

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
THE HANSARD
SPECIAL SITTING

*(Convened vide Gazette Notice
No.4005 of 26th April 2021)*

Wednesday, 28th April 2021

The House met at 10.00 a.m.

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

PRAVERS

COMMUNICATION FROM THE CHAIR

SPECIAL SITTING

Hon. Speaker: Hon. Members, I wish to welcome you back to the House, and hope that you have kept safe as you engaged with your families and constituents.

Pursuant to the provisions of Standing Order No.29 relating to the procedure for convening of Special Sittings of the House during recess, I wish to report to the House that on 22nd April 2021, I received a letter from the Leader of the Majority Party requesting that I convene a Special Sitting of the National Assembly to consider certain matters. Having taken cognisance of the urgency of the matters specified in the letter by the Leader of the Majority Party, I acceded to the request to convene Special Sittings today, Wednesday, 28th April 2021 and tomorrow, Thursday, 29th April 2021, commencing at 10.00 a.m. for the Morning Sitting and at 2.30 p.m. in the case of the Afternoon Sitting, on both days, for purposes of:

1. Notification of a Message from the Senate on the Division of Revenue Bill, 2021.
2. Tabling of reports of the following committees:
 - (a) Report of the Budget and Appropriations Committee on consideration of the Senate Amendments to the Division of Revenue Bill, 2021.
 - (b) Report of the Departmental Committee on Education and Research on the vetting of the nominees for appointment to the positions of chairperson and member of the Teachers Service Commission.
 - (c) Report of the Departmental Committee on Education and Research on the vetting of the nominee for appointment to the position of Principal Secretary in the State Department for Implementation of Curriculum Reforms.
 - (d) Joint Report of the National Assembly Departmental Committee on Justice and Legal Affairs and Senate Standing Committee on Justice, Legal Affairs and

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Human Rights on the Constitution of Kenya (Amendment) Bill, 2020 (A Bill to amend the Constitution of Kenya by Popular Initiative) promoted by the Building Bridges Initiative).

3. Tabling of any other Papers with statutory timelines.
4. Transaction of the following business:
 - (i) Notices of Motion and consideration of Special Motions on:
 - (a) The nominees for appointment to the positions of chairperson and member of the Teachers Service Commission; and,
 - (b) The nominee for appointment to the position of Principal Secretary in the State Department for Implementation of Curriculum Reforms.
 - (ii) Consideration of the Public Petition for the removal of Ms. Tabitha Mutemi from the membership of the Media Council of Kenya.
 - (iii) Consideration of Senate Amendments to the Division of Revenue Bill, 2021.
 - (iv) Second Reading, Committee of the whole House and Third Reading of the Constitution of Kenya (Amendment) Bill, 2020 (A Bill to amend the Constitution by Popular Initiative) promoted by the Building Bridges Initiative.

Hon. Members, pursuant to provisions of the Standing Order No.29, I did gazette the said Special Sittings of the House vide *Kenya Gazette* Notice No.4005 of 26th April 2021. Subsequently, the Sittings of the House today, as well as tomorrow, are properly convened.

Hon. Members, as you are aware through the notifications sent to you in the course of the ongoing recess, I received two Messages from the Senate regarding its passage of the Division of Revenue Bill (National Assembly Bill No.7 of 2021) with amendments to the Schedule regarding conditional allocation to counties, as well as passage of the Mung Beans Bill (Senate Bill No. 9 of 2020).

Pursuant to the provisions of Standing Order No.41(6)(c) and the resolution of the House of 10th February 2021, I did refer the said Bills to the Budget and Appropriations Committee and the Departmental Committee on Agriculture and Livestock, for consideration respectively.

I also received a Statutory Instrument, Legal Notice No.27 of 2021 on exemption of Income Tax, which I determined to be of priority and forwarded to the Committee on Delegated Legislation for consideration pursuant to the resolution of the House of 30th March 2021 on business received during the recess period.

On a sad note, Hon. Members, we learnt with great dismay of the passing on of the late Member for Kiambaa Constituency and Chairperson of the Departmental Committee on Administration and National Security, Hon. Paul Koinange, on 31st March 2021 while undergoing treatment at the Nairobi Hospital. This was truly a profound loss for the Parliament of Kenya, the country as a whole and, indeed, the international community.

I wish to convey my utmost gratitude to all Members for their contributions, condolences and support during this difficult time, as well as to the *ad hoc* committee that spearheaded the funeral arrangements chaired by Hon. Peter Mwathi, Member of Parliament for Limuru. This House has, without doubt, lost a trustworthy, calm, friendly, consistent and devoted leader. I request that we rise and observe a minute of silence in honour of our departed colleague, Hon. Paul Koinange.

(Hon. Members observed a moment of silence)

I thank you. May his soul rest in eternal peace. Next Order.

MESSAGES

MESSAGE FROM THE SENATE

Hon. Speaker: Hon. Members making your way please take your seats.

Hon. Members, as you are aware, Standing Order 41(5) of the National Assembly Standing Orders requires the Speaker to cause the transmission of any Message received from the Senate at a time when the House is not in session to every Member and later report such Message to the House at its next sitting. In this regard, on 19th April 2021, I did notify you of a Message from the Senate regarding the passage of the Division of Revenue Bill (National Assembly Bill No. 7 of 2021).

Hon. Members, the Message conveyed that the Senate considered and passed the said Bill on Tuesday, 13th April, 2021 with amendments to the Schedule, and now seeks the concurrence of the National Assembly on the said amendments in accordance with the provisions of Article 112 (1)(b) of the Constitution. Upon notification to all Members pursuant to the provisions of Standing Order 41(5) and (6), I did refer the Message to the Budget and Appropriations Committee for consideration. I am aware that the Committee is already seized of the matter and will submit its report in the course of this Morning Sitting, to guide the House during its consideration of the Senate amendments to the Bill.

Hon. Members, given the urgent need to pass this Bill, the amendments have been scheduled for consideration by the House during this Morning Sitting, and they will be considered in the manner provided for under Standing Order Nos. 145, 146 and 147 (*consideration of Senate amendments to Bills originating in the National Assembly*).

I thank you Hon. Members.

PAPERS LAID

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House today Wednesday, 28th April 2021 Morning Sitting:

Legal Notice No. 27 of 2021 on Exemption from Income Tax and Explanatory Memorandum from the National Treasury and Planning.

Hon. Speaker: The Chairman, Departmental Committee on Justice and Legal Affairs Committee.

Hon. Clement Kigano (Kangema, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House today Wednesday 28th April 2021:

The Joint Report of the National Assembly Departmental Committee on Justice and Legal Affairs and the Senate Standing Committee on Justice, Legal Affairs and Human Rights on the Constitution of Kenya (Amendment) Bill, 2020.

Thank you.

Hon. Speaker: The Chairperson, Departmental Committee on Education and Research.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday 28th April 2021:

Reports of the Departmental Committee on Education and Research on its consideration of the following:

1. The Vetting of Prof. Fatuma M. Chege, PhD, for Appointment to the Position of Principal Secretary, State Department for Implementation of Curriculum Reforms in the Ministry of Education.
2. The Vetting of Dr. Jamleck Muturi John, PhD, and Mr. Timon Alfred Otieno Oyucho, Nominees for Appointment to the Positions of Chairperson and Members respectively for the Teachers Service Commission.

Thank you, Hon. Speaker.

Hon. Speaker: Chairperson, Budget and Appropriations Committee.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today Wednesday 28th April 2021, Morning Sitting:

Report on the Message from the Senate on the Division of Revenue Bill, National Assembly Bill No. 7 of 2021.

I thank you.

Hon. Speaker: Very well. Next Order!

NOTICES OF MOTIONS

APPROVAL FOR APPOINTMENT OF PROF. FATUMA M. CHEGE AS PRINCIPAL SECRETARY

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Speaker. Hon. Speaker I beg to give notices of the following Motions:

THAT, taking into consideration the findings of the Departmental Committee on Education and Research in its Report on the vetting of nominee for appointment as Principal Secretary, laid on the Table of the House on Wednesday 28th April 2021 and pursuant to the provisions of Article 155(3)(b) of the Constitution and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act 2011, this House approves the appointment of Prof. Fatuma M. Chege PhD as Principal Secretary, State Department for Implementation of Curriculum Reforms.

APPROVAL FOR APPOINTMENT TO THE TEACHERS SERVICE COMMISSION

THAT, taking into consideration the findings of the Departmental Committee on Education and Research in its Report on the vetting of nominees for appointment to the Teachers Service Commission, laid on the Table of the House on Wednesday 28th April 2021 and pursuant to the provisions of Article 250(2)(b) of the Constitution, Section 8 (8) of the Teachers Service Commission Act 2012 and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act 2011 this House now approves the appointment of the following persons to the Teachers Service Commission:

1. Dr. Jamleck Muturi John, PhD, Chairperson
2. Mr. Timon Alfred Otieno Oyucho, Member

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, even though this is a Special Sitting, I have received requests from a few Members who may wish to make a few remarks in tribute to the late Hon. Paul Koinange. However, in making your tributes, bear in mind that this is a Special Sitting and, therefore, we may not take so long.

Let us have Hon. Peter Mwathi.

TRIBUTE TO THE LATE HON. PAUL KOINANGE

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Speaker. I thank you for giving me this chance to pay tribute to a fallen colleague, Hon. Paul Koinange, who was the Member for Kiambaa.

Hon. Paul was a grandson of the renowned leader, the late Senior Chief Koinange wa Mbiyu, father to the then powerful Minister of State, Mbiyu wa Koinange. He worked as a civil servant before opting to venture into business and later vied for Kiambaa Constituency. He was elected in 2013 and 2017, which demonstrates that he was in touch with the people of Kiambaa and they must have appreciated his record of development.

During the 11th Parliament, Hon. Paul served in the Departmental Committee of Health. In the 12th Parliament, he was the Chairperson of the Departmental Committee on Administration and National Security until his demise. It is good to note that Hon. Paul was loyal to his Jubilee Party and Party Leader, His Excellency President Uhuru Kenyatta while undertaking his work. We know him as a very conscious person, a stickler to processes and procedures. We can only describe him as a focused, hardworking and disciplined person. He was social and kind.

Hon. Speaker, I remember he was a chairman of sorts. He was not only Chairman of the Parliamentary Committee, but also Chairman of the Payer Breakfast and the Building Bridges Initiative (BBI), where I belonged and where we worked very closely to ensure that the BBI was understood by the people.

Hon. Speaker, allow me to take this opportunity to thank you for according me the opportunity to Chair the *ad hoc* committee on the funeral of Hon. Paul. I served in that Committee with the following seven Members:

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|------------------------------|-----------------------------------|
| (i) Hon. (Ms.) Fatuma Gedi | – Member for Wajir County; |
| (ii) Hon. Oku Kaunya | – Member for Teso North; |
| (iii) Hon. Jude Njomo | – Member for Kiambu Town; |
| (iv) Hon. Gathoni Wamuchomba | – Member for Kiambu County; |
| (v) Hon. Joshua Mbithi | – Member for Masinga; |
| (vi) Hon. John Lodepe | – Member for Turkana Central; and |
| (vi) Hon. Wachira Kabinga | – Member for Mwea. |

Hon. Speaker, the eight-member committee was charged with the responsibility of ensuring facilitation of the bereaved family members with respect to burial arrangements in accordance with the Parliamentary Service Commission (PSC) Bereavement Policy for Members of Parliament.

The Committee held several meetings which culminated in a befitting send-off of our departed colleague. The funeral ceremony of the late Paul Koinange was conducted strictly in line with the COVID-19 protocols and guidelines.

I wish to express my profound appreciation for the cooperation and support extended by the Members of this House.

Finally, I take this opportunity to once again condole with the family of the late Hon. Paul Koinange and personally thank you for attending the funeral. I also condole with the people of Kiambaa Constituency, Kiambu County at large, all his relatives, friends and the people of our beloved country.

Fare thee well Hon. Paul.

I thank you, Hon. Speaker.

Hon. Speaker: Let us have the Member for Mumias East.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. I would like to add my voice in passing my condolences to the family of the late Hon. Paul Koinange. He was my very close friend. While I was the Chief Whip, I worked closely with him. It is unfortunate that he had to pass away the way he did. Sometimes we get disturbed because if I had opportunity to pick anybody to go, there are several candidates that would go. However, Hon. Koinange was a good man and a serious Christian. That is why I felt that his passing on was unfortunate. Due to COVID-19 protocols, some of us could not attend the funeral, but if it was an open session, I can tell you all these Members of Parliament would have attended his funeral because he was friendly to everybody.

As the leader of the BBI, the expression he had over the BBI was not as bad as what I have seen other Members use here. Therefore, on behalf of my family and the people of Mumias East, I just want to register my condolences to the family. May God keep the soul of our brother Paul Koinange in eternal peace.

I thank you, Hon. Speaker.

Hon. Speaker: Nominee 001.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Speaker for giving me this opportunity to pass my sincere heartfelt condolences to the family of the late Hon. Paul Koinange.

Hon. Speaker, you must have realised that I was a bit agitated when Hon. Washiali was saying that there are other potential candidates that God could have chosen from. He was staring at me. I got scared because this world is a bit beautiful and nobody has ever gone to heaven and reported to us how beautiful it is up there.

So, on my own behalf, my family and persons living with disabilities that I represent in this House, I pass my sincere condolences to the family of the late Hon. Paul Koinange. The late Koinange was a gentleman who interacted with everybody.

The Committee that he chaired was very active. I appeared before the Committee several times and all my Questions were taken up by Hon. Paul Koinange passionately. He ensured that they were answered to my satisfaction. Whenever there was a Question that was coming up in his Committee, he would personally call individual Member to appear before the Committee so that we could sometimes share some of the responses that were given by the Ministry.

He was a personal friend who assisted me several times. Hon. Aden Duale is reminding me that he was a good friend. He is still a good friend to me and I know one day we will meet in heaven because that is where we are going. I know some Members will not be there. They will go somewhere else, but for us, we will meet him up there.

Thank you, Hon. Speaker and I pass my sincere condolences.

Hon. Speaker: Member for Rarieda

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker for giving me this opportunity to condole with the family and friends of our brother Paul Koinange. The death of our brother Paul Koinange is a reminder to all of us that COVID-19 is still alive and remains a danger to all of us. Even as we go about our duties, we all know that Hon. Paul Koinange, by virtue of being the Chair of the Departmental Committee on Administration and National Security, had to traverse this country to attend to so many meetings. These are sacrifices that sometimes citizens do not see us make as Members of Parliament. We must remain alive to it. We must always remember that we must take precautions even as we do our duties. We all know that Hon. Paul Koinange valued national unity and was committed to fostering national unity. I remember he even spearheaded the idea of bringing community elders together across the country. As a member of

the Kikuyu Council of Elders, he had started to bring the elders of the Luo and the Kikuyu together so that later he would foster such unity among other ethnicities.

Hon. Paul Koinange was quiet, humble and generous. He often visited my constituency and we had planned that he would visit my constituency for development related matters. Since we could not attend his burial because of the COVID-19 protocols, we took some time later with some of the Members here and a few Members from the lakeside, and about a week and a half ago, we went to condole with the family. We were able to have an entire afternoon within the COVID-19 protocols, to condole with the family. I urge those who did not make it that there is still opportunity to mourn our brother and condole with the family.

Thank you, Hon. Speaker.

Hon. Speaker: Member for South Imenti

Hon. Murungi Kathuri (South Imenti, Independent): Thank you, Hon. Speaker, I also want to take this opportunity to join my colleagues in condoling our departed colleague, Hon. Koinange.

(Hon. David Gikaria consulted loudly)

The Member in front of me, the Member for Nakuru Town East, who is a bit noisy, is not observing the COVID-19 protocols. I am scared.

I really want to take this opportunity to condole with our departed colleague. Hon. Koinange as all of us know was a servant leader who worked for the people of Kiambaa and people of this country with a lot of zeal. When the sad news came on the screen, we were scared that death can befall a good leader like Hon. Koinange and as Hon. Washiali has put it, and leave those who harass Kenyans day and night. The Member was a peace lover and very hardworking. During the examinations of the audited accounts for the NG-CDF for Kiambaa Constituency, I had opportunity to visit his constituency as the Chair of the NG-CDF Committee and the people of Kiambaa were very happy with what he was doing there. We visited the District Commissioners headquarters, the constituency office and the NG-CDF office and he had done a lot of work. So, I want to join my colleagues on behalf of my family, the good people of South Imenti and other Kenyans in condoling with the family of this gentleman. We should also pray to Jesus Christ because we have done this severally this term. We have lost so many Members. So, as Christians, we should ask God to put a break to deaths in this House and the Senate. We do not need any other Member to go between now and 2022. You can try to see how you can support us on that journey.

Thank you, Hon. Speaker.

Hon. Speaker: Deputy Speaker.

Hon. Moses Cheboi (Kuresoi North, JP): Hon. Speaker, like my colleagues, I also want, on my own behalf, that of the people of Kuresoi North, whom I represent, my family and the Liaison Committee, in which Hon. Koinange sat, to just say that other than being a personal friend, Hon. Koinange was a Member of the Liaison Committee. So, I am speaking on behalf of the Liaison Committee Members who may not get an opportunity to say that he was an extremely active Member of the Liaison Committee. If you check records about his attendance, he would only fail to come for the Liaison Committee meetings when he was doing other official duties outside Nairobi. Something else which I think most of the Members did not pick is the fact that he was a very religious person. At some point, I am not sure if it is all the way to the end, he was co-chair of the National Prayer Breakfast. That is the kind of person we are describing today. As Members speak of him as being a very hardworking Chair and a very hardworking Member of

Parliament, he was also an extremely religious person who tried to use his position as a Member of Parliament to foster prayer and religion in the House. On my behalf, I would like to pass my condolences to his family, his constituents, the country at large and maybe the Members of the Departmental Committee on Administration and National Security.

I thank you, Hon. Speaker.

Hon. Speaker: Member for Mavoko

Hon. Patrick Makau (Mavoko, WDM-K): Thank you Hon. Speaker, for giving me this opportunity to join my colleagues in condoling the family of the late Koinange and the people of Kiambaa Constituency. I agree with Members that Hon. Koinange was a gentle giant. Despite being a Chair of a very sensitive committee, Hon. Koinange could talk with everybody. He carried himself with a lot of decorum. I know death is never kind. It takes away the best. I know that the people of Kiambaa will miss their legislator. We shared NG-CDF manager. The manager I have now came from Kiambaa, and he has brought a lot of expertise and experience under the late Hon. Koinange. Allow me on my behalf and the people of Mavoko to condole with the family and say as other Members have said that we will all meet one time, if we ever meet.

Hon. Speaker: Majority Whip.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. From the outset, allow me on behalf of the people of Navakholo and on my own behalf and that of the Majority Party to pass my condolences to the family of the late Hon. Paul Koinange. As a Whip, it is very difficult to lead your colleagues unless the colleagues themselves accept to be led. One such man is Hon. Koinange, whenever I could call upon him to go a particular direction in terms of what we wanted to pursue, he was swift and quick to accept and he would support me in all my endeavors in terms of whipping my colleagues whom I lead in the majority party. On that, I just want to say, may God rest his soul in eternity.

Hon. Speaker: Member for Kilifi North.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Speaker. I would also like to join my colleagues to condole with the family of the late Paul Koinange. He was a Member of Parliament and the Chair of the Departmental Committee on Administration and National Security. He was working on some of the most pertinent issues in Kilifi. I had presented a Petition on the Pemba Community and within the period before his death, we were working with him on that.

I would want to appreciate the passion with which he took his job and the heart in which he went into to say: "We would like to help the people of Kilifi and the Pemba Community in this country." He went out of his way. Apart from looking at Parliament, he even went to the Department of Immigration, talked to the Cabinet Secretary and even promised that he would talk to the President about it outside the work that he was doing, so that the people of Kilifi would get that opportunity. So, I really appreciate the work that he did.

He was a friend to some families in Kilifi and reminiscenced mostly when we met. We became good friends towards his end because of the work we were doing together. I will miss a chairperson who took his work seriously, one who would not want to let down the country and one who would stand firm to ensure that Government programmes work to help the community. Therefore, I condole with his family and urge all the Members who chair committees to emulate the hard work, dedication and the spirit of nationhood that Hon. Paul Koinange embraced.

I thank you. May God rest his soul in eternal peace.

Hon. Speaker: Member for Mwatate.

Hon. Andrew Mwadime (Mwatate, ODM): Asante, Mhe. Spika. Kwa kweli, mwendazake Mhe. Paul Koinange alikuwa ni mtu wa watu. Nimekaa naye kwa muda. Kuna wakati nilikuwa

nafanya marekebisho kwa hizi sheria za makazi. Nilishangaa sana na Mhe. Koinange. Ni mtu alikuwa anapenda Wakenya wote. Alikuwa sio mtu mwenye ukabila. Naomba wakenya tumuige Mhe. Koinange kwa maana yale mawaidha alikuwa ananipatia wakati wa hizo sheria, nilishangaa sana. Ee Mwenyezi Mungu, weka roho yake pahali pazuri kule peponi.

Asante, Mhe. Spika.

Hon. Speaker: Member for Igembe North.

Hon. Maoka Maore (Igembe North, JP): Thank you, Hon. Speaker, for the opportunity to say farewell to my good friend, Hon. Paul Koinange, on my behalf and that of the people of Igembe North. I have been close to him as a good friend even before he came to Parliament from the time he was mediating the issues of South Sudan. He became a closer friend when we joined here. He was a sincere friend to anybody who was close to him. He was a gentleman per excellence. For that reason, I miss adequate words with which to describe him having been out with him on very many weekends in social gatherings when we were not busy with the Building Bridges Initiative express rallies. The country has lost a very hardworking, a very good statesman and a good friend to all of us.

I thank you.

Hon. Speaker: Member for Homa Bay Town.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. I also stand on my behalf and that of my family, who Koinange visited many times both in Nairobi and at home, and on behalf of the people of Homa Bay Town, who I represent before this House, to condole the family and give them consolation.

I first met Hon. Koinange in the last Parliament where we had a short stint with him in the Committee on Delegated Legislation. We then came together in this Parliament in which I was privileged by our party to serve with Hon. Koinange in the Departmental Committee on Administration and National Security. We worked very closely. I remember in the last trip of duty Hon. Koinange took in Garissa County where we went to check the border patrol issues with our police, I was with him.

Hon. Speaker, only to say a few things about him, if all the committee chairpersons in this House could be like Hon. Koinange, we would be in a very good Parliament. This is one chairperson who, if you remember and it is on record, through his own initiative started sub-committees to serve the committees and Parliament. I was privileged to chair the sub-committee dealing with Questions, petitions and all legislations.

Hon. Koinange was always the first Member of Parliament to come to Parliament and the last to leave. Members will confirm that as early as 5.00 a.m., you would find Hon. Koinange's car at Continental House and as late as sometimes midnight, he would still be there. As his Chairperson of the Sub-Committee on Legislation, I asked him why he had decided that I should chair that sub-committee and he told me that he was passionate about five Bills. We have passed some of these. That was a leader of a committee who recognised that he was leading together with the other Members.

Hon. Colleagues, you noted me transacting the Refugees Bill at the Committee stage, not because Hon. Koinange was unable or incapable, but he said, "You are chairing that sub-committee, pursue it through." With his passing on when we have the Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill, I would request you, Hon. Speaker, and the House Business Committee, that we fast track the Bill. We were proffering amendments to the Kenya Coast Guards Act. I know how passionate he was about it, and I would request the House leadership in keeping his legacy to fast-track it.

Hon. Speaker, we were looking at ways of ending the female genital mutilation (FGM) and cattle rustling in the country. There are amendments he had directed my sub-committee to process along those lines. I would crave the accommodation of the leadership of the House through you when they come before you.

Lastly was the Nyumba Kumi Initiative and it is a very painful thing that we have lost him. I remember when we left Garissa, he called me for a public rally in Ruaka, in his constituency, and I had been to his constituency severally. What a leader the people of Kiambaa have lost! We pray that God may keep his soul in eternal peace.

Hon. Speaker, let me also register my gratitude to the Members of Parliament for the support they gave Hon. Koinange in his hour of need. When an alarm was raised that Hon. Koinange needed blood, we went there and all the Members who went there their blood could not be taken that day. In fact, we had to be staggered. I thank the Members for being there for him. I thank all the Members of the Departmental Committee on Administration and National Security. What I would pray is that the House, the leadership of the nation and the leadership of Parliament gives us a chairperson of the Committee with whom we can serve, as the Departmental Committee on Administration and National Security, to further those things which Hon. Koinange died for.

Lastly, Hon. Speaker, permit me to say this. By the time of his passing on, we had gone to 41 counties across the country meeting the police commands, national Government administration officers and listening to their challenges. We were doing a report by the time of his death which we intended to table here. This was a report which targeted very fundamental reforms in our police service, reforms which would conclude the police reforms which we had started. This was a report which was going to ensure stability in the correctional services. This was a report which was going to ensure that there is complete stability in the Public Service Commission and all sectors which were under our charge. In keeping with his legacy, all the Members of the Committee knew what we stood for and how passionately he felt about them. When we bring it, may I request that the Members support us in keeping his legacy on the matters we will set out in that report.

May the Almighty God keep the soul of our brother, Hon. Paul Koinange, in eternal peace. We are happy to serve and keep his legacy. I thank you.

Hon. Speaker: Member for Rangwe. Let me just pick a few more then we can rest the case.

Hon. (Dr.) Lilian Gogo (Rangwe, ODM): Thank you, Hon. Speaker, for giving me this chance to represent the great people of Rangwe Constituency in mourning with the people of the great Kiambaa Constituency. I am standing here to mourn a colleague, a man of good repute. Hon. Koinange was one such Member of Parliament who cut across the board. He did not think of where somebody came from. He did not look at issues that were problematic in Parliament like some people want to segregate others and do not want to talk to them. When I had issues with insecurity in my own constituency, I approached my colleague Member of Parliament and he took it upon himself to handle insecurity issues in Rangwe. There is a place called Ndiru in Kagan Ward that was a problem for a long time. When Hon. Koinange took it up, he personally handled it. Wherever he is, he should know that Ndiru is fine and the people of Rangwe and the greater Homa Bay County appreciate him.

I mourn with the family of my colleague and friend. For those of us who are left behind, COVID-19 is real. We are currently in a bad state. I am told there are flights that are still coming to Kenya from India. There is a very bad variant of COVID-19 in India. I do not know what we will do about this as a nation. As we remember our colleague and brother, I pray that we put in

place more stringent measures, especially in curbing the importation of very bad strains of COVID-19 from other places.

May the soul of my elder brother and friend rest in peace. May God give his family the peace, grace, calm and quiet that they need at this time.

Thank you so much, Hon. Speaker. I appreciate you.

Hon. Speaker: Let us have the Member for Wajir East.

Hon. Rashid Kassim (Wajir East, WDM-K): Thank you, Hon. Speaker for giving me an opportunity to send a word of condolence to the people of Kiambaa and the family of the late Koinange.

I have interacted with the people of Kiambaa and the family of Koinange since 1975 when my brother, who was then a Member of Parliament, was a Member of the J.M Kariuki Committee. Hon. Mbiyu Koinange, who was the then Member of Parliament for Kiambaa and advisor to His Excellency President Kenyatta, was adversely mentioned. From that time, the people of Kiambaa happened to be our good friends, as well as the Karumes, who were also Members of that committee.

Nonetheless, I interacted with Hon. Koinange when he was the Chair of the Departmental Committee on Administration and National Security. My constituency has been bedeviled with a lot of insecurity. The *Al Shabaab* attack us a lot hence contributing to the insecurity in my constituency. I vividly remember that Hon. Duale, who was the then Leader of the Majority Party, Hon. Koinange and I sat down to discuss issues of insecurity in my constituency which is at the border of Wajir County and Somalia. Hon. Koinange was very useful as far as our relationship, connection and discussions on the matter of insecurity in our area were concerned. He dealt with issues of the Kenya Police Reserve and the placement of security forces in various areas in my constituency. He was extremely helpful.

I remember that I recently brought a Petition to the House regarding the arbitrary arrest of a number of members of my constituency. About eight persons are missing. They were arrested by security agencies and are still missing. I brought a Petition to this House. I was supposed to get an answer. I remember Hon. Koinange was seriously following up on that issue. I beg Hon. Kaluma and the rest of the Members to diligently pursue the matter so that I can get information on those missing persons. I will be very glad. If they follow the steps of Hon. Koinange, we will get solutions for a number of issues that have been bedeviling us, particularly on security.

Further to that, Hon. Koinange, Hon. Kaluma and other Members have visited my constituency of Wajir East in Wajir County. They spent a whole day and night so that they could understand the challenges that security officers experience in Wajir, particularly the police stations which have not been repaired for many years. They are dilapidated. We still have the colonial era police stations. They looked at all those issues, particularly on the armament. I was very keen. I was touched by their visit. They were supposed to give a report. Once they complete the tour of Wajir and many other parts of this country, they will give a report.

He has left us. I am glad he was a very humble and good man. He was an old man and a very seasoned politician, who gave an eye and ear to every Member of Parliament in this House.

Go thee well and may God bless you.

Hon. Speaker: Finally, let us have the Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. Allow me also to join the rest of my colleagues in sending very sincere and most heartfelt condolences to the extended family of the late Senior Chief Koinange wa Mbiyu upon the demise of his grandson, Hon. Paul Koinange.

Hon. Paul Koinange was an astute parliamentarian. He stood out amongst the rest, especially when it came to delivering services to the House and being the link between the House and the Executive. I admired Hon. Paul Koinange and the way he went about doing his duties, especially as he read to us Statements from the Executive regarding our requests on various issues of security and national administration.

He was a friend to all of us. He was a very amiable person who was a friend to every Member. He was quite affable when it came to assisting where there were problems. You would never get a “no” from Hon. Paul Koinange. He was always smiling, soft-spoken and ready to assist each one of us in whatever problems we had.

We have lost one of our best legislators in the country and as such, we have to join the family in mourning him.

May his soul rest in eternal peace.

Hon. Speaker: Very last, let us have the Member for Ainabkoi.

Hon. William Chepkut (Ainabkoi, Independent): Hon. Speaker, permit me to offer my message of condolence to the family of Paul Koinange, particularly Mary, June, the children and the entire Kiambaa Constituency.

Paul Koinange was a great legislator. He was a statesman and he was steadfast. Paul’s level of energy was incredible, amazing and remarkable. He advanced legislation and policy intervention in peace, unity and tranquility. Since he served enough systems of this nation, he was very humble and loyal to His Excellency the President, who is also the five-star general according to Article 131(c).

Hon. Paul Koinange treasured his work. He was campaigning for the Building Bridges Initiative. He was involved in peace, intervention and mediation in South Sudan. It came to pass. In 1971, Paul Koinange was employed as a District Officer (DO) like me. He served in national administration. Therefore, he served this nation with commitment, dedication and devotion. He has left behind a sense of humility, hard work and sweat. His family struggled for the Independence of Kenya. I have seen people wanting to inherit. In 1832, the United Kingdom passed legislation stating that they did not want inheritance. It is all about competence and democracy.

I want to remind Members of Parliament that leadership comes from God. It is not by chance. It is a calling from God. Hon. Speaker, you are third in command in the Republic of Kenya and a general giant. I urge Members of Parliament to appoint a committed servant like Hon. Paul Koinange who used to start work at 5.00 a.m. He used to mingle with others. He used to buy tea and *mandazi* for me. He was a very humble person.

(*Laughter*)

We were together with our great friend. Permit me to continue, Hon. Speaker. I thank you most sincerely. I was with Hon. Kaluma and we cried for the first time. Hon. Kaluma cried. We, including our Vice-Chair, fell down. We were tight with him. When the late Ibrahim was killed, Hon. Koinange intervened. He sent Mr. George Kinoti there. Those who created all the ugly incidents were arrested. So, I urge Members of Parliament not to be in a hurry to appoint another Chairman. We want to have a competent and humble new Chairman like Hon. Paul Koinange.

With those few remarks, Hon. Speaker, I see great things coming to you. Let us all kneel down because we are only one year to the general elections. You are a great man.

(*Laughter*)

When I speak, do not dismiss, ignore or underrate me. I pray to God who will answer. God's favour, mercy and grace surpasses all human understanding and instruments of power. Hon. Kaluma can tell the Members of the Orange Democratic Movement (ODM) that His Excellency, Hon. Raila Odinga is 77 years old, but he is no longer greedy. All Kalenjins voted for him in 2007. We called him Arap Mibei. They said that Hon. Raila wanted a suit and salute. He does not have any greed. I call him and he answers. Many Cabinet Secretaries do not answer phone calls. They dismiss us. We are great people in this Republic of Kenya. We make laws and perform the oversight role. As Members of Parliament, we observe doctrines of transparency and accountability at all times. We are number one. We are third in command. Therefore, we vet all of them.

With those few remarks, let us pass the legislations on refugees and coast guard service into law in Hon. Koinange's legacy. I am humble. Hon. Biwott, President Moi and Mzee Jomo Kenyatta are all there... When Mr. Jonathan Moi died, Hon. Paul Koinange and I gave your message of condolence. We do a great job. As much as you do not tell us, we always talk on your behalf.

(*Laughter*)

Thank you, Hon. Speaker. May God bless you.

(*Applause*)

Hon. Speaker: Very well. On a day for Special Sitting, that should now conclude the tributes to our fallen colleague, Hon. Paul Koinange. Hon. Members, I can see there are still several requests. However, in the interest of time and business which was gazetted for transaction, we will stop there and move on to the next Order.

MOTION

PETITION ON REMOVAL OF A MEMBER OF THE MEDIA COUNCIL OF KENYA

Hon. Speaker: Hon. Kisang who is the Chairman of the Departmental Committee on Communication, Information and Innovation.

(*Loud consultations*)

Hon. William Kisang (Marakwet West, JP): Hon. Speaker, I need protection.

Hon. Speaker: Order Members!

Hon. William Kisang (Marakwet West, JP): Hon. Speaker, I beg to move the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Communication, Information and Innovation in its Report on the consideration of a Petition regarding removal from office of Ms. Tabitha Mutemi as a member of the Media Council of Kenya, laid on the Table of the House on 30th March 2021, and pursuant to the provisions of Section 14(3) of the Media Council Act, 2013, this House finds that the Petition as

submitted discloses sufficient grounds as contemplated under Section 14(1) of the Media Council Act, 2013 and resolves to submit the complaint to the Cabinet Secretary for Information, Communication, Technology and Youth Affairs in accordance with Section 14(3) of the Media Council Act, 2013.

You conveyed the Petition by Mr. Muriuki Muriungi who is an advocate of the High Court regarding removal of Ms. Tabitha as a Member of the Media Council of Kenya on 11th March 2021. Consequently, you referred it to our Committee for consideration and tabling in the House within seven days in accordance with the provisions of Section 14(3) of the Media Council Act (No. 46 of 2013). The time was very short. As a Committee, we requested for 14 more days on 25th March because we were going for a short recess. The House granted us 14 days. That is why the matter has come up for discussion in this Special Sitting.

The Petition avers that Ms. Tabitha was ineligible for appointment as a member of the Medial Council of Kenya according to Section 16 of the Independent Electoral and Boundaries Commission (IEBC) Act as read with Section 2(1) of the Fourth Schedule which stipulates that an employee of the IEBC - and it is good for the Members to listen to this - shall not be eligible for appointment to another public office. That is what the law says. The petitioner contended that Ms. Tabitha Mutemi's appointment to the Media Council of Kenya was also in violation of circular No. OP/CAB19/1A dated on 18th October 2019 from the executive office of the President which prohibits the appointment of public officers to serve as independent members of boards, unless the enabling law specifically provides for the same. Further, Article 77(1) of the Constitution restricts full-time State officers from participating in any other gainful employment.

The other ground advanced by the petitioner for the removal was gross misconduct based on the allegation that Ms. Tabitha defied advice from the Principal Secretary, Ministry of Information, Communication, Technology and Youth Affairs by a letter dated 16th September 2020 that she should not hold two public offices and that she had to choose one by 30th September 2020.

Hon. Speaker, without providing further particulars, the petitioner also alleged that in support of the gross misconduct ground, Ms. Tabitha defied a lawful instruction from the office of the Chief of Staff, the Head of Public Service, the office of the Attorney- General and the IEBC Chairperson.

In summary, the grounds for the removal of Ms. Tabitha were three:

1. The inability of Ms. Tabitha Mutemi for appointment as a Council member by dint of being an employee of the IEBC.
2. The breach of written laws, the Constitution and Government policy in her appointment.
3. Gross misconduct for failure to adhere to lawful directions by her superiors and the appointing authority.

Hon. Speaker, the petitioner, therefore, prayed that:

- i. The Petition be dealt with immediately in view of the urgency and gravity of the issues raised.
- ii. That the National Assembly, within seven days from the date of receipt of the Petition, considers the complaint and if satisfied with the case for removal, to submit the complaint together with recommendations to the Cabinet Secretary for suspension of Ms. Tabitha Mutemi.

- iii. The appointment of a tribunal to consider the matter and if it discloses sufficient grounds for removal, recommend to the Cabinet Secretary removal of Ms. Tabitha from office in accordance with Section 14 of the Media Council Act.

Section 14 of the Media Council Act No.46 of 2013 regulates the removal of the Chairperson or a member of the Board of the Media Council of Kenya (MCK). Section 14 (1) provides for the grounds of removal as follows:

- (i) Violation of the Constitution or any other written law, including contravention of Chapter Six of the Constitution;
- (ii) gross misconduct;
- (iii) physical or mental incapacity that leads to the inability to perform the functions of the office;
- (iv) incompetence or neglect of duty;
- (v) bankruptcy;
- (vi) absence from three consecutive meetings of the Council without justifiable cause;
- (vii) if the Chairperson or a member becomes a director of any media enterprise or holds shares or has any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having interest would result in a conflict of interest with the officer's official duties; and,
- (viii) if the Chairperson or member is convicted of a criminal offence and sentenced to imprisonment for a period more than six months.

Hon. Speaker, it is worth noting that the removal of the Chairperson or a member of the MCK involves the following process as stipulated by the law:

- a) Submission of a Petition to the National Assembly. That is what we are doing now.
- b) Deliberation by the National Assembly and if the Petition discloses ground for removal, recommendations are sent to the Cabinet Secretary.
- c) The Cabinet Secretary appoints a tribunal after suspending the Chairperson or the member.
- d) The tribunal deliberates and if the passed Petition discloses grounds for removal, then the tribunal recommends to the Cabinet Secretary for removal.

In considering the Petition, the Committee wrote to various stakeholders. We advertised in the newspapers requesting them to give written submissions as pertaining to the Petition. The submissions were required to be submitted to the Committee on or before 23rd March, 2021. We received submissions from Ms. Tabitha herself, the Attorney-General, the Head of Public Service, the Editors Guild, the Kenya Union of Journalists, the IEBC and the Kenya Correspondents Association.

From the outset, I wish to inform this House that the Committee wrote a letter dated 17th March, 2021 to Ms. Tabitha, enclosing the Petition by Mr. Muriuki in order to afford her an opportunity to respond to the petitioner's grounds for removal. The Committee asked for written submissions because having a physical meeting was unattainable due to the escalation of COVID-19 cases, especially in the month of March. As Members would recall, the positivity rate at that particular time had gone up to over 26 per cent. That was by the time the President made a proclamation on 26th March to partially close five counties. In addition, there was the statutory period of considering the Petition which was within seven days. That is why we sought the request for an additional 14 days.

Hon. Speaker, earlier on 3rd March 2021, the Committee had received and considered a complaint by Ms. Tabitha Mutemi on similar matters. At that time, it was a complaint but on the same issue. Even though there was no proper petition before the Committee for her removal, the Committee invited Ms. Tabitha and her legal counsel to appear before the Committee. Indeed, all the other stakeholders came. They included the Editors Guild, the Solicitor-General and the MCK amongst others. The Committee appreciated the issue from the presentations and ultimately made a finding that the Chief Executive Officer of the MCK could not lawfully remove a member of the board as it was alleged by the letter.

In that meeting, it was agreed that Ms. Tabitha be reinstated on the *WhatsApp* group for the board members. As we speak today, Ms. Tabitha is still a board member of the MCK.

Back to the Petition before this House, with respect to the first ground relating to ineligibility of Ms. Tabitha for appointment as a member by dint of being an employee of the IEBC, the Committee observed the following:

That Ms. Tabitha Mutemi submitted that State corporations and parastatals are not offices in the public service because they are neither offices in the national Government nor county governments as defined by the Constitution. She stated that the remuneration of chairpersons and members of State corporations and parastatals are not directly drawn from the Consolidated Fund or directly by Parliament. Therefore, the positions of chairpersons and members of the boards are not offices in the public service, which is not true.

The Office of the Attorney-General submitted that public service is defined in Article 260 as the collectivity of all individuals other than State officers performing a function within a State organ while State organ is defined as a commission. That is basically in the law.

The Head of Public Service submitted that Ms. Tabitha was indicated as an employee of the IEBC and as such she is in the service of the national Government. The IEBC is not listed as member of the board of the MCK. So, she does not sit on the board as a representative of the IEBC. Ms. Tabitha is, therefore, not designated as a representative. Consequently, and by virtue of the Mwongozo Code of Governance and the Government Circular OP/CAB. 9/1A of 3rd April, 2016, Ms. Tabitha would be ineligible to serve as an independent board member of the MCK.

The IEBC submitted that Section 16 of the IEBC Act states that members and employees of the Commission shall subscribe to the code of conduct under the Fourth Schedule. Section 2(1)(b) of the Fourth Schedule prohibits members and employees of the Commission from holding other public offices during their tenure of office with the Commission. The Commission is also guided by Article 77(1) of the Constitution as expounded by Section 52 (1) and (2) of the Leadership and Integrity Act, which prohibits a full time State or public officer from participating in any other gainful employment. It is important that Members note this clearly. Consequently, Ms. Tabitha Mutemi's appointment as board member of the MCK is not viable while still in the employment of the IEBC as pronounced by the laws.

Hon. Speaker, pursuant to Section 14(3) of the Media Council Act, the Committee, having considered the complaint, was satisfied that the submissions of the Office of the Attorney-General, the Head of the Public Service and the IEBC disclose a ground for removal from office of Ms. Tabitha Mutemi, that is, the first ground which is ineligibility for appointment as a board member of the MCK.

Hon. Speaker, with respect to the second ground relating to breach of written laws, the Constitution and government policy on appointments, the Committee observed that Ms. Tabitha submitted that prior to presentation of the Report to the Cabinet Secretary, the selection panel through exercise of abundance of caution saw the advisory of the Attorney-General on whether

public officers could serve on the Board of the Council. The Attorney-General in an advisory referred in the Report of the selection panel confirmed that public officers could serve on the Council and submitted the report of the selection panel for the positions of the chairperson and member of the Media Council of Kenya. The Office of the Attorney-General submitted that the said legal opinion concerns the question of whether prohibition of multiple directorships in Mwongozo - Hon. Speaker, I might need an additional two minutes because I have seen the light on as a warning. I ask for three more minutes. Let me go to the end. I have been giving the background so that Members understand.

The head of the public service ...

Hon. Speaker: Proceed for two more minutes only to conclude.

Hon. William Kisang' (Marakwet West, JP): Thank you, Hon. Speaker. The Head of the Public Service submitted that Article 260 of the Constitution defines a public officer and we have done that. As a Committee, we know the reason there is this elaborate move to remove a member of the Media Council of Kenya is because in 2013 we passed the Media Council Act to make it difficult to remove a member unless there are grounds. It was anticipated that if there is a reason to remove a member, they have to go through a tribunal. All the reasons that I have given, the Committee in its own wisdom and from the reasons we have advanced and the law, we find that the Media Council Act provides for safeguards to ensure this elaborate move is taken to ensure a member is not just removed easily.

Pursuant to Section 14(3) of the Media Council Act, having considered the Petition, detailed submissions and evidence presented in writing, the Committee is satisfied and finds the complaints contained in the Petition relating to the ineligibility, breach of written law and gross misconduct disclose grounds for removal of a member of the Board of the Media Council of Kenya and recommends that the complaint be submitted to the Cabinet Secretary, Ministry of Information, Communication and Technology and Youth Affairs for appropriate action in accordance with the provisions of Section 14(3) and (4) of the Media Council Act No. 46 of 2013.

I beg to move.

I request Hon. Anthony Oluoch to second.

Hon. Speaker: Do second.

Hon. Anthony Oluoch (Mathare, ODM): Hon. Speaker, I rise to second this Petition and support the findings of the Committee. It is important from the very outset that we understand that the role of Parliament is very limited when a Petition like this is presented to it. Parliament, through the Committee, is required to do just two things.

The first is to consider the Petition and secondly to establish, *prima facie* or on the face of it, if grounds have been established for removal. In doing so, it is important that we underscore that the Committee makes no finding of guilt or no finding of culpability only to the extent that it establishes that grounds exist. When those grounds have been established, and we found that they have been established, the duty of the Committee is to make a recommendation that a tribunal be formed.

Secondly, it is important to note that at the point where a tribunal is established, it will have a duty to call for evidence, to listen in-depth to the parties including the person who will be affected and the petitioner then to find whether it is proper and indeed within the law to proceed with the removal. This Petition, it is important to note, was anchored on three or four main key issues which I want to highlight. Before I do that, it is important to note that we received submissions from the Independent Electoral and Boundaries Commission (IEBC) who are the employers of Tabitha Mutemi. The IEBC invoked the provisions of their Section 16 and indicated that in terms of the

code of conduct that Tabitha Mutemi signed as part of an employee of IEBC, an employee of the IEBC shall not undertake any other gainful employment while still holding office as a member of IEBC.

The question as to whether the membership of the Board of the Media Council of Kenya constitutes gainful employment was not the duty of this Committee to delve into. That is now remitted to the tribunal at the time they will be considering in full the merits of the Petition before it. It will be their duty to determine whether that constitutes gainful employment or not.

We were invited to look or consider that grounds existed to find that there was gross violation not only of the Constitution but of other written laws. The provisions of the Constitution that were brought to our attention include Article 77 of the Constitution that places a restriction or caveat on any public officer during the time or tenure of their employment to engage in any other form of employment. Article 77 of the Constitution is also to be read together with Section 52(1) and (2) of the Leadership and Integrity Act. The Leadership and Integrity Act in Section 52 reads almost in similar terms as Article 77 of the Constitution and in short it is a prohibition on any public officer who holds office to engage in other forms of gainful employment.

The Head of the Public Service made submissions and making them drew our attention to Article 260 of the Constitution that defines a public officer to mean the office in the national Government, county government or public office service if the remuneration and benefits of that office are payable directly from the Consolidated Fund or out of the monies provided by Parliament. The monies payable to the IEBC for its staff and other operations are drawn from the Consolidated Fund and monies that are appropriated from Parliament.

So based on that, and the many presentations we received from the Media Council, the IEBC and other stakeholders in the industry, I underscore that the Committee found that there existed *prima facie* on the face of it grounds for the removal. I repeat that the Committee did not make a finding of guilt or of culpability. This has been remitted to the tribunal for purposes of determining the merits of the case.

Hon. Speaker, allow me one minute to second the Motion.

Hon. Speaker: I will give you an addition of two minutes, Hon. Oluoch.

Hon. Anthony Oluoch (Mathare, ODM): Thank you, Hon. Speaker. We arrived at that position based on those recommendations and the many presentations that were made to us. We were also drawn to the Mwongozo code and the circular that also underscores what is in the provisions of Section 52 of the Leadership and Integrity Act. The Mwongozo code also mirrors Article 77 of the Constitution and Section 16 of the Independent Electoral and Boundaries Commission Act.

So, having listened to all these, the Committee's duty was then very simple - not to pass a finding of guilt, but to say that on a balance, we think there is something to be inquired into. It is now the duty of the tribunal, if this House will agree with us, to decide on the merits and to give both the petitioner and Ms. Tabitha Mutemi a fair hearing in terms of Article 47 of the Constitution and the Fair Administrative Action Act.

With those remarks, I second.

(Loud consultations)

Hon. Speaker: What is happening in the House? It seems like the Members have forgotten the rules of the House. That is a Report whose Motion has been moved and seconded. Why are you raising your hands? The Question has to be proposed. Is that not so?

Hon. Members: Put the Question!

Hon. Speaker: We do not put the Question at this point. Where did you go to school on parliamentary procedures? We must propose the Question first.

(*An Hon. Member stood along the aisle*)

Is it the desire of the Member who is standing there to remain standing? Just remain there.

(*Question proposed*)

Hon. Members: Put the Question!

Hon. Speaker: Hon. Members, the Report has just been moved. Let me hear a few Members then I will be able to gauge the mood of the House.

What is out of order, Hon. Junet?

Hon. Junet Nuh (Suna East, ODM): Hon. Speaker, this is a Special Sitting. It is not an ordinary sitting. We have the Division of Revenue Bill, the Building Bridges Initiative (BBI) and many other serious matters to discuss. This is a peripheral matter. I am requesting that you put the Question.

(*Applause*)

Hon. Speaker: Hon. Members, I quite agree with Hon. Junet that it is a Special Sitting but fortunately, in the Gazette Notice calling for this Sitting, this is one of the businesses to be transacted. Let me hear what Members have to say.

Member for Kathiani, Hon. Robert Mbui.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Speaker, for this opportunity. I would also like to agree with Hon. Junet that this is not a major issue. It is a very small issue that we need to dispense with as quickly as possible because we have serious business.

(*Applause*)

Looking at this case and the Report, clearly, we may be spending a lot of the time of this House on a very minor issue. The accusations that have come on this matter are very minor. This is about a person who is a Director at the IEBC and then applied for the position of board member of the Media Council of Kenya and got that position. Why should we belabour the point and spend energy fighting to remove such a person? There are many ways by which people can be removed from office.

(*Applause*)

We do not want to spend Parliament's time discussing an individual. One can be in the IEBC and become a chairperson of a board in a school in his or her constituency. Does that become illegal? Does Parliament have to sit here and discuss such matters?

If you look at this thing, clearly, there is even precedent. There are other IEBC directors who have also served in other boards. One served in the Salaries and Remuneration Commission

with the approval of the IEBC. So, this is something that I believe is very malicious. The best thing to do is to just put the Question, so that we finish with this matter.

Thank you, Hon. Speaker. Put the Question.

Hon. Speaker: Member for Murang'a.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Speaker. I just want to join my colleagues because it is not fair for this House to take on issues that seem to be very malicious and petty.

(*Applause*)

It is important to mention that Ms. Tabitha is just a Corporate Affairs and Events Manager at the IEBC. The position that the Committee has presented today is a part-time basis position and not a formal employment. Ms. Tabitha is there out of her experience having been in the media industry. It is also good that I disclose that I have been in the media industry. She is only there to give her advice to the Council. This is not a formal employment.

I do not want to go into the details because due process was followed. This position was advertised. Even when she was given the position, it was gazetted and the details are there. What could have happened two years down the line? Let us not engage in boardroom fights in Parliament. We need to rise above those boardroom fights. It is wrong for committees of this House to be involved in such issues.

I would like to ask the Committee whether the lady was invited to appear before them. When she was told to give a written submission, she begged to be given a chance to appear before the Committee even virtually, but she was denied the opportunity. How then do we come to a conclusion and say that the position is illegal? The Cabinet Secretary and even the unions are in support of her expertise in that part-time job. Therefore, I urge this House that we reject the Report and move on to more serious business that is before the House.

I submit, Hon. Speaker.

Hon. Speaker: Hon. Members, you need to familiarise yourselves with Article 119 of the Constitution regarding petitions. It does not mean that there is a mistake. If anybody petitions the House on any matter that is within its power, the House cannot decline to have the matter considered by the relevant Committee. However, the decision that the Committee arrives at is an entirely different matter.

Therefore, I want to correct the Member for Murang'a that when a petition is brought to the House, as long as it meets the criteria for petitions, it will be a dereliction of duty on the part of the Speaker not to refer the matter to a Committee. As you know, the Speaker has no vote and, therefore, if the Speaker were to reject a petition without referring the matter to a Committee, he would be exercising some voting right. So, it is the Committee that has to make a decision once the matter is referred to it.

Let me hear a Member of the Committee, Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Speaker for giving me this opportunity. I am a member of the Departmental Committee on Communication, Information and Innovation. I had given my dissenting opinion to the Majority Report on the basis that we had procedural gaps in the way the Committee conducted this matter.

(*Applause*)

When you gave direction to this Committee to look into this matter, I remember you said that the process of removal of a person from public office is *quasi-judicial*. Therefore, all steps must be taken to make sure that judicious attention and moderation is considered.

The Committee requested more time. I remember I seconded that Motion requesting more time to consider this matter. When the Committee sat, we took only two hours to dispense with this matter. Secondly, you know this matter first appeared before the Committee as a complaint. Then the Committee made a decision that they could not act on a complaint. They required a petition. A Petition was strangely lodged. Before that Petition was lodged, there was a previous Petition by the Editors' Guild which, strangely, was not committed to the Committee. We never looked at it. However, this one by an individual who, in the Committee's wisdom, was never even asked to appear before the Committee, was considered. So, we decided on a Petition by a Petitioner who never appeared before us. We could not confirm his identity. For that matter, I said I will not support a process that has procedural gaps.

Hon. Speaker, when you are looking at a Petition to remove a person from office, you need to consider all material facts before you. This is a House of records and procedures. We had a number of materials before us. First of all, where were the materials that came as a complaint? Those materials were not considered. I raised this matter before the Committee and the Committee overruled me that we only consider the Petition as it is. Any other matter that came via a complaint was not going to be considered. I thought any matter that comes to this House and is recorded as material before the House must be used to make a determination on a similar matter.

It is important that the Petitioner should have been invited, either virtually or physically, to appear before the Committee. That was not done.

(*Applause*)

That person, Tabitha Muchemi, made some reasonable request to the Committee for some information to be given. She was not given. She made a request that the *Hansard* of 3rd March 2021 be provided to her. That request was not honoured. She made a request that the evidence of one Eric Oduor who was the Chairperson of the Selection Panel that selected her to sit on that board be given to her. She was not given. She also made a request for evidence of the Solicitor-General in the case of Katiba Institute and Others versus the Attorney General. That information was not given.

Hon. Speaker, looking at all the issues, you could clearly see that the Committee did not consider all the material facts that were required to make a decision in this matter. For that matter, I decided to write a dissenting Report. When I read the Report that has been tabled before this House, it does not contain my dissenting Report. Instead, it talks about the Committee having looked at my dissenting opinion and made a decision. I want to say before this House that the Committee never met to decide on my dissenting opinion.

Ordinarily, when a Member dissents, that report must be attached to the main report so that Members can have all the information when the matter appears before the House.

Hon. Speaker: Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you very much, Hon. Speaker. I want to also add my voice to this important Petition.

I have taken time to look at the Report. When I looked at it, I identified a number of gaps which the Committee could have considered. Because of time, I want to very quickly mention them. When that member was nominated to the board, it was gazetted. That was public knowledge.

That means the IEBC was aware of this matter for the last two years. How come today they are saying they were not aware? To me, that should have been considered by the Committee.

The second issue is that of the Media Council Board. When you look at their Act, it is clearly stated who should be a member of that council. So, if you form a committee and say these are the Members, it means anybody else outside the membership is not a member. The same way in a situation where they say “these should be the members”, it means anybody outside that bracket can become a member because they are saying so and so cannot be a member. I get worried when I see somebody who is a member and falls within the bracket of those who should be members, being punished for being a member.

The third issue is that of permanent employment and part-time employment. Most of us here have been board members in parastatals. We only earn a sitting allowance. If you look at the Mwongozo, it says you can only meet four times in a year. So, the question is this: Is part-time employment equal to permanent employment? I think the answer to that is a big no. So, on that basis, there are so many public servants who are public officers who are serving in boards and they are not being punished basically because it is a part-time employment. The other thing is that, as a board member, you only provide strategic direction to an organisation. You are not a day-to-day operator. You only go there when there are meetings to discuss policy issues and you go back to your position. So, I think this is unfair.

Hon. Speaker, there is this issue of the Media Council. The question is this: Is it a parastatal just like we have the Kenya Revenue Authority (KRA) and any other Government parastatal? I think the answer is no. That is because to some extent, this is an independent body that is taking care of the interests of the media fraternity. If you look at all the submissions by the media unions, they are saying that they have no objection to this person being a member of the board. What I think is happening in that place is that somebody is running away from accountability. I think the CEO of that organisation - and I must come out clearly - does not want to be held accountable. The Committee is now assisting the CEO to run away from accountability. I think this is very unfair to this country.

(Applause)

Parliament, being an oversight body - because we are an oversight an organisation - should be the first in the line demanding accountability. So, based on this, I want to say this Report must be rejected by this House and this member must continue serving her full term of three years which is ending next year. I do not know why somebody should serve for two years and then she is taken away in the third year. The CEO must not be seen to be running away from accountability. We demand accountability from every Kenyan.

On that basis, I reject this Report.

Hon. Speaker: Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker, for giving me this opportunity.

As you had rightfully put it, you do not have a vote as a Speaker. So, referring it to the relevant Committee is very important. To the Committee, ever since I came to this House, I have never seen such a petty and malicious Report that was not well thought-out. In my view, they did not do their ground work well because being a member of a board is not doing full employment. There are many parastatals. I was once a Chairman of a State corporation and we had members of that Board who were Principal Secretaries (PSs) from Ministries. It is because it is not gainful

employment. Why are we punishing ladies? We are talking about two-thirds gender principle and yet, we are still punishing ladies. If this goes on, we will soon start punishing People with Disabilities (PWDs). This House should be aware that the President of Judiciary is now a lady and we must be very careful. I hope the Chairman of the Committee is listening.

Hon. Speaker, lastly, who violated the Act? They are saying that she was not eligible for appointment, but did she appoint herself? We should punish the Cabinet Secretary (CS) who appointed her in case he broke the law. This Report is very malicious and I want to urge this House that, for the sake of protection and oversight, we reject it in totality. I am ashamed to be part of this House. With a lot of respect, I want to tell the Chairman that they did not do their ground work well and this Report is very malicious!

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Hon. Speaker, I am quite alive to what appears to be the mood of the House, but I beg to agree with the Report of the Committee. First of all, the flaws in terms of the process that many Members have spoken to, is an issue that the tribunal will have looked into, if it was formed. Any tribunal must observe strictly the requisites of the Commission on Administrative Justice Act and the Fair Administrative Action Act. No tribunal can possibly come to any conclusion without calling all the parties. The Committee was only required to consider *prima facie* whether there was a basis for saying that this should be inquired into. You cannot fault them for not going into the details.

Secondly, we should not take this matter lightly because another similar Petition will come and we will be asked the basis under which we will be treating it differently. This is a question of principle. As a House, despite the provisions of the IEBC Act and Article 77 of the Constitution, is it okay for an individual to hold two public offices, possibly, from which they are earning? If our answer is yes today, then we must be consistent and let it be a yes for any other case. In my case, I am not personalising it to the individual but I am attending to the issue of principle.

Thirdly, this is a matter where the opinion of the Attorney-General was sought and he is in agreement with the approach of the Committee. The IEBC Chair is also in agreement. On what basis can we then treat this matter lightly? It must be remembered that in any case, as a matter of policy, we are in a country of many learned people without jobs. Why should we say that it is okay for one person to hold two positions? I am in agreement with the Committee as a matter of principle.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. You have listened to the great speeches that have been made and I believe you have read the mood of the House. I rise under Standing Order No. 95 to request you to call upon the Mover to reply, so that we can dispense with the matter.

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

Hon. Speaker: Member for Tharaka, please, take your seat.

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

Hon. Speaker: That was a point of order and, therefore, you must hold your horses. Those who are migratory, is it possible for you to give us time to do this? We do not want to just say that you wanted to dispense with this matter and so, it is important to get the mood of the House.

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

Let us have the Mover.

Hon. William Kisang (Marakwet West, JP): Hon. Speaker, I rise to reply. It is unfortunate that...

Hon. Charles Kilonzo (Yatta, Independent): On a point of order, Hon. Speaker.

Hon. Speaker: Who is this persistently shouting “point of order”?

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Speaker. I want to raise this matter because last year, a similar matter appeared before this House and it was purely on procedure. In this particular matter, an accused person had requested to appear before the Committee, but the ruling from the Chairman was that Members of Committees are totally out of order to deny an accused person an opportunity to appear before the Committee.

(Applause)

I want to bring to your attention that, despite your previous rulings where on two occasions you warned Members of Parliament not to deny accused persons opportunity to appear before them, which has happened again. An accused person requested to appear, but the Committee denied her an opportunity to appear whether physically or virtually. I want to request you to either issue a warning or refer this Committee to the Powers and Privileges Committee because you had already issued two warnings. This should serve as a lesson for Members who deny accused persons an opportunity to appear, despite requesting to appear. I also want to request you to warn Members not to engage in board room wars. In the 10th Parliament, we saw.....

Hon. Speaker: This is now an address!

Hon. Charles Kilonzo (Yatta, Independent): I have explained my point of order, Hon. Speaker.

Hon. Speaker: The Mover is already replying. Hon. Osotsi spoke to the issue you have raised. I expect Hon. Kisang to respond to those allegations raised by Hon. Osotsi who is a member of the Committee.

Mover, please proceed.

Hon. William Kisang (Marakwet West, JP): Hon. Speaker, it is unfortunate that, apart from Hon. Osotsi who dissented, no other Member of the Committee got an opportunity to speak and so, I want to donate two minutes to.....

(Loud consultations)

It is my right to donate minutes.

Hon. Speaker: You are replying. Hon. Kisang, just reply.

Hon. William Kisang (Marakwet West, JP): Hon. Speaker, I want to state that Hon. Osotsi proposed that we recommend that the CS Information and Communications Technology (ICT), Innovation and Youth Affairs form a mediation committee to resolve this issue. However, the law does not provide for that and, therefore, we made our recommendation as per the law. I want to inform the House that the Committee met Tabitha together with her lawyer on 3rd March and several other stakeholders. When the Petitioner came, we asked them to do a written submission

and the accused never requested to come in person. She agreed and did her submission. It is not proper for two Members to claim that the accused was not given an opportunity to appear before the Committee. I want to state that the Committee did its job as per the law. From the mood of the House, it is clear that there is a lot of lobbying and some people have been cheated that they will be assisted next year.

I beg to reply.

Hon. Speaker: Could the Member for Wundanyi take his seat? Take your seat. Hon. Members, before I put the Question, I want to make this observation in light of what Hon Charles Kilonzo has said. When a matter is referred to a committee of this House and any member of the public either writes or appears before the committee desirous of proffering any information, it is against the rules of natural justice to deny such persons the opportunity to make representations as they deem.

(Applause)

I think members of such a committee should be the first ones to notify the Speaker of such a transgression if it ever happens or threatens to happen before a committee. Again, on the other hand, my general observation is that some of these matters which touch on violation of the law and/or the Constitution are fairly tricky. I think Kenyans will be best advised that Houses of Parliament are places for politics and sometimes decisions are taken not purely on the basis of the law but on the basis of politics, and how the House Membership has been lobbied. So, this is just to caution Kenyans in general that, where you allege violation, please, just take the matters straight to the courts of law, tribunals or such like bodies. It looks like increasingly as we approach 9th August, 2022, it is going to be difficult, particularly for this House, to make decisions on matters of this nature. That is a general observation for purposes of consumption by members of the public who desire intervention even though Article 119 of the Constitution permits any person to petition the House of Parliament on any matter that is within its power. That is the crux of the matter. So, generally, people are advised to examine and see whether it is within the power of the House to make such adjudication, especially one alleging violation of the Constitution or any other law.

That said and done, I proceed to put the Question.

(Question put and negated)

Next Order!

MOTION

CONSIDERATION OF SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL, 2021

Hon. Kanini Kega (Kieni, JP): Thank you so much, Hon. Speaker. I beg to move:

THAT, the Senate Amendments to the Division of Revenue Bill (National Assembly Bill No. 7 of 2021) to be now considered.

I want to thank your Office and the Office of the Clerk for enabling my Committee, during this difficult time, to consider the Message from the Senate. I also want to thank my Committee

for working round the clock to ensure that we had a Report on the Message from the Senate within a very short time.

In accordance to Article 110 of the Constitution, Section 191(iv) of the Public Finance Management Act, 2012 and Standing Order No. 41, I am honoured to present to this House, on behalf of the Members of the Budget and Appropriations Committee, the Committee's Report on the Message from the Senate on the Division of Revenue Bill (National Assembly Bill No. 7 of 2021).

The National Assembly considered and passed the Division of Revenue Bill (National Assembly Bill No. 7 of 2021) on 23rd March, 2021. In line with Article 110 (4) of the Constitution and Standing Order No. 41 of the National Assembly on messages, the Message was submitted to the Senate on 24th March, 2021 for its consideration and concurrence. The Senate on Tuesday 13th April, 2021 passed with amendments the Division of Revenue Bill, 2021, and sought the concurrence of the National assembly on the said Bill in accordance with the provisions of Article 112(1)(b) of the Constitution. My Committee held one meeting to consider what came from the Senate.

In its consideration of the Division of Revenue Bill, 2021, the Senate observed the High Court Ruling on Petition Number 252 of 2016. In its consideration, the court ordered that in accordance with Article 202 of the Constitution, all funds christened in the Division of Revenue Act as "conditional" or "unconditional" grants should be disbursed to the counties through the County Revenue Fund. Therefore, the Hon. Speaker directed that the Division of Revenue Act should conform to the provisions of Article 202(2) and 203(1) of the Constitution.

The Senate further noted that conditional or unconditional grants are not items to be provided for under the Division of Revenue Act. They can be issued to the county level of governments under the auspices of Article 190 of the Constitution or through an agreement between the two levels of Government that respect the institutional and functional integrity of either levels of Government. In this regard, the Senate amended the Division of Revenue Bill, 2021 as passed by the National Assembly by deleting the memo items which had a proposed allocation of Kshs39.88 billion from its national share as additional conditional allocation to county governments. That comprises of Kshs7.537 billion for the leasing of medical equipment and supplements for construction of county...

Hon. Speaker: One minute Hon. Chair. Hon Members, I hope you have looked at the Gazette Notice. This is one of the key businesses that you are supposed to transact. When I see Members walking out, I do not know whether they know this is one of the businesses that they are supposed to transact! In as much as the Whips and the Leadership are supposed to be doing this, it behooves the Chair also to notify Members that this is an important business to transact. As you know, counties may not be able to develop their budget estimates without a Division of Revenue Act in place. Indeed, even the national Treasury cannot. Proceed, Hon. Kanini Kega.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Speaker for that guidance, Infact, to add on that, the estimates cannot be tabled before we dispense with the Division of Revenue Bill, 2021. That comprises Kshs7.535 billion for leasing of medical equipment and supplements to the construction of county headquarters and Kshs32.342 billion as additional conditional grants to county governments from proceeds of loans and grants from development partners. Those conditional grants were reflected in the Division of Revenue Bill as memo items, which served as additional information to disclose allocations to county governments besides the equitable share allocation. Those funds, therefore, are included in the Appropriations Bill for the National Estimates. The Division of Revenue Bill as passed by the National Assembly versus the one

approved by the Senate is also shown in the document that we have tabled. I invite Members to have a look at the document. The Schedule is attached. It is very important for Members to note that the amounts that will be included are the national shareable revenue at the national level, which is Kshs1.3 trillion, the Equalization Fund of Kshs6.8 billion and the equitable share to county governments of Kshs370 billion.

The Committee made the following observations:

(i) The major point of departure between the National Assembly and the Senate is presentation of a memo item in the Schedule of the Division of Revenue Bill, 2021. There is no dispute between the amounts to be allocated to the counties and the removal of the memo items does not materially change the flow of funds to the counties as the memo items are already set aside in the National Estimates and will be appropriated accordingly.

(ii) Going forward, there is need to establish a legal framework for the transfer of conditional grants to respective county revenue funds (CRFs) so as to ensure timely release of funds for implementation of programmes and projects at county level.

Not many legislators here or even in the counties know about those funds. In fact, there is no clear legal framework on how those funds are disbursed, appropriated or overseen. A few months ago, there were allegations that conditional grant funds sent to Garissa were not used for their particular purpose. So, going forward, we have to have a legal framework on how those funds will be disbursed and overseen.

Finally, the Committee recommends that this House do concur with the proposed amendments by the Senate and, therefore, approve the deletion of the Schedule and substituting therefor with the new Schedule as proposed.

Hon. Speaker, with those few remarks, I beg to move and request the Leader of the Minority Party, Hon. John Mbadi, to second.

Hon. Speaker: Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. As I second this Motion, I would like to begin by appreciating the work that has been done by the Senate in reviewing the Division of Revenue Bill and proposing some amendments to it. I would also like to commend the Budget and Appropriations Committee for the speed and timeliness with which they have reviewed the Senate amendments to the Bill and prepared a report which has been tabled in this House. We are all aware of the extensive delays in previous financial years in passing the Division of Revenue Bill and the adverse effects that this has had on service delivery by the county governments. It is for this reason that I commend the work of the Committee, which has enabled this House to process the Bill on time.

Timeliness is a very important factor in the Budget process. When the Division of Revenue Bill and the County Allocation of Revenue Bill are passed on time, the county governments are able to have a realistic estimation of their resource envelope and to finalise their annual estimates accordingly. A lot of times, we have asked how counties would go ahead preparing budget estimates when actually the two Bills have not been passed by Parliament. We all know that the letter and spirit of the Constitution with regard to division of revenue was to ensure equity in resource distribution. However, as it is, division of revenue appears to be simply a schedule that does not really address county issues.

It is very disappointing that despite our efforts to ensure timeliness in the division of revenue for the reasons that I have already stated, the National Treasury does not still honour House resolutions and continues to violate the Constitution at will. More particularly, I want to refer to Article 219 of the Constitution that clearly states in black and white that a county's share

of revenue shall be transferred to the county without undue delay and without deduction. When we hear that some county staff have to endure five months with no salary, I cannot help to wonder: Have the National Treasury's staff also gone without salary? And since when did it become okay to delay county disbursements such that even salaries cannot be paid for almost half a year? Even if revenue collection has significantly under-performed, provisions of the PFM Act on cash management allow for short-term borrowing to meet urgent demands such as payment of salaries. There is no reason whatsoever for county employees to go without pay for months on end.

It is high time that we understood some of the provisions in law. For example, when you talk of 'of which' in the Division of Revenue Bill, it should be understood what that actually means. The Bill has always included 'of which' in the national Government share of revenue, meaning that the list of conditional allocations to counties is included in the national Government share of the revenue. So, even though we include a schedule indicating a breakdown of those conditional grants, they are part and parcel of the national Government share of revenue. The listing of conditional allocations under the term 'of which' is merely for transparency purposes - just to explain what exactly are conditional grants. For example, we have been talking about the road maintenance levy and the user fee forgone. Why then would a judge rule that conditional grants are not part of shared revenue? I have serious reservations with the court's understanding of the PFM Act. And I really do not know whether we have financial consultants in courts to advise our legal teams to understand what exactly some of the terminologies that are used in the PFM Act mean. The court has further directed that conditional grants be distributed through the county revenue fund, but how is the question...

Hon. Speaker, I can see my time is up.

Hon. Speaker: You have more time than that.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. We are aware of the following instruments of appropriation: Annual Appropriations Act, Supplementary Appropriations Act, Division of Revenue Act and County Allocation of Revenue Act. If the conditional grant fund is not included in any of these appropriations, how then would it be taken to the county revenue fund?

Let me highlight another serious issue in one minute. That is the issue of pending bills. Every year when we debate the Division of Revenue Bill and County Allocation of Revenue Bill, we have a similar debate in this House on the status of pending bills. This is something that we should take seriously. Why? Because pending bills is a way of robbing Kenyans.

We are asking Kenyans to supply goods and render services, including undertaking construction projects, among other works, when we are not ready to pay – when we do not have funds to pay and we do not even provide for those funds in subsequent financial years. It is immoral, unjust, unprofessional and unethical. As the Chair did say, there are minimal amendments to this Bill.

With those many remarks, I second the Motion.

Hon. Speaker: Order, Members! Order, Member for Gitutu Chache North.

(Question proposed)

Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I rise to support the Report by the Committee.

This is a fairly procedural matter despite the Mover and the Seconder taking us through a whole lot of history on the Bill. We debated the Division of Revenue Bill in this House. We then sent it to the Senate because of some historical issues and in compliance with an advisory from the courts in as much as we do not see the relevance of referring it to the Senate. This is a matter of appropriation, which should have been finalised by the National Assembly.

The Senate, in their wisdom, looked at some of those things and said that the memorandum item needs to be re-done in a certain way. So, because that change to the original presentation, it needed to come back here. We are not talking about the figures or how much money will go to the county governments and how much will remain at the national level. The changes are on presentation issues. We do not need to dwell a lot on it. I wish it was substance. This is a matter of presentation and disclosure. We have the Estimates, which will show each of these individual Items in the different Votes. We can then spend more time on the substance. However, in terms of matters to do with form, again, it is just something that we need to do because it has come back to us.

I want to thank the Senate because they have also highlighted an issue that came from the courts. Moving forward, even as we engage, I hope with the reforms in the Judiciary, at some point, we will get clarity in terms of to what extent should courts be prescribing what happens in the House or how money is appropriated. I am not sure if they have the expertise to rule on some of those things. However, since they have done it and we must respect the courts, we are then bound to look at how that kind of presentation takes place.

Members, perhaps, we still have two processes. We have to get into a Committee of the whole House to consider this Bill and get back to the House. Given the limited time that we have, if Members are willing, we could cut our debate on this matter. We debated the Division of Revenue Bill in this House. The only change is a presentation issue. We should not be debating on whether we should present the Bill like this or like that because we have agreed with the Senate. To the extent that we agreed, there is no debate. We should just move on and finish this matter so that it can go for assent to unlock the door for the Printed Estimates to come to this House before 30th April 2021. The same courts declared that we cannot have the Printed Estimates being brought to the House or even being prepared by the National Treasury until we have the Division of Revenue Act – not the Division of Revenue Bill. This means it has to be assented to. The Constitution puts the limit that the Estimates need to be in this House by Friday. Today is Wednesday. We only have tomorrow to have this Bill assented to. The National Treasury will then bring the Printed Estimates to this House before the constitutional deadline. We will end up in a quagmire of legal issues.

Therefore, I would like to urge the House that we hold our horses. We have enough time in the afternoon to speak on so many other issues. We have tomorrow. However, for now, we can just dispose of this matter as fast as possible and make progress on the bigger issue; the estimates coming to the House.

With that, I beg to support.

Hon. Speaker: Hon. (Dr.) Wamalwa. Even before you speak, you know the issue raised by Hon. Mbadi and Hon. Kimunya is an important one. Maybe, for the Members of the Departmental Committee on Justice and Legal Affairs, we could send some message. This is because you meet with all the people you oversee in the justice sector. Indeed, some of the orders that come from the courts are extremely strange. Sample this: The Appropriations Act of 2018, the Supplementary Appropriations Act of 2018, the Appropriations Act of 2019, Supplementary

Appropriations Act of 2019 were unconstitutional and an order is hereby issued that the Speakers of the two Houses of Parliament go to regularise.

One question is: Do they understand what an Appropriations Act does to authorise expenditure and withdrawal of money? From 2018, 2019 and even to the Judiciary and we authorise that and they have spent. Moreover, they now want us to regularise. Why regularise? They should just say we are going to repay because we received it unconstitutionally. I mean there is really need for somebody to try and talk to them. Some are fairly knowledgeable but there are some who you know sometimes when you pick some fellows from outer stations where they mainly concentrate on matters to do with pregnancy compensation and dowry payments... To give them matters to do with the interpretation of the Constitution, obviously, you are giving them a terrible headache. They find they cannot understand. This is because they have left the station. They have been out there in the outer station where they do not deal with these matters frequently.

Anyhow, the Departmental Committee on Justice and Legal Affairs - and Hon. Gitonga Murugara is in the House - please take up this matter. Hon. Kaluma, you can assist them. Tell them before they make some of those decisions, they should ask people to explain them. They should even call experts from the universities or from the National Treasury to explain to them what this Bill does. What does an Act of this nature do? When you say "A Finance Act, 2018 is unconstitutional", I mean that is the authority on which even the taxes from which salaries were paid from was collected. It just does not add up!

Hon. (Dr.) Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you Hon. Speaker. As I rise to support this Division of Revenue as amended by the Senate, one thing I want to request listening to Hon. Mbadi and Hon. Majority Leader is this: Could the National Treasury appeal? This is because it seems the National Treasury should also appeal against this issue.

However, the moment the National Treasury does not appeal, we are now forced to comply with the law. Therefore, my humble request is that the Departmental Committee on Budget and Appropriations should maybe give it as a recommendation for the National Treasury to appeal against this. Moreover, in case there is no capacity, we request the National Treasury before they do, maybe, any or part of these judgments; they should be told by the financial experts in terms of the implications.

Hon. Speaker, I do not have much to say. It is a straightforward Bill and I support it.

Thank you.

Hon. Speaker: Hon. Duale, did you want to add your voice?

Hon. Aden Duale (Garissa Township, JP): Thank you Hon. Speaker. This is one of the few instances where I agree with the Senate. In addition, two reasons made the Senate to make this decision. One is the High Court Petition of 2016 which informs - and it says very clearly that:

"The Court upheld that it is not permissible to provide for conditional grants in the Division of Revenue Bill."

That is a court decision. Hon. (Dr.) Wamalwa said they should appeal. Hon. Speaker, it is already past time. The 14 days are gone and we have to live with it.

Secondly, Hon. Mbadi is a long standing Member of the Budget and Appropriations Committee (BAC). In all their recommendations in all the years, they have been asking the national Executive and Government to provide policy on how those conditional grants should be used. It is a record in this House. If nobody is bringing the policy, the House must act.

Thirdly, that money, even to have it oversighted by the legislature, is a problem - particularly the donor money. I am a member of the Public Accounts Committee (PAC). The

Principal Secretary (PS) for Ministry of Devolution comes to the Committee. The PS Housing was there last week. They have just become a conveyor belt of donor money. They just send it to counties and have no oversight role. We as the National Assembly have a problem of inviting the Governor and his team. I am a living example. My Governor is in court for misappropriating the World Bank Infrastructure Development Fund.

Hon. Speaker, if you go to Level 5 hospitals today, be it Kakamega, Garissa, Embu or Nyeri, where every year this House appropriates over Kshs350 million, you will not find Panadol. If you go to the maternity wards, you will realise that women are being told to buy basic things for delivery. With regard to our polytechnics, this House appropriates close to Kshs200 million to village polytechnics in our constituencies. I ask these Members: Is there development in your village polytechnics done by the counties?

Hon. Speaker, the essence of this amendment by the Senate is that those monies, both in grants or loans and whether for maternity, village polytechnics or roads... Let me ask Members here something: The work that our little Kshs16 million does can be seen in our constituencies. What about the Kshs200 million given here to every county through the Division of Revenue Bill annually?

So, Hon. Speaker, it is better this House makes a decision and agree with the Senate that the amount of money for conditional grants and loans from the national Government and donors be returned back to the national Government Ministries, Departments and Agencies. We have no apologies to make. We will ask the new Chief Justice, if she is approved by the House, to employ economists, fiscal analysts and consult with the National Treasury so that, as they deal with the matter that the Hon. Speaker has raised, they are well advised. Their researchers should not be legal persons only, but they should also be fiscal analysts who will tell them the implication of annulling the Appropriations Bill.

Hon. Speaker, the problem was not even with the Judiciary. It was our brothers here next door, the Senate. They are the ones who went to court. They should have sifted the case properly and removed Bills or Acts that touch on themselves. As you said, if you annul the Appropriations Bill 2018, then you ought to return all the money that you have used as an institution.

Hon. Speaker, this is a good day for devolution. Every penny that goes to devolved units – and I am sure there are people who want to be governors here - do not worry. If you behave well, we will bring back these conditional grants. But if you become like the ones who are in power now, we will only give you what is due to you which is the equitable share. I support.

Hon. Speaker: Let us have Hon. (Dr.) Nyikal, the Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker for giving me this opportunity. I rise to support the Motion for two reasons.

First, the Senate has done a good job. The Budget and Appropriations Committee has also scrutinised the work that the Senate did. More importantly is that, for once, we have avoided the delays that come from our disagreements. Hon. Speaker, why is it that every time when we are doing the Division of Revenue Bill, an issue comes up? Even this time, the formula was a big problem.

Hon. Speaker, I have said this before and I would like the Hon. Leader of the Majority Party to hear it and, definitely, the Chairman of the BAC.

I believe there is an intrinsic structural problem that we had not looked at and it starts at the time of the Budget Policy Statement (BPS). When that document comes to us, it gives us a lot of information on the needs of the National Government which we base our decision on. We even think of how we can help our constituencies. At that point, we have no information at all, on what

the counties need except that we use the formula that we know of not less than 15 per cent. That is where the problem is because if we had known, then we would react appropriately. The only information we have is conditional grants. We know what those grants are going to do in the counties. They are the ones we discuss. In my view, the Inter-governmental Budget and Economic Council (IBEC) where there is an interaction between the national and county government in terms of needs, should work so that we get some information at the BPS time on what the needs of the counties are, so that as we use the 15 per cent formula, we also put into consideration the needs of the counties. I have said this many times.

I know the Chair of the Budget and Appropriations Committee did not hear what I said, but I will actually follow up and explain to them. I support this but there is a structural issue that we need to look into. Otherwise, we will always have this at the time of Division of Revenue Bill.

Hon. Speaker: What is your point of order, Hon. Sankok?

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker. I am rising on Standing Order No. 95 that, judging by the mood of the House, we are all discussing the same issue and everybody is speaking the same thing and there are no amendments. So, I am requesting that the Mover be called upon to reply.

Hon. Speaker: Very well.

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

Hon. Speaker: Mover.

Hon. Kanini Kega (Kieni, JP): Thank you very much, Hon. Speaker and thank you Hon. Members. With a lot of humility, I reply.

Hon. Speaker: Hon. Members having confirmed that the House has requisite quorum, I proceed to put the Question.

(Question put and agreed to)

Hon. Speaker: Next Order

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[The Chairman (Hon. Moses Cheboi) took the Chair]

CONSIDERATION OF SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL

Hon. Chairman: Order, Hon. Members! Take your seats. We will be moving pretty fast. We are now doing the Committee of the whole House, considering the Senate amendments. Please, Hon. Members, it will be a brief one and so, kindly, let us be together here. Let us proceed.

Senate Amendments to the Schedule

SCHEDULE (s.4)

ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FY 2021/2022

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2016/17 audited and approved Revenue i.e. Ksh.1,357,698 Million
A. Total Sharable Revenue	1,775,624,173,860	
B. National Government	1,398,798,856,427	
Of which:		
1. <i>Leasing of Medical Equipment</i>	7,205,000,000	
2. <i>Supplement for construction of county headquarters</i>	332,000,000	
C. Equalization Fund	6,825,317,433	0.50%
D. County equitable share	370,000,000,000	27.3%
Memo items		
1. County equitable share	370,000,000,000	
2. Additional conditional allocations (National Government share of Revenue) of which;	7,537,000,000	
2.1. <i>Leasing of Medical Equipment</i>	7,205,000,000	
2.2. <i>Supplement for construction of county headquarters</i>	332,000,000	
3. Conditional allocations (Loans & grants) of which:	32,343,890,512	
3.1 IDA-Kenya Devolution Support Program (KDSP) (Level 2 Grant)	4,600,000,000	
3.2 IDA-Transforming Health Systems for Universal Care Project	2,234,664,075	
3.3 DANIDA Grant-Primary Health Care in Devolved Context	701,250,000	
3.4 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	6,394,997,407	
3.5 EU-Instruments for Devolution Advice and Support (IDEAS)	230,730,934	
3.6 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	7,838,338,490	
3.7 World Bank- Kenya Informal Settlement Improvement Project II (KISIP II)	2,800,000,000	
3.8 IDA- Water and Sanitation Development Project (WSDP)	5,000,000,000	
3.9 Sweden Agriculture Sector Development Programme II (ASDP II)	1,300,042,902	
4.0 Drought Resilience Programme in Northern Kenya	370,000,000	

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4.1 Emergency Locust Response Project (ELRP)	800,000,000	
4.2 UNFPA- 9th Country Programme Implementation	73,866,704	
Total County Allocations= (1+2+3)	409,880,890,512	30.19%

SCHEDULE (s.4)**ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FY 2021/2022**

Type/level of allocation	Amount in Kshs	Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh. 1,357,698 Million
A. Total Sharable Revenue	1,775,624,173,860	
B. National Government	1,398,798,856,427	
C. Equalization Fund	6,825,317,433	0.50%
D. County equitable share	370,000,000,000	27.3%

(Senate Amendments to the Schedule agreed to)

Hon. Members, we have finalised. That was the only item. I request the Mover to move reporting.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Chairman. I beg to move that the Committee doth report to the House its consideration on the Senate Amendment to the Division of Revenue Bill (National Assembly Bill No. 7 of 2021), and its approval thereof without amendments.

Hon. Chairman: Very well.

*(Question proposed)**(Question put and agreed to)**(The House resumed)*

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) in the Chair]*

The Temporary Deputy Speaker (Hon. Christopher Omulele): Order, Members! Let us have the Chairman.

Hon. Moses Cheboi (Kuresoi North, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the Senate Amendments to the Division of Revenue Bill (National Assembly Bill No. 7 of 2021), and approved the same without amendments.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Mover.

Hon. Kanini Kega (Kieni, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. John Mbadi to second the Motion for the agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): I second.

(Question proposed)

Hon. Members: Put the Question!

The Temporary Deputy Speaker (Hon. Christopher Omulele): Is it the mood of the House that I put the Question?

Hon. Members: Yes.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, allow me then, having confirmed that we have the requisite quorum, to put the question.

(Question put and agreed to)

That marks the close of today's morning business.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): The time being 12:43 p.m. this House stands adjourned until this afternoon at 2:30 p.m.

The House rose at 12:43 p.m.