

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Monday, 21st December, 2020

Special Sitting

*(Convened via Kenya Gazette Notice
No.10697 of 17th December, 2020)*

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING TO CONSIDER NATIONAL ASSEMBLY AMENDMENTS TO THE TEA BILL (SENATE BILLS NO. 36 OF 2018)

The Speaker (Hon. Lusaka): Hon. Senators, it is my pleasure and privilege to welcome you for this special sitting.

On the request of the Senate Majority Leader and with the support of the requisite number of Senators, I appointed today, Monday, 21st December, 2020 as a day for a Special Sitting of the Senate *vide Gazette Notice* No. 10697, dated 17th December, 2020.

In the *Gazette Notice*, I indicated that the business to be transacted at this special sitting shall be consideration of the National Assembly amendments to the Tea Bill (Senate Bills No. 36 of 2018).

In accordance with Standing Order No. 30(5), the business specified in the Gazette Notice, and as outlined in the Order Paper shall be the only business before the Senate during the special sitting, following which the Senate shall stand adjourned until Tuesday, 9th February, 2021, at 2:30 p.m., in accordance with the Senate Calendar.

Hon. Senators, further, as you may recall, during the Special Sitting held on Wednesday, 16th December, 2020, I issued a Communication on the demise of the Senator for Machakos County, the late Sen. (Dr.) Boniface Mutinda Kabaka, MP.

I take this opportunity to inform you that the funeral arrangements have been concluded and the late Senator will be laid to rest, tomorrow, Tuesday, 22nd December, 2020, at his home in Masinga, Machakos County.

At the sitting, I directed that owing to the nature of the business to be transacted then, the Senate would take time at today's special sitting to honor and eulogize our departed colleague and friend. This shall proceed after the Order on the Committee of the Whole has been dispensed with.

As we condole with the family of the late Sen.(Dr.) Kabaka, allow me to also take this opportunity to express my heartfelt condolences to the family, friends and people of Nyamira County on the passing on of the late Hon. John Obiero Nyagarama, the Governor of Nyamira County, which occurred on Friday, 18th December, 2020.

As you are aware, I worked with the late Hon. Nyagarama in my earlier capacity as the then Governor for Bungoma County. The late Hon. Nyagarama will be remembered for his work in the tea sector and for relentlessly working to ensure that the livelihoods of the residents of Nyamira County are improved.

May the Almighty God rest the souls of the late Sen. (Dr.) Boniface Mutinda Kabaka, MP and the late Governor John Obiero Nyagarama in eternal peace.

I thank you.

We move on to the next Order.

PAPER LAID

REPORT OF THE COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES ON THE NATIONAL ASSEMBLY AMENDMENTS TO THE TEA BILL (SENATE BILLS NO.36 OF 2018)

Sen. Ndwiga: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Monday, 21st December, 2020-

Report of the Standing Committee on Agriculture, Livestock and Fisheries on the National Assembly Amendments to the Tea Bill (Senate Bills No.36 of 2018)

(Sen. Ndwiga laid the document on the Table)

The Speaker (Hon. Lusaka): Take your seat.

Hon. Senators, before we go to the next Order, I have a Communication to make on the procedure to be followed in the consideration of the National Assembly amendments to the Tea Bill (Senate Bills No.36 of 2018).

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE TEA BILL (SENATE BILLS NO. 36 OF 2018)

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Hon. Senators, as you are aware, the Tea Bill (Senate Bills No. 36 of 2018) was passed by the Senate on 12th June, 2019 and referred to the National Assembly for concurrence.

On 9th December, 2020, I reported to this House that pursuant to Standing Order 41 No.(3), I had received a Message from the Speaker of the National Assembly regarding the approval by the Assembly, with amendments, of the Tea Bill (Senate Bills No. 36 of 2018).

As listed in the Order Paper at Order No. 3, the House shall begin by considering the Motion for the consideration of the National Assembly amendments to the Tea Bill (Senate Bills No. 36 of 2018), which Motion may not be amended, except as contemplated in Standing Order No.159(2).

The effect of an amendment under Standing Order No. 159(2) would be to defer consideration of the National Assembly amendments to some future date.

If the Motion set out at Order No. 3 is approved, without amendment, the House shall proceed to Order No.4 which is the Committee of the Whole, to consider the amendments of the National Assembly to the Bill as set out in the Order Paper, in accordance with Standing Order No.159 (3).

For the avoidance of doubt, Standing Order No. 159 (3), states-

“Where the Senate has resolved that the amendments by the National Assembly to a Bill be considered and, on the appointed date, the Senate shall dissolve into the Committee of the Whole where each amendment shall be called out by the Clerk and may be agreed to or rejected in accordance with Article 112 (2) of the Constitution.”

Hon. Senators, Standing Order No. 159(4) further states that-

“When the Senate has concluded the consideration of the amendments by the National Assembly to a Bill originating in the Senate and the Senate –

(a) passes the Bill as amended, the Speaker shall refer the Bill to the President within seven days for assent; or

(b) rejects the Bill as amended, the Speaker shall refer the Bill to a Mediation Committee under Article 113 of the Constitution.”

It should also be noted that if the National Assembly amendments are passed in the Committee of the Whole and the report is adopted, we shall not proceed to Third Reading as the Senate had already previously passed the Bill at Third Reading.

Hon. Senators, as I conclude, allow me to remind you that in accordance with the Standing Orders, at today’s sitting, the Senate shall only be considering the amendments of the National Assembly to the Bill.

The Senate shall not interrogate the Bill afresh and as such, no further amendments would be admissible at this stage. The Senate is required to proceed with the consideration of the National Assembly amendments in accordance with the Standing Orders that I have cited.

Please. be guided accordingly. We move on to the next Order.

MOTION**CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS
TO THE TEA BILL (SENATE BILLS NO.36 OF 2018)**

Sen. Ndwiga: Mr. Speaker, Sir, I beg to move the following Motion-
THAT, the National Assembly amendments to the Tea Bill (Senate Bills No.36 of 2018) be now considered.

Mr. Speaker, Sir, Senators will remember that on June, 2019, we passed this Bill and it was referred to the National Assembly where it has been until December this year when it was brought back to the Senate with amendments.

As a Committee, we have looked at the amendments and discussed with various stakeholders including, and not limited to the Ministry of Agriculture, Livestock and Fisheries.

After the Bill came from the National Assembly, I forwarded some of the concerns and petitions from several stakeholders who would like to see amendments in the Bill to the Committee on Agriculture, Livestock and Fisheries petitions.

In our 114th meeting, as the---

Sen. Kang'ata: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Kangata?

Sen. Kang'ata: Thank you, Mr. Speaker, Sir, for affording me this opportunity to raise my point of order. Today is a historic day for those of us who come from tea-growing regions. Millions of tea farmers are currently watching these proceeding to see whether the Senate will positively consider this Bill. However, we have ---

The Speaker (Hon. Lusaka): What is your point of order?

Sen. Kang'ata: Mr. Speaker, Sir, allow me to---

The Speaker (Hon. Lusaka): That is not a point of order.

Sen. Kang'ata: Mr. Speaker, Sir, I am seeking your permission whether you can adjourn this House for only five minutes.

The Speaker (Hon. Lusaka): Order, Senator. You are out of order for now. Let the Motion be moved and seconded.

Sen. Kang'ata: Okay, thank you.

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. I was wondering where I had gone out of order because I am moving the Motion. The Motion needs to be seconded before we can discuss other issues about the Tea Bill (Senate Bills No.36 of 2018).

First, I want to thank this House on the reforms of the tea sector. When you read the newspapers and the social media, it is as if this House is being sent a Bill from the National Assembly to assent to. That is not true. The truth is that this Bill emanated from this House. At this juncture, allow me to thank our colleague, Sen. Cheruiyot of Kericho County, who instigated the *Ad Hoc* Committee into the Challenges Facing the Tea Sector in Kenya.

While I served as the Vice-Chairperson of that Committee, we traversed this country and talked to tea farmers in the whole Republic from Kisii, Kericho, Murang'a and Embu. We heard the cries of the tea farmers of this country. It is as a result of those meetings that the *Ad Hoc* Committee introduced a Bill which was passed by this House in June, 2019.

Mr. Speaker, Sir, among the cries of the tea farmers was that the Kenya Tea Developers Agency (KTDA), which manages their tea factories had become so opaque that they did not know what was happening in the operations of the tea sector.

I am happy and I thank God that I am still alive because when we created the Kenya Tea Development Agency from the then Kenya Tea Development Authority, it was a very fierce battle. Those who were in Parliament then like Sen. Orenge and Sen. Wetangula will remember that this was a fierce battle. Mark you that most of us from the tea growing areas were in the opposition and had to form an organization then called the Coffee and Tea Parliamentary Association (COTEPA), which campaigned vigorously to have the establishment of the Agency.

The ideals then were that the tea farmers of this country will have an organization that they own and which would have democratic leadership. They wanted an organization that will be transparent and which will culminate in them earning livable income. Unfortunately, many years after the Agency was formed, that has not come to pass. When we went around the country, we realized that wherever we went and talked to the managers of the tea factories in Kisii, Kericho, Murang'a and Embu, it was very apparent that the management of the tea factories were speaking for KTDA. Therefore, when we called the Kenya Tea Development Agency to come to the Senate Committee during public participation, we voiced our concerns because that is where we started losing it.

Tea farmers in this country elect members amongst themselves to go and run their tea factories. However, when these members are elected and go to the tea factories as directors, the KTDA appropriates them as directors of KTDA. That leaves the farmers with no voice. This is what must change. The reason we have this Bill and the amendments is because we want to rectify that situation.

I thank the Members of the National Assembly. After the Bill left the Senate, they did a lot of work and introduced quite a number of amendments. I also thank the Ministry of Agriculture, through the Cabinet Secretary, Hon. Peter Munya, who also introduced many amendments through the National Assembly. I wish to thank them because I know that the National Assembly went out to meet farmers just like we had done.

Mr. Speaker, Sir, what I do not want lost is that the farmers must know that it is this House that realized, way back in 2018, soon after we were elected to this House, that something was amiss in the tea sector. It is this House that started the process of reforms in the tea sector. When this House passed the Motion to form the *Ad Hoc* Committee into the Challenges Facing the Tea Sector in Kenya, that was the beginning of the tea reforms in this country. I am emphasizing this because we are hearing so many masqueraders, who are saying that they are the ones who are pushing, that they have been to the courts

and so forth. The pilot of this project is none other than Sen. Cheruiyot, who is with us in this House today. Although I know Sen. Cheruiyot will thank the Members of the *Ad Hoc* Committee, I wish to also thank them starting with Sen. Kang'ata, Sen. Ongeru and Sen. Murkomen and himself. They did a sterling job and that is the process which has got us to where we are today.

Mr. Speaker, Sir, the reforms in the tea sector could not have come at a better time. It is at this time when tea farmers in this country are crying loudly for these reforms. When we formed the Agency, and I did not say this earlier, our intention was that the management of the tea factories will be a democratic process. It started as such initially, but somewhere along the way, the process was changed such that today there are many farmers who do not know who the directors in the tea factories are or how they were elected. That process must be changed. We want all small-scale tea farmers to feel the ownership of their tea factories.

Turning to the way we sell our tea, since time immemorial, our tea has been sold through the auction in Mombasa. The auction is perhaps the best place for price realization. That is why you realize prices because of competition from different people who would want to buy your tea. However, that is not the only way.

Speaking towards the end of 2020, I think that it is time that we, Kenyans and Africans, relooked at the way we do our business. Who said that our business is to be producers of raw materials for everybody else? One of the amendments that caught my eye and which perhaps I would say is one of the most progressive is that the new Bill will require that within eight years, all tea managers will start a process of value addition to a minimum of 40 per cent of the tea that they take to the auction. That is progressive. I would have said perhaps up to 60 per cent. Who said that the tea farmer today in this country, while they are getting peanuts, there is no time they will sit in a restaurant in London and they are told that today because there is a tea glut; there is too much tea in the world that the price of tea has reduced? That is not so. While the tea farmers in the Republic and all over Africa are saddled with poverty, the consumers, the middlemen and those other business people are swimming in huge profits.

I am happy that we are going to move in that direction of value addition. This is a something I have personally been championing for many days. It was the vision of COTEPA when we formed the Agency, that the Agency will spearhead the process of meaningful value addition of our tea, so that we do not just become producers of raw material and shifting them to other business people and brokers to make money.

At this juncture, I wish to request the Members of this House to support these amendments. It is true that for last two days, so many Members have called me and talked to me about their concerns about some of the amendments. I have also received many petitions from several stakeholders, including the Kenya Tea Growers Association (KTGA), the KTDA itself and another association called the Small Scale Tea Growers (SSTC). I have received not less than five petitions. However, we have consulted with the Ministry and it was agreed that as soon as the Senate passes this Bill, the Ministry will hasten to form the Board.

When this Bill left this House, one of its key proposals was to form the Tea Board of Kenya (TBK). The Tea Board used to exist and function, but somewhere along the line, we do not know what happened, and it died. However, we now want the Board back.

One of the major reasons that personally I want the Tea Board back is because we expect that apart from the Board regulating the behavior of the tea sector, we also expect that the Government will channel enough funds to that Board. It is the only way that the Government can assist the tea farmers.

Tea farmers, like all the other farmers, require Government assistance at one point or another. It is through the Tea Board, a body of the Government, through which the Government can be called upon to assist tea farmers.

Mr. Speaker, Sir, we expect that the Board that will be formed will be professional, with a strong marketing division to market our tea outside this country, not just in ready-made tea form, but in value added form. We expect our tea in packets and tins. For this country to make meaningful income from our agricultural products, we must go through the value addition process. We then require structured marketing outside this country so that our farmers can earn what they should be earning.

Mr. Speaker, Sir, there is a lot that I could say, but because I know there is a lot of interest in this matter, I would like to request my Vice-Chairman, Sen. Wambua, who has ably handled matters of tea in our Committee, to second this Bill.

May I also persuade hon. Members for the sake of our farmers, to kindly let us pass this Bill as it is.

Sen. Wambua: Thank you, Mr. Speaker, Sir. Desperate times call for desperate measures. So, we will use the microphone to do that which we have to do.

I stand to support the adoption of the amendments passed by the National Assembly to the Tea Bill (Senate Bills No.36 of 2018). In doing so, I thank my brother and colleague, Sen. Cheruiyot, for sponsoring this Bill at the time he did. We all know the circumstances then and now surrounding the tea sector, especially tea farmers. It is disheartening that we live in a country where tea farmers, who till their farms for long hours every day and pick the tea, constitute a portion of a population that can hardly afford a packet of instant tea. Once it is processed, it becomes such a luxury that they cannot afford.

I thank the Senate Committee on Agriculture, Livestock and Fisheries under the able leadership of Sen. Ndwiga for being very consistent. Not just on the matter of tea, but all cash crops and all value chains for all crops grown in this country to ensure that the benefit, if any, should go back to our farmers.

In supporting this Bill as amended, I wish to remind hon. Members that at the core of this conversation, it is not to be multi-national tea factory or big business people that deal with tea. However, at the core of this conversation, it is the tea farmer on the slopes in Kisii, Kericho, Murang'a and all other parts of this country that grow tea. The conversation must be guided by the best interests of that farmer.

Mr. Speaker, Sir, tea and coffee have for the longest time been the major foreign exchange earners for this country. However, over the years, the frustration visited upon tea and coffee farmers by functionaries, both in Government and the private sector, have rendered investment in these two sectors unreliable and not beneficial to the farmers.

This Bill, as amended, is a call to duty for Senators in executing their devolved agriculture mandate to ensure that our tea farmers suffer less, if they must. After we are done with these amendments in the Tea Bill, we shall move to the other value chains in the other crops like coffee, sugar and maize.

(Applause)

Mr. Speaker, Sir, yours faithfully is sponsoring a Bill in this Senate, the Dengu Bill. One of the things that we need to do is to expand the food basket in this country. We must stop the conversation that certain regions in this country are food baskets to feed our people. Let us weave more food baskets in other regions to ensure that we give benefit to farmers across this country.

We have farmers in some countries who live like kings and they are treated with dignity and are given express passes in train stations and supermarkets. The principle is that they should go back home and till the land and feed their people. We must begin that conversation in this country.

We must all agree that the Agriculture and Food Authority (AFA) has miserably failed the regulation of crop chains in this country. We must unpack AFA and make sure we go to specific directorates for specific food chains. That way, we shall be able to focus our attention properly on crops and identify the needs and desperation of farmers who deal with certain crops in this country.

I urge Members that for now and through these amendments, let us be seen to be speaking the voice of the tea farmer in this country. Let us support these amendments and if there would be need to do further amendments, to include other things, that can be done later. However, for now, I support the amendments to the Tea Bill and ask my colleagues to support them.

I thank you, Mr. Speaker, Sir.

(Question proposed)

Sen. Kibiru: Thank you, Mr. Speaker, Sir. I stand to support the amendments of the Tea Bill. From the onset, I say that I am a very good tea picker. At one point in time, I would do over 35kgs a day; picking tea with the two leaves.

Mr. Speaker, Sir, as I support the amendments, I posted yesterday in the social group of the Senate on how tea has come and how the journey of the tea started. Like John Kamau put it yesterday, we are on our 117th Year since we started growing tea in this country. The article did give quite an elaborate way of how the farmers through conspiracy have been impoverished through the value chain.

At one point in time in this House and some of the forums that we have attended, it is said that from the buying centre all the way to the auction, there are about almost 40 taxes levied on tea. As we move on and as I beseech my colleagues to come up and support this Bill as amended by the National Assembly, we need to look at - like what Sen. Wambua has said - how we go back to our areas of specialization. We need the Tea Research Center. We need the Tea Board to do its work because this country will never develop if we do not take care of the agricultural sector.

Mr. Speaker, Sir, the other day when we went for a round table breakfast meeting with the National Treasury, and they came up with the strategy of reviving the economy post COVID-19, it was pointed out that a number of issues will be put into the agricultural sector. There can never be a better way of starting this strategy of reviving the agriculture sector than passing this Bill.

Mr. Speaker, Sir, as we do this, when the Tea Board comes on board, we need to put in place the correct regulations, so that the issues of Kenya Tea Development Agency (KTDA) waking up one day, borrowing Kshs4.6 billion and then takes another Kshs1.45 billion which they put in some banks that collapse two weeks later, should stop.

Mr. Speaker, Sir, without much ado, I would say that I stand with the farmers of tea in this country. I will vote and I beseech my colleagues to vote for the Bill as amended.

Thank you, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I want to support this Bill and appreciate the work of my Senator, Sen. Aaron Cheruiyot. A good idea always produces good ideas, not necessarily better ideas. I think your idea was better in trying to deal with the sector and with this very important crop for us.

I also want to thank our Committee for the work they did that ended up in the preparation of a Bill that went to the National Assembly and it has now come back to us. To Sen. Aaron Cheruiyot, this may be a lasting legacy for you. This is because there are a lot of times when people want us to remember them with Bills of statues or questions they brought before this Parliament.

I remember for my colleague in Siaya, hon. Donde, his Bill became the brand wherever he goes even today. For the late J.M. Kariuki, it was the Hire Purchase Act, what he did in respect of the amendment---In fact, it was the first Bill by a private Member that ever hit the Floor of Parliament in our history.

I want to categorize the work of the *Ad Hoc* Committee and the work that has been by Sen. Cheruiyot in that regard as historic. There was one time I was in a delegation that went to Mumias. In that delegation, we had a Member of Parliament from Trans Nzoia. Trans Nzoia is all about maize. If you go to Mumias, it is all about sugar. All these crops are very important depending on the areas where you come from. Definitely, I hope that we are going to take up on the footsteps of Sen. Cheruiyot and correct the other vagaries that are confronting the other crops, particularly the ones that I have mentioned.

On that trip, I remember a Member of Parliament out of kindness of heart told the people in Mumias that farmers should get higher prices for maize. In Mumias, if you talk about increasing the prices of maize, that would mean that they will pay more for maize or maize flour. They were not quite happy with that. Sometimes, these messages, depending on where you are, can be quite mixed.

Mr. Speaker, Sir, I think the primary person to support is the farmer. I want to repeat this because we have many players in the tea industry. However, we have to protect the farmer. In the many times I have gone to central province, Mount Kenya areas, Kericho, Limuru and other areas, the plight of the farmers has always been the primary concern. This is because, in the legacy and the structures that we had before, it would appear that farmers were just beasts of burden. You produce a crop, you get little for it, but other brokers and middlemen make a lot of money out of it.

For all of us, in looking at this Bill, I pray to you, think of the farmer first. If you think of anybody else, imagine there was no tea to sell in Kenya. Imagine if farmers get frustrated and they started uprooting their tea, would you be talking about auctioneers or brokers or packers? The primary concern should be with the farmer.

I want to say this, that, we should not be scared even if Kenya overproduces tea. In Brazil, one of the things that they do, they all the time have an oversupply of coffee and they release it depending on the prices, but they keep their quota. If the farmer is not able to produce enough so that Kenya can keep its quota, then everything else that we are doing can go to note. Even with the oil producers, the starting point is to protect the oil producer, be it a nation or a state, you start with a producer. I plead because it is going to come to you.

I know one of these days I will be asking for support for those who grow sugarcane to support the sugarcane farmer. Before you come before the mill, the packer and the person who owns a warehouse, if you turn it, the priority on its head and begin to support their warehouse owner or the packer, more than the farmer, it will be very terrible for us.

In the past when I used to live in Kericho, you could see all those African Highlands with very big signboards, for example, Brooke Bond. However, when you go to those farms, the way they were making sure that they get the profit, the terms and conditions of the employees and how they were looked after; their care and welfare, was zero.

However, when the ordinary farmer in Kipsigis started growing his own tea, you could see a little difference. By the way, the best tea does not necessarily come from the large-scale owners. Some of the best tea comes from the simple farmer with five or 10 acres. This is the person we want to protect in this Bill.

Mr. Speaker, Sir, I know there are many problems in the amendments that have been brought by the National Assembly more particularly, I wanted to talk about the new impositions that have been placed against the players in the tea industry. If you have the amended Bill from the National Assembly, they are found from Clause 24D or even 24B. Clause 24D is requiring registration of a warehouse operator. What is wrong with

requiring a warehouse operator in relation to tea to be registered as such? I see no problem with that.

There is the registration of tea packers. If a farmer, in order to survive in this competitive industry, has been a member of some co-operative or some organization, I do not see anything wrong with this. Then, registration of a tea buyer that is found in Clause 24F, registration of tea brokers that is found in Clause 24H and then the registration of a management agent.

Also, registration of tea auction organizers in paragraph 24K. I know some tea auctioneers and how they do their business. They do everything in the book to make sure that they enhance their profits. If they are not licensed and managed properly, then that is where the farmer is going to lose a lot of money.

Those who are calling upon us to make those who do packing and auctioneering become tea agents, I think you are trying to make sure that the toil and blood of those who go to the farm every morning is in vain. I think that would not be right.

In the interpretation clause, you will find the definition of who an auction organizer is. I think this definition is very important. That is because sometimes you have players like people who trade with the Government and who do business with the Government. We even had people doing business with the Kenya Medical Supplies Authority (KEMSA) and after they did business with KEMSA, their names disappeared, and we do not know who they are. Their names cannot be disclosed.

Therefore, I do not see what is wrong in giving a definition of who an auctioneer organizer is, which it says that it means-

“A person, company or firm established for the purpose of organizing tea auctions.”

What is wrong with that? To be a lawyer, I need to satisfy some qualification requirements same as to be a doctor, to be an architect and even to be a Member of Parliament. By the way, if you forgot, the Constitution defines who can become a Member of Parliament, how to become a Member of Parliament or how not to become a Member of Parliament.

What about the so-called auctioneers or auction organizers? Why would the law run away from defining who that person is, so that the small farmer in the value-added chain can understand who they are dealing with up to the person who is making that English tea from Kenyan tea in London? Why would the farmer in Limuru not be able to know all these persons and qualifications?

Mr. Speaker, Sir, if you are in the world of betting on horses, there is a street in Nairobi with some people who know how to do this business. They would know when the horse was born, where the mother of the little horse came from and the entire family tree. This is a useful provision in this Tea Bill.

I know that we do not have all the time in the world today. However, I would beseech those that are probably not inclined to pass this Bill, that we pass this Bill. There are many things that can be done later in terms of enforcement, implementation and many

things, which are not clear. When it comes to the other players in the sector, they can be covered through the regulations.

This will forever be known as Sen. Cheruiyot's Bill. If you kill it at this stage or try to take it to mediation, I think we will go to the next election without a Tea Bill. That would be a wrong mistake to do, particularly, for the first time, when the other House is agreeing with us and you want us to go back there when they have agreed with us. I think it will be like we have lost sight and we need our eyes to be opened.

With those few remarks, I thank you.

The Speaker (Hon. Lusaka): Hon. Senators, I see a lot of interest. This is our Bill and you will have more time to discuss. Therefore, I will give each of you five minutes so that we are able to move faster.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. At the outset, I want to congratulate Sen. Cheruiyot for this landmark legislation that he has brought to this House. It will be forever remembered.

I also want to thank the Standing Committee on Agriculture, Livestock and Fisheries led by Sen. Ndwiga who has given us a brief exposition of the history of this struggle that has taken place both in this House and outside this House.

Before I go into the details of this Bill, many people have lobbied because Sen. Cheruiyot *Tweeted* earlier for people to lobby their Senators. I received numerous calls and SMS. I want to thank James who says he is a voter in Nairobi from Nyeri, Alice Kihara from Embakasi, Dr. Kones who vied in Bomet County and was my Mathematics teacher in the University of Nairobi and Muthoni Waithanji. I called back one of them to find out if they know what they are talking about. I asked them what it is in this Bill that they actually like and they were clear because somebody can say just pass it because it will help us yet they are not farmers.

My county does not grow tea, but we are the largest consumers of tea locally. In Nairobi, we are the largest consumers of everything. Looking at this Bill, it speaks to a lot that needs to be done.

Based on the economics of our country, agriculture which produces almost 33 per cent of the Gross Domestic Product (GDP), according to the World Bank report of the Kenya economic update, we are talking about 31.4 per cent of reduction of rural poverty and 56 per cent of the total labor force. However, the disconnect, which I know many people do not realize is that despite those numbers, the contribution to revenue by agriculture is still below 10 per cent. Why is it that way? It is because we have not properly addressed the issues of value addition. People are busy, but they are not actually creating revenue and wealth in this country and other people are creating the wealth.

Mr. Speaker, Sir, unless we decisively deal with issues of value addition, Kenyans will be busy in the farms clogging up what we call non-meaningful GDP, but not increasing revenue in this country. That is what we need to address.

If you look at the level of poverty by people who engage in agriculture, it is extremely high. The normal tea farmer cannot be compared to the person who is dealing with those auctions or the people in the Kenya Tea Development Agency (KTDA) and

these organizations that do not grow even a single crop of tea. It is the same with maize and coffee.

Mr. Speaker, Sir, I will tell you and you know from where you come from that one of the biggest causes of poverty in the Western region is maize farming. We need radical leadership to address the root cause of these issues. Many times, we are just like cashiers. I know that because I farm maize in Kitale. Throughout the year, you put money and at the end of the year, what you get cannot relate to it.

Look at sugarcane farming; it is a big cause of poverty. The most fertile part of this country is Western, but all those farmers are extremely poor. Unless somebody actually tells us what we need to do properly or we as leaders say the truth. Why do we have to farm sugarcane the way we do in Western yet a farmer in Brazil will farm his sugarcane, sugar will leave there, it will come to the port of Mombasa, they will pay whatever taxes they pay and it comes all the way to the gate of Mumias and is cheaper than the sugar equivalent to a kilogram from Mumias right there? These are radical questions that must be answered because we cannot do the same thing, the same way, over years and expect different results. That is the definition of madness.

I hope as we pass this Bill, we shall also have a radical view at all the other crops and agriculture as a sector towards these radical questions and transform it, but ultimately in our mind the common *mwananchi*, the small holder farmer. Later, we can deal with the middle men and the cartels.

Mr. Speaker, Sir, I was joking with Sen. Ndwiga and Sen. Cheruiyot. They will agree with me that in any society you need the brokers to some extent. In the animal kingdom if there were no brokers, the lions would be eating grass because there would be no gazelles. You need a middleman in between the lion and the grass. In the same breadth, in this one, you need them, but let us regulate them and what they do. Our main focus must be the farmers.

I want to affirm all those who have called me and lobbied that we support the amendments. We must state that it is untidy that the National Assembly has amended the entire Bill. These are almost 30 amendments; I do not know how we will vote. It is as if they have rewritten the Bill. However, for the sake of the common tea farmers all over the country, not just in Rift Valley or central, Kisii, Nyamira and Vihiga.

The Speaker (Hon. Lusaka): Your time is up.

Sen. Khaniri, proceed.

Sen. Khaniri: Thank you, Mr. Speaker, Sir, for giving me the opportunity to add my voice. I want to make it clear because there is a notion out there that we are passing the National Assembly Bill. It is not so.

This was the Senate Bill sponsored by Sen. Cheruiyot. It was a product of an *Ad Hoc* Committee which I had the privilege to serve. Therefore, what we are debating today is the amendments that were made by the National Assembly on our Bill. I will begin by saying this is a day that I have longed for on behalf of my farmers. The hard work that we have put in as an *Ad Hoc* Committee and Sen. Cheruiyot put in to develop the Bill is coming to fruition. I want to urge Senators, particularly those who do not come

from tea growing areas to listen to us the Senators who represent farmers. We are the ones who know precisely what our farmers are going through.

Mr. Speaker, Sir, this Bill will be an early Christmas for our tea farmers. I want to plead with you, my colleagues, let us give the tea farmers an early Christmas gift. For years, the cartels in the sector have thrived on the hard work of the farmers. The cartels have enriched themselves while the farmers who toil in the farm continue to languish in poverty. This Bill is going to be the game changer. We may not agree 100 per cent with the amendments made by the National Assembly, but I want to plead that we do not want to lose the gains we are going to get by passing this Bill. Yes, we do not agree with one or two amendments made by the National Assembly.

Let us pass the amendments as they are. Let us get the assent of the President on the Bill, so that the farmers can start benefiting from the gains. If there are any other amendments and there are people who are uncomfortable with the amendments it can always be corrected. There can always be further amendments. However, we cannot afford to delay this any further. We have to pass it today.

There was wisdom in you and the leadership of this House classifying this as an urgent matter, and therefore, calling for this special Sitting. Therefore, we cannot just wish that away. We have timelines and have to pass this Bill. When I was growing up, tea farming was profitable to the tea farmers. My father was a tea farmer. I inherited the tea farm and I am tea farmer by extension; I must declare my interest. I can tell you that it is not the same.

When we were going round with *Ad Hoc* Committee, we met so many farmers in various areas in the country. Farmers have reached a stage where they are now uprooting their tea. Many people, me included have uprooted part of the tea I had grown because it was not profitable or viable.

Mr. Speaker, Sir, by passing this Bill, we will revive the Tea Board of Kenya and the Tea Research Foundation. This will ensure efficiency and transparency in licensing of the tea brokers. By passing this Bill, we will ensure that buyers and brokers will pay farmers within 14 days of selling the tea as opposed to what it is right now when they pay at them on whims.

By passing this Bill, we will be abolishing majority of the taxes levied on the tea farmer. At the moment, the tea farmer pays up to 42 taxes. How do you get profit when you pay 42 taxes? Listen to those of us who represent farmers. We plead with you to stand with us as we fight for our farmers, so that we ensure that we give our farmers an early Christmas gift.

Mr. Speaker, Sir, I see that my time is up. I beg to support.

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, you have the Floor.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I rise to support this Bill. As I support it, let us all remember the history of this country. Let us remember where Kenya was when its agriculture sector was strong. When coffee, tea, sugar cane, maize and cattle farmers used to have their gains and justice for what they produce.

Some of us who come from tea growing areas know that it is a misery when you meet farmers and they give you their stories. In Nyeri County, we have had a case where a young man was captured on social media uprooting tea. Most tea farmers grow tea in their small *shambas* of four acres or so. When tea prices started collapsing, it was not because tea was not fetching money in the world market, but because there is a system that came. The KTDA was working before, but today farmers' money and gains have been invested in nonproductive areas and they end up getting nothing.

Today, as I speak, this year the farmers got almost nothing for their tea, not to talk about the miserable coffee farmers who have given up. Tea and coffee farmers in our neighbouring countries of Ethiopia, Uganda and Rwanda are making good money. In Kenya, silos were built by the colonialists for storing grains, including maize and wheat. However, today Kenya is importing maize.

We have an opportunity to safeguard the tea industry. I appeal to this House to pass the Bill with the amendments thereon. If anybody thinks of anything better, they can bring it in future. However, for now, let us quickly pass it as it is, so that the Kenyan farmers have some hope.

Mr. Speaker, Sir, let us not mince words. Things do not just happen. Why are tea and coffee farmers in the desperate situation? Why have tea and coffee farmers been impoverished? Why are the dairy industry farmers not getting real returns? Kenya must relook at itself. If we were growing fruits, tea, or maize in large quantities in the midst of COVID-19 pandemic, we would be selling and doing well. However, our economy is hard hit. We need to relook at agriculture if we have to make any meaningful gains to farmers in this country.

This is a great day for the tea farmers. Hon. Members in this House have sympathy for them and we must pass this Bill to give hope to tea farmers.

Mr. Speaker, Sir, let me add that----

(Sen. (Eng.) Maina's microphone wen off)

The Speaker (Hon. Lusaka): Your time is up, Senator! There is a lot of interest in this Bill. At least, you have made your point.

Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I rise to support the amendments and the Motion.

I am now speaking to the Chair. It would have been nice if Members had been taken through these amendments because there are some genuine concerns like Sen. Sakaja mentioned. It is unusual for a Bill to have so many amendments. Taking us through them would have been helpful, but we trust the Chairman. When he says that some of the issues that would have been raised can be addressed later, I hope it is not the promise that Sen. Murkomen gave here when we were opposing the Audit Bill.

Mr. Speaker, Sir, I had an opportunity to visit Chinga Tea Factory in Nyeri County. I saw roads where tea farms are. Somebody mentioned that the cess that is

collected by county governments is supposed to improve those roads. It is a pity that some counties are now apportioning that money to do their usual funny things, but we must go back there. The cess that they collect from tea farmers is supposed to improve the infrastructure for those roads. When I travelled around Nyeri, the roads around tea farms were good.

Secondly, some of us who do not grow tea are supporting this Bill. Please listen to us because Sen. Wambua will bring a Bill about something strategic about Kitui, Meru, Makueni, *et cetera*, and we would like you to support it. You will be surprised that Mbooni Constituency where I come from grows possibly the best coffee in Kenya. There are eight factories in the village. My grandfather used to grow coffee. My father asked me and made sure that I undertake that coffee which was grown by my grandfather will never uprooted. In fact, where we buried him is surrounded by coffee trees. We are supporting this so that the questions surrounding tea and coffee can also be addressed. The cartels that exist in tea also exist in coffee industry, possibly worse.

I went to Stockholm with Members here. We sat in a Starbucks Restaurant. The most expensive coffee was up in the shelves in Starbucks in Switzerland, but yet the farmer here is so poor and miserable.

I recently went with Sen. Omogeni to Nyamira County - condolences for the loss of the Governor - at that time, we were questioning him about something else - we happened to be in a tea area. Let me tell you, a person who was disabled was forced to take his tea five kilometres away because the board was quarrelling.

We know the problem about tea and coffee; it is the auction. The question that I asked Sen. Cheruiyot this morning was whether or not the auction that is proposed here in Clause 24 by the National Assembly will address the question of the cartels who have invaded tea auction to the detriment of poor miserable farmers.

We are also supporting this Bill and I am glad that this has been brought by Sen. Cheruiyot. Even in other discourses that are going to be in the country in the future, there is no law that will be perfect. So, when we come to Sen. Cheruiyot and ask him to support something else, they should remember that we are supporting this not because it is perfect, but because it is the best for now.

Mr. Speaker, Sir, what is it? Is this law going to guarantee the small scale farmer what we want? Is it lack of laws that has cause this problem?

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, I hope you hold Sen. Mutula Kilonzo Jnr.'s time, because what I am raising sounds trivial, but it is important.

To our colleagues who are contributing virtually via Zoom, there should be a minimum level of decorum. If we project people from the Senate driving cars, and at the same time, across the country, we are watching Sen. Mutula Kilonzo Jnr. and other people speaking---

If someone has to appear virtually, they should be seated somewhere, stoic, wearing a tie or be properly dressed, so that they do not distract us. The country is being

distracted. Members of public are wondering why there are some people in the Senate and others on the streets of Nairobi watching the proceedings from outside. We are confusing Kenyans outside there.

The Speaker (Hon. Lusaka): That is why I have not called them. We are working on it.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I was talking about political goodwill. I think that part of the problem in all cash crops farming in Kenya is lack of political goodwill. If there is political goodwill in maize, sugarcane and coffee sectors, the poor farmer will benefit. We saw for ourselves the problems that arise when we do not protect our poor farmers in Nyamira County and other counties.

Both Sen. Orengo and Sen. Sakaja mentioned Brazil. Brazil and Colombia grow Robusta coffee, which is not the best grade, but they market it as if the world depends on it alone. Kenya grows the best tea and coffee. Our tea is blended in Dubai, mixed with other tea that is not of high grade and then sold at a very high price. When I went to Nyeri, I discovered that the tea that is packaged at Chinga Tea Factory is not even sold in Kenya. It is sold abroad because it is packaged on site.

Can we also benefit from first grade tea? Is that so much to ask for, Mr. Chairman? Do we have to consume mbuni and nescafe because it is bad coffee? No. We must benefit from it. We must support this Bill because this is one of the best avenues to ensure that the poor Kenyans can get something into their pockets. Two leaves and a bud must make sense. An ordinary tea or coffee farmer in Kenya is miserable because of cartels and pricing.

Thank you, Mr. Speaker, Sir.

I support.

Sen. Murkomen: Mr. Speaker, Sir, like my colleagues who have spoken have done, I want to start by congratulating Sen. Cheruiyot who came up with the *Ad Hoc* Committee and the Bill, and for the team work of all the Senators who worked in that team.

I am glad that the Bill was so popular that it did not suffer the usual problems that our Bills go through in the National Assembly. I know the work Sen. Cheruiyot had to do from the background lobbying Members of the National Assembly. Otherwise, his Bill would have been declared a money Bill, like many beautiful Bills from this House have been.

This Bill is for hustler tea growers. It is for the small man and woman in the far-flung areas of our country. It is for those who have been forgotten in the tea sector for a long period of time. For that reason, this Bill deserves our support.

I am a Member of the Committee on Agriculture, Livestock and Fisheries. I must confess here that led by our Chairman, we had to go through this Bill and scrutinize it. I must also say that the late Sen. (Dr.) Kabaka, whom we will go to bury tomorrow, was instrumental in the Committee. We eulogise him for the good work he did in the Committee on Agriculture, Livestock and Fisheries where we served together.

We agree with those who have raised issues concerning the Bill, including the KTDA and private processors. We agree there are issues that should be addressed. In fact, even the role of the county governments needs to be enhanced.

We know there are certain shortcomings in the Bill. However, we consulted with colleagues this afternoon and reasoned that because of the process that a Bill has to go through, we should first secure and save the benefits to the tea farmer now. We will revisit it when it has passed and see other amendments we can bring to make it a far much better.

For those who have concerns and those interested in the reforms of the tea sector who are worried about the provisions that have been proposed here, we assure them that when the Board is place, we, as a House, led by Sen. Cheruiyot or the Committee on Agriculture, Livestock and Fisheries, will come up with amendments and introduce them here.

By the time we will be coming back in February or March next year, we will relook at what should be improved to make the Tea Bill even far much better. So, we are doing this in the knowledge that we will have an opportunity again to revisit the issues raised.

Secondly, we need to completely do away with the Agriculture and Food Authority (AFA) and the Crops Act. That was a very bad experiment that has affected the tea sector and worsened the sugar sector. As a Member of the Committee on Agriculture, Livestock and Fisheries, we get so many petitions about sugar.

The other day we were in Kisumu with all the other Senators from that region. The worst is the grain sector because it has been affected badly. That includes maize farmers from maize farming counties.

As Members of the Committee on Agriculture, Livestock and Fisheries, we will work with all the Senators who have brought Bills. As a Committee, we will unpack the Crops Act so that we go back to the institutions we had that were sector-wise that concentrate on various crops so as to benefit the people of country.

Once again, Mr. Speaker, Sir, I thank Sen. Cheruiyot and my colleagues in this Chamber who have stood with the farmers. I want to tell every citizen and stakeholder in this Republic without fear of contradiction that we have agreed as a Senate that their cries are not in vain. We will sit down again and revisit this Bill to make it even better and accommodate their concerns.

I thank you.

Sen. Wetangula: Mr. Speaker, Sir, I also stand to support this Bill. I salute Sen. Cheruiyot for having brought a Motion to which we all spoke, that culminated into this Bill.

I will start where the distinguished Senator for Elgeyo-Marakwet left. There are still people out there who are concerned that their views and issues have not been brought on board. The KTDA is grumbling. I know it is a popular view that they should be reformed and reforms are important. However, it is also important that when you reform an institution, you should listen to them.

Tea is arguably the only crop in this country that is still functioning in its production, processing, sales, and in terms of returns. The coffee sector is dead or literally on the deathbed. Sugar is gone, maize is gone, pyrethrum is gone, name it.

I do not know whether Sen. Ndwiga has left or he is still here. He has been on the frontline championing the issues of farmers. As we talk about tea today, the cereal boards are not open to take in the farmers grains for a harvest that started in late August. As I speak, Mumias Sugar Company is dead, Nzoia Sugar Company is *mahututi*, and many others. As I speak, the coffee farmers are suffering. As we support this process of change, let it not be change for one sector only.

Those of us who were in the Tenth Parliament stand indicted for having blindly passed the AFA Bill that consolidated all agricultural laws into one without proper transition, management and structures and the AFA became a monster. So, deconstructing the AFA is the way to go. We want to see the Sugar Act, the Pyrethrum Act and all Acts of Parliament that were there that made the nourishment of crop farming in this country back on the shelves of our laws.

Equally important is the fact that agriculture is devolved. I have seen a memorandum somewhere from the Council of Governors (CoG) complaining that their views were also not taken on board sufficiently or at all. So, as we pass this, we must know that legislation cannot be cast in stone. It is a process that we can continue improving where necessary to make things work better.

Mr. Speaker, Sir, passing this Bill should not be an end, but the beginning of positive reforms in the tea sector that will make it possible for farmers to get just returns from their sweat. They wake up in the morning, toil and moil in the sun and in the heat. Some are bitten by snakes in the tea farms, but at the end of the day, they end up getting very little. This has to be stopped, checked and reformed.

Mr. Speaker, Sir, I support the Bill and urge the Committee on Agriculture, Livestock and Fisheries to enjoin the proponent of this Bill to continue looking at how we can make things better for the tea farmer in this country.

I thank you.

Sen. Kang'ata: Mr. Speaker, Sir, let me take this opportunity to thank Members of the *Ad Hoc* Committee on Tea which generated this Bill. I was a Member of that Committee. We went to various places including Gatura Shopping Centre in Gatanga Constituency, Murang'a County, and visited one tea factory.

The reason I support this Bill is because first, tea is one of the most important foreign exchange earners for this country. Currently, money send from the diaspora is number one earner of dollar, but the second one is tea. Tea has been at number two spot for a long period of time.

We all know the importance of foreign exchange. Once we ensure the crop and our farmers are supported, our shilling will continue stabilising. Therefore, we need to support the tea sector. It employs millions of Kenyans and creates value addition in agriculture. As correctly stated by my colleagues, we have had a situation where coffee, pyrethrum and sugarcane farming collapsed.

Mr. Speaker, Sir, it is only tea that is still going strong. Once we bring these reforms, I have no doubt tea will become the very and most important crop not only for Kenya, but I would imagine an important contribution to the growth of Africa.

Murang'a County has ten tea factories serving the small-scale farmers. We start from tea factories in Mathioya all the way to Gatanga Constituency. They employ thousands of people and create a market for our small-scale farmers. Therefore, it was very important on our part to come up and support this Bill.

Mr. Speaker, Sir, this Bill addresses several problems which tea farmers have been experiencing. The first one is the over taxation of the tea farmer. The tea farmer, currently, pays almost 41 or 42 different types of taxes. Secondly is the cess that is collected by the counties.

Various counties from the regions where farmers grow tea have been taking tea cess. Instead of reinvesting that money to build good roads in tea growing areas, they have been expending that money with other works and making roads in the tea growing areas to become deplorable and neglected. Therefore, this Bill is going to address that problem.

Mr. Speaker, Sir, the third issue is the Tea Board. Few years ago, we created a body called AFA. It collapsed several parastatals into one entity called AFA. However, now we are creating the Tea Board to specifically deal with issues of tea.

The fourth is the issue of auction. We have had a situation where we have one auction at Mombasa, but a parallel market has been created outside that auction. That problem is going to be remedied by compelling all tea to be sold through the auction. That parallel market of tea has made prices at the tea auction to become depressed because buyers are not going into the auction. They are preferring what we call private treaties.

As a result, the Government has been losing taxes. Those transactions, the so-called direct sales are opaque. We do not know how much they fetch for KTDA. Therefore, let us take all tea to the auction. The auction is going to become more vibrant and create more employment. It is going to ensure the market is open and transparent.

Mr. Speaker, Sir, finally is the issue of the payment period. This Bill once passed is going to compel farmers to be paid within 14 days from the date when the auction deal was finalized. Currently, it takes so many days notwithstanding an auction deal has been finalized.

The Speaker (Hon. Lusaka): Okay, I will seek your indulgence because I can see the time is not on our side. I reduce to three minutes. Sen. Faki, proceed.

Sen. Faki: Mr. Speaker, Sir, I pray that you give me more time because I come from the county that hosts the auction.

First and foremost, I wish to congratulate my colleague, Sen. Cheruiyot, and the Committee on Agriculture, Livestock and Fisheries led by Sen. Ndwiga for this very important Bill.

From the outset, I want to make it clear that I am not opposed to the tea farmers in Kenya gaining what they are supposed to gain for their hard-earned crops. However,

there are several issues that I want to draw to your attention to in this Bill that was passed by the National Assembly.

Mr. Speaker, Sir, first is Clause 24 (l) on the auction process. The Bill provides that all tea has to be taken through the auction in Mombasa. The demand at the moment and the supply of the tea in Mombasa are at variance. The supply is more than the demand that is coming up in the auction. If we allow all the tea to be sold through the auction, the market will be flooded and the prices will come down. This will adversely affect the farmers.

Mr. Speaker, Sir, at the moment there are two options. You sell through private treaty or the private arrangement and you can also sell through the auction. The private sale complements the auction because in the auction sales, not all tea is able to be taken during the auction. Therefore, the surplus is sold through private arrangement. It will also be unconstitutional for somebody to be forced to sell his produce through the auction yet he can get a similar or higher price through a private arrangement.

Mr. Speaker, Sir, the fact that all tea will be sold through the auction will adversely affect the industry. This is because there are special tea such as those sold directly to the buyers who pay better prices than what is paid for at the auction.

The second issue is with regard to the tea levy, which will also affect our tea. It will make it more expensive for the Kenyan tea compared to the other tea. The auction covers ten countries. It covers Kenya, Uganda, Tanzania, Rwanda, Burundi, DRC Congo, Ethiopia, Malawi, Mozambique and Madagascar.

The Speaker (Hon. Lusaka): Your time is up. Sorry. Just wind up in one minute please.

Sen. Faki: Mr. Speaker, Sir, all those ten countries are served by the Mombasa Tea Auction. Any messing up with the auction is likely to affect the country and this will contribute to the decline in the purchase of tea in this country.

Finally, as you have limited my time, the auction in Mombasa covers about 75 per cent of the tea that is sold in the country. The 15 per cent is sold by the private treaties and the other remaining five per cent or ten per cent is sold by the packers within the country.

Mr. Speaker, Sir, it will not affect much if the two systems are allowed to be used in the sale of tea. I oppose these amendments that have been done to the Bill. Unless those issues are addressed, I will not support them.

The Speaker (Hon. Lusaka): Sen. (Dr.) Milgo, proceed.

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir, for this chance to also support this Bill as amended. I am supporting it as a Senator who comes from the largest tea growing area in Bomet County. Three quarter of Bomet County grows tea and I am one of the greatest farmers as well.

Let me thank Sen. Cheruiyot and the Committee on Agriculture, Livestock and Fisheries led by Sen. Ndwiga for the wonderful job they have done. Tea is an important crop not only to our farmers, but to Kenya as well being one of the greatest foreign exchange earners. It has added onto the economy of this country.

In the past when we were growing up, tea used to play a very important role in ensuring that there was food on the table and farmers paid school fees for their children. Apart from that, it is medicinal to some people. However, of late, there have been very many challenges, particularly when it comes to auctioning tea. This is to the extent that we have very many farmers who are now uprooting tea because of the fact that they have been impoverished after farming tea as their major crop.

Mr. Speaker, Sir, we have been encouraging many of our youth to take up agriculture. Many of them in my county took up tea farming. However, they are in a worse place than when they started because of the many cartels. The major problem that tea farmers have is the cartels along the value chain. Clause 24 of the Bill that deals with the auctioning is important because the farmers need to know who the brokers are, the packers are and the operators. Such a move would go a long way to ensure that farmers are on the know.

Currently, tea farmers do not even know the brokers for their tea in the factories. There is a lot of taxation tea sector. Many of our farmers are worried that tea is taxed to the extent that they earn very meager amounts of money. The amount of money they earn is not enough to even recoup what they put in in terms of fertilizer and labour.

The Speaker (Hon. Lusaka): Sen. (Dr.) Milgo, your time is up.

Kindly proceed, Sen. Omogeni.

Sen. Omogeni: Mr. Speaker, Sir, I thank you for giving me this opportunity. I would like to begin by mourning with the people of Nyamira County for the loss of our Governor, the late Mzee John Obiero Nyangarama, who has had a very successful career in the tea industry. My condolences to the widow of our late Governor, family and the entire Nyamira County.

If I was to speak candidly without blinking an eye, the people I represent in this House, the people of Nyamira County want legislation that will regulate the tea industry to be enacted as soon as yesterday. I fully support the recommendations and amendments that have been proposed by the National Assembly. Sometimes ago, I mentioned in this House that I visited a village in Nyeri County called Kiarugiu. The farmers there told me that their priority at that time was to see to it that the Government was coming up with legislation that would spur the tea industry and make tea farming meaningful.

Mr. Speaker, Sir, I support the amendments on this Bill because for the first time in the history of this country there is a proposal in Clause 24(d) to create a tea fund that will assist in price stabilization of tea. I do not know whether my colleagues know the import of that clause. That means that may be from the next financial year, the Government will be setting aside a fund that can be used as a top up to pay farmers when the prices are so low.

In the last financial year, Nyamira County with seven tea factories, farmers earned between Kshs9 and Kshs15 from bonus which is peanuts. Such meager amounts cannot support peasant farmers in getting enough money to pay school fees and take care of their needs. The fact that there is such a proposal in this Bill should elicit support from a majority of the Senators.

Mr. Speaker, Sir, brokers have been the biggest beneficiaries from the tea farmers. The brokerage fee has been reduced from 1.5 per cent to 0.5 per cent. The farmers are now going to benefit from the new arrangement. I urge my colleagues from the non-tea growing regions to stand with us for the benefit of the poor farmers who we represent in this House.

Mr. Speaker, Sir, I beg to support.

The Speaker (Hon. Lusaka): Proceed, Sen. Wamatangi.

Sen. Wamatangi: Mr. Speaker, Sir, I rise to support the amendments and the Bill itself. I would also like to congratulate the Committee, Sen. Cheruiyot and the rest of the Senators who participated in the Committee and the sub-Committee. One of the biggest problems that we have had in this country is the marketing and sale of cash crops that have a value chain that does not necessarily require local sales, but benefit more from global sales is lack of transparency. That is what has ailed most of the cash crop industries including the tea industry.

Mr. Speaker, Sir, it is unfortunate that the value chain in the sale of cash crops with tea being a major cash crop is the top down value chain. The biggest beneficiaries are at the top and the lowest at the bottom. I do not want to be repetitive, but all of us have had this experience.

I once visited a marketer in the United Kingdom (UK) who happens to hail from one of the towns in Asia, a place called Kerala, where tea is also grown. In the house of the marketer that I visited, I found sacks and sacks of tea. However, the ones he held most is Kenyan tea which is not only blended with other teas, but it is repackaged under foreign names. I was amused to see that a tea called Lipton which sells greatly in the international market is actually Kenyan tea. Kenyan tea is bought and repacked with their brand. It is said and known that when you are taking Lipton tea, you are taking Indian or Asian tea, but that is not the case.

I support this Bill because I know that the farmers in Kiambu County, especially Lari, Gatundu North and South, Limuru and other parts of Kiambu as well as tea farmers in the whole country have been waiting for a long time for this day when their voice can be heard. As one of colleagues stated, this can be a wakeup call to governors that since agriculture is a devolved function, to take this Bill up once it has been passed so that they can rally the small scale farmers and support them so their voice is heard against the loud voice of the conglomerates.

Mr. Speaker, Sir, when I was growing up in Kericho County where Sen. Cheruiyot comes from, there is used to be a season when many people would migrate from other parts of the country to Kericho; that time was called bonus time---

The Speaker (Hon. Lusaka): Your time is up, Sen. Wamatangi.

Kindly proceed, Sen. (Dr.) Ali

Sen. (Dr.) Ali: Mr. Speaker, Sir, before I make my contribution to the Bill, I would like to send my condolences to the family of a chief in my constituency who was beheaded by Al Shabaab today and his head brought to one of the centres.

Wish to support the Bill as amended. The people in Kenya at the grassroots level who work very hard suffer a lot. I support this Bill because it will benefit local farmers. Wajir County does grow tea neither is it an agricultural zone, but we are the consumers of tea. We need the tea farmer as well as the sugarcane farmers and all the other people involved in farming. The cartels in this country have taken up every sector, but I would like to advise them not to be selfish because we need one another. The way the Senators from tea growing counties need my vote today, I will also need their vote tomorrow.

I would like to remind the Members of this House that everybody is of importance in this House. When an issue affecting livestock farmers comes to this House, I would like to be supported in the same way that I am supporting this Tea Bill. We should support the local farmers who till the land and those who look after animals not those who are in the top 10 per cent.

Mr. Speaker, Sir, we also need to talk about coffee, mung beans, cabbages, potatoes and milk, so that all Kenyans feel happy. When we take care of those at lower levels that is when Kenyans will feel that they are doing well, are okay, sleep well and their children go to school. When they go to the hospitals, they are able to pay for everything they need. That is the only way to go.

I urge everybody and anybody who is in this field, who thought they could just eat alone that we want to share the benefits of this country with everybody.

I support.

Sen. (Dr.) (Musuruve): Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Bill. I thank Sen. Cheruiyot for coming up with this Bill. He is truly alive to the fact that tea farming has value addition.

When I was growing up, I would visit my late grandfather who apart from being a teacher was also a tea farmer. *Mzee* Reuben Haguri educated all his children, my paternal uncles and aunties using proceeds from tea. I saw the value of tea farming when I was growing up. But all of a sudden, the value slackened because of lack of good management and the coming in of brokers to the tea factory.

The clarion call of this Bill is that we must support tea farmers. It is our duty as Senators to ensure that we support them.

Tea farming has value addition if it well managed and well-coordinated. I am happy with the proposal to set up the Tea Board of Kenya. The Board will bring sanity to the tea industry. Brokers have depressed tea farmers. Farmers feel that no one is keen about them. The will ensure we raise the standards of tea farming and make it attractive.

When I started working for the first time as a teacher in 1990, I decided to give my father *Mzee* Inimah a gift of tea bushes. I am happy because even right now my mother who is a widow benefits from tea farming.

This Bill will help farmers earn more from their sweat. I encourage my fellow Senators to support this Bill so that our farmers will be happy. May it be a boon, a golden opportunity and a Christmas gift to them.

I support.

The Speaker (Hon. Lusaka): Proceed, Sen.(Dr.) Lang'at.

Sen. (Dr.) Lang'at: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Bill. I was a member of the *Ad Hoc* Committee that came up with this Bill. We listened to many farmers from various parts of the country whose contributions were taken on board while drafting this Bill. We listened to farmers in Kericho, Nyamira and Embu counties.

I thank Sen. Cheruiyot for coming up with this Bill. Many farmers are now waiting for the enactment of this Bill into a law. They are supporting it in the social media. This will be an eye opener and I hope we will come up with other legislation to improving agriculture industry in this country.

On matters to do with tea farming, we went to the Tea Research Foundation in Kericho, which used to be a very admirable, especially when it used to be East African Tea Research Foundation. That great institution is in a coma and it is about to collapse because of the present management and policies that are existing in the tea sector.

There is no research going on in that institution. If we do not pass this Bill, tea farming will collapse. Many farmers are depressed and they are not growing tea of high grade because the Tea Research Foundation is no longer doing research. This institution and others need to be reformed.

As Sen. Murkomen said, more amendments will be taken on board to improve this law. As of now, let us secure this golden opportunity that this House and the National Assembly has accorded us to pass this Bill.

I thank everybody who has participated in making sure this---

The Speaker (Hon. Lusaka): What is your intervention, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, as usual, the fact is that when somebody is invited to your Gallery, you recognize them. There is a gentleman seated there who looks like Hon. Moses Kuria – I cannot clearly tell - but you did not recognize him and he looks like a stranger.

The Speaker (Hon. Lusaka): I had not seen him and with the mask, it even becomes more difficult. Is he Hon. Kuria?

(Several Senators responded in the affirmative)

Welcome to the Senate. Let us give him the normal welcome.

(Applause)

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity to talk on this very important Bill. Once upon a time when I was still at school, it was crops such as tea, coffee and pyrethrum that earned the country the highest amount of foreign exchange.

It has been very sad to see that from that pedestal, we now came to a period where farmers are uprooting their crops beginning with coffee and now tea and so on.

I congratulate the Senator for Kericho; the young man who initiated this Bill which we are now discussing and which has gone through the process. I also congratulate the Senate and the National Assembly for working in a very cooperative manner on the issue of Bills rather than foot dragging on these Bills. This provides a very good example.

Farmers have been exploited not just in Kenya but all over the world. A sensitive Senate such as ours looks to see ways in which farmers can be protected. This Bill now protects the farmer. The auction charges we have been told have now come from 1.5 to 0.75 per cent. The KTDA and other management charges have come from 2.5 to 1.5 per cent.

More importantly to me is Clause 24(L) (5) (6) which provides for time limits within which payments must be made. It states-

“(5) Tea brokers, buyers and the auction organizers shall ensure that the proceeds from the sale of tea are remitted to the tea factories accounts within fourteen days from the date of the auction.

(6) A tea factory shall within 30 days of receipt of the proceeds of the sale of tea, pay tea growers:

(a) At least 50 per centum of payment due for green leaf delivered every month.

(b) The balance due to the tea grower within three months from the end of the financial year.”

The tea brokers, buyers and auction organisers shall ensure the proceeds from the sale of tea are remitted to the tea factory accounts within 14 days. The tea factory shall within 30 days remit at least 50 per cent---

(Sen. Wako's microphone went off)

The Speaker (Hon. Lusaka): Your time is up, Sen. Wako. Proceed, Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. For the first time in all instances, we agree with the National Assembly on the amendments they have brought. I agree with my colleagues that some of the amendments might have gone to the heart and soul of the initial Bill.

On the issue of introducing the new part of Section 24, I am happy to note that one of the functions of the Board is to re-look at the issue of taxes. You will remember that tea suffers as one of the biggest form of taxation, at around 42 per cent.

Secondly, we have seen the issue of employing market strategy within the tea sector. Another aspect is about tea research because extension services within the tea community have not been very well elaborated. However, the tea research that has been put in place will further advise farmers on the quality.

We now have even purple tea that is being embraced by farmers across the region. I think Kericho County is leading followed by Nandi County, where I come from, among others. In almost five out of the six sub-counties of Nandi County already plant the purple

tea. On tea research, we agree that there is need to support tea farmers in terms of extension services.

Mr. Speaker, Sir, the sugar sector has collapsed. You will remember that we had issues which also affected your county. Over five million Kenyans who depend on sugarcane are suffering.

The maize sector is also suffering and these are issues that we can address. In the milk sector, we have already complained because one of the companies controls 40 per cent, and yet the Competition Authority of Kenya (CAK) has done nothing about it.

I agree that this is the right time for this Bill for the ordinary small scale tea farmers. I am happy the Chairperson of the Committee on Agriculture, Livestock and Fisheries has confirmed to me that any other pending issue can be addressed even during this recess, where a memorandum can be raised. We are not passing this Bill because it is perfect, but we believe that we can go to some level and ensure we perfect it.

I think that tea farmers in this country will have an opportunity to have a regulatory regime and law that will try to address many other issues that we want to see in this Sector.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Ochillo-Ayacko, proceed.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir, for allowing me to speak. I nearly gave up thinking that I would not speak on this important topic.

Many years ago, some young lady with whom I was in school – she was not my girlfriend – joked that love without sex is like tea without sugar. There was that joke many years ago.

(Laughter)

I did not believe in that joke, but now I do. Tea is only good when we have sugar. The Chairperson, who has been a friend of mine for many days, must bring the sugar issue here.

Many people talk about the benefits of tea and what we earn from it, which I agree with. However, there are many crops without which we would all be dead and they do not bring money, for instance, cassava. There are people who just feed on cassava; pastoralists who just take milk; fishermen who just eat fish; and they do not beg from anybody.

Mr. Speaker, Sir, if you were to value how they feed their families and look at it from a food security perspective, you would know that agriculture is the mainstay of the economy and our entire wellbeing.

I want to take this opportunity to congratulate Sen. Aaron Cheruiyot for thinking about tea farmers and ask him to also think about other farmers. This tea business, in my view, has been rigged and has been brought on a Special Sitting. Let us rig for other crops and for other activities that feed our people.

We must not just look at tea alone, but also other crops like sugarcane. Sugarcane is a major employer. Other crops, including millet, sweet potatoes and *matoke* that we do not think of have brought up many people. Therefore, what we need to prioritize as a House is agriculture. Let us have special sitting after special sitting to discuss agriculture.

Now that we are talking about tea, let us remember that tea and sugar go together. In fact, very few of us take tea without sugar. I want to congratulate those who are champions for tea and I want to recruit them to be champions for sugar too. This is because tea and sugar go together.

Thank you.

The Speaker (Hon. Lusaka): Hon. Senators, unfortunately, we must bring this to rest. As I told you, we are constrained with time. You will continue talking later on after the Committee of the Whole.

Mover, kindly, reply.

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. It is apparent that all the Senators are overwhelmingly supporting this Bill.

Mr. Speaker, Sir, as we go to voting for the Bill, and because we are going to pass this Bill today, I wish to appeal to the Ministry of Agriculture, as they constitute the Tea Board, they must learn from history that the Coffee Board of Kenya is the one that virtually killed coffee in this country.

How? The members of that Board were also players in the coffee sector. They were traders in the sector. I am appealing that whoever we appoint in the Tea Board must be persons above reproach. They must be persons who are passionate about tea and who will take the concerns of tea farmers at heart.

Mr. Speaker, Sir, I also wish to address the various stakeholders who feel that they are unsatisfied with the Bill. I know that you have received several Petitions so far. I am hoping that you will assign those Petitions to relevant Committees. The ones that will come to my Committee, I can assure the House that we will deal with them expeditiously.

I am, therefore, appealing to all those stakeholders who feel affected by this Bill and who are currently before the courts of law, I want to ask them to trust this House to deal with their concerns expeditiously.

Mr. Speaker, Sir, I hope that all the Petitions which land on your desk, that you will allocate them even during this recess. We will look at them and concerns of various stakeholders. They are many. It is their right to be properly accommodated in the Bill. I think we should accommodate them in one way or another.

For instance, in furtherance of the tea sector, we cannot ignore county governments. Agriculture being a devolved function, we have to work jointly with them. My Committee had a session with the Council of Governors (CoG). We met in Mombasa. We raised several issues with them. They also raised several issues, which we intend, at a later point, to bring to this House.

Mr. Speaker, Sir, I read somewhere in one of these newspapers that my Committee was meeting with the CoG to discuss this Bill. There cannot be anything

further from the truth. This is because the first priority of the Senate of the Republic of Kenya is to safeguard devolution. We will be meeting with the CoG.

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones. Order, Members.
Sen. Pareno, what is your point of order?

Sen. Pareno: Mr. Speaker, Sir, I was just going to say that you intervene because we can hardly hear the response from our hon. Senator.

(Several Senators stood up in their places)

The Speaker (Hon. Lusaka): There are also too many Senators on their feet. Please resume your seats.

Sen. Ndwiga: Thank you. Mr. Speaker, Sir, indeed, I want to conclude and also inform the people who may have been misguided, that the Committee of this House cannot and should not meet with the CoG. They are thoroughly misguided. That happens to be our business.

Mr. Speaker, Sir, in furtherance of agriculture in this Republic, my Committee and the CoG would be meeting quarterly to check on the progress of agriculture. Let people be informed that wherever they see us with the CoG, we are not discussing personalities. In my long time in politics, I do not discuss personalities. I have no interest in personalities; my business is the business of the Republic.

With those few remarks, once again, I want to thank all the Senators for their valuable contributions. I hope that soon, we will be looking at where we can have other amendments after we have passed this Bill.

I thank you.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No. 79, this is not a matter affecting counties. Voting will be by acclamation. I will, therefore, proceed and put the question.

(Question put and agreed to)

Let us move on to the next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Pareno) in the Chair]

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS
TO THE TEA BILL (SENATE BILLS NO. 36 OF 2018)

The Temporary Chairperson (Sen. Pareno): Hon. Senators, we are now going to do the Consideration of the National Assembly amendments to the Tea Bill (Senate Bills No.36 of 2018).

Clause 2

Clause 2 of the Bill amended by deleting clause 2 and substituting therefor the following new clause-

Interpretation. 2. In this Act-

“auction” means a physical or electronic system where potential buyers place competitive bids for tea; “auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya;

“blending” means the art of mixing of teas of different types and grades to affect the flavour and characteristics of the tea for the purposes of packing and sale;

“Board” means the Tea Board of Kenya established under section 3;

“broker” means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between tea growers or tea factories and buyers for a fee;

“buyer” means a person, company or a firm engaged in acquiring made tea for sale in the local or export market, including export of imported tea;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“commercial green leaf transporter” means a person, a firm or a corporate body contracted by a tea factory to provide green leaf transport services from the farm or leaf collection center to the tea factory at a fee;

“commercial tea nursery” means a person or firm who maintains not less than five hundred tea seedlings or tea planting material for sale;

“county government” has the meaning assigned to it under Article 176 of the Constitution;

“crops inspector” means a person appointed as an inspector in accordance with section 24Y of the Act;

“export” means to take tea or cause tea to be taken out of the Kenya customs territory or out of an Export Processing Zone;

“exporter” means a person, a firm, or a corporate body engaged in the business of blending, packaging and exporting of tea in bulk or in value added form;

“Foundation” means the Tea Research Foundation established under section 24ZE;”

“Fund” means the Tea Fund established under section 24ZD;

“grower” means any person who is cultivating tea in an area;

“green leaf agreement” means an agreement between a tea grower and a tea factory relating to the delivery of green leaf;

“import” means to bring tea into or cause to be brought into the Kenya customs territory or into an Export Processing Zone;

“importer” means a person, a firm, or a corporate body engaged in the business of importing tea into Kenya;

“large scale tea grower” means a person cultivating tea in a parcel of land above fifty acres;

“levy” means the levy imposed by the Cabinet Secretary on tea exports and imports in accordance with section 24ZC;

“licensee” means a person who holds a manufacturing licence issued under the Act;

“made tea” means the derivative from tea leaf through a manufacturing process;

“management agent” means any person that is appointed by a tea factory through a specific management contract or agreement to perform or offer professional services other than company secretary services;

“manufacture” means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products and includes the packaging, labelling, distribution of tea and tea products for sale;

“manufacturing licence” means a licence issued under section 24A;

“medium scale tea grower” means a person cultivating tea in a parcel of land of between ten and fifty acres;

“person” includes a firm, a company, an association, cooperative society or a corporate body;

“small scale tea grower” means a grower cultivating tea in a parcel of land of less than ten acres;

“specialty teas” means premium teas manufactured whole leaf, semi-aerated or non-aerated and includes green, purple, white, oolong and orthodox but does not include black curl tear and cut teas;

“tea” means the plant botanically known as *camellia sinensis* and includes its seed, tea plants and the leaf, whether on the plant or detached therefrom, and in the latter case, whether green tea or manufactured tea;

“tea block” means a block set out in the Third Schedule within which tea is grown;

“tea dealer” includes a warehouse operator, buyer, exporter,

importer, broker, packer, manufacturer, management agent, and auction organizer;

“tea factory” means a factory that processes and manufactures tea leaf into made tea;

“tea grower” means a person who grows tea or cultivates tea in Kenya;

“tea packer” any person who blends, brands and packs tea into packets or containers holding not more than ten kilograms of tea intended for sale locally or for export;

“value addition” means improvements on made tea through packaging, blending, flavouring, tea extracts, tea aroma and branding;

“warehouse” means a premise used for the storage of made tea and specialty tea by a warehouse operator;

“warehouse operator” means a company registered in Kenya which is in the business of storing tea.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 5

Clause 5 of the Bill deleted and substituting thereof with the following new clause-

Functions of the Board. 5. The functions of the Board shall be to-

- (a) develop, promote and regulate the development of the tea industry;
- (b) co-ordinate the activities of individuals and organizations within the tea industry;
- (c) facilitate equitable access to the resources, facilities and benefits of the tea industry by all interested parties;
- (d) make recommendations to the Cabinet Secretary on the formulation of policies, plans and strategies for

- the regulation of the tea sector;
- (e) register tea factories, small scale tea growers, medium scale tea growers, large scale tea growers, warehouse operators, tea packers, tea buyers, exporters, importers, tea brokers, management agents, tea auction organizers, commercial tea nurseries, commercial green leaf transporters;
 - (f) license manufacturers;
 - (g) promote best practices and standards in the production, processing, marketing, grading, storage, collection, transportation and warehousing of tea;
 - (h) Facilitate marketing and distribution of tea through gathering and dissemination of market information and monitoring of the local and global supply-demand situation;
 - (i) co-ordinate prioritization of research in tea;
 - (j) regulate the sale, import and exports of tea;
 - (k) develop, implement and coordinate a national tea marketing strategy;
 - (l) prescribe the maximum period and minimum amount for payment of green leaf;
 - (m) promote and advise on strategies for value addition and product diversification;
 - (n) promote demand and consumption of tea locally and internationally;
 - (o) identify market needs and trends and advise the Cabinet Secretary on issues related to national and international tea trade;
 - (p) collaborate with national and international trade bodies on tea related matters;
 - (q) monitor, conduct surveillance and enforce compliance with tea standards, this Act and any regulations made under it;
 - (r) advise the national government on levies, fees and import or export duties on tea;
 - (s) advise the county governments on agricultural cess and fees;
 - (t) oversee the efficient utilization of available Board's funds;
 - (u) undertake capacity building, technology transfer and

technical assistance to the counties on matters related to tea;

- (v) carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 6

Clause 6 of the Bill amended in sub-clause (1) by inserting the following paragraphs immediately after paragraph (c)—

“(ca) collaborate with such bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the object and purpose for which the Board is established;

(cb) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;”

(cc) ensure the proper and effective performance of the functions of the Board;

(cd) manage, control and administer the Tea Fund for purposes that promote the object and purpose of this Act.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 7

Clause 7 of the Bill amended-
in sub-clause (1)-

- (i) by inserting the following new paragraph immediately after paragraph (c)

“(ca) the Principal Secretary responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”

- (ii) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs—

“(d) one person of either gender, who shall have knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternately by the Council of Governors;

(e) four persons, two of either gender, representing and elected by small scale and medium scale tea growers from the East and West of the tea blocks:

Provided that two persons shall be from each of the tea blocks;

(f) one person elected and representing large scale tea growers;

(g) one person elected and representing tea traders;”

(b) by inserting the following new subclause immediately after subclause (2)-

“(2A) The appointment of the chairperson or members of the Board under subsection (1) (a), (d), (e), (f) and (g) and shall take into account the gender, regional and other diversities of the people of Kenya.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 8

Clause 8 of the Bill deleted and substituted thereof with the following new clause—

Term of
appointment.

8. (1) The persons appointed under section 7(1) (a), (d), (e), (f) and (g) shall serve for a term of three years renewable for one further term.

(2) The persons appointed under section 7(1) (a), (d), (e), (f) and (g) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times but not more than six months shall lapse between one appointment and another.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 9

Clause 9(a) of the Bill amended by deleting the words “the permission of the chairperson” appearing immediately after the words “the Board without” and substituting therefor the words “notifying the chairperson”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 13

Clause 13 of the Bill amended by deleting sub-clause (3) and substituting therefor the following new sub-clause—

“(3) A person is not qualified for appointment under subsection (1) unless the person—

- (a) holds a relevant degree from a university recognized in Kenya;
- (b) has at least ten years knowledge and experience in a relevant field;
- (c) has at least five years experience in a position of senior management;
- (d) meets the requirements of Chapter Six of the Constitution.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 15

Clause 15 of the Bill amended in subclause (3) (d) by deleting the word “seven” appearing immediately after the words “at least” and substituting therefor the word “five”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 16

Clause 16 of the Bill amended by-

- (a) renumbering the existing provision as subclause (1);
- (b) inserting the following new subclause immediately after subclause (1)-
 - “(2) In employing staff, the Board shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 19

Clause 19 of the Bill amended by inserting the word “”First”” immediately after the words “”with the””.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

New Part

Part III of the Bill deleted and substituted thereof with the following new Part—

PART III- REGULATORY PROVISIONS

s

Role of national and county governments in the development of tea. 20. (1) Pursuant to the Fourth Schedule of the Constitution —

- (a) the Board, on behalf of the national government, shall be responsible for licensing and charging of levies;
- (b) each county government shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—

- (i) the development of tea grown within the county;
- (ii) tea disease and pest control;
- (iii) markets within the county;
- (iv) cooperative societies within the county;
- (v) register commercial tea nursery operators
- (vi) soil and water conservation.

(2) In order to achieve the objects and purposes of this Act, the national and county governments shall provide an enabling environment for the development of the tea sector.

Registration of small scale tea growers and medium scale tea growers.

21. (1) A small scale tea grower and medium scale tea grower shall register with the tea factory to which the respective tea growers deliver green leaf or purple leaf using the prescribed form.

(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of small scale tea growers and medium scale tea growers and the appeal process in case of refusal or denial of registration.

(3) Every tea factory shall keep or cause to be kept for statistical purposes, a register of all small scale tea growers and medium scale tea growers registered under subsection (1) specifying—

- (a) the name of the small scale tea grower and medium scale tea grower;
- (b) the location, size and parcel number of the land on which the tea is grown;

- (c) the net weight in kilogrammes of green leaf delivered and amount paid submitted annually;
- (d) the variety of tea grown; and
- (e) such other information as the Board may prescribe.

(4) Where the tea factory has reasonable cause to believe that a person whose particulars are so recorded has ceased to be a small scale tea grower and medium scale tea grower, it may, after giving that person written notification by registered post of its intention to do so, remove their name from the register.

(5) The register referred to in subsection (6) shall be prima facie proof of the fact that a person is a registered small scale tea grower or medium scale tea grower.

(6) The tea factory shall furnish the Board with particulars of all registered small scale tea growers or medium scale tea growers in such manner as the Board may prescribe.

(7) A person shall not sell or offer for sale green leaf unless the person is registered with a tea factory in accordance with this Act.

(8) A tea factory shall only buy green leaf from its registered tea growers.

(9) A small scale tea grower or medium scale tea grower shall not sell green leaf to any person other than the tea factory where they are registered.

(10) A small scale tea grower or medium scale tea grower wishing to change the tea factory where they deliver their green leaf shall inform their respective tea factory by giving a minimum notice of thirty days.

(11) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding six months, or to both.

Board of
directors of tea
factory limited
companies.

22. (1) The Board of Directors of tea factory limited companies shall be a maximum of five members.

(2) The Board shall put in place mechanisms to ensure that not more than two-thirds of the Board of Directors of tea factory limited companies elected or appointed are of the same gender.

(3) The Board of Directors of tea factory limited companies shall be elected through a democratic system of one grower, one vote.

(4) Where a Board member for tea factory limited companies is temporarily unable to perform their duties, the Board may appoint another person from the respective block to act in their place during the period of absence.

Registration of
large scale tea
growers.

23. (1) A large scale tea grower shall register with the Board in a prescribed form and shall pay the prescribed fee.

(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of large scale tea growers and the appeal process in case of refusal or denial of registration.

(3) A person who grows tea in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or to both.

Tea grower certificate. 24. The manager of a tea factory shall issue a certificate of registration to a small scale tea grower, medium scale tea grower or a large scale tea grower in the form prescribed in regulations.

Licensing of manufacturers. 24A. (1) A person shall not manufacture tea for sale except under and in accordance with a licence issued under this Act.

(2) A person shall apply for a manufacturing licence to the Board in a prescribed form and shall pay the prescribed fee.

(3) The Board may, after consultation with the Cabinet Secretary —

- (a) issue a manufacturing licence, in accordance with this Act;
- (b) refuse to issue the licence on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof;

(c) cancel, vary or suspend any licence if in the findings of the Board, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing entities.

(4) A manufacturing licence issued under this section shall in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending tea.

(5) Before the issuance or renewal of a manufacturing licence for a tea factory limited company the Board shall satisfy itself that the applicant has a procurement policy providing for competitive procurement of goods and services.

Register of manufacturers. 24B. The Board shall maintain a register, in such form as prescribed in regulations, of all manufacturers licensed under this Act and shall enter therein, in respect of each tea factory —

- (a) the full names of the manufacturer;
- (b) the date of issue of the licence;
- (c) particulars of any cancellation, suspension or variation of the licence; and
- (d) any other particulars the Board may deem necessary.

Illegal manufacture, possession, etc.

24C. (1) A person commits an offence if the person-

- (a) manufactures tea for sale in contravention of this Act;
- (b) buys, sells, offers for sale, transports or has possession of tea which to the person's knowledge or belief-

- (i) has been grown, manufactured or processed otherwise than in accordance with this Act;
- (ii) is from a non-registered grower or dealer of such crop.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years, or both.

(3) If a person is in possession or has control of tea for which the person is unable to account to the satisfaction of a crop inspector under this Act, such tea shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.

(4) If a person is convicted of an offence under this section, the court shall order that any tea and any vehicle, vessel or other conveyance in relation to which an offence has been committed shall be forfeited to the Government unless, in the case of a vehicle, vessel or other conveyance, the court deems it necessary, for reasons to be recorded by it in writing, not to do so.

Registration of warehouse operator. 24D. (1) Every warehouse operator shall register with the Board.

(2) A person shall not store tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of warehouse operators and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of tea packers. 24E. (1) Every tea packer shall register with the Board.

(2) A person shall not pack tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea packers and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a
tea buyer,
exporter or
importer.

24F. (1) A person who intends to carry on the business of tea buying, tea exporting or tea importing shall register with the Board.

(2) A person shall not carry on the business of buying tea, exporting or importing tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea buyers, tea exporters and tea importers and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Tea imports.

24G. (1) A person who imports tea into Kenya shall prior to importation—

- (a) provide evidence that the teas they intend to import are not available in the local market or at the tea auction;
- (b) provide a sample of the teas to be imported and pre-import verification certificate from the country of origin; and
- (c) obtain pre-import approval from the Board.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a tea broker.

24H. (1) Every tea broker shall register with the Board.

(2) A person shall not negotiate the purchase or sale of tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for—

- (a) the procedure for registration of a tea broker and the appeal process in case of refusal or denial of registration;
- (b) the maximum number of tea factories that shall be served by a tea broker.

(4) The remuneration paid to a tea broker by a tea factory limited company and a tea buyer or exporter for services rendered shall not exceed zero point seven five per centum of the gross sales by the broker.

(5) A person who contravenes subsections (2) and (4) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a management agent.

24I. (1) Every management agent shall register with the Board.

(2) A person shall not perform or offer professional services to a tea factory unless the person is registered in accordance with this Act.

(3) Every management agent shall submit annual returns to the Board and a copy to the respective county government in the form prescribed.

(4) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a management agent and the appeal process in case of refusal or denial of registration.

(5) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Management
agent agreement.

24J. (1) A person who intends to manufacture or deal in tea may engage the services of a management agent upon such terms and conditions as may be agreed in the management agreement between them.

(2) A management agent shall sign a management agreement with each tea factory limited company that they intend to offer management agent services to.

(3) A management agreement between a management agent and a tea factory, shall be—

(a) submitted to the Board for review and approval before execution by parties; and

(b) for a period of five years, and may be renewed upon expiry at the discretion of the tea factory.

(4) The remuneration for services rendered by a management agent to a tea factory limited company shall not exceed one point five per centum of the net sales value of the tea sold per year.

(5) The staff costs for personnel seconded to the tea factory limited company by a management agent shall be borne by the management agent.

(6) Company Secretarial services shall be excluded from services to be offered by a management agent to a tea factory limited company.

(7) A tea factory shall recruit its own in-house Company Secretary or outsource the service.

(8) Despite subsection (7), a tea factory may enter into an arrangement with one or more tea factories to have a joint in-house Company Secretary.

(9) A director of a tea factory shall not serve as a director in another company having a direct or indirect commercial relationship with the tea factory where the person is serving as a director.

(10) Where the provisions of subsection (9) apply, a director of a tea factory shall forthwith relinquish his or her position.

Registration of a tea auction organizer. 24K. (1) Every tea auction organizer shall register with the Board.

(2) A person shall not deal in tea as a tea auction organizer unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a tea auction organizer and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Auction process. 24L. (1) All teas processed and manufactured in Kenya for the export market with the exception of orthodox and specialty teas shall be offered for sale exclusively at the tea auction floor.

(2) All tea factory limited companies shall register with the Board and the auction organizer to participate in the tea auction directly and not through management agents.

(3) An auction organizer shall establish an electronic trading platform for the auction of tea that will be usable and accessible to all players in the value chain.

(4) A buyer shall pay in full the value of the tea bids they have won at the auction before collecting or taking custody of the tea.

(5) Tea brokers, buyers and the auction organizers shall ensure that the proceeds from the sale of tea are remitted to the tea factories accounts within fourteen days from the date of the auction.

(6) A tea factory shall within thirty days of receipt of the proceeds of the sale of tea, pay tea growers—

- (a) at least fifty per centum of payment due for green leaf delivered every month;
- (b) the balance due to the tea grower within three months from the end of financial year.

(7) An auction organizer shall develop trading rules to govern its operations and the trading rules shall be submitted to the Board for approval.

Registration of commercial green leaf transporters. 24M. (1) A person who intends to carry on the business of commercial green leaf transporter shall register with the Board.

(2) A person shall not carry on the business of commercial green leaf transporter unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial green leaf transporters and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a commercial tea nursery.

24N. (1) A person who intends to establish a commercial tea nursery shall register with the county government where they intend to establish a tea nursery.

(2) A person shall not establish a commercial tea nursery unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial tea nurseries and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Considerations before registration and licensing and renewal.

24O. (1) The Board shall, before registering, licensing or renewing a registration or licence under this Act, satisfy itself that—

- (a) the applicant has complied with the provisions of this Act and any other relevant law; and
- (b) the applicant or the directors of the company are fit and proper for the function for which they seek a licence or registration.

(2) In determining whether a person is fit and proper, regard shall be had to—

- (a) whether they have taken part in any business practice in the tea value chain that in the opinion of the Board was fraudulent, prejudicial or otherwise improper; or which otherwise discredited their method of doing business; and
- (b) whether they have been directors of a company or entity whose licence or registration certificate has previously been revoked or suspended by the Board for any cause.

No. 4 of 2015. (3) In determining whether a person or director is fit and proper, the Board shall have due regard to the provisions of the Fair Administrative Action Act, 2015, the Companies Act, 2015 and any other relevant law.

No. 17 of 2015.

Conditions of a licence.

24P. (1) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the licence and to any conditions which may be prescribed.

(2) The Board shall consider the professional and moral suitability of a person applying for a license and satisfy itself that such a person is a fit and proper person for the grant of the license.

(3) For the purposes of this section, the criteria for assessing the professional or moral suitability of a person applying for a license shall be as prescribed in the Second Schedule.

(4) In considering an application for a license, the Board may require to be satisfied as to—

- (a) the financial condition and history of the applicant;
- (b) the integrity of its management;
- (c) the professional and moral suitability of the persons proposed to manage or control applicant;
- (d) the adequacy of the capital structure of the applicant; and
- (e) the public interest which will be served by the granting of the licence.

(5) The Board may at any time during the validity of a licence—

- (a) vary the conditions of the licence; or
- (b) impose conditions or further conditions on the licence.

Application for renewal of a licence. 24Q. (1) An application for the renewal of a licence under this Act shall be made to the Board in a form prescribed not later than the first day of the month of June in which the current licence is due to expire.

(2) Despite subsection (1), a late application may be made upon payment of a late application fee as may be prescribed by the Board.

Revocation or alteration of a licence. 24R. The Board may revoke, alter or suspend a licence issued under this Act if in its opinion—

- (a) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the licence holder or any employee of the licence holder; or
- (b) a condition of the licence has been contravened or not complied with.

Surrender of licence.

24S. (1) The holder of a licence which is revoked shall immediately surrender it to the Board.

(2) A licence holder may at any time surrender the licence to the Board and the licence shall cease to have effect immediately.

Appeals to the High Court.

24T. (1) An applicant for or holder of a licence who is aggrieved by a decision of the Board may appeal to the High Court on or in respect of—

- (a) the grant, refusal, renewal, variation or revocation; or
- (b) the conditions imposed on the grant, renewal or variation, of a licence.

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

Approval of fees charged.

24U. Any fee, commission or other dues charged by a broker, management agent or an auction organizer shall be subject to prior approval by the Board.

Declaration of blended teas.

24V. (1) A person who blends any or various grades of tea produced in Kenya with any other tea produced outside Kenya shall declare the percentage of Kenyan tea on the packaging and on the blend sheet.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Taxation of tea.

24W. (1) Fees imposed by a county government shall not in any way prejudice national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.

No. 2 of 2012 (2) The Cabinet Secretary shall, using the structures established under the Intergovernmental Relations Act, put in place mechanisms to harmonize fees and charges on tea across counties.

Tea value addition. 24X. (1) All tea buyers or exporters shall value add at least forty per centum of their annual Kenya tea exports within eight years of the commencement of this Act.

(2) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, facilitate the establishment of Common User Facility for tea value addition as may be prescribed.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

New Part

The following new parts inserted immediately after Part III

PART IIIA – APPOINTMENT OF CROP INSPECTORS

Appointment of 24Y. (1) The Board may appoint qualified persons to be crop inspectors. inspectors for the purposes of this Act.

(2) For purposes of subsection (1), the Board may, by regulations, prescribe the qualifications for a crop inspector.

Entry and 24Z. A person duly authorized in writing in that behalf by the Board inspection. may, at all reasonable times and upon production of such authority to any person so requesting—

- (a) enter any land or buildings occupied by the holder of a manufacturing licence issued under this Act, or a person registered under this Act;
- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence or registration are being complied with; and
- (c) may require any person found thereon to give such information as the person may require.

Powers of entry. 24ZA. (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

- (a) perform the functions or exercise the powers conferred by this Act or any other written law;
- (b) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (c) demand the production by a licence holder of the licence for examination;
- (d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
- (e) do any other thing authorized under this Act.

(2) The owner or occupier of or any person on land or in premises or a vehicle which is entered under subsection (1) shall render such reasonable assistance as may be required by the inspector.

(3) A person who refuses, unreasonably delays or fails to comply with a requirement under subsection (2) commits an offence.

Obstruction of 24ZB. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three years, or both.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

PART IIIB

PART IIIB – ESTABLISHMENT OF TEA LEVY AND TEA FUND

Establishment of 24ZC. (1) The Cabinet Secretary may by notice in the Gazette, impose a levy to be levied on tea exports and imports, to be known as the tea levy.

(2) The levy imposed through a notice under subsection (1) shall be collected by the Board at a rate not exceeding one per centum of the auction value for teas sold through the auction and at such times, being not earlier than one after the date of publication of the notice, in such a manner, as is specified in the Notice.

(3) The levy on tea imports shall be charged at a rate of one hundred per centum of the value of the imported teas.

(4) The levy imposed under this section shall be levied and collected in such manner as the Cabinet Secretary may prescribe through regulations.

(5) The tea levy collected under subsection (2) shall be apportioned as follows—

(a) fifty per centum shall be applied by the Board for income or price stabilization for tea growers;

(b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;

(c) twenty per centum shall be remitted directly to the Tea Research Foundation;

(d) fifteen per centum shall be applied for infrastructure development in the tea subsector on a pro rata basis.

(6) A person who fails to pay the tea levy imposed under this Act commits an offence.

24ZD. (1) There is established a Fund to be known as the Tea Fund which shall be managed by the Board.

- (2) The Fund shall consist of-
- (a) monies appropriated by the National Assembly;
 - (b) monies from the tea levy;
 - (c) monies from a source approved by the Board;
 - (d) grants and donations made to the Board.
- (3) The Board shall apply the monies received into the Fund to—
- (a) income or price stabilization;
 - (b) research and development.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

PART III C

ESTABLISHMENT OF THE TEA RESEARCH FOUNDATION

Establishment of the 24ZE. (1) There is hereby established a body to be known as the Tea Research Foundation.

(2) The Foundation is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

Functions of the 24ZF. (1) The Foundation shall—

- (a) promote, co-ordinate and regulate research in tea and tea diseases; and

(b) expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the development of tea.

(2) For the purpose of carrying out its functions the Foundation shall—

(a) formulate policy and make policy recommendations to the Cabinet Secretary on tea research;

(b) prioritise areas for, and co-ordinate, tea research in Kenya in line with the national policy on tea;

(c) determine and advise the Government on the resource requirements for tea research in Kenya both at the national and county level;

/Amendments.

(d) regulate, monitor and ensure that all tea research undertaken by other institutions or persons undertaking tea research is consistent with the national priorities specified in the relevant policy documents;

(e) formulate or approve medium and long term research plans, strategies and budgets of the Foundation;

(f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Foundation;

(g) support and promote the training and capacity building in relation to agricultural research;

(h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in tea research;

(i) establish platforms for the purposes sharing of research information, advancing research and transfer of technology and dissemination of information relating to advancements made in tea research;

- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of tea research; and
- (l) perform such other functions as may be conferred on it by this Act or any other written law.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 25

Clause 25 of the Bill amended by—

- (a) inserting the following paragraph immediately after the introductory statement— “(a) such monies as may be appropriated by the National Assembly;”
- (b) renumbering the existing paragraphs (a), (b), (c), (d) as (b), (c), (d), (e), respectively.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 26

Clause 26 of the Bill amended —

- (a) in subclause (1) by deleting the word “three” appearing immediately after the words “at least” and substituting therefor the word “six”;
- (b) by deleting subclause (3) and substituting therefor the following new subclause—

“(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.”

(c) by inserting the following new subclause immediately after subclause (3)—

“(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 27

The Bill amended by deleting clause 27 and substituting therefor the following new clause—

Accounts and 27. (1) The Board shall cause to be kept
audit. proper books and records of accounts of the income,
expenditure and assets of the Board.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Board together with—

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a statement of financial position of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 28

Clause 28 of the Bill amended—

- (a) in sub-clause (1) by deleting the words “balance sheet” appearing

- immediately after the words “and the annual” and substituting therefor the word “statement”;
- (b) in sub-clause (2) by deleting the words “balance sheet” appearing immediately after the words “publish the report,”;
- (c) in sub-clause (3) by deleting the words “balance sheet” appearing immediately after the words “submit to Parliament the reports,”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

New Part IVA

COMPLAINTS AND INVESTIGATION PROCEDURE

Complaint and investigation against a licensee. 29A. (1) A person who is aggrieved by or is likely to be aggrieved by the contravention of any provision of this Act by a licensee may file a complaint requesting the Board to enforce the provisions of this Act against that licensee.

(2) The complainant shall, in the complaint,—

- (a) cite the specific provisions of this Act that the licensee has contravened or is likely to contravene;
- (b) state the facts relating to the alleged contravention or likely contravention; and
- (c) attach any documents relevant to the complaint.

(3) The Board shall provide a written response to the complainant within fifteen days of receipt of a complaint.

(4) The Board may by written notification to the complainant, extend the review of the complaint by up to thirty days where it determines that a complaint raises—

- (a) a novel issue whose disposition requires the Board to consider an issue that it has not previously addressed; or

(5) The Board may dismiss a complaint if—

(6) Where the Board dismisses a complaint, it shall notify the complainant and provide a written explanation.

(7) Where the Board admits a complaint, it shall issue a written notification to the licensee complained of and the complainant indicating—

(a) the specific provisions of this Act that the licensee has been alleged to contravene; and

(b) reasonable details of the alleged facts constituting the contravention.

(8) A licensee that is the subject of a complaint shall, within fifteen days of receipt of the notification from the Board, submit a response providing the basis on which it disputes the allegations of contravention.

(9) The Board shall, subject to section 29G on confidentiality, provide copies of all documents filed by each party to the other party.

(10) The Board may—

(a) allow the filing of additional responses by the parties;

(b) upon application and for good reasons, extend time for the filing of any documents or replies by the parties to the complaint;

(c) Request the complainant or the licensee complained of to submit additional information at any time during the course of the enforcement proceedings; or

(d) direct an independent audit or appropriate investigation of the operations and books of account of a licensee to obtain information relevant to the complaint.

29B. (1) A complainant may, at any time and with reasons, withdraw its complaint in writing addressed to the Board and the licensee complained of.

(2) The withdrawal of a complaint shall not preclude the Board from taking enforcement action on its own motion in the public interest.

29C. (1) The Board shall issue its decision on a complaint within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written notice to the parties and before the expiry of the sixty day review period, extend the time and specify the date by which it shall issue its decision.

29D. (1) Where the Board intends to commence an enforcement action against a licensee on its own motion, the Board shall—

- (a) notify the licensee and clearly indicate the specific provisions of this Act the licensee is alleged to have contravened;
- (b) allow the licensee at least fifteen days to respond in writing with a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the licensee disputes the allegation; and
- (c) issue its decision within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written notice to the licensee and before the expiry of the sixty day review period, extend the time and specify the date by which it shall issue its decision.

29E. (1) At any time during an enforcement proceeding, the Board may issue an interim directive to a licensee to cease and desist from any specified conduct.

(2) In determining whether to issue an interim directive the Board shall consider whether—

- (a) there is prima facie evidence that the licensee has contravened the provision of this Act;
- (b) continuation of the licensee's conduct is likely to cause serious harm to other licensees, consumers or the general public;

(c) the potential harm of allowing the licensee to continue its conduct outweighs the burden on the licensee of ceasing the conduct; and

(d) issuance of the interim directive is in the public interest.

29F. (1) Where the Board determines that a licensee has contravened any provision of this Act, the Board may take such enforcement measures as it considers appropriate, including—

(a) issuing a written warning to the licensee;

(b) directing the licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Act;

(c) directing the licensee to take specific remedial action;

(d) declaring any agreement or contract void;

(d) imposing a financial penalty relative to the period that the breach persists; or

(f) suspension or cancellation of the licence issued under this Act.

(2) A person aggrieved by the decision of the Board under this section may appeal to the High Court.

29G. (1) A party submitting information to the Board may request that the information submitted be treated as confidential.

(2) The Board shall grant a request for confidential treatment if the requesting party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment contains commercially sensitive information or that the disclosure of the information would have a material adverse impact.

(3) For the purposes of this section, “commercially sensitive information” includes information—

(a) that is not otherwise available to the public; or

(b) whose disclosure would cause commercial harm to the party or otherwise provide a commercial benefit to the party's competitors, including business procedures, practices, plans or its assessment of market conditions.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 30

Clause 30 of the Bill amended by—

- (a) deleting sub-clause (1);
- (b) deleting the expression “(2)” appearing immediately before sub-clause (2);

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 32

Clause 32 deleted and substituted thereof with the following new clause—

| | |
|---------------------|---|
| General penalty. | 32. A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or a fine not exceeding twice the value of the tea or tea products or, to imprisonment for a term not exceeding one year, or to both. |
|---------------------|---|

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 33

Clause 33 of the Bill deleted and substituted thereof with the following new clause— Regulations.

33. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for—

(a) the regulation of the production, processing, importation and exportation of tea;

(b) the procedure of registration of tea brokers, small scale tea growers, medium scale tea growers, large scale tea growers, commercial green leaf transporters, tea packers, tea buyers, tea importers, tea exporters, management agents, auction organizers, warehouse operators, commercial tea nurseries;

(c) the procedure of licensing of tea manufacturers;

(d) the forms to be used in the application for registration, licensing, contracts and related activities;

(e) the prescribed areas for planting tea;

(f) the appeal process in case of refusal or denial of a licence;

(g) monitoring of the entire value chain in the tea sub-sector;

(h) regulation of the conduct of tea auction including the volumes of tea to be sold through auction or through direct sales;

(i) the promotion of fair and proper governance structures in institutions along the tea value chain in the interest of tea growers;

(j) rules to avoid conflict of interest in the ownership and dealings between tea growers, tea factories and tea dealers

k) the criteria for the pricing of green leaf;

(l) maximum fees charged by players along the value chain;

(m) the tenure of board members for tea factory;

(n) procedures for ensuring internal democracy in tea growers' institutions and organizations;

(o) value addition of tea exports and imports;

(p) control of pests and diseases;

(q) any fee charged under this Act;

(r) the regulation of contracts between growers, tea factories and other players in the tea industry;

s) tea safety including transportation, processing and market standards of tea;

(t) submission of returns and reports by the holders of licences and registrations under this Act;

(u) regulation and controlling the method of blending, packaging and labelling of tea for purposes of traceability;

(v) standards, and the manner of grading and classification of made tea products under this Act; and

(w) anything required to be prescribed under this Act;

(3) For the purposes of Article 94(6) of the Constitution— (a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to

bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;

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of 2013

(b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 34

Clause 34 of the Bill amended—

- (a) by renumbering the existing provision as subclause (1);
- (b) by inserting the following new subclause immediately after the renumbered subclause (1)—
“(2) The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the expression “Tea.....*Camellia* spp.””

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 35

Clause 35 of the Bill deleted and substituted thereof with the following new clause—

| | |
|--|---|
| Transfer of assets and liabilities. | 35. All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Tea Directorate of the Agriculture and Food Authority and the Tea Research Institute of the Kenya Agricultural and Livestock Research Organization, shall, on the date of commencement of this Act, vest in the Board and the Foundation, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property. |
|--|---|

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 36

Clause 36 of the Bill deleted and substituted thereof with the following new clause—

Pending proceedings and claims. 36. All legal proceedings and claims pending in respect of actions and activities to which this Act apply shall be continued or enforced by or against the Board and the Foundation in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority and the Kenya Agricultural and Livestock Research Organization had this Act not been enacted.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 38

Clause 38 of the Bill deleted and substituted thereof with the following new clause—

Existing licences and registrations. 38. All licences and registrations existing before the appointed day shall remain valid until their expiry, and subsequent licences and registrations shall be issued under this Act.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

Clause 39

Clause 39 of the Bill deleted and substituted thereof with the following new clause—

Transfer of Staff. 39. (1) The staff of the Tea Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board.

(2) The staff of the Tea Research Institute employed by the Kenya Agricultural and Livestock Research Organization prior to the commencement of this Act, shall be the staff of the Foundation.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Division will be at the end.

New Clauses

The following new clauses inserted immediately after clause 32—

Offences relating to body corporate. 32A. (1) Where an offence under this Act is committed by a body corporate or any other association, the offence shall be deemed to have been committed by a director, a partner or any other person involved in, or acting or purporting to act in the management of affairs of the body corporate or association.

(2) It shall be a defense to a charge under this section where the court is satisfied that—

(a) the act or omission constituting the offence took place without the person's knowledge;

or (b) the person took reasonable steps to prevent the commission of the offence.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Hon. Senators, Division on this Clause will come at the end.

New Clause 32B

Conflict of laws. 32B. If any conflict arises between the provisions of this Act and any other Act with respect to the development of the tea crop, the provisions of this Act shall prevail.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Hon. Senators, Division on this Clause will come at the end.

Schedule

The Schedule of the Bill amended—

(a) by deleting the title and substituting therefore the following new title— “First Schedule”

(b) in paragraph 1(3) by deleting the word “five” appearing immediately after the words “by at least” and substituting therefor the words “two thirds of the”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Hon. Senators, Division on this Clause will come at the end.

The New Schedule (after the First Schedule)

The following New Schedule inserted immediately after the First Schedule—

SECOND SCHEDULE

CRITERIA FOR ASSESSING PROFESSIONAL OR MORAL SUITABILITY

(1) In order to determine, for the purposes of this Act, the professional and moral suitability of persons, proposed to be Directors and senior officers of a licensee, the Board shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

(a) possession of adequate professional credentials or experience or both for the position for which the person is proposed;

(b) ability to recommend sound practices gleaned from other situations;

(c) ability to provide dispassionate advice;

(d) ability to avoid conflicts of interest in his or her activities and commitments with other organizations;

(e) ability to absent oneself from decisions when the person is incapable of providing objective advice.

(3) For the purpose of and without prejudice to the generality of the provisions of paragraph (1), the Board, may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—

(a) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;

(b) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence or other malpractices;

(c) has taken part in any business practices that, in the opinion of the Board, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited the person's methods of conducting business; or

(d) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on the person's competence and soundness of judgment.

(3)The Board may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person as stipulated under the Act.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Hon. Senators, Division on this Clause will come at the end.

The New Schedule (after the Second Schedule)

That following New Schedule inserted immediately after the Second Schedule—

THIRD SCHEDULE [s. 2]

TEA BLOCKS

BLOCK

COUNTIES

EAST

Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.

WEST

Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga, Trans-Nzoia, Baringo, Bungoma, ElgeyoMarakwet and UasinGishu

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): Hon. Senators, Division on this Clause will come at the end.

The Temporary Chairperson (Sen. Pareno): Hon. Senators, having concluded with the amendments we are supposed to proceed for Division.

Sen. Kang’ata: Madam Chairperson, thank you for the good work. I am seeking for two directions from you. That we ring the Bell for about five minutes. I take this opportunity to urge my colleagues who are following this proceeding virtually to be prepared to commence voting, to login. If there is any Senator out there watching us. There are colleagues who need to come in and start voting because this is the final stage. Give directions that voting is by delegation.

The Temporary Chairperson (Sen. Pareno): Yes, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Madam Chairperson, I thought it was magic that I press one and the other one comes on. I agree with Sen. Kang’ata that the Bell be rung for five minutes. The other concern I have is that, there should be direction on the voting. Are we voting clause by clause or one vote for the entire Bill? The clarification is important.

The Temporary Chairperson (Sen. Pareno): We will take one vote for all the amendments. We can ring the Bell for five minutes.

(The Division Bell was rung)

The Temporary Chairperson (Sen. Pareno): Order, Senators! I now direct that the doors be closed and the Bar drawn.

(The Bars were Drawn and Doors locked)

(Loud consultations)

Can we have the Tellers? Sen. Omanga for the “Ayes” and Sen. Shiyonga for the “Noes”.

Sen. Mutula Kilonzo Jnr.: On a point of order, Madam Temporary Chairperson.

The Temporary Chairperson (Sen. Pareno): Yes, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Madam Chairperson, I am aware of at least one Senator who is logging in, that is, Sen. Khaniri. Could he, please, be facilitated to log in and be counted?

The Temporary Chairperson (Sen. Pareno): Can you facilitate Sen. Khaniri?

(Loud consultations)

Sen. Mutula Kilonzo Jnr.: He should be recorded as having logged in, so that he can participate.

The Temporary Chairperson (Sen. Pareno): We have to see evidence that he has logged in.

(Loud consultations)

I hope you have heard that we need to facilitate Sen. Khaniri to log into the *Zoom* platform.

Order, Senators! I now put the question; that the National Assembly Amendments to Clauses 2, 5, 6, 7, 8, 9, 13, 15, 16 and 19; deletion of Part 3 and insertion of New Part 3, incorporating Clauses 20, 21, 22, 23, 24 to 24X; insertion of New Part 3A, incorporating Clauses 20, 21, 22, 23, 24 to 24X; insertion of New Part 3A, incorporating Clauses 24 Y to 24 Z (b); insertion of New Part 3B, incorporating Clauses 24 Z (c) to 24 Z (d); insertion of the New Part 3C, incorporating Clauses 24 Z (e) to 24 Z (f); amendments to Clauses 25, 26, 27, 28; insertion of New Part 4A, incorporating New Clauses 29 A to 29G; amendments to Clauses 30, 32, 33, 34, 35, 36, 38 and 39; insertion of New Clauses 32A and 32B, amendments to the First Schedule; and, insertion of Second and Third Schedules of the Tea Bill (Senate Bills No.36 of 2018) be approved.

Let us proceed to vote, please. We will do a Roll Call vote.

(Hon. Senators proceeded to vote by Roll Call)

(Voting in progress)

The Temporary Chairperson (Sen. Pareno): We were to call Sen. Dullo again. Is she still voting online?

An hon. Member: She is absent.

The Temporary Chairperson (Sen. Pareno): Okay, let us proceed to count the votes. Tellers, are you ready with your returns? Sen. Omanga and Sen. Shiyonga.

DIVISION

ROLL CALL VOTING

(Question, that the National Assembly amendments to Clauses 2, 5, 6, 7, 8, 9, 13, 16 and 19, deletion of Part III and Insertion of New Part III (Incorporating Clauses 20, 21, 22, 23, 24, -24X), Insertion of New Part IIIA (Incorporating Clauses 24Y – 24ZB), Insertion of New Part IIIB(Incorporating Clauses 24ZC-24ZD, Insertion of New Part IIIC (Incorporating Clauses 24ZC-24ZD), amendments to Clauses 25, 26, 27 and 28, Insertion of New Part IVA (Incorporating New Clauses 29A-29G), amendments to clauses 30, 32, 33, 34, 35, 36, 38 and 39, Insertion of New Clauses 32A and 32B, amendment to the First Schedule and Insertion of Second and Third Schedules, of the Tea Bill (Senate Bills No. 36 of 2018) be approved, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen.

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Kinyua, Laikipia County; Sen. (Dr.) Lang'at; Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Omogeni, Nyamira County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Prengei, Nakuru County; Sen. Sakaja, Nairobi County; Sen. Seneta, Kajiado County; Sen. Wamatangi, Kiambu County; Sen. Wako, Busia County; Sen. Wambua, Kitui County; and; Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Omanga

Noes: Nil

Teller of the Noes: Sen. Shiyonga

The Temporary Chairperson (Sen. Pareno): Thank you Tellers for a job well done. Hon. Senators, the results of the Division are:

AYES: 33

NOES: 0

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 33 votes to Nil)

The Temporary Chairperson (Sen. Pareno): The Mover is Sen. Cheruiyot. He is the owner of the Bill.

Sen. Ndwiga: Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of the National Assembly amendments to the Tea Bill (Senate Bills No. 36 of 2018) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. Pareno): I now order that the Doors be opened and the Bars be drawn.

(The Bars were drawn and doors opened)

(The House resumed)

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

REPORT AND CONSIDERATION OF REPORT

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CONSIDERATION OF NATIONAL ASSEMBLY AMENDMENTS TO
THE TEA BILL (SENATE BILLS NO. 36 OF 2018)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Members, the Chairperson will now report.

Sen. Pareno: Madam Deputy Speaker, I beg to report progress that the Committee of the Whole has considered the National Assembly amendments to The Tea Bill (Senate Bills No. 36 of 2018) and its approval thereof without amendments.

The Deputy Speaker (Sen. (Prof.) Kamar): Mover, proceed.

Sen. Ndwiga: Madam Deputy Speaker, I beg to move that the House do agree with the Committee on the said report.

(Question proposed)

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Cheruiyot, proceed.

Sen. Cheruiyot: Madam Deputy Speaker, thank you for this chance that I had requested earlier on. I take this time to appreciate our colleagues who have acceded to our request---

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Cheruiyot, in addition to what you want to say, you are also seconding the Motion from the Mover.

Sen. Cheruiyot: Madam Deputy Speaker, thank you. I will do so. As I said, I really appreciate my colleagues. They took time this afternoon out of their busy break to come and transact business on behalf of the millions of Kenyans who depend on tea farming.

I appreciate every one of you because this has been a two years journey that we have walked together as a House. It has nothing to do with me as a person, but everything to do with Senate. The fact that we passed the Motion that set up the *ad hoc* Committee.

Madam Deputy Speaker, we went round the country. I think we visited almost 13 counties listening to the views of the farmers. They pleaded with us and there is nothing more difficult than when citizens of our Republic cry out to you and you are a leader.

In short, what they were saying was if they were in our positions, perhaps they would have thought for a solution. It is out of that realization that we came back as a Committee and worked on the Bill and rolled it out on the Floor of this House.

We completed it last year and it has gone through the motions of Parliament. We have been caught in between all the tribulations that many of the Bills that come from the Senate face with regard to Articles 110 and 114 of the Constitution. We appreciate each and every parliamentary officer because of the dedicated contribution to the work that they have done for us to ensure that this Bill sees the light of the day.

Madam Deputy Speaker, we appreciate our colleagues in the National Assembly for the work they did on this Bill. On many occasions, we do not have very kind words for them because they are our aggressors most of the time in the disputes that we have between both Houses.

However, today, as the Senate Minority Leader, Sen. Orengo said, it is one of those rare occasions where they have agreed to the work that the Senate has done.

It will not be fair on our part if we do not appreciate our colleagues in the National Assembly who went ahead to add to make so much more contributions to the Bill by including 34 more Clauses from the Ministry of Agriculture, Livestock and Fisheries on the things that they considered that we had not factored in as a House in our contributions. It is a big milestone for both Houses of Parliament to agree with the Ministry of Agriculture, Livestock and Fisheries.

I would like to appreciate the party leaders because we must be sincere that in the course of the weekend, there were many stories flying around and what people were saying. I appreciate each and every one of the party leaders in ensuring that we pass this Bill as a House, conclude it and give the tea farmers of this country a fantastic Christmas.

I can now confidently go back to Kericho County and tell my constituents that my stay in this House has been meaningful. Just like the many colleagues who come from tea growing areas, we can now go to our home counties and say that we have done our work as a Senate.

Madam Deputy Speaker, as I conclude, I would like to state that Sen. (Prof.) Ongeru is a big time tea farmer farming over 200,000 kilograms of tea every year. I was speaking to him earlier and informed him that from just two clauses that have been introduced, he is making close to Kshs200,000. The clause that reduces the auction percentage price from 1.5 per cent to 0.75 per cent which saves him close to Kshs100,000 out of his earning.

The second clause that is really beneficial is on the management fee that moves it from 2.5 per cent as is currently to a maximum of 1.5 per cent which gives him another Kshs200,000. The same can be said for so many others farmers.

Holistically, when you read this Bill, it is beneficial to the tea farmers. At the end of this agricultural year, which we call an agricultural cycle in the tea food chain when bonus is declared, many farmers will have thousands more shillings in their pockets courtesy of the work that this House has done.

Madam Deputy Speaker, I know that we are pressed for time otherwise I would have said many more things. On behalf of many of our colleagues who represent tea farmers in this House and overall as an institution, I would like to pass my appreciation.

I beg to second.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Cheruiyot. I know that you have now persuaded a few more people to become tea farmers.

Hon. Senators, I can see three requests to speak from three Senators. However, I would like to inform you that we needed about an hour to eulogize our colleague, the late Sen. (Dr.) Kabaka.

Hon. Senators: Put the Question.

The Deputy Speaker (Sen. (Prof.) Kamar): I am going to put the question, but I would just like to warn Members that they do not have to load this.

I can see that the three Senators who had requests to speak on the Bill have withdrawn so I can now put the Question.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

TRIBUTE TO THE LATE SEN. (DR.) BONIFACE KABAKA,
SENATOR FOR MACHAKOS COUNTY

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, let us now move to the very important session of eulogizing our dear colleague, the late Sen. (Dr.) Kabaka, the Senator for Machakos County. I will limit the contribution time to three minutes per Senator so that all of us can have an opportunity to speak.

The first Senator to speak will be Senator---

Hon. Senators: Read the order.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senator, eulogizing our brother was not part of the order on the Order Paper, but it was on the Communication from the Speaker. The first person to speak will be Sen. Wambua, who has represented us very ably in the burial committee of the family.

Kindly proceed, Sen. Wambua.

Sen. Wetangula: On a point of order, Madam Deputy Speaker, before we begin.

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of intervention Sen. Wetangula?

Sen. Wetangula: On a point of order, Madam Deputy Speaker. There are a few of us who were accorded an opportunity by the Speaker to speak very briefly about our colleague on the day that we had the impeachment proceedings. Are we going to be allowed to have a second bite at the cherry or are we taken as having spoken?

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wetangula, you know very well that it is the eye of the Speaker that will deal with the issue. Do not report yourself or others.

Sen. Wetangula: Madam Deputy Speaker, I asked that because we agreed that the proceedings would be taken from the HANSARD and submitted to the family of the late Sen. (Dr.) Kabaka. Therefore, if what I said on Thursday will be extracted and be part of it, then I do not need to take a chance that can benefit another Senator.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wetangula, you are very right. I have considered that point. If a Senator spoke on Thursday, they do not have to speak again because that has already been extracted. The contributions from today's sitting will be extracted this evening on time for it to be taken to the family.

Kindly proceed, Sen. Wambua.

Sen. Wambua: Madam Deputy Speaker, I thank you for giving me this opportunity to eulogize my friend and colleague, Sen. (Dr.) Kabaka. I am very sensitive

about time, but I plead with you to give me an additional two minutes because while eulogizing, I will also give a brief of what the funeral committee is doing.

The Deputy Speaker (Sen. (Prof.) Kamar): That is in order.

Sen. Wambua: Madam Deputy Speaker, I thank you for giving me this opportunity to eulogize my friend and colleague, Sen. (Dr.) Kabaka, the Senator for Machakos County, who left us on the 11th day of December 2020. For the record, Sen. (Dr.) Kabaka left us at 8.45 a.m. on 11th December 2020 and not earlier as had been circulated by a section of social media.

I would like to note that all of us have lost a dear friend and a great leader in this nation. The late Sen. (Dr.) Kabaka was a man who was very passionate about the things that he did especially the plight of the poor and the downtrodden in society.

The last conversation that I had with Sen. (Dr.) Kabaka, was about people in his county whose land had been taken for the construction of a mega dam and they had not been compensated. When he tried to put for their compensation, and it was not forthcoming, he took the initiative as an advocate of the High Court of Kenya and went to court to stop the project until his people are compensated.

When we had that conversation, he told me, “My brother” as he used to call me, “I want to go with you to see those people and because I know who you are, you will definitely cry to see the kind of people whose land has been taken away without compensation”. That speaks volumes about the kind of person the late, Sen. (Dr.) Kabaka was.

Madam Deputy Speaker, in my interaction with Sen. (Dr.) Kabaka, and I say this with humility to the people of Machakos County--- In fact, counting the number of times Sen. (Dr.) Kabaka has gone with me to Kitui for functions, I am convinced that he could have spent a lot more time in functions in Kitui than Machakos.

When I lost my auntie in May this year, it was Sen. (Dr.) Kabaka who called me and said that him and I should not bother other people. We would share the cost of the burial. We would buy the coffin and pay for transportation to go and rest my auntie. He drove himself to my home for the burial.

Madam Deputy Speaker, time will not allow me to say the many things I did with my brother, Sen. (Dr.) Kabaka, but one thing stands out. Earlier in the year, I mentioned to him that I was thinking of enrolling for a Masters Degree in Theology. He told me that on the day I would go to pick the forms for enrollment, he would go with me, so that we pursue the course together. That is how close he was to me.

God gave us Sen. (Dr.) Kabaka and God has called him. Blessed be the name of the Lord. It will be remembered how Sen. (Dr.) Kabaka stood with Kitui and Makeni and all the counties that were supposed to lose money in the Revenue sharing formula.

(Applause)

I remember how he was lobbied by so many people to abandon the course because Machakos was gaining money. In my presence, he told them that for as long as

his people in Kitui and Makueni were losing money, he would not accept to gain at the expense of his brothers and sisters.

May the soul of our brother and friend, Sen. (Dr.) Kabaka, rest in eternal peace.

Madam Deputy Speaker, with your permission I wish to inform the House that tomorrow is the day we will go to Mikuyu in Masinga for the final resting of our brother and colleague. We will leave the City at 7.00 in the morning.

I thank the Secretariat for the great support they have given the family and the organizing Committee to make sure that we give Sen. (Dr.) Kabaka a befitting send-off.

Transport for Senators has been arranged. We will meet here in Parliament at 6.30 a.m. Since the proceedings and happenings around Parliament are determined by our Standing Orders and traditions, we have agreed as a Committee that was appointed by the Speaker to coordinate the burial, that we will begin a new tradition in this Parliament. This is that when a Member passes on, it is only fitting that as they depart, they have an opportunity to be brought to Parliament for colleagues who will not be able to go to the morgue and the burial to pay their last respect.

We have agreed that tomorrow, we will pass by here with the body of our friend, for people to just pay their respects; meet and join with other colleagues, so that we leave Parliament as a convoy to Masinga through Thika Road. We expect to be in Masinga at around 10.00 a.m. when the programme will start and run through until around 4.00 p.m. when we intend to bury our friend.

This is just a call to our colleagues to kindly make that sacrifice tomorrow. Wake up early in the morning, and at 6.30 a.m., let us all be here. A few of us who are in the Committee will go to the Lee Funeral Home to bring the body. We will join our colleagues here and together go to bury our brother and friend.

Madam Deputy Speaker, I thank you for giving me the time to eulogize my friend and brief Members on what we are doing.

May the soul of my brother Sen. (Dr.) Boniface Mutinda Kabaka rest in God's eternal peace.

Sen. Murkomen: Madam Deputy Speaker, our colleague, Sen. (Dr.) Kabaka, was my senior in the legal profession. He is a man who if you met in this Chamber or outside there, you would mistake his simplicity for weakness. You would never tell that he was a man with immense knowledge and education. I think he had five degrees and was pursuing the sixth and a PhD.

If there was a Senator who engaged us intellectually in the Senate Social Media Group, it was Sen. (Dr.) Kabaka. I enjoyed their conversation especially late night because I am a late night sleeper. Him and Sen. (Dr.) Ochillo-Ayacko have always entertained us with very witty comments. In any conversation you would have with Sen. (Dr.) Kabaka, you would realize that he was deep both in the legal profession and philosophy of life.

His most memorable moment in this House, and which is his legacy, is his stand with those counties that were meant to lose money in the discussion on division of revenue.

When we were having that debate, Sen. (Dr.) Kabaka was part of “Team Kenya”. Sen. Sakaja, who was part of our leadership, will bear witness that most of us thought that he was the last person to stand firm because of the pressure that was there in so far as the decision to stand with the counties that were losing was concerned, but he stood very firm. I would also mention that Sen. Mutula Kilonzo Jnr. went with Sen.(Dr.) Kabaka to pray with a bishop.

When they came back Sen. Mutula Kilonzo Jnr. told us not to worry about Sen. (Dr.) Kabaka. He did not just confess to us but to God that he was going to stand firm with “Team Kenya” and he did so. It is very sad that this House and the country has lost such a gentleman at his level.

I used to joke with him that if his political career ends soon, he should consider a career in the Bench, so that he could write very good judgments based on the immense knowledge he had.

We will miss our colleague, but tell the people of Machakos to take heart. Your Senator did wonderful things in defending you outside there and inside this Chamber. God will guide you also to get another leader who will follow in the footsteps of Sen. (Dr.) Kabaka.

With those few remarks, I wish his family the very best and God’s grace.

Sen. Sakaja: Thank you, Madam Deputy Speaker. I join colleagues in offering my condolences to the people of Machakos, my neighboring county, as well as the family of our late departed colleague.

On 7th December, if I got the date right, I joined Sen. Mutula Kilonzo Jnr. and Sen. Wambua at Nairobi Hospital to visit our friend, who was supposed to wake up from surgery that evening. I was not allowed to see him, but we sat with family. I think the wife and one of the sons were seated next to us. We were looking forward that he would come to a few hours or days later.

On 11th December, 2020, Sen. Mutula Kilonzo Jnr. called me and put it very interestingly that:-

“The rebel-in-chief of ‘Team Kenya’, you have lost a general.”

I understood what he meant. That was very sad.

Sen. (Dr.) Kabaka was very jovial, engaging and extremely deep, as Sen. Murkomen has said. He was a friend. I remember at the time I addressed an issue about him, Sen. Mutula Kilonzo Jnr., and Sen. Murkomen for going to court to support the then governor of Nairobi County, Gov. Sonko, and I felt that they should have told me what they were doing. He took time to come to my office and explain what was going on. We became very close during the stalemate of revenue sharing formula. He was in our team. We had thought he would be the weak link, but he was strong.

That moment was not an easy for any of us, especially those whose counties had been gaining, but who chose to stand with the others. Every time, he would just call me to reassure me that we are moving in one direction. We did many things even outside Parliament, many of which, him and I will stay with the memory.

Madam Deputy Speaker, the people of Machakos have lost an honest and a selfless man. If you look at what he was doing at home and even the school he was

putting up, his love for the community and the truth, they have lost a great Senator. I hope that his memory will live on.

I am reminded of the words of Kahlil Gibran, the prophet when he speaks about death. He says-

“Your fear of death is but the trembling of the shepherd when he stands before the king whose hand is to be laid upon him in honour. Is the shepherd not joyful beneath his trembling that he shall wear the mark of the King, yet is he not more mindful of his trembling? For what is it to die but to stand naked in the wind and to melt into the sun?

And what is it to cease breathing, but to free the breath from its restless tides, that it may rise and expand and seek God unencumbered?

Only when you drink from the river of silence shall you, indeed, sing.

And when you have reached the mountain top, then you shall begin to climb.

And when the earth shall claim your limbs, then we shall truly dance.”

Sen. (Dr.) Kabaka, go well and dance on.

Thank you.

Sen. (Prof.) Onger: Thank you, Madam Deputy Speaker. It is with a very heavy heart that I mourn the passing on of a great Senator, debater, a very intellectual academic giant and a person who was endowed with tremendous ability to interpret the social circumstances and economic welfare of his people.

Indeed, those of us who witnessed his ability to debate in this House, he was able to, in a very brief manner, summarize the events of the debate and give a way forward on how that debate should go.

More so, his acumen and knowledge in the legal profession gave him a very tall position in that professional docket. He was a man with a lot of experience that he was able to bring on the table.

Of the Parliamentary debate, he was a man, who in his social engagement, was very mindful of other people’s welfare. I know that every time and one who approached on something that had to do with either somebody who had died somewhere, he was a ready hand in giving support to that person and the projects that needed to be done.

In fact in terms of his contribution to this nation, he has contributed more than many others who would have done in his place if they had been given that time span that he has been with us.

In sympathy with his family, we want to condole with the family and the people of Machakos for losing a very able Senator, and hopefully and God willing, they may find somebody to step into his shoes.

We pass our condolences, particularly the close family. I know that at this time of grief, many people may doubt what there is. However, for those of us who are glued in the Bible, we know that there is hope beyond death. Death is just a shadow. Death comes at the time like this. Death is a biblical initiation.

We have seen a lot of people die. However, at the end of the day, we should all believe and trust that eventually when the Lord Master comes on that glorious day, as

recorded in Revelation 21:1-3; that when the Jerusalem City descends on this earth, we shall all be pleasantly there singing a new song, which even the Angels of Heaven will not be able to read and understand the tonics of that song except the ones who have triumphed on this world. I think he will be one of them.

Thank you, Madam Deputy Speaker, for giving me this opportunity to eulogize one of our best and consummate debaters in this House.

Sen. (Eng.) Maina: Thank you, Madam Deputy Speaker. I stand to remember our colleague, Sen. (Dr.) Kabaka. Sen. (Dr.) Kabaka always came out as a very humorous person who seemed to wish everybody well. It was not just a casual thing for him to say that even if Machakos was getting more money, he could not agree with that, if his brothers and sisters in Makueni and Kitui were not getting.

I remember at one time asking him jokingly why that had to be. He was so convinced and convicted. I want to tell his people that they had a selfless leader and a man who seemed and wished no harm.

I remember when we were approving the Inspector General (IG) of Police, Mr. Hilary Nzioki Mutyambai, Sen. (Dr.) Kabaka stood firmly and told this House that the man was his classmate and appealed to us to support him. I remember rising to say that when one of our colleagues has given those kind of credentials, there must be something true about the person we are approving. As a result, we supported the present IG of Police. He was a man who stood on what he believed and for the interest of his people.

I want to make two final appeals. The media should be wary and considerate of families. When something like this happens, the media should not bring emotional issues that are neither here nor there. Somebody passes on and that is it. Do not bring other stories that are emotionally amusing.

The other appeal is that Sen. (Dr.) Kabaka has left a family. I have been wondering what we can do in this House to ensure that we give reprieve to that kind of a family. We will lay Sen. (Dr.) Kabaka to rest tomorrow, but I wish we had a system in this House or Parliament where something is done to ensure that the continuity of the lives of the children and family is not affected as much.

At the end of the day, God knows best what he did and what he is doing. Let us pray and appreciate God for the life he gave to our brother. May the wish of God be done. May God bless his family and take care of it more than anybody can take care of it.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Cheruiyot, proceed.

Sen. Cheruiyot: Thank you, Madam Deputy Speaker for this chance. I want to take this opportunity on behalf of the people of Kericho and Kenyans who may not get a chance, to share the grief in this format and manner to pass their condolences to the people of Machakos, the family of our colleague, Sen. (Dr.) Kabaka, following his untimely demise.

I agree with those of my colleagues who agree that Sen. (Dr.) Kabaka was a witty man and was blessed with a way of simplifying the complex issues. On one occasion, I had the chance of travelling with our colleague, Sen. (Dr.) Kabaka, to Colombo in Sri Lanka where we spent two weeks together with other colleagues. We happened to have

been staying at the same hotel. Many evenings after the conference we would spend time together walking around and discussing many issues. At that point, I got to learn of the man that Sen. (Dr.) Kabaka was. He was a great friend and a person who interacted deeply and wanted to know more about people.

A distinguishing factor about him that I do recall up to date is that on many occasions when we travelled as Parliament and in our delegations, you will hardly find Senators or Members of Parliament engaging the staffers we travelled with. Curiously, as we are giving our tributes to Sen (Dr.) Kabaka, I have recalled that most of our evenings we would hang out with the Parliamentary staff that we travelled with. This was Sen. (Dr.) Kabaka for you. He had a way of not distinguishing between the high and those that are considered not to be of their class or rank. He would interact freely with them, enjoy good times and share with them. This is the way of life.

As the Bible says there comes a time when a man is born and a time to die. The time has come for our colleague to depart from this world. We are now mourning him. Tomorrow we shall go to his home village to bid him farewell and give our condolences to the people of Machakos County for losing such a distinguished leader.

One of the greatest contributions we will never forget is what he did for us when we caucused together in “Team Kenya”. We had many sessions and meetings together. This was an issue that not many would have handled. You would imagine that coming from a county that was gaining and having your governor, who is fairly loud, get on all media stations and tell residents of your county how you are a useless person. That your county is supposed to be gaining certain amounts of money, but because of your other considerations, you are not supporting it. Since he was convinced in the course and path he had taken, he believed in a better Kenya as many of us who caucused during that particular time did, he stood firm.

For those great attributes, I will forever cherish the moments and the memories that we had with this great colleague of ours.

Finally, I conclude by reminding many of our mainstream media not to behave like tabloids because many things they said about him were very unfortunate. I called one of the editors and told him that we politicians have families too. Some of the things you are writing about people are completely unnecessary. It is not fair that it will come a time that people will say certain things about you. It is about media ethics that I hope can be respected and restored by the Media Council of Kenya (MCK).

With those many remarks, I say rest in peace good friend and colleague, Sen. (Dr.) Kabaka.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Let us try to use two minutes, even though we said three minutes, so that all Members will get a chance. I still have more than 15 Members who want to give their tributes.

Sen. Pareno, you have the Floor.

Sen. Pareno: Thank you, Madam Deputy Speaker for giving me this opportunity to mourn a friend and a colleague. I knew Sen. (Dr.) Kabaka before we came to this Senate. I had known him for quite some time back because he was an Orange Democratic Movement (ODM) Party Member. I had an encounter with him during those days as a

Member of the ODM party before he ran on the current ticket he used to come to the Senate. Sen. (Dr.) Kabaka is a colleague in the law profession. My path and his criss-crossed as we ran around in the courtrooms to defend our clients. He was a very committed lawyer. He finally became a colleague in the Senate. I admired him and his practice of the law.

Madam Deputy Speaker, the last encounter that I had with him just before we lost him is a visit he made to my home in Mashuru in Kajiado County. He came in with Sen. Wambua, and I hosted them. He had plans and a life that was so vibrant.

He had asked me to help him get a breed we call the Dorper sheep. When he came home, he identified a few that he hoped he was going to purchase. He also wanted to have a breed of animals we call Similtans. He wanted to buy some from us. It was not to be.

He had those plans, but I guess God had bigger plans for him. All we can do is mourn him. We miss him. He was a darling and a friend to many of us here in the Senate. I pray that he becomes a darling to the angels in Heaven.

Rest in peace, colleague and friend, Sen. (Dr.) Kabaka.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Kinyua.

Sen. Kinyua: Asante sana, Bi. Naibu Spika kwa kunipa fursa hii. Kwanza kabisa, ningependa kutuma rambirambi zangu na za familia yangu na watu wote wa Laikipia kwa familia ya mwendazake Sen. (Dr.) Kabaka, pamoja na watu wa Machakos.

Jambo ambalo ninakumbuka kuhusu Sen. (Dr.) Kabaka ni kwamba alikuwa mtu mkarimu sana. Ninakumbuka wakati ndugu yetu, mwendazake Sen. Oluoch, alipotuacha, Sen. (Dr.) Kabaka alijitolea kulipa karo ya wanafunzi wa mwendazake. Ninakumbuka aliandika hundi ya kusaidia. Ukarimu wake ulijitokeza vizuri sana.

Ninakumbuka kama msomi. Tulisafiri naye katika nchi ya Australia. Tulipokua huko, aliniambia kitu kizuri zaidi. Alienda kwenye maktaba na akanunua vitabu vya wanasheria. Ni mtu aliyejulikana sana kwa mambo ya masomo.

Jambo lingine ambalo nina jua ni kwamba alikuwa mtu stadi sana katika mijadala ya Seneti. Kwa hivyo, tutamkosa sana.

Jambo lingine lililojitokeza kwa Sen. (Dr.) Kabaka ni kwamba alikuwa na msimamo dhabiti. Mimi nilikuwa nikimrai ateme ‘*Team Kenya*’ na ajiunge na timu yetu ya “*one man, one vote, one shilling*,” kwa sababu kaunti yake ilikuwa imeongezewa pesa. Lakini alisimama kidete na kusema kuwa hawezi kuwaacha ndugu zake kutoka Makueni na Kitui. Ni mtu ambaye akisema jambo, analisimamia kwa ustadi sana.

Yeye ni rafiki yangu na rafiki wa wengi hapa. Tutamkosa sana. Safiri salama.

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

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

The Temporary Speaker (Sen. Pareno): Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Thank you, Madam Deputy Speaker, for giving me a chance to eulogize and send condolences to the family of our colleague, Sen. (Dr.) Kabaka.

If ever there was a jovial and kind man in this Senate, Sen. (Dr.) Kabaka was such a person. I am aware of many verses in the Old Testament and New Testament that compare life to the grass that withers away, and the flower that fades away. You will find those words in many parts of the scripture.

When I remember how fast Sen. (Dr.) Kabaka has left us, I only hope that as the word of the Lord lasts and stays forever, his life will remain with us and with generations to come, because what we place in record regarding Sen. (Dr.) Kabaka will be read and attested to by future generations.

Madam Temporary Speaker, I want to compare Sen. (Dr.) Kabaka to a famous statesman in old Rome called Marcus Cicero. He was a man of letters. He was a lawyer, a statesman and an orator. He was a successful lawyer and politician. The only difference between him and the late Sen. (Dr.) Kabaka is that he tried to overthrow the Government of Rome, but the late Sen. (Dr.) Kabaka never tried. However, in every respect, including calling for democratic rule, because Cicero also wanted the old republican tradition to be maintained in Rome before Julius Caesar and after he became the Emperor of Old Rome.

A great man he was. He always sat in front of me because I sat behind him and vice versa. He was truly inspiring as a man of letters and human being. I hope we will remember him for the good deeds he did for this country and being firm and principled. Whether we disagreed or agreed, he remained principled, and I will always remember that.

Finally, Madam Temporary Speaker, I always encourage all the young Senators to create their brand. The late Sen. (Dr.) Kabaka created his brand. Say everything that you must say even if people think that you are wrong. The only thing we must always maintain is decorum because as politicians, sometimes we go overboard. Lawyers never go the way politicians go. Bishops never call each other names like politicians do. The late Sen. (Dr.) Kabaka never did that. So---

(Sen. Orengo's microphone went off)

Sen. (Dr.) Langat: Thank you, Madam Temporary Speaker, for also giving me this opportunity to mourn one of our great leaders, the late Sen. (Dr.) Kabaka. Death is a monster that spares no one irrespective of wisdom or knowledge.

The late Sen. (Dr.) Kabaka was a great man. I heard many of us talk about him as a great debater. Indeed he was a great debater. If anyone ever sat with him outside this particular House in a free environment and listened to him, they will agree that he was a man with a lot of knowledge.

He aspired to become the next governor of Machakos. He had a plan for that particular vision. I remember one time I asked him if he was an economist because his arguments in the area of economics expressed a lot of wisdom and brilliance.

As Sen. Cheruiyot has said, I want to express a lot of concern to the MCK. Sometimes what the social media and even the mainstream media say about people, especially when they are dead, is disrespectful to the families. They forget about the ethics they learnt in the university about being mindful of the significant other people. Sometimes what they say is more injurious to the living than even---

(Sen. (Dr.) Langat's microphone went off)

Sen. Mutula Kilonzo Jnr.: Thank you. Madam Temporary Speaker, I hope I can do this in three minutes. It is very difficult to eulogise the late Sen. (Dr.) Kabaka.

When I did not see him here for three weeks after the Naivasha Retreat on the Building Bridges Initiative (BBI), I called him personally and he told me he was unwell. He explained that he had several symptoms and I advised him to go and get checked. It turned out that he had COVID-19 and a tumour.

After that, Sen. (Dr.) Kabaka was a person, who even when unwell, still had coffee here and there. He was full of life. It was very disturbing to receive a call on 4th December, 2020 that he was unwell. I am still very traumatized because I had to do a lot of organization through the Parliament to get Sen. (Dr.) Kabaka checked.

Madam Temporary Speaker, I was told about his diagnosis of excessive bleeding at 6.00 a.m. on that day. Although I wanted to disclose to all you Members what had befallen Sen. (Dr.) Kabaka, I really restrained myself. As a result, I really suffered with that information. Therefore, just to find him immobile at the hospital was more traumatizing.

I met Sen. (Dr.) Kabaka in 2009 in Kabaa, where I went to pick my lovely wife, Anita, where she comes from. I have known him and he used to call me his in-law, in Kikamba "*athoni*." For Sen. (Dr.) Kabaka and his largeness of life to be reduced into a coffin tomorrow is something that will be very traumatizing to me. That great man with great humour, who used to sit behind us here; it is a tragedy.

Madam Temporary Speaker, I want to remind you, Members, that in the end as politicians, we are all human beings; let us be friends. Let us know one another. May his soul rest in peace.

Thank you.

The Temporary Speaker (Sen. Pareno): I really have a problem with time. I would request if you can use about two minutes instead of three, it would be easier. I do not know how you would use the two minutes.

Sen. Wako, proceed.

Sen. Wako: Thank you, Madam Temporary Speaker for giving me this opportunity to talk about a learned colleague. Sen. (Dr.) Kabaka was serving a first term as Senator. As usual when those serving second term receive those who are coming in for the first time, we observe them.

Sen. (Dr.) Kabaka quickly made his mark upon me as somebody who was giving literally his all to serve the people who elected him. That came out clearly when you

talked with him. It came out clearly, when he contributed in this House. He was very much concerned.

The Temporary Speaker (Sen. Pareno): Sen. Wako, there is a point of order by Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: On a point of order, Madam Temporary Speaker. This is a Special Sitting. We are supposed to sit until midnight, and we are very few of us left. Not all these Senators here will find an opportunity to say something tomorrow. Although the Standing Orders require that I request for an extension of time, since it is a Special Sitting, I am not sure whether that Standing Order applies.

However, even if it does not apply, would you be kind enough to allow at least the people in this Chamber to say something? Even if you give them two minutes, we would not extend beyond even 7.00 p.m. This is because they will not get that opportunity tomorrow.

Thank you.

The Temporary Speaker (Sen. Pareno): It looks like you read my mind. I was actually getting a copy of the Standing Orders to quote the relevant section to be able to extend time to allow those that are here to be able to talk about our colleague. Being a Special Sitting and it involves the death of one of our Members, I think we can do for those that are here.

I will be able to extend time maybe by ten or so minutes, for us to conclude. Those that are here will be able to be accommodated.

Please proceed Sen. Wako.

Sen. Wako: Thank you, Madam Temporary Speaker. I had not known Sen. (Dr.) Kabaka before. He was not in my party. However, when he came here, he impacted upon me very seriously as a Member of the legal profession. In fact, he is the one who took the initiative to come and consult me from time to time on issues legal. Through that, I came to know him fairly well.

However, I would not have known him even better until we had the debate on the formula. This is because he was somebody whose county was getting quite a bit of money and yet, he was ready to say, no.

Madam Temporary Speaker, his own Governor condemned him from time to time in the Press. On the day of decision on that matter, I observed to see how he would react. It may be recalled that on the day itself, even the Senate Minority Leader, really defended Sen. (Dr.) Kabaka against the attacks by the Governor of Machakos County. In my mind, I thought that he would change his mind and vote for the formula because his county was going to benefit. However, he walked to the microphone and said a big 'No' to the formula.

Although the late Sen. (Dr.) Kabaka was concerned with the issues of his people, the rule of law, social justice and so on, he acted in accordance with---

The Temporary Speaker (Sen. Pareno): Sen. Wako, your time is up, but I will give you one minute to finish making your contribution.

Sen. Wako: Madam Temporary Speaker, I would like to pass condolences on my own behalf and on behalf of the people of the county of Busia at the passing away of the

Senator for Machakos County, Sen. (Dr.) Kabaka. May the Almighty God give the family of Sen. (Dr.) Kabaka strength and comfort during this period of sorrow and grief.

The Temporary Speaker (Sen. Pareno): Proceed, Sen. (Prof.) Kamar.

Sen. (Prof.) Kamar: Madam Temporary Speaker, I thank you for giving me the opportunity to join my colleagues in registering, on behalf of the people of Uasin Gishu County, our deepest condolences to the family of the late Sen. (Dr.) Kabaka; a man who distinguished himself as a great debater and seasoned lawyer. The late Sen. (Dr.) Kabaka gave a lot of advice on legal issues to the committees that he served in. We shall really miss the late Sen. (Dr.) Kabaka, but believe that God has a better plan for him.

Sen. (Dr.) Kabaka died at a time when I had told him that I would go to Machakos County for pay back because my aunty was married in 1965 and so, we were going to Machakos County for the beautiful brides. During the planning of our journey to Machakos County, I looked for Sen. (Dr.) Kabaka, but could not get him on phone. Therefore, I asked Sen. Mutula Kilonzo Jnr. to accompany me. We were happy to get the two beautiful brides, but I was sad that one of the times that we travelled to Machakos County for bride price negotiations, the late Sen. (Dr.) Kabaka was in hospital. We will really miss him.

Madam Temporary Speaker, on the day that Sen. (Dr.) Kabaka died we also lost the late hon. Joe Nyagah, at 1.30 p.m. I would like to send my deepest condolences to the family of the late hon. Joe Nyagah, who was also a Member of Parliament and Cabinet. I would also like to send my condolences to the family of the Governor of Nyamira County, whose body is also being preserved at the Lee Funeral Home. I send my deepest condolences to the people of Nyamira County, through Sen. Omogeni, the Senator for Nyamira County. This is a very difficult time for this county---

The Temporary Speaker (Sen. Pareno): Your time is up, but I will give you one more minute to finalize.

Sen. (Prof.) Kamar: Madam Temporary Speaker, the death of these very dear brothers is part of the losses that have been brought about by COVID-19. We must take COVID-19 seriously. I join those who have urged county governments to reconsider how we treat our doctors. We need to find ways of assisting our doctors, so that they can assist our people.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): Proceed, Sen. Shiyonga.

Sen. Shiyonga: Madam Temporary Speaker, I thank you for giving me this opportunity to join you in sending my tribute to the family of the late Sen. (Dr.) Kabaka Bonface Mutinda. I would like to begin by stating that the hour of death cannot be forecast. We can only imagine that death will be in a distance future. The death of our colleague, Sen. (Dr.) Kabaka came very soon.

Madam Temporary Speaker, I had time to go and visit him in hospital the day he passed on, only to be told he was no more. You can imagine the feeling; going to visit somebody and being told that he was being taken to the morgue.

With all due respect, it is my honour to speak about him today. Although I wish I were talking about his retirement party and celebrating what a great man he was, I am eulogizing Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka was an honourable Member and articulate leader who brought courage in everything he did. He had a fine political mind. We can all think that we will continue to live, but life is so unfair that death came so soon for our colleague. It has taken him so soon from the family and we shall never see him again.

Allow me one minute because I just want to finish my tribute. It was too much for me to hold back my tears when I was in the hospital that I was headed to the morgue.

Death is a reminder to all of us of how short life is. Please, treasure every moment you live.

Rest in Peace my colleague, Sen. (Dr.) Kabaka, until we meet again. May God bless you and bless your journey.

Sen. Farhiya: Thank you, Madam Temporary Speaker for giving me this opportunity to send my heartfelt condolences to the family of Sen. (Dr.) Kabaka. I also send my condolences to my backyard. A chief from my area was beheaded today by the *Al Shabaab*. That shows that the *Al Shabaab* elements can attack anybody anytime. It does not matter whichever religion, but just at their convenience.

Sen. (Dr.) Kabaka was very passionate about the people of Machakos and had a great vision for the County, where he hoped to be the governor. I am sad that he never realized his vision.

Sen. (Dr.) Kabaka was a man of his own words. If he said one word, that was what you got. He was very reliable as a colleague. He was there for you when you needed him. I remember we visited Sen. Faki's home with him when he lost his son. He was empathetic to colleagues.

Before the Committee memberships were changed, I shared two Committees with Sen. (Dr.) Kabaka and I got fond of him. I have never attended a burial ceremony. This will be my first time because of how dear Sen. (Dr.) Kabaka was to all of us.

I remember when Sen. Wambua brought a Motion on pending bills on behalf of his county--

The Temporary Speaker (Sen. Pareno): Please, conclude in one minute.

Sen. Farhiya: Sen. (Dr.) Kabaka supported Sen. Wambua passionately in defending the people who were never paid. Sometimes he was so lively that I cannot imagine that we have lost him. That is something I have not conceptualized in my mind up to now.

As has been said, life is too short. Let us appreciate each other when we are alive.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): Proceed, Sen. Kasanga on the *Zoom* platform.

Sen. Kasanga: Thank you, Madam Temporary Speaker for giving me this opportunity as well. On my behalf and that of my entire family - the entire Kasanga

Mulwa family - I send our most heartfelt condolences to the family of Sen. (Dr.) Kabaka and the citizens of Machakos.

I cannot believe that Sen. (Dr.) Kabaka is gone. He was a personal friend, beyond being a colleague. I had the honour of attending several functions alongside him.

(There was a technical hitch)

The Temporary Speaker (Sen. Pareno): We have lost your voice; we can only see your face. Can you hear us?

Sen. Kasanga: Yes, I can hear you. Somebody had muted me.

The Temporary Speaker (Sen. Pareno): You are back. Please, proceed.

Sen. Kasanga: Thank you, Madam Temporary Speaker. As I said, I had the opportunity to attend several functions with Sen. (Dr.) Kabaka. For instance, we raised funds at a church in Machakos, where the Speaker was presiding and then he went and hosted us to a wonderful lunch in Machakos Town. He came to our Catholic Church in Daystar and helped us to raise funds. We spent an entire day with him.

Madam Temporary Speaker, Sen. (Dr.) Kabaka was a lover of trees. We have a forest that he came to plant with us of over 1,000 trees. We call it the forest of Sen. (Dr.) Kabaka in Lukenya. That is how much he loved trees. He planted a lot of trees in Ukambani.

I have lost a personal friend, somebody who shared information freely and gave advice when it was required. He was always briefing me to make sure that I work hard in my business and make that it does not get over showered by Senate affairs. He was a good man and hardworking in his practice. He was self-made; the sort of the leader that young people need to emulate. Young people need to understand that you can find your way into the highest level of this House by sheer hard work, commitment and honour in everything that you do.

He was really a good example to the young people. He was also very steadfast. As most of my colleagues have said, he was a man of his word. What he said, he meant it and stood by it.

I really feel the loss of Sen. Kabaka. I will personally miss him. I feel it for the citizens of Machakos County because he had a vision for them.

Madam Temporary Speaker, I pray that his soul may rest in eternal peace and his family may be comforted by the love of God. The man he was, he will always remain and will be.

Thank you, Madam Temporary Speaker, for the opportunity.

The Temporary Speaker (Sen. Pareno): Sen. Kasanga, your time is up.

Sen. (Dr.) Mwaura, kindly proceed.

Sen. (Dr.) Mwaura: Thank you, Madam Temporary Speaker. I want to mourn my friend. This was someone whom I knew many years when were in the same ODM party. The two of us stood out because he was Kamba and I am a Kikuyu. We used to console each other that 'we may be in the wrong party because of ethnicity.'

Nevertheless, because of centre left ideology, we stood together shoulder to shoulder. It is quite interesting that in the Twelfth Parliament, we made it to the Senate.

He was a friend whom we shared a lot in terms of the books that we read and the good command of English since the time that we were inducted together as Senators in Naivasha.

Further, his benevolence and great humanity was displayed when the Senator for Migori, Sen. Ben. Olouch, died. He volunteered - only him in that big funeral - to educate his children. That really says a lot.

Sen. Kabaka is well read. He had four Masters degrees. He is not just somebody who reads books; he has a lot of them. He was enrolled into another over and above pursuing a Doctorate of Philosophy (Phd) degree.

Sen. Kabaka was the only man who stood with me by signing my papers when I was competing to be the Deputy Speaker of this House. For that, I will forever remain grateful. He was a man who believed in my cause. We served with him in the Committee on Finance and Budget.

Madam Temporary Speaker, we also travelled together. I remember we were with him last year in Cape Town enjoying the various aspects of that place, including Robben Island.

He was a great man. In fact, he frog-matched me this year when we were defending the Senate at Naivasha in the retreat. That was his commitment. He just took me from the chair and said: "let us go and fight for it." Therefore, I mourn a friend; a great patriot, a man who was ahead of his time. I believed he would have been the future Governor of Machakos County.

May you rest in peace, Sen. (Dr.) Boniface Kabaka.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Madam Temporary Speaker. I want to take this opportunity to condole with the family of Sen. (Dr.) Kabaka and the people of Machakos. I do so on my own behalf, my family and the people of Migori. We, the people of Migori, had the misfortune of losing my predecessor and we had occasion to experience the sadness that engulfed Machakos. In such sad times, we recourse to God and one another, and we share this and all the grief.

I want to say two things about Sen. (Dr.) Kabaka. He was a pompous person with very colourful language. Those who do not understand pomp and colorfulness will mistake it for arrogance. If you went beneath the veneer of Sen. (Dr.) Kabaka, he was a humble and loving person.

Among the Senators who are here, in my view, if history is written, you will find that he will occupy one of the front chapters. Most of us will occupy the footnotes of that history because he earned it. He was a person who stood and fought for justice, particularly social justice.

I am happy that Sen. (Dr.) Kabaka is not being cremated. There is a trend of people being cremated, and I almost got caught in that trend. There is this book in the Bible that talks about Lazarus. When the Lord went to look for him, He found the body of Lazarus and raised it. If Lazarus had been cremated, there would be no body to rise.

Therefore, I am happy that when the time of Sen. (Dr.) Kabaka comes to rise, his body will be there to be raised.

Thank you, Madam Temporary Speaker.

Sen. Omogeni: Madam Temporary Speaker, on my behalf, my family and the people of Nyamira, I take this opportunity to pass my condolences to the family of the late Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka was a very special friend to me. Other than Sen. Cherargei, Sen. Mutula Kilonzo Jnr. and Sen. Waqo, he is one of the few Senators whom I have been privileged to host at my home in Nyamira. He has shared a meal with my mum. What stands out from the other three is that he even conducted a *harambee* for my church called Motagara Seventh Day Adventist (SDA).

Sen. (Dr.) Kabaka and I were privileged to work for the same law firm, Kingori, Kariuki and Company Advocates. It is the staff in that law firm that interested me to know Sen. (Dr.) Kabaka; they described him as a very happy and jovial person.

In this House, we cannot compete for anybody who is as friendly or as jovial as Sen. (Dr.) Kabaka. We cannot find a man who was as bold, brave and courageous as Sen. (Dr.) Kabaka. We have lost a great friend and a man who had a lot to contribute to the growth of this House as a Senate and the people of Machakos.

Sen. (Dr.) Kabaka was not the richest man in this House, but he was the most generous. He was free to give to a social cause; church *harambees* and when people had died. I hope that the people of Machakos will consider rewarding a member of the family, may it be a son or daughter with that Senatorial seat of Machakos.

May God bless his soul in eternal peace.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me this opportunity to condole with the family of my colleague. On behalf of my family, my own behalf and that of Persons with Disabilities (PWDs) in this Republic, I want to say *pole sana* to the family of Sen. (Dr.) Kabaka.

Indeed, as colleagues have said, Sen. (Dr.) Kabaka was a friend to everyone. He was empathetic and a team player. He would empathize with all colleagues. Anytime he spoke to someone, he had something to tell him or her.

I remember last year I took a team of Kenyan players to South Africa. When I told Sen. (Dr.) Kabaka that I was going to South Africa, he gave me the contacts of his sister and linked us up, and we interacted. The sister confirmed that Sen. (Dr.) Kabaka educated all his siblings.

Sen. (Dr.) Kabaka had a big heart and he did what God intended him to do. This is a lesson to us; that when God gives us a role in this world, we should endeavour to do our God-given role because at the end of the day, we have to go back to him.

Death is painful, but we have to thank God for the opportunity he gave us to be with Sen. (Dr.) Kabaka. It is also a lesson to us that we should endeavor to leave a legacy, so that we can be remembered for the good deeds we have done and God has allowed us to do. *Pole sana* to the family of Sen. (Dr.) Kabaka. I hope that God will favour us to ensure that his legacy in leadership and family comes back to the Senate and Parliament.

The Temporary Speaker (Sen. Pareno): Order, Senators! I pass my condolences to the family of the late Sen. (Dr.) Kabaka. We have said much, but not enough to describe him.

May he rest in peace.

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, having concluded the business of the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 9th February, 2021, at 2.30 p.m.

Merry Christmas and happy New Year to the Senators.

The Senate rose at 6.47 p.m.