ensure that we are in the House to defend the Government position without even having read what was in those things. We were misled that it would be Kshs95 million annually. I fail to understand how it has varied from that Kshs95 million to where it is at Kshs200 million.

The issue of leased equipment originated from cartels which are benefiting from that. I do not even have an idea of those companies which own this equipment. They are shadowy companies. This is simply a cash cow for the cartels. Therefore, let us allow the counties to have their money. These cartels who own this equipment should negotiate directly with these companies so that they can get value for money because there is that issue. We also have so many devolved functions which the national Government wants to usurp. One of them is housing where we are imposing the housing levy when it is a devolved function. Why is the national Government trying to grab that function and pretend that it is a key function? It is provided for in the Constitution as a county function. We are even allocating lots of money to it. We need to rethink all that.

The issue of agriculture is devolved. We are funding the Ministry of Agriculture, Livestock and Fisheries when we should re-channel all that money to the counties. Even universal health which should be the priority is not properly taken care of. We are only talking of

four counties having universal health while the others have not experienced it. What the Senate has done is noble. We should all support it and not be seen as a National Assembly which specialises in rubber stamping what is forwarded by the Executive to this House. The whole of that Bill is from the Executive. We are here to rubber stamp because we do not have a position.

**Hon. Speaker:** Hon. Jared Okelo, unfortunately, I had already given you an opportunity earlier on. Maybe you might wish to make a contribution. Did you just want to second the amendment?

**Hon. Jared Okelo** (Nyando, ODM): Thank you, Hon. Speaker. In the spirit of brotherhood, I will donate a minute to my brother, Hon. Otiende, with your permission. I support the rejection of this Bill. Going forward, both the Senate and the National Assembly must work in tandem for anything to be made into law. Just as you have said, there is nothing that can come from the Senate and see the light of day without the approval of this House.

Therefore, it is incumbent upon the Senate to always be in unison with the National Assembly so that we do not just have cohesion within the two Houses, but also ensure that every Bill that comes from the Senate sees the light of the day.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, the best thing is for me to gauge the mood of the House and the only way to do it is by putting the Question to the vote.

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

The Mover.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. As I reply, let me take this opportunity to thank Members who have contributed, including the Member for Bomet Central, who had the only differing view which we truly appreciate. It is important to note that even those Members like Hon. Chris Wamalwa and the Leader of the Minority Party who are aspiring governors are in agreement with us that as much as we want to support the counties, we must do it in a balanced way. It is only fair that we offer ourselves and the Senate an opportunity to sit and reason together in mediation.

As the Leader of the Majority Party said, we may get into more problems, if we now start interfering with the contractual agreements between the counties, the national Government and the providers of the managed equipment services. As it has been said, we must remember that this is leased equipment. If you do not pay for it, the only natural thing is for the owners to go and get it from the counties. If we do this, we will subject the people in the counties to further suffering because they will now need to come and queue at Kenyatta National Hospital (KNH), Moi Teaching and Referral Hospital and Mombasa Provincial Hospital. We have not bought this equipment.

With those few remarks, I beg to reply and urge Members to reject these amendments from the Senate in totality to offer us that opportunity to go into mediation. Thank you, Hon. Speaker.

*(Question put and agreed to)*

**Hon. Speaker:** That is a very lukewarm response, Hon. Members. The result of that is that when the House gets to Order No.13 (i), it will not be considered. I will make the necessary announcement, as contemplated both in Article 113 of the Constitution and Standing Order No. 148. So, we proceed to the next Order.

### MOTION

#### REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Statute Law (Miscellaneous Amendments)(No.2) Bill (National Assembly Bill No. 13 of 2018) up to Section 94(4) of the provisions relating to Public Procurement and Asset Disposal Act, No. 33 of 2015 and seek leave to sit again.

**Hon. Speaker:** Hon. Members, as I have been directed, when the House was considering the Motion listed as Order No.13 (ii), the House adjourned at 6.30 p.m to discuss some business which had been proposed by the Member for Kakamega County, Hon. Elsie Muhanda. Therefore, for us to proceed, we have to put this Question. I hope everybody is aware.

*(Question put and agreed to)*

Next Order.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

#### IN THE COMMITTEE

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

*(Resumption of consideration in Committee interrupted on 7.5.2019)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Order Members. We are in the Committee of the whole House to consider the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No. 13 of 2018), starting from Section 98(1) on the provisions relating to the Public Procurement and Asset Disposal Act, 2015 (No. 33 of 2015)

*(Loud consultations)*

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015 (NO. 33) OF 2015)

*The Public Procurement and Asset Disposal Act, 2015 (No. 33) of 2015)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Order Members. Let us allow Hon. Members who are walking out of the Chamber to do so. Please do so in order so that we can get back to the business.

*Sections 98(1), 114(6), 117 and 119(1)*

Hon. Members, we have no amendment to this. I, therefore, move to put the Question.

*(Sections 98(1), 114(6), 117 and 119(1) agreed to)*

*Section 121*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Mover, Hon. Chairman, Hon. Limo.

**Hon Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act —

(g) in the proposed amendment to Section 121(4) by inserting the word “entity” immediately after the word “procuring”;

The reason for this is to add the word “entity” after the word “procuring” because in the drafting of the amendment, it talks about procuring, but it fails to include the word “entity” to read “procuring entity”. It is a drafting error.

*(Question of the amendment proposed)*

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

*(Section 121 as amended agreed to)*

*(Section 124(14) agreed to)*

*Section 124(15)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We have an amendment by the Chair. Please move it.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I propose to withdraw the amendment because it was erroneously referring to Section 14, which we have just skipped. Therefore, it was going to negate the objective of the Bill. So, I propose to withdraw it because it was not properly considered.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The Chairperson is on record that he has withdrawn the amendment. I treat it that we have no amendment to this.

*(Proposed amendment by Hon. Joseph Limo withdrawn)*

*(Section 124(15) agreed to)*

*(Section 124(16) agreed to)*

*Section 126(3)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We have an amendment by Hon. Millie Odhiambo. Can you move your amendment?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act, (No.33 of 2015) –

(g) in the proposed amendments to section 126(3) by deleting the word “seven” and substituting therefor the word “fourteen”;

The proposed amendment reduces the variation period to seven days from 21 days. The period is too short. I therefore propose a period of 14 days, which is similar to the previous amendment that we had already done.

Thanks.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Leader of Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I support Hon. Millie Odhiambo. Seven days is too short for anything to be conducted. So, we revert back to 14 days. I would like to share with friends that we are now dealing with contractors. Everybody has left and we now have contractors. We must be very careful.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Leader of Majority Party, these are Members of Parliament. No one owns them.

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

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

*(Section 126(3) as amended agreed to)*

*Section 135(3)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We again have an amendment by Hon. Millie Odhiambo. Please, move your amendment.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I wish to inform the Leader of the Majority Party that I am an aspiring contractor, but I am one currently, especially after I watched Governor Sonko yesterday say that he has over 1,000 title deeds and over 100 logbooks. I actually discovered that I can be declared bankrupt, going by Sonko's standards. I am extremely poor.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The Leader of the Majority Party is smiling. Can you move your amendment?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act (No.33 of 2015) –

(h) by deleting the proposed amendments to section 135(3).

Again, it is giving the contract period a very short time by reducing it to seven days. From what happens in our constituencies, sometimes such a period is very short. So, I propose that we retain it at 14 days and not seven days.

*(Question of the amendment proposed)*

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

*(Section 135(3) as amended agreed to)*

*(Sections 135(4), 136(1) (b) and 138(5) agreed to)*

*Section 139(4)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Limo to move the amendment.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act –

(i) by deleting the proposed amendment to section 139 (4).

The import of the amendment is to ensure that the timeline in the Act on variation of contracts which is twelve months remains. The amendment in the Bill proposes to remove the timelines so that you can do a variation of a contract at anytime. So, we rejected that and we propose to retain the 12 months period for variation of contract.

*(Question of the amendment proposed)*

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

*(Section 139(4) as amended agreed to)*

*Section 167(1)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We have an amendment by Hon. Ichungwah.

**Hon. Kimani Ichungwah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule in the proposed amendments to the Public Procurement and Asset Disposal Act (No. 33 of 2015) –

(a) by deleting the proposed amendment to section 167(1);

This is a provision that gives an aggrieved party in a procurement process, at least, a minimum of 14 days. The amendment as proposed was reducing the period to seven days. What was envisaged in the Act was that bidders would have, at least, 14 days because ordinarily notices are posted by mail using postal address. Therefore, within seven days you may not even get people to get their mail within a period of seven days. So, I propose we revert to the 14 days that exist today. Indeed, it is instructive to note that this is not the first time this is being done. The same proposal was done through Legal Notice 106 of 2013, but this House, recognising the difficulty that bidders and contractors used to go through, amended Section 167 and reverted to the 14 days period.

Therefore, I beg that we support the amendment to revert it to the 14 days to allow people who are aggrieved adequate time to prosecute issues in pursuit of justice and fair arbitration of procurement issues.

*(Question of the amendment proposed)*

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. From what Hon. Ichungwah is saying, it makes a lot of sense. Seven days will be too short. I support the amendment to retain 14 days.

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

*(Section 167(1) as amended agreed to)*

*(Sections 167(4)(b) and New Section 5, 168, 169 and 172 agreed to)*

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairlady, you are doing a very good job this evening. We are trying to follow with this new equipment called the e-system which does not help much because it has the Order Paper, but it does not have the Bills and the parent Act. Without those things, even when we are going electronic, I am not so sure whether we are capable of being there. The Leader of the Majority Party is trying to keep track with legislation.

For example, in Section 167(4)(b), there is no proposed amendment but when you consider the new provision in sub-section 5, these are some of the things which will pass us and we may end up – although there is no amendment proposed – having a disastrous law. It says that the section shall not apply to tenders reserved for women, youth, persons with disabilities and other disadvantaged groups. This is alright because it is speaking to 10 per cent which is paid on review, but when sections like these talk about “other disadvantaged groups”, what are these groups?

This is the problem because if we went slowly, probably the Leader of the Majority Party would have done a further amendment because this is new. Even though he has not put it in writing, he could have suggested that we should have stopped at “persons with disabilities”. When we talk about any other disadvantaged groups, we have now opened this thing to abuse. Anybody else including me who comes from Suba will be a disadvantaged group including the Member for Kikuyu. He is a very disadvantaged group because in Kikuyu, they cannot speak fluent Luo as I do.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Kajwang'. I hope you do not have some difficulty in handling your device.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Yes, we have, but I was just saying that we probably need to go...

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): All the Members were trained. Are you okay with your system?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I am very digital. The problem is the content. The Bill and Acts are not here. What is here is only the Order Paper.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We have had our bite on those sections. We had no amendments to them and we have already passed. I am sure if you had approached the Leader of the Majority Party with the knowledge you have, he would have proposed them in the Order Paper. As at now, it is on record that we have no amendments to such sections.

*Section 173(c)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule in the proposed amendments to the Public Procurement and Asset Disposal Act (No. 33 of 2015) by–

(b) deleting the proposed amendment to section 173(c).

This amendment seeks to delete Section 173(c) of the Act. This (c) gives the Review Board powers that if we take away from them; we will see a lot of abuse by procurement entities and their accounting officers. When a Review Board reviews a procurement process and maybe there was an aggrieved party, the Review Board feels that...

For instance, if somebody was the lowest bidder and truly deserved a procurement award but it has been awarded, maybe to the third or the fourth lowest evaluated bidder, and the Review Board should make a determination that nullifies the procurement process that had been awarded to the fourth bidder. It should make a decision to award to the deserving bidder and then it is in the spirit – as I had said earlier – of fairness and justice as is stipulated in the Constitution. All our procurement process should be fair, transparent and accountable. Therefore, if we delete that particular provision in the Act, we will be seeing a situation where procurement entities and their accounting officers abusing this process and disadvantage very deserving bidders.

I, therefore, urge the House to support the amendment.

*(Question of the amendment proposed)*

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairlady, I rise to support, but when I look at all the amendments that I see, they all tend to give the Executive excessive powers like this particular one. It is giving the accounting officer power to overrule the Review Board while in the first place; the review was done because the accounting officer had done something that somebody was not happy with. How then can the Board sit and afterwards, the same officer whose decision was being reviewed is now countering that? Even in reducing the review time and all this, there is a tendency to give Executive powers that will be draconian. This should not happen.

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

*(Section 173(c) as amended agreed to)*

*(Sections 176(1) (e), 176(1)(f) and 176(1)(h) agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Kajwang’

**Hon. T. J. Kajwang’** (Ruaraka, ODM): Hon. Temporary Deputy Chairlady, sometimes this can be very disastrous, of course there is no amendment but I am looking at the Act, there is no mention of Section 78 in the parent Act. The parent Act talks about Section 76(6). In other words, what the amendment is trying to do is already in the Act. This is why I am calling for a lot of scrutiny.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Kajwang’ we are not on the same page. We are not on Section 178, we are on Section 176.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): No, the amendment is on Section 176 but it is deleting the expression Section 78 and substituting therefore, the expression Section 76(6). When you consider the Act itself in Section 176(e), Section 78 is not mentioned, what is mentioned is Section 76(6). It means that we need to be very careful. It would seem to me that whoever put together the Statute Law (Miscellaneous Amendments) Bill, there are a lot of typographical errors that would lead to very serious interpretation of these sections. Did you understand what I said?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Kajwang' now that on our Order Paper we do not have these amendments, can we hear from the Leader of the Majority Party, maybe you can clarify to Hon. Kajwang'.

**Hon. Aden Duale** (Garissa Township, JP): I have Section 78 of the Public Procurement and Asset Disposal Act of 2015 here. You know I am digital. Come this side, I will show you. Section 78 says: "An accounting officer of a procuring entity shall appoint a tender opening committee specifically for the procurement in accordance with the following requirements and such other requirement as maybe prescribed". It is there. We should just move. It has been amended, you have the old one. These books have not been updated. That is why we have these gadgets.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): I agree it is good to consult. Hon. Kajwang' is always very keen.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, before you rule, can you ask the Office of the Clerk to update these books?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Yes, I am requesting that the books be updated so that we do not mislead Hon. Members.

*(First Schedule, paragraph 3, Second Schedule paragraph 3,  
Third Schedule paragraph 2, paragraph 3(1), 3(2) and paragraph 4 agreed to)*

*New Section 55(1)*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act —

(f) by inserting the following new amendment—

s. 55(1) Delete the expression "section 38" and substitute therefor the expression "section 41"

We are amending it so that the current sections cross reference Section 38 instead of Section 41. It is just a cross-referencing issue.

*(Question of the new section proposed)*

*(New Section read the First Time)*

*(Question, that the new Section be read a Second Time, proposed)*

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*New Section 87A*

**Hon. Moses Kuria** (Gatundu South, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act by inserting the following new amendments immediately after the proposed amendments to section 80—

New Insert the following new sections immediately after section 87—

Payment.

87A.(1) The procuring entity shall pay a successful tenderer within ninety days from the date of receipt of invoices and certificates for works, goods or services executed or delivered.

(2) Despite subsection (1), the procuring entity shall pay a successful tenderer within thirty days from the date of receipt of invoices and certificates for works, goods or services executed or delivered by the following groups of tenderers—

- (a) women;
- (b) youth;
- (c) persons with disabilities; and
- d) other disadvantaged groups.

The import of this section is to address the issue of prompt payments and the pending bills and to require that the procuring entity be successful tenders 30 days from the day of receipt of invoices and certificates for women, youth and persons living with disabilities and other disadvantaged groups to address the issues where people are getting auctioned and there is no records from the procuring entities.

I beg to move

*(Question of the new section proposed)*

*(New Section read the First Time)*

*(Question, that the new Section be read a Second Time, proposed)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I want to support this amendment but I want to tell Moses Kuria it is not practicable for 30 days, maybe he moves a further amendment to 60 days. I do not think you can be considered when you submit your invoice and when you supply. With the payment system under the new system of IFMIS, we need to ask him to do a further amendment of 60 days or 45 days. We do not want to pass a law that will not be implemented. It would be very difficult to implement it. If you do not do that, then there will be penalties.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): As he consults with you, the Leader of the Majority Party let me give Hon. Ichung’wah a chance to comment on this.

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, we consider amendments that have money Bill effect in line with Article 114 of the Constitution and by the time the Budget and Appropriations Committee considered these amendments, we had agreed with Hon. Moses Kuria and communicated the same to the Speaker that they would be processed. The National Treasury as required by the Constitution to make decisions in consultations with the Budget and Appropriations Committee have given their comments and have proposed to reject on the following grounds: That, the Act provides for payment of interest on overdue amounts and liquidated damages under Section 140.

Further, on the draft Regulation 150

“(1) A contractor shall satisfactorily perform its sub-contractual obligations prior to any payment by a procuring entity.

(2) A procuring entity shall make prompt and timely payments to a contractor that meets its contractual obligations.

(3) Payments shall only be made after an invoice or free note is accurately raised and submitted in accordance with the provisions of the contractual agreement.”

Hon. Speaker, those are the reservations that were expressed by the National Treasury. It is important that the House notes those reservations. Article 113(2) of the Constitution requires that we make that decision in consultation with the National Treasury. As much as the Committee was in support, there were reservations from the National Treasury.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Let us hear from Hon. Member for Gatanga Constituency before I go to Hon. Makali.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you, Hon. Temporary Deputy Chairlady. I want to disagree with what Hon. Ichung’wah has said. Even if you were to be paid interest there must be a timeline that you are supposed to be paid. Currently in the market, it is 30 days. If you have not paid after 30 days, you start earning interest.

*(An Hon. Member spoke off-record)*

Of course it depends with the contract. However, Hon Ichung’wah has talked about being paid interest. He has not talked about the time. We are not disagreeing on the time of the Leader of Majority Party. Forty five days is okay. Sixty days is long, 45 days is agreeable. After that time, you can start earning interest.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The owner of the amendment is here. I have listened to Members’ contributions and so has he. It is up to him to make a decision whether to proceed with his amendment or not. Let us have the Member from Kitui Central Constituency then we can have Hon. Kajwang’.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. This amendment by Hon. Kuria is important to this country. We need to look at it from an objective perspective. The problem why we are suffering is that people work for the national Government and the county governments, but when it comes to payments these governments can take a whole year to pay. At times they take two years. What is happening through those kinds of acts is that, the Government is killing individuals with small-scale

businesses. That is what Hon. Kuria is trying to resolve so that the Government is clear that once somebody has delivered on a contract, you have either 90 days to pay him and if it is among the disadvantaged groups; what Hon. Duale is proposing is that we should make it 60 days. Hon. Kuria, it is important that you consider that proposal for 60 days. It will help the economy. That may be too short.

On the other side of the coin – this is what is critical for me - there are two things that will happen. One, what this amendment is doing is that immediately after the 30 or 90 days, you start paying interest. That implies that all the pending debts will be converted to domestic debts. That will have a serious impact on the public debt in this country. We are already grappling with the issue of public debt. So, even as we think about this amendment, it has a serious implication to the economy.

Two, it says, even if we pass this amendment, it will be a requirement for the national Government and the county governments to operate the way the National Government Constituencies Development Fund (NG-CDF) operates that, by the time you procure, you must have money in the account. That needs to be analysed. If you do not have money in the account, then people who are procuring services will be hesitant to procure because 90 days may lapse and it becomes a public debt. So, the Treasury is between a rock and a hard place. Generally, as an economist, those are things Hon. Kuria needs to help us. At the end of the day, this Bill will affect the economy and Kenyans. We will need to seriously think about how to navigate around those issues.

Before I take my seat, the other important thing is the issue of - Hon. Kuria, I am pleading with you – the part on other disadvantaged groups. Please, let us avoid it because it will open doors for abuse. You can, therefore, be specific as in women, youth and persons with disability and you close it so that it is closed. You cannot give the procuring entity a chance to start debating who these disadvantaged persons are. That will help this amendment. Generally, it is a good amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Kajwang'. I know now Hon. Kuria is convinced. Can you give the microphone to Hon. Kajwang'? Order! Hon. Ichung'wah.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairlady, the order which I rise to seek from you arises from what my friend Hon. Ichung'wah, Member for Kikuyu Constituency has just said. You need to give us guidance. In fact, as I looked at the Order Paper before he rose, I saw that the Office of the Clerk had flagged it out that these amendments are subject to Article 114 of the Constitution and the Budget and Appropriations Committee had pronounced itself on it.

Hon. Ichung'wah has informed us of the Treasury reservations. Article 114 of the Constitution is mandatory in its terms. It says that the amendment must proceed only in accordance to the recommendation of the Cabinet Secretary for Treasury. So, the intention of this amendment is good, but it dovetails to what we have been saying all along. This is an amendment that should not come in a statute law (miscellaneous amendments) Bill because we need to think through it. I do not know – through the Temporary Deputy Chairlady – what happened with the Leader of the Majority Party. I thought that the prompt actions Act had been published. I do not know at what point it disappeared. These are the kind of things that we need to look at. He has a point. People are committing suicide because of tenders that are unpaid.

Again, as the Hon. Member here – a respectable financier – has said, we are going to dip ourselves in a bigger public debt than we thought. You have to read the two amendments together to understand what Hon. Kuria is trying to do. In the next amendment he says that if, for some reason, you are unable to pay, you should give promissory notes. However, the promissory notes are only acceptable by banks. Why is it only acceptable by banks and not insurances, other institutions or shopkeepers? So, it is so selective that I am unable to support it, although the intention is very clear.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well, that is noted. Hon. Members, this is an asset of the House through Hon. Moses Kuria. That is why I have allowed Members to deliberate on it. Let us have the Leader of the Majority Party then I will allow Hon. Kuria to react to the contributions.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I think we need to discuss this more, with your permission. What Hon. T.J. raised in Article 114 is important. Parliament cannot wait for the National Treasury. We do not work at their whims. They were given an opportunity, they could not make it and then the Speaker made a ruling. That is why it is even on the Order Paper, after Article 114 of the Constitution. Whatever letter Hon. Ichung’wah is reading is not even physical. He is reading it on his phone and it has not been received. No, that is your phone. If it is here on the machine, fine.

I agree with Hon. Kuria. When the Kenya Association of Manufacturers (KAM) appeared before us in the leadership retreat, they said the payment period by the Government is estimated to be once in 24 months, but the payment period by the private sector is estimated to be within 60 to 180 days. These are the standards. It cannot be 30 days. So, we ask Hon. Kuria to move it in an amended form so that we take care of everybody at 90 days, not even 60 days. At 90 days we are very comfortable.

The problem we are facing in this country is not even the procuring entity, it is the Exchequer. Today, if a contractor has done a job with, for example, Kenya Pipeline Corporation, Kenya Power or National Irrigation Board, the invoice will be there, all the processes have been done but they wait for close to one year for the National Treasury to release money. So we are punishing a procuring entity. I think we should deal with the National Treasury. Even county governments, I think what they receive daily is recurrent expenditure. Sometimes they do not even receive money for development. So how do they pay a contractor if they do not have money? As a legislature, we would agree with Hon. Kuria to peg it at 90 days so that after those days interest can accrue.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): He will have to pronounce it himself. Thank you, Leader of the Majority Party, for the information. Let me give the last one to the Vice-Chairperson of Public Investments Committee and then I will give it to Hon. Kuria to say whether he is convinced or not.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I think the word “consultation” does not amount to acceptance by the other party. It is just seeking the opinion or advice of the other party, which I have no doubt our able Chair must have done.

The fact is people are suffering and we must set a fixed number of days for payments to be done. What is happening at times, especially at the county level, is that they are even so selective in their payments that the groups that suffer most are the disabled, women and the

youth. So we are under obligation, as a House, to set a fixed number of days for these parties to make the payments. I want to plead with Hon. Duale that we should not go for three months because that is a quarter. Let us go for two months under which payments must be done. That way I support.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, it is on your Order Paper page 704. We are moving this pursuant to Article 114 of the Constitution. The Budget and Appropriations Committee has recommended consideration of the amendments by the House and we had the Speaker's Communication on 30<sup>th</sup> April 2019. Allow me to give it to Hon. Kuria, he is either convinced or not, and then we can leave it open to Members to debate. Hon. Moses Kuria.

**Hon. Moses Kuria** (Gatundu South, JP): Hon. Temporary Deputy Chairlady, I thank Members for their sentiments. I want to propose an amendment to drop 87A(2) which refers to 30 days for women, youth and persons living with disabilities, so that everyone will be covered under category (1) which is 90 days. I was expecting to get support from my favourite Member of Parliament, Hon. Millie Odhiambo, because yesterday she told us that she is the owner of all the disadvantaged groups but today she has a studious silence on this matter. Since she is more knowledgeable on matters of disadvantaged groups and she has not spoken to this, I want to agree with the Leader of the Majority Party and I hereby propose to withdraw 87A (2) so that we can cover everyone within 87A (1) which is general.

I beg to move, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. Jessica Mbalu): I wanted to hear that from Hon. Moses Kuria, which is to withdraw the proposed amendment on 87A (2).

*(Proposed amendment to New Section 87A(2) withdrawn)*

*(Question, that the New Section 87A (1) be read*

*a Second Time, put and agreed to)*

*(The New Section 87A (1) was read a Second Time)*

*(Question, that the New Section 87A (1) be added to*

*the Bill, put and agreed to)*

*New Section 87B*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Moses Kuria, please move your amendment.

**Hon. Moses Kuria** (Gatundu South, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act by inserting the following new amendments immediately after the proposed amendments to section 80—

Issuance of promissory note by the procuring entity.

87B. (1) Where the procuring entity fails to make payment within the periods prescribed under section 87A, the procuring entity shall issue the tenderer a promissory note which shall be valid for a period not exceeding forty-eight months from the date of issue.

(2) The promissory note referred to in section (1) shall—

- (a) be eligible for use as a financial instrument by any licensed bank;
- (b) accrue interest payable by the procuring entity.

This section addresses the issue of the instrument that is supposed to be given to suppliers or contractors in case they do not get paid within the times that we have already addressed under 87A(1) and we are not creating new dates as some Members have alluded to. The date is there, only that it is not recognised. Poor people in this country are lending to the Government without any evidence. So we are not providing any new date. Already the Government owes contractors Kshs300 billion: county governments owe Kshs108 billion and national Government Kshs200 billion. These promissory notes will force the National Treasury to give contractors something with which they can go and defend their property in the banks so that they are not auctioned and the interest thereon is going to be borne by the contracting authority.

I want to say this to my very able Chair of the Budget and Appropriations Committee: We are not here to serve the National Treasury. We are here to serve the people of this country who are committing suicide. And we are here to cause some pain. Why should someone contract or buy some goods or services if they do not have money in the first place? This section is going to enforce good behaviour on the side of counties, the national Government and the National Treasury, so that that we have good fiscal responsibility on the part of all the entities so that we are able to live within our means and not punish Kenyan suppliers and contractors in case we do not have good fiscal discipline.

With that, Hon. Temporary Deputy Chairlady, I beg to move.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The Leader of the Majority Party, what is out of order?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, you can use the microphone at the Dispatch Box.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I do not know whether you have seen that Section 87B is again subject to Article 114 of the Constitution before we even discuss it. So, if that is the case, that amendment must be dropped. The Speaker ruled on the other one and not on this one.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): On 30<sup>th</sup> April, 2019, there was a ruling by Hon. Speaker on both.

Hon. Members, before we are divided on that one, I will propose the Question.

*(Question of the new section proposed)*

*(New Section read the First Time)*

*(Question, that the new Section be read a Second Time, proposed)*

Hon. Members if you notice your microphones are not working, please, approach the Dispatch Box.

Yes, Hon. Kajwang’.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): First of all, the Leader of the Majority Party cannot approbate and reprobate. He allowed us to debate Section 87A. The same reasoning should apply to Section 87B. The Leader of the Majority Party made me very humble. He said that we are not working for the National Treasury. We have to work here as legislators. For that, I was very humbled that we were thinking as Members of the National Assembly and not the Treasury. So, we should free my friend, Hon. Moses Kuria, from the 114 business. I plead with him to just do a few other amendments and make them saleable.

First, I have a problem with the interest. When you say that interest will accrue interest, at what rate and for how long? You are going to create a Pandora’s box. Even if you say market rates, what is that? Is it the lending rates? Which rate is prevailing? What has been controlling the market has been the lending rate. Even up to now, if there is a pending payment, there is obviously interest accruing at court rates, which are controlled by the Civil Procedure Act, the Adjudicature Act and so on. So, if you drop that one, I will support you.

Also, I would have wished that you do not specify it to financial institutions only. It should be general so that a promissory note can be used anywhere. Even when the Leader of the Majority Party wants to buy cattle, he can use promissory notes to do so. So, if you could work on those amendments, I am ready to support you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Let me hear Hon. Cecil Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Thank you. I strongly support the amendment by Hon. Moses Kuria because we have seen the suffering of Small and Medium-sized Enterprises (SMEs) in this country. We came up with the access to Government procurement opportunities that made young people, women and people with disabilities run to banks with their LPOs, get loans to supply to procurement entities and today they have been auctioned.

Therefore, even though I support the amendment, I am still persuaded by what Hon. T.J. Kajwang’ has said; that, we might be opening a Pandora’s box. We need to be specific on the interest rates. So, this is a proper amendment coming at a time when Kenyan businessmen and women are suffering and wondering what to do as their properties get auctioned.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): For your information, on the same ruling by Hon. Speaker dated 30<sup>th</sup> April, 2019 regarding Section 87, we were advised that the House does proceed to consider the proposed amendments. So, maybe, it should be considered by the Committee of the whole House. Let us debate this. We must appreciate the Members in this law-making process.

Yes, Hon. Makali.

**Hon. Makali Mulu** (Central, WDM-K): Thank you. I want to assure my friend, Hon. Kuria that we are supporting these amendments basically because they are going to benefit Kenyans. At the same time, we must note something. What will happen at the end of the day is that we are likely to clog the system such that even the Kenyans we would like to benefit will not benefit. The Government does not collect money upfront. It does every month. We pay taxes monthly. That is the same money that the Government uses to pay contractors. What is going to happen? Through this amendment, we are going to demand that by the time Government entities award contracts, the money must be in the Consolidated Fund. If we do not do that, this law will be applicable.

The other side of the story is that such a law is likely to slow down the process of awarding contracts such that the same contractors we imagine will benefit by getting contracts will have no contracts to implement. The truth of the matter is that as we put these funds on record, we are sure of what we are doing. Therefore, as much as we want to help Kenyans, we must appreciate the way the economy works. Otherwise, we will clog the system and get stuck.

I want Kenyans to be paid when they work, but they should be paid within realistic arrangements. Let us agree to have payments made within 90 days, which is a very good timeframe. I would humbly request Hon. Kuria on the issue of when monies due should start accruing interest, we could extend that period slightly. We may agree to payments being made within 90 days, and if six months lapse without payments being made the amounts in respect of the pending bills start accruing interest. That way, we allow the National Treasury about three months to play around, during which period we will be helping more implementation of projects.

I thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Let us now hear the Member for Nyeri Town.

**Hon. Ngunjiri Wambugu** (Nyeri Town, JP): Thank you. I have some concerns even as I support the concept behind these amendments. Even as we debate on whether we are going to pay within 30 or 90 days, we are basically saying that the money is available. When we introduce a concept for interest, who is going to be charged interest? The people who are going to pay the interests are taxpayers.

As a House, we are supposed to legislate for fiscal discipline within the Government but we are now seeking to give the Government a leeway not to pay contractors. What we are being told is that if you give me a contract and you do not pay me within 90 days, you can tell me that you will pay me interest. Again, we have been told that it is not known for how long such interest will accrue. So, an amount of money in respect of a pending bill can accrue interest for even 10 years. Both big and small businesses supply goods and services to the Government expecting the money they have used to accrue some profits. If you are going to wait for six months or 24 months for payment to be made to you, what will happen to your business? Even promissory notes can be accepted by banks.

In my opinion, we should not legislate for Government mistakes. We cannot pass a law to say if the Government does not do what it should do, then it will have an option. We will be setting a very bad precedent. We are giving the Government an opportunity not to pay. We are legislating to ensure that we solve the problem of Kenyan suppliers by ensuring that they get paid their money within a certain period. So, if we agree that the Government must pay within 30

or 90 days, I will borrow from a bank, knowing for sure that I will get paid for my supplies to the Government within 90 days, and not that I will be paid interest if I do not have the money within 90 days.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, I must appreciate that this is a very interesting amendment. I note that Members are very informed. Let us hear the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I also want to bring to the attention of the House, that as we speak today in the last 10 years the National Treasury has not issued any promissory notes. The history behind it as you know was discarded after the Anglo-leasing scandal.

I want Hon. T. J. to listen to me. As we stay here today there is no issuance of promissory notes by the National Treasury. But, this was done after the many scandals including Anglo-leasing. Today, I can tell you we are fighting corruption. The moment, as a House, we introduce the issuance of promissory notes by contractors they can go to my constituency and do shoddy work or not do it and sue the Government because they are holding that note. I am telling you. So, as much as we feel we are helping our people to hold some documents, ultimately, that will be counterproductive in the war against corruption.

Ask yourself why the Government stopped the issuance of promissory notes in the last 10 years. The reason was it was like Anglo-leasing where people would supply hot air but they have something to sue the Government in 10 or 20 years to come. Hon. Moses Kuria, you must look at the implications. We agree with you that you are helping the people of Kenya but we are opening another floodgate.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, I have seen Hon. Kuria listening and consulting. For our concern to be addressed let us hear from the owner of the amendment, Hon. Kuria. He could be addressing your issues and interests. Out of interest let me give Lentoimaga Musa, the Member for Samburu North this chance.

**Hon. Alois Lentoimaga** (Samburu North, JP): Thank you, Hon. Temporary Deputy Chairlady for giving me an opportunity. This House must ensure there is financial discipline in Government. From what we are talking about here, I think there is indiscipline. From the experience we have, you cannot advertise tenders if there are no funds. In fact, when you advertise tenders in the newspapers money is already committed. This is unless, we are not following the normal procedures of the Financial Management Act.

First of all, I support his Bill but I do not support the issue of promissory notes and debts. We need to ensure that Government is the biggest trade maker in this country. The money that circulates in the market is from the Government because it does a lot of business in terms of tendering. So, many Kenyans especially the youth and women have borrowed money from banks and use LPO financing. But because of non-payment by the Government, banks have declined to advance money to the youth. So, let us ensure that if it is 45 days let it be so. To me 60 or 90 days are too many. You are giving them an opportunity to continue with bureaucracy.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well. I just love the concerns. The Member for Seme and the Member for Kikuyu just make a comment please.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Chairlady. First of all, I must congratulate Hon. Kuria. I think these ideas are fantastic and he

should follow them up. I think they are raising very fundamental issues. Let me just take the one of starting to procure when you have money. That definition of having money normally means you have money as stated in the budget. It does not mean you have cash in the bank as a ministry or procuring agent.

If we bring this now people will not tender until they have money. But because money is being collected on time, what will happen is that they will wait if there is no money. By the time they do tenders it will be too late. What we will have is a huge lack of absorption. So that, Accounting Officers will not procure and at the end of the year you will say they were unable to absorb because they could not procure in time. So, I want to appeal to Hon. Kuria that these amendments should be brought on their own. They should not be part of the Statute Law (Miscellaneous Amendments) Bill so that we can go over them thoroughly.

I have said that I am worried about the many miscellaneous amendments we are coming up with. What the Hon. Member has brought today on interest rates and promissory notes is that we should look at how we punish the Government. But remember when you are punishing the Government you end up punishing Kenyans. If the promissory notes go to the banks you will be putting the matter before the banks.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well, the Member for Seme. Let me hear from the Member for Kikuyu. Before I put the Question, I will give the Chairperson a chance.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairlady. I want to agree with the Vice-Chair of the Public Investments Committee who, indeed, stated that as legislators we should not be curtailed by the views of the National Treasury. The provisions of code 14 are clear that it is in consultation with the National Treasury. Therefore, I took the liberty to inform the House since a decision had already been made and the Speaker made a communication on the views of the National Treasury on this issue.

I just want to point out two things to Hon. Moses Kuria, because I clearly understand he is coming from Kiambu County where pending Bills are very huge and many of our business people are suffering. But we must be very careful as Hon. Nyikal and Hon. Makali Mulu have said. When we legislate, we will be putting it in statute that certain things must happen within a specified period of time. This is through the introduction of promissory notes as the Member for Samburu has said.

It is true that, indeed, these pending bills are debts. They are what you can constitute as informal debt that has not been formalised. What we are doing with this amendment is formalising informal debt. The implication this will have on the fiscal discipline as the Member for Nyeri Town, Hon. Nyikal and Hon. T. J. Kajwang have said is that it will be distorting the fiscal framework we have set for ourselves. This will be by formalising the informal debt into what will constitute formal debt. It will have such huge implications on the level of our national debt.

As we speak, those of us who attended the leadership forum in Mombasa listened to a presenter from the Kenya Association of Manufacturers (KMA) say that at the county level, we are speaking of an informal debt to the tune of Kshs108 billion. If we incorporate the informal debt from the national Government, we are talking about Kshs400 billion. That is equivalent to what we were unable to procure in China for the Standard Gauge Railway (SGR). Therefore, ask yourselves as we legislate what we will be doing to our fiscal framework in terms of our national

debt levels by formalising an informal debt if we issue promissory notes to the tune of Kshs400 billion at once.

I would like to ask my good friend, Hon. Moses Kuria to probably consider even legislating on issues to do with invoice discounting. This is because as the Leader of the Majority Party has said promissory notes are financial tools which were used in this country and other in the past. In today's world, we have new ways of doing business where people are able to discount invoices. If we put it in the statute that the Government must pay within 90 days it will be very easy to trade with our invoices and discount them in our commercial banks. I want to ask Hon. Kuria to rethink the question of promissory notes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): With that information to Hon. Kuria - I have seen him consult a lot including with the Leader of the Majority Party - let me give him the chance before I put the Question so that we can hear whether the Members have been able to convince him. Hon. Kuria, you have the Floor.

**Hon. Moses Kuria** (Gatundu South, JP): Thank you, Hon. Temporary Deputy Chairlady. I have listened to the comments by Members. In accordance, I want to propose a further amendment and drop Section 87B (2). That is the part that relates to interest payable. I have been listening to the sentiments of Members. I propose to drop that one in line with the comments by Hon. Makali Mulu. However, at the same time, as much as I am grateful that the House has supported the issue of setting a maximum limit, there must be a consequence. We do things on paper but if there is no consequence, it is just empty talk that we are doing here even on Section 87(1). So, the promissory note will ensure that there is a consequence for non-payment. If there is no consequence, then all they have done is nothing.

The Chair of the Budget and Appropriations Committee has given a very good example about what we are borrowing from China. We need to take care of people who have lent money to Government in terms of pending bills. Before we take care of even China, we must take care of our people. If there is someone to suffer, it should not be our people. Why would you want to pay China before paying our people? In retrospections, I beg to move this amendment and beseech Members to look at this particular issue because these people are from Garissa, Seme and other places. I beg to move.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Moses Kuria, you will be spoiling for yourself. Yes, the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, Hon. Moses Kuria is very isolated out there. Of late, you have seen him in the House. He wants to campaign using the privilege of the House. He is even talking about China. This is the Committee of the whole House. People cannot talk for long. We do not want to listen. We have other party leaders.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): No, Hon. Moses Kuria. You are now spoiling for yourself. Hon. Members, I want to propose the Question. We must move.

*(Proposed New Section 87B(2) dropped)*

*(Question, that the new Section be read  
a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*New Sections 134(2A), 2B and 2C*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, I am sure we can now move faster on the area of interest. We have an amendment to this section by Hon. Joseph Ngugi. Hon. Ngugi, please move your amendment to this.

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act No.33 of 2015 by inserting the following new proposed amendments in the proper chronological order —

s.134(2) Insert the following new sub-sections immediately after sub-section (2) —

(2A) The accounting officer shall within three working days after being notified of the tender award, submit the draft contract to the Attorney-General for approval.

(2B) The Attorney-General shall within fourteen working days upon receiving the draft contract from the accounting officer, clear the draft contract or provide comments for review of the contract by the accounting officer.

(2C) The accounting officer shall within seven days upon receiving the comments on the draft contract from the Attorney-General, incorporate the comments in the draft contract.

Hon. Temporary Deputy Chairlady, mine is just a minor proposal. Sections 2A, 2B and 2C are to do with contracts which are over Kshs5 billion which require the Attorney-General to approve. I am saying that the Accounting Officer, on getting the valuation report under Section 2A, should be able to give the Attorney-General those documents so that he can give his comments within 14 days. On receipt of the Attorney-General's comment, the Accounting Officer should, within seven days, be able to incorporate the comments from the Attorney-General and to award the tender or whatever he deems fit within seven days.

Let me explain again. This is to do with contracts worth Kshs5 billion which require the Attorney-General to approve. I am saying when the Accounting Officer gets the valuation report within three days, he should be able to submit the documents to the Attorney-General. The Attorney-General should be able to act within 14 days. After seven days, the Accounting Officer should be able to incorporate the comments of the Attorney-General. The current status has no timeline. I am just trying to introduce a timeline.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): With that import of the amendment by Hon. Ngugi, I want to propose the Question. You can go ahead and explain further.

**Hon. Joseph Nduati** (Gatanga, JP): Leader of the Majority Party, you know there is the 14 days tendering period and another 14 days for evaluation. I am proposing that in case the tender requires the consent of the Attorney-General, the Accounting Officer should take those documents to the Attorney-General within three days because the evaluation will be over. Then within 14 days, the Attorney-General should act, and within seven days, the Accounting Officer should incorporate those comments.

*(Question of the new sections proposed)*

*(New sections read the First Time)*

*(Question, that the new sections be read a Second Time, proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Mbarire, you have the Floor.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairlady, it is good that we have timelines but we must be very careful about the timelines we are putting in law. We are now assuming that the Attorney-General does nothing else or has nothing else but he is waiting for this voluminous document, and he may have many of them that he needs to deal with. You also know that sometimes if this voluminous document is not looked at very keenly, it can put us in real trouble as a nation. We have witnessed some contracts that have put us in a very precarious position as a nation and as a Government. I propose that we either increase the number of days or we withdraw. We do not want the Attorney-General to simply rush through a document and give us the wrong advice. We want him to do the right thing and ensure he protects the nation, especially on such big contracts. We are talking about Kshs5 billion and over. These are not small issues.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Kajwang’.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Temporary Deputy Chairlady, I rise to oppose this with a lot of respect to the Member for Gatanga. This is over-prescriptive. There are so many things that we do not need to put in law. There are administrative actions that can be taken. If the Attorney-General has been delaying, we can have administrative systems that will make him hasten what he has been doing. However, the big problem here is that the Attorney-General often will do what is called due diligence. When you have a contract of Kshs5 billion or that kind of thing, the Attorney-General must send his representatives to those places to see for themselves whether this thing exists or not. Sometimes, the Attorney-General will have to take legal advice from other jurisdictions to find out how this thing works before they can do the approval. My friend here from Seme knows what happened to that equipment which is shredding hyacinth in Kisumu. They did not go to Italy to see for themselves whether this thing was there. Before they knew it, they were procuring something which does not work. With a lot of respect to the Member for Gatanga, you are shooting your foot. You will be putting the Attorney-

General at a place that he is unable to work or he will be giving you opinions that you cannot rely on.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Please let us avoid repetition so that we can move a bit faster. Next is Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I join Hon. Kajwang' in strongly opposing that particular provision. As Hon. Cecily has said, you are limiting the Attorney-General's time in terms of being able to review very voluminous documents.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): What is your position?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): The issue of contracts that are worth Kshs5 billion being scrutinised, as Hon. T.J says, is to offer due diligence to the process. There was reason why it is huge contracts of over Kshs5 billion. We must desist from being used as tenderpreneurs. It is tenderpreneurs that would want a very rushed process that has not been scrutinised by the Attorney-General to facilitate their business. I strongly oppose that particular position.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): You are opposing. It is very well noted. This is a House of debate. Let us have the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, you will not allow Hon. Ichung'wah to get away with that. He needs to tell us who the tenderpreneurs are. T.J, Millie and I are not tenderpreneurs. We keep camels, goats and engage in fishing from the natural environment.

I oppose the amendment. The Office of the Attorney General is a serious office. For you to do due diligence, you require more than six months to save taxpayers' money. Imagine telling the AG that he has seven days and maybe he is attending a meeting in New York. So, what happens? The Member for Gatanga is my good friend. We do not want to subject his amendment to a vote. He should just drop it. He is pointing to somebody else but if we go that route then that must be another tenderpreneur.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Thank you, the Leader of the Majority Party. Lastly, let me hear the Member for Masinga. The public should know the law-making process. I am very grateful to the Members who are very keen on this law-making process.

**Hon. Joshua Mwalyo** (Masinga, WDM – K): Thank you, Hon. Temporary Deputy Chairlady. I was wondering why you were not seeing us on this side.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We notice you.

**Hon. Joshua Mwalyo** (Masinga, WDM – K): Our cards are inserted. The *Mheshimiwa* for Gatanga is trying to say that contracts or tenders have a deadline of evaluation. You cannot evaluate tenders forever because they expire. He is saying that the time should be limited because it might expire before it is awarded. He is trying to shorten the time. Even if it is not 14 days, it should be shortened so that he does not evaluate after it has been evaluated.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The Member for Masinga, are you supporting the proposed amendment or not?

**Hon. Joshua Mwalyo** (Masinga, WDM – K): I am supporting it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Because some Members are supporting and others are opposing, allow me to put the Question on this for the House to take a vote.

*(Question, that the new section be read  
a Second Time, put and negated)*

*New Section 139(2)*

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act by—

s.139 (2) Delete subsection (2) and substitute therefor the following new subsections—

(2) An accounting officer of a procuring entity on the recommendation of an evaluation committee, may approve —

(a) extension of contract period; and

(b) reimbursable costs.

(2A) A request under subsection (2), shall be accompanied by a recommendation from the contract administrator and application from the contractor making justification for such application.

New Insert the following new subsection immediately after subsection (2) —

(2A) The accounting officer of a procuring entity, on the recommendation of an evaluation committee and on the advice of the contract administrator, may approve the use of prime costs, provisional and contingency sums: Provided that the use of prime costs shall be subjected to procurement methods prescribed in section 92 of this Act and a successful bidder shall be a subcontractor.

This is a good amendment. I hope the Leader of the Majority Party will agree with it.

The proposed amendment was giving powers to the contractor to extend the contract period and deal with the reimbursable costs. That is the duty of the contract administrator or the project manager. I recommend that an accounting officer of a procuring entity, on recommendation of an evaluation committee, may approve extension of time and reimbursable costs. Under Section 2A, that shall be accompanied by recommendations from the contract administrator. That is the way it is in the industry. This amendment was wrongly put.

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be  
read a Second Time, proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Nothing is out of order unless you contribute. Let us have Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, the proposal of the amendment has explained one bit of the amendment in terms of the extension of the period. The devil is in those reimbursable costs. The devil is in the details.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Do you want a clarification on the same?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): I want further clarification on what these reimbursable costs are.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Before I give a chance to Kajwang', Mover, can you clarify on that so that we move faster for Members to take a vote on an informed decision.

**Hon. Joseph Nduati** (Gatanga, JP): There are many reimbursable costs, Hon. Temporary Deputy Chairlady. There are things like increase in prices which are catered for under most contracts. There could have been additional works which have been done. Sorry, I thought he was the Chairman because he is harassing me and calling me a tenderpreneur. You are really harassing me, Hon. Ichung'wah, and calling me a tenderpreneur which I am not.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Ichung'wah, stop harassing Hon. Ngugi. Allow him to clarify for you and other Members.

**Hon. Joseph Nduati** (Gatanga, JP): Can I continue? The additional costs related to the works and valuations are supposed to be dealt with by the contract administrator and not the contractor. That is what I am proposing.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for "Kajwang". I am sorry, there is no constituency by the name "Kajwang". Let us have Hon. Kajwang'.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Ruaraka is synonymous with Kajwang'. Hon. Temporary Deputy Chairlady, I invite my friend, the Member for Gatanga, to think through this. We should not over-legislate. We should allow the principle of free economy to work on its own. These are contractual terms. If you are doing roads construction, there are the International Federation of Consulting Engineers (FIDIC) contractual terms that engineers, lawyers and contractors in that sector all know. It is not in the law.

Going to the procurement of other goods and services, you do not have to prescribe everything because those things are in the contract themselves. You allow parties the freedom to change contracts and negotiate according to how those goods are. When you say that they may extend, that is usually the case in contracts. But you can also have contracts in which the parties decide that there will be no extensions. If you legislate on this, you tie the hands of procurement entities from negotiating as swiftly as they can.

Because these things are already in the contracts that we are talking about, we should not put them in legislation, otherwise, we will be stifling the process of legislation.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Are you opposing or supporting the amendment?

**Hon. T. J. Kajwang'** (Ruaraka, ODM): I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Kolosh. This is not just a house of a few. Before you, let me hear from Hon. Kolosh. You already spoke to this, Hon. Ichung'wah. There was nothing out of order.

**Hon. Ahmed Kolosh** (Wajir West, ODM): Hon. Temporary Deputy Chairlady, I made my maiden speech in the 12<sup>th</sup> Parliament. They should thank me because I can be here and cross the Floor and T.J and the likes cannot do much. I am in the same Parliament. The Member is simply saying that instead of giving this leeway to the contractor, let us give it to the contract administrators. That means that if there will be variations or any changes, whether material or in terms of prices, they must not come from the contractor but from the employer.

I support this amendment because it makes the management of contracts easier by ensuring entities that have issued contracts have full control over the contractor. Contractors can simply delay processes. If there are variations in the contract terms, unless we are very careful, we will be giving them the leeway to do what they want. That is why the employers should be given the responsibility to initiate any variation or changes to the contract terms.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well Members. We must move fast. At least, we have heard the import of the amendment. For us to move fast, we will have to put the Question. Hon. Ichung'wah, make a comment because Members have been convinced on either way and they understand the law. These are the amendments to the Public Procurement and Asset Disposal Act. Members have a lot of interest and knowledge in it. Please make a comment before I put the Question. Hon. Ichung'wah, you have the Floor.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairlady. I want to express myself on this amendment. I only sought a clarification on what I said: the devil could be in the details.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): You were on a point of order.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): When he explained what these reimbursable costs are, he confirmed my fears that the devil is in the details because he is speaking about variation of cost. I will speak as a former Vice-Chair of the Public Investments Committee. The genesis of all corruption in Government stems from variation of contracts, especially on pricing. That is exactly what the Member is proposing. Therefore, I strongly oppose that amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well. Leader of the Majority Party, did you contribute to this amendment?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, the Member for Gatanga has understood my point. I have explained to him. What Hon. T.J. said is true. We do not need to legislate on this. There are some things which are left for regulations. Different contracts have different scopes and detail. I am sure the Chair of the PIC will agree with me. There are people who even quote little amount of money but they make more money under variation. The moment we put this amendment in law, then we are falling into the...Give an opportunity to the Chair because he wants to withdraw his amendment.

*(Hon. Kimani Ichung'wah spoke off-record)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Does he want to withdraw or subject the amendment to a vote? We must have order in the House, Hon.

Ichung'wah. I should have put the Question but I have listened to the debate and seen a lot of consultations. Let us give the opportunity to the Mover.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Chairlady. Hon. Ichung'wah should not intimidate a first term Member. It is very unfair. You should be showing us the way. I have discussed with the Leader of the Majority Party and I have realised where my problem is. I wish to withdraw those amendments. He has guided me very well. I want to thank him for that.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): You are on record, the Member for Gatanga for withdrawing your proposed amendment to New Section 139(2). Hon. Members, the proposed amendment to New Section 139(2) is officially withdrawn. Since it was a Second Reading, we will do away with it.

*(Proposed New Section 139(2) by Hon. Joseph Nduati withdrawn)*

Next section.

*New Section 139(2A)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Joseph Ngugi, you have an amendment to New Section 139(2A).

**Hon. Joseph Nduati** (Gatanga, JP): I also wish to withdraw it. I want to thank the Leader of the Majority Party for guiding me on this.

*(Proposed New Section 139(2A) by Hon. Joseph Nduati withdrawn)*

*New Section 142(1)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The Chairman of the Departmental Committee on Finance and National Planning has an amendment.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act —

*Provision*  
s.142(1)

*Amendment*

New                    Insert the following new section immediately after subsection (1)—

“(1A) Notwithstanding subsection (1), a successful foreign tenderer shall submit a performance security equivalent to the contract amount, issued by a financial institution or insurance company licensed in Kenya, before signing of the contract, and the performance security shall remain valid for a period of ten years from the close out date of a contract.”

The import of this amendment requires any successful foreign tender to submit a performance security equivalent to the contract amount. The reason for this is that in the recent

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past, we have had too many firms that come from outside the country to apply for tenders. Once they win, they fail totally because they are not able to do the contract. We require that they take a performance security equivalent to the contract amount. It is important for Members to know that this is not applicable to Kenyan companies.

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, you always have the priority.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, the Chair's amendment is very good. One, I want to give the example of the dams in Elgeyo/Marakwet County. The company came and it was given 10 per cent of the contract. They looked for their own insurance in Rome and then after five months, they said that they were bankrupt. Any foreign contractor must first place an equivalent of the contract sum as bid bond.

Two, Kenyan insurance underwriters must be used so that the money can be saved. The company which was given the contract to construct dams disappeared and the person who insured those dams is in Rome. Chinese Companies are competing with local contractors today for contracts worth Kshs50 million. We must give them a benchmark. If you get a contract in Kenya, you must provide a similar bid bond and you must use the local insurance companies.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Thank you. You support the amendment. Yes, the Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD – K): Thank you, Hon. Temporary Deputy Chairlady. The Report of the Public Accounts Committee on the Independent Electoral and Boundaries Commission (IEBC) was amended. They talked about the people who supplied the Kenya Integrated Election Management System (KIEMS) kits and the issues of local incorporation. It goes in the same spirit with what Hon. Limo has said. We support him. Let us have the bid bond of 100 per cent and then let us have a local insurer for the interest of Kenyans. Many a time, these companies come here and when you Google them, you see that some of them are blacklisted in their countries. It is important to have the local incorporation for purposes of mitigating the risk.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Yes, the Member for Mwingi North. Hon. Kajwang', you cannot contribute to every amendment. There are so many Members who have interest in this amendment. However, I note your interest.

**Hon. Paul Nzengu** (Mwingi North, WDM – K): Thank you, Hon. Temporary Deputy Chairlady. I would like to support the proposal. I would like to ask the Chairman of the Departmental Committee on Finance and National Planning a question. He is not listening.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): He is listening to you. Carry on. You are on record. Address me but not the Chair of the Committee.

**Hon. Paul Nzengu** (Mwingi North, WDM – K): As much as I agree with the proposed conditions for foreign contractors, we must be realistic in the conditions we put. It is not realistic to tell people to give performance bonds worth the amount of the contract.

*(A Member interjected)*

It is my opinion. So, please allow me to say it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): You are protected. Make your comment.

**Hon. Paul Nzengu** (Mwingi North, WDM – K): If we are talking about a contract of Kshs20 billion and then we say that you must provide a bond of kshs20 billion, it is not realistic. We should have a percentage. Currently, the law says that you do a performance bond of 10 per cent of the contract amount. The law also says that you give advance payment guarantee of 20 per cent. I am just pleading with the Chairman to consider giving a more realistic figure like a percentage of 50 per cent of the contract amount.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Thank you.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD – K): On a point of information.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Whom do you want to inform? Allow me to put the Question. Hon. Chris, do you want to inform the Member for Mwingi North? Are you ready to be informed, Hon. Nzengu?

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD – K): You have already given me the opportunity to contribute.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): No! I must follow the procedures.

*(Hon. (Dr.) Chris Wamalwa spoke off-record)*

You are not on record. The Member for Mwingi North, are you ready to be informed by Hon. Chris?

**Hon. Paul Nzengu** (Mwingi North, WDM – K): Yes, I am ready.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Chris Wamalwa, inform the Member for Mwingi North.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD – K): Thank you, Hon. Temporary Deputy Chairlady. When the contract sum is Kshs100 million, the insurance does not give the equivalent of that. It works differently. You can get an equivalent of that in a bank. If it is a bid bond insurance of 100 per cent equivalent, for example, of Kshs10 million, the contractor will only give us a small percentage. The insurance companies do not give a guarantee the way banks do.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, with that information and the debate that has arisen, I put the Question.

*(Question, that the new section be read  
a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*New Section 142*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Joseph, you have an amendment to the proviso.

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Temporary Deputy Chairlady, I wish to withdraw it.

*(Proposed New Section 142 by Hon. Joseph Nduati withdrawn)*

*New Section 142 (3)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The Chairman of the Departmental Committee on Finance and Planning has an amendment.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act –

(3) Delete and substitute therefor the following new subsection—

“(3) The provisions of subsection (1) shall not apply to tenders related to consultant services, works and supplies where their estimated value does not exceed one hundred thousand shillings, or works and supplies reserved for persons with disabilities and other disadvantaged groups, and for these categories, the performance securities shall not be more than ten per cent of the contract price.”

The import of this section is to set out exclusions for requirements of performance security when it relates to contracts that do not exceed Kshs100,000 and those which are reserved for people with disabilities and disadvantaged groups like women and youths.

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*New Section 143*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We again have an amendment by the Chair of the Committee.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act -  
s.143 Delete and substitute therefor the following new section—

Nature of

performance security.

143. The performance security referred to in section 142(1) may not generate interest and it shall be determined in accordance with the form provided for in the tendering document, and may be paid in the form of—  
(a) a bank guarantee issued by an authorised financial institution;  
(b) an insurance guarantee issued by an authorized insurance institution approved by the Insurance Regulatory Authority; or  
(c) an irrevocable letter of credit.

This basically defines the nature of performance security which is a bank guarantee, an insurance guarantee or an irrevocable letter of credit to define how it should come.

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Kajwang’.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Temporary Deputy Chairlady, the Chair of the Committee should express himself more on this so that it is clearer.

I have a problem with how he has worded his amendment. He says that, “performance security may not generate interest”.

*(Hon. Joseph Limo consulted an Hon. Member)*

Let the Chair of the Committee pay attention so that I make my point.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Limo, Hon. Kajwang' wants your attention.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): The wording in the amendment is that it may not generate interest. That is the problem. I wish you should not have used the word, "generate". You should have said "attract interest or earn interest". When you say "generate interest" you mean something else.

If you mean that it should not earn interest, you should say "shall not". When you say "may not" you are ambiguous. Would the Chair of the Committee want to recast his language so that he is very clear on what he wants to say?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Limo, please, clarify.

**Hon. Joseph Limo** (Kipkelion East, JP): I respect the fact that Hon. Kajwang' comes from a place where English is common and, therefore, he is a black English man. Maybe, he is making some sense though if you use the word "shall" it will make it compulsory. The word "may" will give some flexibility.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Limo, Hon. Kajwang's concern is whether your proposal provides for earning of interest or not.

**Hon. Joseph Limo** (Kipkelion East, JP): I may not be an expert in drafting but if, indeed this is a housekeeping issue which will make the draft better, then I will not resist that one, but subject to technical advice from the drafters.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Mwalyo.

**Hon. Joshua Mwalyo** (Masinga, WDM-K): Hon. Temporary Deputy Chairlady, I would say that performance bonds do not attract interest at all. Even if you buy it and you bond yourself with a contract, it does not have any interest. I think a bit of some homework should have been done.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Chris Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Hon. Temporary Deputy Chairlady, a bond is normally given a timeframe. It can be one year or two years. When it expires, you renew it. So, ordinarily, it does not earn interest.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The Chair is here and has listened. My eyes are tied. I can only put the Question.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Hon. Temporary Deputy Chairlady, maybe there was a drafting mistake because there is a precedent that has been set. That is why normally it is clear and specific that when you have a performance bond it is for a duration of two months if the contract will take two months or if it is one year, they extend for another half a year. Normally, it is a term which is spelt out. But interest does not apply in this case.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Chairperson, having listened to the Members on the interest...

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, having listened carefully and having considered the debate, we amend it to replace the word "may" with the word "shall". It will read that "it shall not generate" instead of "it may not".

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): The Chairman of the Committee has moved it in the amended form. It has been moved.

*(Question, that the new section be read  
a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to  
the Bill, put and agreed to)*

We had a proposed amendment by Hon. Joseph Ngugi. Now that the amendment by Hon. Limo has been carried, Hon. Ngugi's amendment is dropped.

*(Proposed amendment by Hon. Joseph Nduati dropped)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Wamalwa, you are confusing the Chair. It looks like you are trying to intimidate him.

*New Section 144(2)*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act —

s. 144(2) Delete and substitute therefor the following new subsection—

“(2) The bank, authorised financial institution or insurance shall be obliged to give to the procuring entity all the amount of the performance security upon claim by the latter.”

This is for the purpose of creating obligation for the financial institution which gave performance security to pay the procuring entity the secured amount against lodging a claim. It is bringing the obligation to the person who gave the performance security.

*(Question of the new sub-section proposed)*

*(New sub-section read the First Time)*

*(Question, that the new sub-section be  
read a Second Time, proposed)*

*(Question, that the new sub-section be read  
a Second Time, put and agreed to)*

*(The new sub-section was read a Second Time)*

*(Question, that the new sub-section be added to*

*the Bill, put and agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, on the same, we had a proposed amendment by Hon. Joseph Ngugi. Now that the amendment by Hon. Limo has been carried, then Hon. Ngugi's falls.

*(Proposed amendment by Hon. Joseph Nduati dropped)*

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Temporary Deputy Chairlady, I have realised that most of my amendments were picked by the Chair and that is why I am dropping them. Next time, the Chairman should say who brought the amendments.

*New Section 144(3)*

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Temporary Deputy Chairlady, I wish to withdraw this amendment.

*(Proposed amendment by Hon. Joseph Nduati withdrawn)*

*New Section 145(1)*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act —

s.145(1)      Insert the words “but the performance security shall remain valid for the period stipulated in section 142(1)” immediately after the words “procuring entity”.

This is just a cross-referencing amendment under Section 142(1) to emphasise that the validity of the period for performance security shall be as stipulated in the new amendment which is 10 years.

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

*[The Temporary Deputy Chairman  
(Hon. Patrick Mariru) took the Chair]*

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be  
read a Second Time, proposed)*

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*New Section 155(1)(1A), 1B and 1C*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): If Hon. Gachagua is not here, that is dropped.

*(Proposed amendment by Hon. Rigathi Gachagua dropped)*

*New Section 155(4)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): That is by Hon. Rigathi Gachagua who is absent. That is dropped.

*(Proposed amendment by Hon. Rigathi Gachagua dropped)*

*New Section 155(6)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I am advised in writing that Hon. Florence Mutua has nominated Hon. Tuitoek Daniel Kamuren to move the amendment on her behalf. Clearly, given the fact that the one who was nominated is absent, that is dropped.

*(Proposed amendment by Hon. (Ms.) Florence Mutua dropped)*

*New Section 157(8)(iii)*

**Hon. Joseph Nduati** (Gatanga, JP): I wish to withdraw it.

*(Proposed amendment by Hon. Joseph Nduati withdrawn)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): New Section 157(8) by Hon. Gachagua who is absent is also dropped.

*(Proposed amendment by Hon. Rigathi Gachagua dropped)*

*New Sub-Section 157(9)*

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Public Procurement and Asset Disposal Act No.33 of 2015 by inserting the following new proposed amendments in the proper chronological order —

s. 157(9) Insert the following new subsections immediately after sub-section (9) —

(9A) The percentage awarded to citizen contractors under subsection (9) shall be indicated in the contract.

(9B) A procuring entity shall pay directly for the supply of goods, services or works to the citizen contractors under subsection (9).

The amendment is basically to deal with works done under joint venture in partnership with foreign contractors. I am proposing that works which are awarded to citizen contractors must be documented and put into the contract so that they are known and that a particular contractor is paid directly by the bidder.

In the Standard Gauge Railway project, foreign contractors went into partnership with local contractors. Our local contractors were given shoddy work to clean railway stations and the Chinese went with all the money. That is why I am proposing this amendment.

*(Question of the new sub-section proposed)*

*(New sub-section read the First Time)*

*(Question, that the new sub-section be read a Second Time, proposed)*

*(Question, that the new sub- section be read a Second Time, put and agreed to)*

*(The new sub-section was read a Second Time)*

*(Question, that the new sub- section be added to the Bill, put and agreed to)*

*New Section 167(2)*

*(Proposed amendment by Hon. Joseph Nduati withdrawn)*

*New Section 177*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): That is by Hon. Gachagua who is not here. That is dropped.

*(Proposed amendment by Hon. Rigathi Gachagua dropped)*

*(Provisions relating to the Public Procurement and Asset Disposal Act, 2015, No. 33 of 2015 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We are now moving to the next statute which is the National Employment Authority Act, 2016 (No.3 of 2016). I suggest we move in some measured speed so that we make progress.

NATIONAL EMPLOYMENT AUTHORITY ACT, 2016 (NO.3 OF 2016)

*National Employment Authority Act, 2016 (No.3 of 2016), Sections 2, 4 and 8*

*(Hon. (Ms.) Odhiambo-Mabona spoke off-record)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, I have just mentioned that we are dealing with Sections 2, 4 and 8 of the National Employment Authority Act, 2016 (No.3 of 2016). The three sections have no amendments.

You have an amendment on the next one but not on Section 2, 4 and 8A.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairlady, I have a proposed new subsection (gg) after (g) in Section 8.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, you are proposing to insert a new paragraph after the proposed new paragraph (g) in the proposed New Section 8A. That is in the Order Paper on page 706. Yours relates to Section 8A.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Which section are we dealing with?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Section 2, 4 and 8. There is Section 8 and Section 8A.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I am sorry.

*(Sections 2, 4 and 8 agreed to)*

*Section 8A*

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the National Employment Authority Act, 2016, (No.3 of 2016)—

(a) by inserting the following new paragraph immediately after the proposed new paragraph (g) in the proposed new section 8A—

“(ga) develop and implement programmes to ensure Kenyan migrant workers returning to Kenya and have been victims of trafficking in persons, are attached to rehabilitative programs provided in any other law.”

This is an insertion of subsection (ga) after (g). The essence of that proposal is that there are many women migrant workers who are often victims of trafficking persons and need

rehabilitation before integration into the society. So, I am seeking to have that included as part of what it will do.

*(Question of the amendment proposed)*

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

*(Section 8A as amended agreed to)*

*Section 17(2)*

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the National Employment Authority Act, 2016, (No.3 of 2016)—

(b) by deleting the proposed amendments to Section 17 (2) (d).

I wish to propose a deletion but with a further amendment. I want to inform the Members the thinking behind the National Employment Authority Act which was moved by Hon. Sakaja. It was mainly targeting young people. He was hoping that even when you are hiring, it would give advantage to young people. The proposed amendment seeks to curtail the chances of young people. For instance, you bring an amendment to provide that the persons must have master's degree and 10 years' experience. Some of us became directors without 10 years' experience. Sometimes we limit people for no good reason. The only further amendment I wanted is that I had proposed deletion to the proposed amendment in (d) which is, "has not attained the age of 35 years at the time of appointment." When you do that, it actually closes and makes sure that it is only the youth. Whereas I would like it to be open for the youth to have an advantage, I would also not like a situation where it is only the youth who can be the Director General. So, I want to withdraw my proposed amendment to (d) but retain the rest.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, to be clear, because you are doing a further amendment on your feet, are you then effectively withdrawing your proposed amendment?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): No.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Just to be clear, it is important to be on record.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chair, let me read it out so that we are clear on record. Section 17(2) says that there shall be a Director-General of the Authority who shall be appointed competitively by the board. A person shall be qualified to be appointed to be as a Director General if that person holds a degree. These guys were trying to say that a person should not just hold a degree but have a master's degree. So, I oppose that. A degree is enough. You do not have to have a master's degree.

Secondly, they were saying the person must have 10 years' experience when the law says it is five years. So, I am opposing the 10 years. Let us retain five years so that we promote our young people. The one I am withdrawing is (d) which says: "has not attained the age of 35 years at the time of appointment." I support the Mover that we withdraw that amendment because it

limits and makes it only available to young people. What I am proposing is that it should be available to everyone, both young and old. When you make it five years and not 10 years, then you are including the youth. Sometimes we say we include the youth but we put technicalities that then exclude them. When you put too many years and very high qualifications, then we are excluding the youth.

So, we are withdrawing only (d).

*(Proposed amendment to part (d) by Hon. (Ms.) Odhiambo-Mabona withdrawn)*

*(Question of the amendment proposed)*

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

*(Section 17(2) as amended agreed to)*

*(Sections 28(1), 30(1), 30(3), 33(1), 33 (3), 37(1), 37(2), 42(2) agreed to)*

*(Provisions relating to the National Employment  
Authority Act, 2016 (No.3 of 2016) as amended agreed to)*

FISHERIES MANAGEMENT AND DEVELOPMENT ACT, 2016 (NO.35 OF 2016)

*Fisheries Management and Development Act, 2016 (No.35 of 2016, Section 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the Leader of the Majority Party. Yes, Hon. Mbarire.

**Hon. Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act—

(a) in the proposed amendments to section 2 by—

- (i) inserting the word “Council” immediately after the words “artisanal fishing vessel” appearing in the prefatory sentence; and
- (ii) inserting the following new definition in proper alphabetical sequence—

“Council” means the Kenya Fisheries and Oceans Advisory Council established under section 6;

It seeks to change the name of the advisory council from the “Kenya Fisheries Advisory Council” to “Kenya Fisheries and Oceans Advisory Council.” The justification for this amendment is that it is intended to expand and enhance the mandate of the advisory council to include oceans in order to embrace the blue economy. The amendment to the definition of the word “council” is therefore necessary as a consequence of the name change.

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Thank you, Chair. I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie Odhiambo, do you have an amendment to section 2? Yes, indeed, Hon. Millie Odhiambo. This is as per the Order Paper. Let us dispense with the amendment by the Leader of the Majority Party.

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

Hon. Millie Odhiambo, you have an amendment as well to that section.

**Hon. (Ms.) Millie Odhiambo** (Suba North, ODM): Thanks, Chair. I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act No. 35 of 2016-

(a) in section 2 by inserting the words “or commercial” immediately after the words “for subsistence” appearing in the definition of the term “artisanal fishing”.

If you look at the proposal, you will find that it deletes the word ‘commercial’ in the phrase ‘artisanal fishing’. Through this, I am seeking to protect small-scale fish farmers from stringent rules and licences, so that if you are doing fishing but in a small-scale you should not be subjected to too many rules. Yes, there are people who will be fishing for subsistence but then they might sell six pieces of fish. So we should not put them under too many stringent rules. Again, what we should have done is to harmonise the definition between artisanal and subsistence fisheries.

*(Question of the amendment proposed)*

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

*(Section 2 as amended agreed to)*

*(Sections 58(2), 58(4), 81(3) and 84(1) agreed to)*

*Section 84(2)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie Odhiambo, you have an amendment.

**Hon. (Ms.) Millie Odhiambo** (Suba North, ODM): Thank you, Chair. I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act No.35 of 2016 –

(b) in Section 84(2) by deleting the proposed amendment to paragraph (b);

This is because if you look at the Act and the Fourth Schedule to the Constitution that gives mandates to both county and national governments, this amendment takes away the mandate of the county governments. Fisheries is solely, if you may say, a county function. Already we have mutilated this Act a lot and given a lot of the mandates of the county governments to the national government. The little that remains we seem to be taking away. This is the mandate of the county governments, not the national government.

*(Question of the amendment proposed)*

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

*(Section 84(2) as amended agreed to)*

*(Sections 84(4), 84(5), 85(1) and 86(1) agreed to)*

*Section 86(3)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Chair, Departmental Committee on Agriculture and Livestock, Hon. Adan Haji, you have an amendment. The Chair is not present, so that is dropped.

*(Proposed amendment by Ali Adan dropped)*

*Section 88(1)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Chair, Departmental Committee on Agriculture and Livestock is absent.

*(Proposed amendment by Ali Adan dropped)*

*(Sections 88(2), 89(1), 91(2A), and 91(5) agreed to)*

*Section 98(1)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie Odhiambo, you have an amendment to Section 98(1).

**Hon. (Ms.) Millie Odhiambo** (Suba North, ODM): Thank you, Chair. I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act No.35 of 2016-

(c) in Section 98(1) by inserting the words “of which percentage shall not be less than forty per centum (40%) of the crew on the fishing vessel” immediately after the words “citizens of Kenya” appearing in the new paragraph (h).

What the parent Act provides is that foreign investors shall ensure that they employ at least 40 per cent of Kenyans. What this proposed amendment does is to remove the requirement

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that at least 40 per cent of Kenyans are employed. So I am returning it back to ensure that Kenyans are employed.

*(Question of the amendment proposed)*

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

*(Section 98(1) as amended agreed to)*

*(Sections 112(1), 112(1)(a), 114(2), 140(1), 201(1), 202(2),  
206(1) and 207(1) agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): New Part II is a new section by the Leader of the Majority Party. Let us have Hon. Mbarire.

*New Part II*

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act—

(b) by inserting the following new amendments immediately after the amendments proposed to section 2-

PART II  
Title

Delete the title “THE KENYA FISHERIES ADVISORY COUNCIL” and substitute therefor the title “THE KENYA FISHERIES AND OCEANS ADVISORY COUNCIL”

Hon. Temporary Deputy Chairman, I wish to move an amendment to Section 6 whose aim is to reflect the name change and also seek to make the Cabinet Secretary for Fisheries, the Chairperson of the advisory council due to its advisory nature for continuity to follow up recommendations of the council.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Since it is a new one, you propose that it be now read a second time.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): I propose that this amendment be now read a Second Time.

*(Question of the new part proposed)*

*(New part read the First Time)*

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*(Question, that the new part be read a Second Time, proposed)*

*(Question, that the new part be read a Second Time, put and agreed to)*

*(The new part was read a Second Time)*

*(Question, that the new part be added to the Bill, put and agreed to)*

*New Section 6(1)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mbarire for the Hon. Leader of the Majority Party.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, I think I got confused and what I moved was what you are asking me to do right now. That is the new Section 6(1). Allow me to consult.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Take a minute to consult. Hon. Mbarire, I am sure we are now on the same page. Please proceed to move Second Reading of New Section 6(1).

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Let me first make it clear that I had already moved the New Section 6(1) and so...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): No, you had not moved Section 6(1). Earlier on, you had moved new Part II.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Yes, I had moved New Part II and I am now going to move New Section 6(1). I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act—

(b) by inserting the following new amendments immediately after the amendments proposed to section 2-

s.6(1) Delete the words “Kenya Fisheries Advisory Council” and substitute therefor the words “Kenya Fisheries and Oceans Advisory Council”  
Delete paragraph (a) and substitute therefor the following new paragraph (a) —  
(a) the Cabinet Secretary responsible for fisheries, who shall be the chairperson;  
Thank you.

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

*(Question, that the new section  
be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section  
be added to the Bill, put and agreed to)*

*New Section 6(3)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mbarire for the Leader of the Majority Party. Propose for the Second Reading of that.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act—

(b) by inserting the following new amendments immediately after the amendments proposed to section 2-

s.6(3) Delete

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section  
be read a Second Time, proposed)*

*(Question, that the new section  
be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section  
be added to the Bill, put and agreed to)*

*New Section 11(1) (a)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mbarire, move the Second Reading of the New Section 11(1) (a).

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): I propose that New Section 11(1) (a) be deleted from the words that start...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): No, it is Second Reading. It cannot be deleted because it is a new section. You are proposing Second Reading.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act—

(b) by inserting the following new amendments immediately after the amendments proposed to section 2-

s.11(1)(a) Delete the words “from among the members appointed under paragraph (c)

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*New Section 47*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mbarire, move the Second Reading of New Section 47.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act-

(b) by inserting the following new amendments immediately after the amendments proposed to section 2-

s. 47 Insert the words “and Oceans” immediately after the word “Fisheries” appearing in subsection 201(1)-

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*New Section 201(2)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mbarire, move the Second Reading of New Section 201(2).

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act-

(c) by inserting the following new amendments immediately after the amendments proposed to section 201(1)-

s.201(2) Delete

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*New Second Schedule*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mbarire move the Second Reading of New Second Schedule.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Fisheries Management and Development Act-

(d) by inserting the following new amendments immediately after the amendments proposed to section 207(1)-

Second Delete the expression “section 53(2)” and substitute therefor the expression

Schedule “section 50(2)”  
Delete the title “DESIGNATED FISH LANDING STATIONS”  
and substitute therefor the title “DESIGNATED FISH PORTS”

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order, Hon. Millie Odhiambo?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. There is a very clear difference between a “port” and a “landing station”. Maybe the Mover can explain to us the mischief she is trying to cure.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): That is a fair request. Hon. Mbarire, what are you intending to do?

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, designated fish landing stations are taken care of by the word “ports”. We want to make ports all encompassing.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, unless you really get a good reason, I will oppose that. The reason I will oppose that is that I am speaking from my backyard. There is nowhere in my constituency that qualifies as a port. So, when you stop the landing bays, then it means you will have actually removed all the landing bays in Suba North from the realm of the Fisheries Management Act. So, you give us a good reason or we consult further on this amendment. We can bring a further amendment. If you look at the Fisheries Management Act – I have not carried mine – you will see the way the port and the landing bay are defined. They are totally different things. So, what would you be calling our units? We do not have a port where I come from. What do we have? We have waters or what?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mbarire, I will come to you in a minute. Let us hear Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. I also concur with my colleague, Hon. Millie Odhiambo, in standing to oppose the amendments because I come from a fishing community and we land with our fish at any point. Changing the definition to a “port” from a “landing station” is simply complicating matters. I do not have the Transport Act or the Kenya Ports Authority Act, but changing it into a port is completely changing the definition. It will mean all our small landing sites, for example, in my constituency, including Budalangi, will become illegal and our fishermen will have nowhere to land without being harassed and arrested by the marine police. We stand to oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I want to give Hon. Mbarire a second chance on this amendment. I can tell Hon. Mbarire is consulting on that particular amendment. I request that the consultation be fast because we need to make progress.

Hon. Mbarire, please consult fast. We have to make progress. Hon. Mbarire, please, take a second stab at this so that we may progress. You have the Floor.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, we have consulted and it is clear that this amendment was necessary because Section 53(1) talks about designated fish landing stations which are specific to particular areas especially along the

Indian Ocean. The designated fish port is now all-encompassing so it will take care of the landing stations that Millie is talking about in her constituency and any other station around a lake or a fishing area. This is now to expand the real meaning of landing ports so that we take care of those small ones that you are talking about.

The current Act has even mentioned the names of the fish landing stations. The ones that have been mentioned in Section 53(1) are the ones along the Indian Ocean. There was need to change and call them ports so that we include all the others that are in the country. The fear Hon. Millie had is now taken care of.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I can tell she wants to speak to this. Please, if you could do so in a minute, Hon. Millie.

**Hon. (Ms.) Millie Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, I have looked at the Schedule and it was worded wrongly. It is referring to three ports as designated landing stations which means that it is defining those ports as stations which are the rural ones like ours. That is okay.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Oundo, must you really speak to this? You have a minute.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Just to go on record, I want to trust the interpretation by Hon. Millie and Hon. Cecily Mbarire. I hope there is no mischief and our people will not suffer. I want to trust what they have said.

*(Question of the new schedule proposed)*

*(New schedule read the First Time)*

*(Question, that the new schedule  
be read a Second Time, proposed)*

*(Question, that the new schedule  
be read a Second Time, put and agreed to)*

*(The new schedule was read a Second Time)*

*(Question, that the new schedule  
be added to the Bill, put and agreed to)*

*(Provisions relating to the Fisheries Management and Development Act, No. 35 of 2016 as  
amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, congratulations. We are done with the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.13 of 2018). Let us have the Mover.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.13 of 2018) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND CONSIDERATION OF REPORT

### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Can we have the Chairperson to report to the House?

**Hon. Patrick Mariru** (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) (No. 2) (National Assembly Bill No.13 of 2018) and approved the same with amendments.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Mover of the Bill should move the Motion for agreement with the Report. Yes, Hon. Cecily Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Maina Kamanda to second the Motion for agreement with the Report of the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Yes, Hon. Maina Kamanda.

**Hon. Maina Kamanda** (Nominated, JP): I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, from where I sit guided by the procedures of the House, we are not in a position to put the Question. Therefore, let us move on to the next Order.

*(Putting of the Question deferred)*

## BILL

*Second Reading*

### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): It is on record that we got a request from the Leader of the Majority Party to defer the Second Reading of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.21 of 2019). I order that we defer Order No. 14.

Let us move on to the next Order.

*(Bill 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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Chairperson of Public Investments Committee.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Temporary Deputy Speaker, due to the interest of time, I request Members to allow me to move this Motion in a very short period and then after, I will request the Vice-Chair to continue.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Chair, if you work within your time, you will still have time. If you do not finish now, you are entitled to your time in the next Sitting.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Considering the size of the Motion, we can move it, second and allow Members to contribute.

Hon. Temporary Deputy Speaker, I beg move the following Motion:

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.

This Motion is straightforward and clear. We were able to call 10 witnesses and one of the observations we made regarding the same was that pursuant to Section 78 of the Public Procurement and Asset Disposal Act, an expression of interest which is provided for in sub-section (1) in the form of a notice inviting persons to submit expression of interest is a prequalification requirement and does not require or constitute a tender envisaged in Section 59(3) of the Public Procurement and Asset Disposal Act. The whole thing is straightforward. We

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were able to get the findings from each and every individual and offices that appeared before us as a Committee.

Eventually in the interest of time, it is important for this House to agree that we move forward so that the KRA can start collecting the necessary taxes as required by law. That law had been passed by this House.

Some of the things we wish to make clear are that the Kenya Association of Manufacturers and the Kenya Revenue Authority both confirmed that there was an issue of public participation in the excisable goods management system. The Kenya Bureau of Standards (KEBS) and the Anti-Counterfeit Agency equally confirmed the same. I am glad that Hon. Wamalwa is here. He has already begun a process to legislate for a law on public participation as provided for in the Constitution.

One other recommendation we have made is that the KRA should share information and technology with the KEBS and the Anti-Counterfeit Agency at no extra cost whatsoever to the manufacturers.

Once this contract expires, renegotiating a new contract should not be done except with the three agencies namely KRA, KEBS and the Anti-Counterfeit Agency so that we have proper synchrony of the agencies. On this one, I am sure many Members will agree with me.

After listening to views and concerns of all those who made presentations before the Committee and considering the Constitution, another recommendation we made is that Parliament should ensure that we do not have any taxation on pure drinking water. This is envisaged in the Constitution and it is a requirement for any human being.

Thank you very much, Hon. Temporary Deputy Speaker. I request the Vice-Chair to second.

*(Motion interrupted)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Before he seconds, allow me to interrupt the business a bit. There is a Paper that ought to have been laid and I will allow Hon. Cecily Mbarire to lay it.

### PAPER LAID

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 8<sup>th</sup> May 2019:

List of nominees to Embakasi South Constituency, National Government Constituencies Development Fund Committee:

1. Stephen Omari Odero, male youth representative.
2. Duncan Mulwa Nduva, male adult representative.
3. Sabina Warukiru Wanjohi, female youth representative.
4. Linet Mugasiali Madete, female adult representative.
5. Vincent Odongo Bunde, representative of persons living with disability.
6. Urbanas Mwikia Musau, nominee of the constituency office, male.
7. Lydia Kwamboka Ombwogi, nominee of the constituency office, female.

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**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Table it. You also have Notice of Motion.

### NOTICE OF MOTION

#### APPROVAL OF NOMINEES FOR APPOINTMENT TO EMBAKASI SOUTH NG-CDF COMMITTEE

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to give notice of the following Motion:

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 list of nominees for appointment to the Embakasi South Constituency Committee of the National Government Constituency Development Fund, laid on the Table of the today, Wednesday, 8<sup>th</sup> May 2019.

*(Resumption of debate on the Motion)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us get back to the seconding of the Motion by the Chairperson of the PIC.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Hon. Temporary Deputy Speaker, I rise to second this Motion.

The Committee had 14 sittings and examined 10 witnesses, namely the Commissioner, Kenya Revenue Authority; the CEO, Kenya Bureau of Standards; the CEO, Kenya Anti-Counterfeit Agency; a Member of Parliament from Cherengany, one Joshua Kutuny; the Solicitor-General, the management of Kenya Association of Manufacturers; the management of the Public Procurement Oversight Authority (PPOA), and the Office of the Auditor-General. The Committee also made visits to SICPA Headquarters in Switzerland. The findings of the Committee as raised by the Chair have been clear.

Pursuant to Section 78 of the Public Procurement and Asset Disposal Act, 2005, it is clear that an expression of interest as provided for in Subsection (1) is in the form of notice inviting persons to submit expression of interest is a prequalification requirement hence does not constitute a notice as envisaged in section 59(3) of the Public Procurement and Asset Disposal Act.

The Committee, therefore, observed that the Deputy Commissioner for Procurement and Supply Services wrote to the evaluation committee requesting for review of expression of interest report to consider the impact of digitisation of the KRA. There was no evidence that has been tabled before the Committee to show that the action by the Commissioner has interfered with the independence of the evaluation committee. As such, the Committee solely developed their own criteria for the tender.

Section 26(6) of the Public Procurement and Asset Disposal Act also provides that a procurement entity shall not commence any procurement procedure until it is satisfied that sufficient funds have been set aside in its budget to meet obligations of the contract. The

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Committee observed that EGMS programme was a self-funding programme as the manufacturer was charged Kshs1 per stamp. The question of whether Section 26(6) of the Public Procurement and Asset Disposal Act was complied with by KRA may not, therefore, be sustained in light of the self-funding nature of the programme.

Based on the evidence adduced by the KRA, the Committee observed that there is need to review pricing mechanism and consequently the contract may have been probably justified by the expansion of the scope of the excise goods for which the EGMS was to be used and the need to ensure there is sustainability. Above all, the KRA sought advice from the Office of the Attorney-General who is the Principal Legal Adviser of the Government, and who draws his mandate from Article 156 of the Constitution as well as from the Public Procurement Regulatory Authority to renegotiate with SICPA in the contract. Based on the evidence adduced before our Committee, we feel that it was not possible for the KRA to procure an alternative manufacturer to produce stamps with designs and security agency compatible with the tracking platform designed by SICPA without transfer of intellectual property rights to another supplier.

The evidence adduced before our Committee with regard to value for money in the procurement process by the KRA shows that there has been an increase in the amount of excise duty collected. For example, collection of tax in certain consumables like wines and spirits has risen from 12 to 43 per cent.

The EGMS can also help the Government in matters of coordination between agencies like the KRA and the ACA. The collaboration between agencies will definitely ensure there is quality in terms of goods and standards related to goods. The Office of the Attorney-General has also reviewed the contract documents. As the principal advisers of the Government, they felt that value for money has been observed.

In view of this, I second the Motion.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Funyula, you have the Floor.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Sorry, Hon. Temporary Deputy Speaker. I did not intend to comment on this because I have not had a chance to read the Report. I hope I will not be considered to have spoken on this matter. I beg not to be considered to have spoken on this matter. It was just by mistake that my card was there.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Yes, I saw a request from you. Thank you Hon. Member for pronouncing yourself. I can see a request by the Member for Rarieda. I think he has left his card. Members, do you not have interest to speak to this?

Hon. Millie Odhiambo, where is your card?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): We have an interest to speak to this. It is just that we have had a very long day with the miscellaneous amendments. I would kindly urge the House, because it is almost time, to be given time maybe tomorrow to proceed with it.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I can see you are interested, Hon. Members. It has really been a very busy day. Thank you Hon. Millie Odhiambo.

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Today, you do not even have your card because it is not reflecting here. You could be missing chances and you know you are a senior Member of the House.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, because of the procedures of the House guided by the Standing Orders and the time being 7.00 p.m., this House stands adjourned until Thursday, 9<sup>th</sup> May 2019, at 9.30 a.m. It is so ordered. I thank you all.

The House rose at 7.00 p.m.