

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Thursday, 24th June, 2021**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****Hon. Speaker:** There is no quorum. Ring the Quorum Bell.*(The Quorum Bell was rung)***Hon. Speaker:** Very well. We can commence.**COMMUNICATION FROM THE CHAIR****GUIDANCE ON BIOMETRIC CHAMBER ATTENDANCE REGISTRATION**

Hon. Speaker: Order, Hon. Members! Further to the guidance I issued yesterday, I wish to notify the House that beginning next week, which is Tuesday 29th June, 2021, registration for Chamber attendance will be done solely through biometric registration devices located in the Chamber. Subsequently, all forms of manual registrations that have so far been undertaken through the Office of the Serjeant-at-Arms shall stand suspended at the rise of the House this evening.

Hon. Members, in view of the expected use of the biometric registration system, the Office of the Serjeant-at-Arms is hereby directed to ensure the availability of sufficient sanitisation equipment adjacent to the biometric registration devices. Further, to avoid congestion at the entrance to the Chamber, during the short recess, the Clerk of the National Assembly will be expected to make necessary arrangements to ensure that sufficient biometric registration devices are installed at appropriate locations on both sides of the Chamber.

I hasten to add that the elderly Members, those with disability, and Members with medical conditions who may require exemption from this requirement will be considered on case by case basis.

The House is accordingly guided.

Thank you.

(Applause)

Next Order!

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PETITION

Hon. Speaker: Members making their way, I appreciate that many of you, particularly the youthful ones, may be excited at something called, “The Safari Rally.”

(Laughter)

They might have gone like the Member for Budalang’i. He is a young man and he must have only read in the newspaper about the Safari Rally. So, he must have gone to see it being flagged off. But those of you who are like the Member for Tongaren, I am sure you are not excited. The Member for Eldama Ravine, please, make your way. You appear to be excited about the sight of small cars in the Safari Rally.

POOR MANAGEMENT OF KENYA SEED COMPANY

Hon. Speaker: Hon. Members, pursuant to the provision of Standing Order 225(1)(b), I wish to report to the House that I have received a Petition signed by one Peter Chemuigut of National Identification Card No.20022696 on behalf of farmers from Bomet and Narok counties in the South Rift and stakeholders in the seed sector from the North Rift, requesting the House to look into issues of poor management of the Kenya Seed Company that has occasioned circulation of fake maize seeds.

Hon. Members, the Petitioners state that farmers in South and North Rift have been engaging in maize farming as their economic mainstay and for purposes of meeting the ever-increasing demand for maize, which is Kenya’s staple food. However, the Petitioners claim that poor management at the Kenya Seed Company has created a loophole for production and circulation of fake maize seeds, thereby greatly undermining their efforts to produce the crop.

The Petitioners recount that, from November, 2020 to February, 2021, farmers commenced preparations for the 2021 planting season and purchased “hybrid” maize seeds from Kenya Seed Company, the trusted source of seeds for many years. They claim to have bought H624 and H6213 maize varieties, being the high-yielding maize varieties commonly planted in the North and South Rift regions. However, at the time of planting, many farmers noticed that most packets contained rotten seeds, a situation that had never been witnessed with regard to seeds purchased from Kenya Seed Company. They add that, after planting the said maize seeds, majority of farmers experienced unprecedented poor germination rates as low as 3 per cent, especially with the H624 variety. The Petitioners aver that, in spite of the continuous rains experienced in the affected regions from January to April, 2021, farmers witnessed very poor and uneven growth lengths, weakly stems, different crop colour shades and poor insects-resistance, among other challenges.

Hon. Members, the Petitioners claim to have reasonable grounds to believe that the massive crop failure is attributable to fake seeds from the Kenya Seed Company because other farmers who planted maize seeds from other seed companies like ADC, PANNAR Seed, Seed Co. and One-Acre Fund, had good germination, excellent growth and resistance to infection by MLN and SMUT diseases. The Petitioners are concerned that they are staring at imminent huge losses that will negatively impact on their livelihoods and despite numerous complaints by farmers, the Ministry of Agriculture has not made any serious efforts to establish the root cause of the fake seeds and destroy the remaining seeds in the various Kenya Seed outlets so as to forestall a spill-over to the next planting season.

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The Petitioners further claim that poor governance and the absence of a Board of Directors at the Kenya Seed Company has contributed immensely to rampant occurrence of fake Kenya Seed Company seeds in the market. They allege that one Mr. Fred Oloibe, who was allegedly appointed un-procedurally by the Cabinet Secretary for Agriculture on 14th April, 2020 as the Acting Managing Director, has been frustrating plans for holding an Annual General Meeting to legally elect Board of Directors. They further allege that the Acting Managing Director and other senior managers have outstanding integrity issues that are currently being investigated, including the loss of seeds worth Kshs100 million in the Kenya Seed Narok stores and nearly Kshs10 million at its Kitale Seed Shop and infiltration of cartels that has resulted in production and circulation of fake seeds.

Hon. Members, the Petitioners state that families have been left devastated and are now staring at total loss of income and food insecurity given that there is only one planting season in the North and South Rift regions. They are frustrated that, instead of addressing farmers' concerns on the fake seeds, Kenya Seed Company management has been citing infection of MLN and SMAT diseases as scapegoats to avoid taking responsibility for circulation of fake maize seeds attributed to poor management at the Kenya Seed Company.

It is on the basis of the foregoing concerns and the gravity of the ramifications that the matter has on food security and national security that the Petitioners are praying to this House to look into the issues raised in this Petition as a matter of urgency and, in particular:

(i) Investigate the circumstances under which fake maize seeds in Kenya Seed Company packets were in circulation at accredited Kenya Seed Company distributors in North and South Rift regions, with a view to establishing the root cause of the fake seeds and cause the destruction of the remaining fake seeds in various Kenya Seed outlets so as to forestall a spill-over to the next planting season.

(ii) Investigate the circumstances under which the Cabinet Secretary for Agriculture allegedly appointed one Fred Oloibe un-procedurally as the Acting Managing Director of Kenya Seed Company despite being under investigation on reasonable grounds of possible lack of integrity.

(iii) Intervene through the relevant national Government Ministry to revoke the appointment of Mr. Fred Oloibe as Acting Managing Director and cause the management of Kenya Seed Company to convene an Annual General Meeting convened for shareholders to legally elect the Board of Directors.

(iv) Cause the Ministry of Agriculture and the Kenya Seed Company to compensate farmers for the losses incurred from crop failure due to planting fake seeds purchased from Kenya Seed Company and its accredited outlets.

(v) Recommends the prosecution of persons found culpable of production and circulation of fake maize seeds branded and distributed in the name of Kenya Seed Company; and,

(vi) Conduct site visits to Kenya Seed Company seed farms to ascertain the extent to which hundreds of acres of basic seed are being destroyed as a result of mixing of seeds due to poor management with a view to forestalling production of more fake seeds for the next planting season to stave off shortage of seeds in the country;

Having determined that the matters raised in the Petition are well within the authority of this House, pursuant to the provisions of Standing Order No. 227, the Petition stands committed to the Departmental Committee on Agriculture and Livestock. The Committee is required to consider the

Petition and report its findings to the House and to the Petitioner in accordance to the provisions of Standing Order No.227 (2).

Thank you.

Hon. Speaker: Member for Endebess, do you want to comment?

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. This Petition by Peter Chemoigut on issues pertaining to Kenya Seed Company is a weighty matter. Kenya Seed Company Headquarters is apparently in Trans Nzoia County and the Elgon Downs and the seed dryers are within Endebess Constituency. Most seeds are grown within the ADC farms which are within my constituency. This is a matter that is in the hearts of the people of Trans Nzoia.

Apparently, the Committee needs to fast-track this Petition and make sure that these issues that have been raised are speedily addressed. As we speak today, Kenya Seed Company does not have a board of directors. One of the major shareholders called Mr. Nathaniel Tum was sidelined by the Cabinet Secretary in appointing the board of directors. It is an issue to do with food security. It is one of the four issues that the President raised as an agenda to address in his last term of his presidency. We should treat the matter of Kenya seed Company as a priority. I think we were with the Chairperson of the Departmental Committee on Agriculture over lunch time and I hope he is listening. I can see he is here. This is a matter that you need to follow up especially, the Members of Parliament from those areas. I want to be part of that team to listen to it because it directly affects my constituents.

Thank you.

Hon. Speaker: Member for Gilgil, kindly have the Floor.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker. I join my colleagues in supporting this Petition by Peter Chemoigut.

This issue is not just limited to the Central and South Rift. It touches on Central Rift where Nakuru lies. It is an issue of food security. It is weighty and on top of the management issues that have been raised. We are looking at a serious crop failure that would affect this country in terms of being food secure.

I hope the Committee will fast-track this and more importantly, summon the Kenya Bureau of Standards. We need to get them involved in this. The absence of Government fast-tracking and weighing in means that we have private companies that are exploiting farmers by selling poor seeds, fertilizers and it touches on bigger issues. I hope that the Committee will be able to involve the Kenya Bureau of Standards and the Ministry of Agriculture. Let us get the Government to be in the fore-front in ensuring that Members and farmers get the right maize seeds and all seeds so that we can secure this country in terms of food.

Having said that, I support the Petition and join you in welcoming Safari Rally in Soysambu, Gilgil and Sleeping Warrior in Elementaita. I wish Members can come and witness it after 19 years of absence.

Thank you, Hon. Speaker.

Hon. Speaker: In the olden days, Cabinet Ministers could never be absent at 2.30 p.m. If they were, their assistants would be in the Chamber. However, these days, it is different. You can imagine as we were discussing this Petition, the Chairman was making his way and, even as he came in, you could see he was enjoying himself.

Hon. Sossion, kindly, have the Floor.

Hon. Wilson Sossion (Nominated, ODM): Thank you, Hon. Speaker. The Petition before this House is not only a matter of crop failure but also a security issue. The matter being raised

borders on deliberate criminal action from unscrupulous individuals to make money out of fake seeds.

Households and small-scale farmers who rely on seeds to produce food are at risk of starvation and inability to raise income for their livelihoods. Therefore, this matter, in my own opinion, ought to be classified as a serious security issue that may not only be dealt with by the Departmental Committee on Agriculture, but may require an *ad hoc* Committee of this House.

Hon. Speaker, it is very shameful that as a country, and even as a Government of Kenya, whose one of the Big Four Agenda is food security, to allow and permit the sale of fake or uncertified seeds to farmers. We should not just be a talking shop. I believe this is a matter that you have within your powers that you can direct that it be dealt with by either the Departmental Committee on Agriculture and Livestock or an *ad hoc* Committee of the House to deal with it to finality so that we can protect the farmers in every planting season.

There is also need for farmers to be always secured and insured in case of crop failure. There is need for the Government to take responsibility and compensate the farmers who were tricked into using fake seeds.

Hon. Speaker, it is time we judiciously take action on criminal individuals who engage in criminal activities to dupe farmers in our country.

I support the Petition.

Hon. Speaker: Member for Navakholo, you have the Floor.

Hon. Emanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. I rise to support the Petition and particularly wish it was possible that we could expand the scope of investigation such that what the Petitioner has pleaded in regard to maize seeds actually spills to the sugar-cane seeds. This is such that Kenya Sugar Research Foundation is also not really responding well in terms of giving farmers the right seeds. If it is possible, I would seek that the Chair expands the scope of the investigation. This is so that whereas he is touching on the seeds in terms of maize seeds, he can go further - now that it is the same department - to understand why it is that in general, most of the agricultural produce in the agricultural sector is getting a raw deal in terms of the seed production.

Hon. Speaker: Unfortunately, the Petitioner only raised the issue of maize. Neither you nor I are permitted to expand the scope of the Petitioner's desires beyond what he has petitioned. Therefore, unfortunately, maybe someone else will have to bring another one to deal with other seeds.

Let us hear Hon. Lessonet.

Hon. Moses Lessonet (Eldama Ravine, JP): Thank you, Hon. Speaker, for giving me this opportunity to support this particular Petition. This year, 2021, we shall have massive crop failure in the food basket of Kenya in the Rift Valley. One contributing factor is what has been alluded to by the Petitioner. In support of that Petition, I want to beseech or beg the Chair of the Committee on Agriculture and Livestock. Before he was the Chair, he was very passionate about this matter but he can rise to the occasion and go to the bottom of those fake seeds. Those are seeds which most of the time our farmers go to the market to buy and they are branded Kenya Seed. In addition, it also happens most of the time that it is only the packaging that is branded. However, the product inside in terms of the seeds is not the quality seeds we used to know in the 70s, 80s and 90s. It should go beyond this. Kenya Seed Company produces all other seeds from Boma Rhodes - for those who plant grass - to beans for those who choose to plant beans.

In addition, Hon. Speaker, you spend a lot of money to plant a lot of Boma Rhodes and they have zero germination while you have bought the same from an institution we used to respect or we want to respect, called Kenya Seed Company.

Therefore, Hon. Speaker, I support this petition.

I thank you

Hon. Speaker: Member for Kipkelion East, you have the Floor.

Hon. Joseph Limo (Kipkelion East, JP): Thank you Hon. Speaker for giving me this chance to also contribute to this important Petition. This is a very important Petition because any country which does not control quality is a country which does not have a future. The Ministry of Agriculture, Livestock and Fisheries and, indeed, the whole country has lost direction in terms of ensuring that all agricultural institutions are up to task. One of the biggest issues we currently have is funding. I want to beseech this House, through the Committee on Agriculture and Livestock together with the Committee on Budgets and Appropriations that, when it comes to financing, we must ensure that all institutions which deal with agriculture are properly funded. I am saying this because you will find Kenya Seed Company is unable to do adequate research and produce the right seeds and the right quantity and this has created some room for unscrupulous traders to produce fake seeds. That is because Kenya Seed Company is unable to supply the right quality at the right time.

Hon. Speaker, it is not only maize seeds which are being affected. It also affects coffee - because coffee research is not funded. It also affects tea because Tea Research Foundation which was there before is almost dead. It is actually located in my constituency and it is not funded. You find they cannot do any research. Therefore, I beseech this House to ensure that it rises to its feet and ensures that it performs its constitutional mandate of controlling the funding and fund the right institutions to the right levels so that this country is safe.

Otherwise South Rift and North Rift - which are the food baskets of this country, including my own constituency which produces a lot of maize - are at risk. We are planting maize whose quality we are unsure of.

I support that Petition.

Hon. Speaker: Very well. The Petition is committed to the Committee on Agriculture and Livestock to act as directed.

Next Order!

PAPERS LAID

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following papers on the Table of the House today, Thursday, 24th June 2021, afternoon Sitting:

The Bilateral Air Service Agreements for ratification between Kenya and South Africa; and Kenya Botswana and the explanatory memorandum.

The Report of the Auditor-General in respect of the State Department for Post Training and Skills Development for the Year ended 30th June 2020, and the certificate therein.

The Report for the Financial Statement for the Financial Year ending 30th June 2019 for the Privatization Commission.

Hon. Speaker: Next Order!

QUESTION BY PRIVATE NOTICE

Question No.003/2021

MEASURES TO ADDRESS NEGLIGENCE BY M/S CP POWER (EA)

Hon. Zachary Thuku (Kinangop, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Energy the following Question by Private Notice.

- (i) What action has the Cabinet Secretary taken against the contractor, M/s CP Power (E.A) who undertook the Last Mile Connectivity Programme Projects in Kinangop Constituency for abandoning the sites with dug-out holes, leading to injury and loss of lives to area residents and, specifically, causing the death of a two-and-half-year-old child, Master Joseph Gitau on 23rd June 2021 in Moset Village, Kinangop Constituency?
- (ii) Could the Cabinet Secretary compel the contractor to compensate the family for this negligence?
- (iii) What measures is the Ministry putting in place to ensure that the hazardous electricity pole holes on sites abandoned by contractors across the constituency are filled up or installed with poles with immediate effect?

Hon. Speaker: This Question will be replied to before the Departmental Committee on Energy. Is the Chair in the Chamber? Is it Hon. Gikaria? I just want to draw your attention to the fact that this is a question by private notice and, therefore, the answer is required at the earliest, Tuesday, next week. Therefore, you should take it upon yourself to get in touch with the Cabinet Secretary or whoever it is that deals with these matters.

Hon. David Gikaria (Nakuru Town East, JP): Hon. Speaker, I have heard your directive and this will be sorted out by Tuesday. Thank you.

ORDINARY QUESTIONS

Question No.207/2021

IMPENDING RETRENCHMENT OF OVER 50,000 TEA PICKERS

Hon. Speaker: For Ordinary Questions, next is the Member for Konoin, Hon. Brighton Yegon. The Member has written requesting the Question to be deferred. He is not available to ask it and so, his request has been acceded to, and therefore, the Question is deferred. The next Question is by the Member for Starehe, Hon. Charles Njagua.

(Question deferred)

Question No.208/2021

REVIEW OF COVID-19 PROTOCOLS WITH REGARD TO PSVS

Hon. Charles Njagua (Starehe, JP): Thank you, Hon. Speaker. I rise to ask Question No.208/2021 directed to the Cabinet Secretary for Health.

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- (i) Could the Cabinet Secretary explain the basis for allowing rail and air transport to carry passengers at full capacity during the period of the COVID-19 Pandemic, while subjecting other means of public transport to reduced passenger capacity requirements?
- (ii) Could the Cabinet Secretary consider reviewing the COVID-19 protocols and guidelines with regard to Public Service Vehicles (PSVs) also known as *Matatus*, considering that *Matatu* owners are currently operating and running into losses largely due to loans and attendant financial commitments with their financiers?

Thank you, Hon. Speaker.

Hon. Speaker: Very well. The Question will be responded to before the Departmental Committee on Health. The next Question is by Hon. John Paul Mwirigi, the Member for Igembe South.

Question No.206/2021

STALLING OF ATHI-KIIJI-AUKI-MAUA ROAD

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Speaker. I rise to ask Question No.206/2021 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works.

- (i) Could the Cabinet Secretary explain why the construction of Athi-Kiiji-Auki-Maua Road in Igembe South Constituency, which is being undertaken by M/s. Jack Chin Water and Hydro Power Company, has stalled since 2016?
- (ii) What measures is the Ministry putting in place to ensure that construction works resume and are completed on time?
- (iii) What steps is the Ministry taking to compensate farmers and individuals affected during the construction of the said road and when will they be paid?

Hon. Speaker: Just for clarification, Hon. Mwirigi, in Question (i), did you say it stalled in 2020 or 2016?

Hon. John Paul Mwirigi (Igembe South, Independent): Hon. Speaker, it is 2020 since the road commenced in 2016.

Hon. Speaker: So, this is a mistake.

Hon. John Paul Mwirigi (Igembe South, Independent): Yes.

Hon. Speaker: That correction should be made so that the CS does not... What it reads here is 2016.

Hon. John Paul Mwirigi (Igembe South, Independent): The Clerk has already informed me that they will make the correction.

Hon. Speaker: Yes, before they send it so you do not get a wrong answer.

Hon. John Paul Mwirigi (Igembe South, Independent): Yes.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing. Next Question is by the Member for Belgut, Hon. Nelson Koech. Did Hon. Koech request for deferment of his Question? I have a feeling and think I have seen his letter. Anyhow, the next Question is by the Member for Baringo Central, Hon. Kandie.

Question No. 211/2021

MEASURES TO ADDRESS THE HUGE NUMBER OF
STUDENTS ADMITTED TO SECONDARY SCHOOLS

(Question deferred)

Question No.212/2021

STATUS OF TENDER FOR BULK GRAIN HANDLING IN THE PORT OF MOMBASA

Hon. Joshua Kandie (Baringo Central, MCCP): Thank you, Hon. Speaker. I stand to ask Question No.200/2021 directed to the Cabinet Secretary for National Treasury and Planning.

- (i) Could the Cabinet Secretary provide a status Report on the progress made by Kenya Ports Authority in authorising, designing, development ...

Hon. Speaker: Just a minute, the Question does not read the way you are reading.

- (i) Could the Cabinet Secretary detail the progress made by Kenya Ports Authority and not a status Report. Are we dealing with the same Question?

Hon. Joshua Kandie (Baringo Central, MCCP): Yes, it is the same Question.

Hon. Speaker: You read what is in the Order Paper and not what you are imagining in your head.

Hon. Joshua Kandie (Baringo Central, MCCP): This is what I was given by the Table Office yesterday.

Hon. Speaker: What is happening? Just look at the Order Paper. You may not have learnt how to do so very quickly. It takes some lessons on how to operate.

Hon. Joshua Kandie (Baringo Central, MCCP): Thank you, Hon. Speaker. I now have the right Question. The Question is No.212/2021.

Hon. Speaker: Yes, the other one you read was 200/2021.

Hon. Joshua Kandie (Baringo Central, MCCP): Hon. Speaker, I beg to ask the Cabinet Secretary for National Treasury and Planning the following Question.

- (i) Could the Cabinet Secretary detail the progress made by Kenya Ports Authority in authorising, designing, development and commissioning of additional grain bulk handling services at the Port of Mombasa?
- (ii) Could the Cabinet Secretary provide information on the firms seeking to be licensed to offer grain bulk handling services, including whether they have valid certificates of incorporation and tax records, and their level of compliance with the Public Private Partnership framework?
- (iii) Could the Cabinet Secretary confirm whether the process of identifying the firm(s) adhered to the Public Procurement and Asset Disposal Act, 2015 and the resolutions of the House contained in its report titled Report on Optimisation of Revenue in Grain Handling Services?

Thank you, Hon. Speaker.

Hon. Speaker: No! It goes on. There are two others.

Hon. Members: Turn over!

(Laughter)

Hon. Joshua Kandie (Baringo Central, MCCP): Yes.

- (iv) Could the Cabinet Secretary further confirm that due diligence was carried out on the firms seeking to be licensed to operate additional grain bulk services by the Authority to ascertain among others that they are not proxies to other companies, particularly M/s. Export Trading Group, which has unresolved accountability issues before various government agencies, including Parliament?
- (v) What is the status of implementation of the recommendations of the Report on the Optimisation of Revenue in Grain Bulk handling services at the Port of Mombasa as adopted by the National Assembly?

Thank you, Hon. Speaker.

Hon. Speaker: Very well. The Question will be replied to before the Departmental Committee on Finance and National Planning. For the second time, Question by the Member for Belgut, Hon. Koech. I think I saw his letter, and therefore, I will defer the Question because I think he may have requested for deferment.

Question No.211/2021

MEASURES TO ADDRESS THE PLIGHT OF FORM I ADMISSIONS IN BELGUT CONSTITUENCY

(Question deferred)

We go to the next segment which is Statement requests and the request is by the Member for Narok North, Hon. Ole Kenta.

REQUEST FOR STATEMENT

DISMISSAL OF SPENCER SANKALE BY MAASAI MARA UNIVERSITY

Hon. Richard ole Kenta (Narok North, ODM): Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding the summary dismissal of CPA Spencer Sankale Ololchike by the Maasai Mara University Council.

Hon. Speaker, CPA Spencer Sankale Ololchike has been serving as a senior accountant at the Maasai Mara University, a distinguished member of the 23,000 strong Institute of Certified Public accountants of Kenya and supporter of Amnesty International Kenya. He was dismissed from employment in a letter signed by the Council Chairman on 17th June 2021 following alleged actions of gross misconduct without being accorded a fair administrative hearing. His treatment by the University Administration and the Council is malicious, callous and is driven by efforts to cover up corruption at the institution. Following a public expose of corruption at the Maasai University in 2019, which was shocking and alarming, credible evidence and testimony was availed implicating the University administration – current and former - in corruption malpractices.

His two re-deployments and the pressure to expunge sections of internal audits that implicates the current Acting Vice-Chancellor and some members of the Council is one of such evidence. The summary dismissal of CPA Spencer Sankale Ololchike is, therefore, a matter that

requires being condemned in the context of a whistle blower and the fight against corruption in the country.

Hon. Speaker, it is on account of this concern that I seek your indulgence to order an inquiry by the Departmental Committee on Education and Research on the following:

- (i) Inquire into the status of investigations on corruption in the Maasai Mara University and a probe to establish the role of the current university council in cover-up and protection of former university officials implicated in corruption, especially those implicated in the famous “Mara heist” matter;
- (ii) inquire into the circumstances that led to the appointment of the Acting Vice-Chancellor Prof. Onyango Kiche Magak and Members of the Council of Maasai Mara University and whether they met the necessary qualifications;
- (iii) inquire into the circumstances that led to the summary dismissal of Mr. Spencer Sankale Ololchike and why he was not accorded a fair administrative action and consider his unconditional reinstatement; and,
- (iv) inquire into the measures in place to protect all whistle blowers on matters corruption and embezzlement of public funds as provided by law and, in particularly, the case of Mr. Sankale Ololchike.

I thank you, Hon. Speaker.

Hon. Speaker: Let us have the Chair or the Vice-Chair of the Departmental Committee on Education and Research. The Statement will be forwarded to the Committee through the Office of the Leader of the Majority Party.

Next Statement is by the Leader of the Majority Party.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING 29TH JUNE TO 1ST JULY 2021

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I rise to give the following Statement on behalf of the House Business Committee which met on Tuesday, 22nd June 2021, to prioritise business for consideration.

The House has considered the Budget Estimates for the Financial Year 2021/2022, the Appropriations Bill (National Assembly Bill No.31 of 2021 and Second Reading of the Finance Bill (National Assembly Bill No.18 of 2021). The House is also in the process of finalising the consideration and approval of the Second Supplementary Estimates for the Fiscal Year 2020/2021. During the afternoon Sitting of Tuesday, next week and given the timeliness, the House will be considering the following:

- (i) The First Reading of the Supplementary Appropriation Bill No.2 of 2021.
- (ii) The Second Reading of the Supplementary Appropriation Bill No.2 of 2021.
- (iii) At the Committee of the whole House, Supplementary Appropriation Bill No.2 of 2021; and,
- (iv) The Public Private Partnership Bill (National Assembly Bill No.6 of 2021).
Additionally, we will also consider in Second Reading of the following:
 - (i) The Waqf Bill (National Assembly Bill No.73 of 2019).
 - (ii) The County Governments (Amendment) Bill (Senate Bill No.13 of 2018).
 - (iii) The Social Assistance Repeal Bill (National Assembly Bill No.16 of 2020).

Hon. Speaker, in the Evening Sitting of Tuesday next week, the House is scheduled to consider the following in the Second Reading:

- (i) The Kenya National Blood Transfusion Service Bill, if we do not conclude it today.
- (ii) The Impeachment Procedure Bill (Senate Bill No.15 of 2018).
- (iii) The National Cohesion and Peace Building Bill (Senate Bill No.35 of 2018).
- (iv) A Motion to consider a report on the Departmental Committee on Finance and National Planning on Inspection Visits to Ascertain the Impact of Revenue Enhancement Initiatives on Revenue Collection.

I wish Members will pay attention so that they know what questions will be answered. They should not say they were not given notice. In accordance with the provisions of Standing Order No.42A(5) and (6), I wish to convey that the Cabinet Secretary for ICT, Innovation and Youth Affairs will appear on Tuesday, 29th June 2021, before the Departmental Committee on Information, Communication and Innovation to respond to:

1. Question No.103/2021 by Hon. Gideon Mulyungi on the policy measures used to identify areas to be provided with mobile telephone network connectivity in the country and all the other issues.
2. Question No.130/2021 by Hon. Gideon Keter to explain why the media sector in the country is operating casinos disguised as advertisement while practicing gambling throughout their broadcasting, programming and other issues.
3. Question No.176/2021 by Hon. Joseph Manje, MP, to provide an update on the status of the Kenya National Addressing System under the Communication Authority and wherever it involves.

Hon. Speaker, the House Business Committee will reconvene on Tuesday, 29th June 2021, to schedule business for the rest of the week. I wish to lay this Statement on the Table of the House. Thank you.

(Hon. Amos Kimunya laid the document on the Table)

Hon. Speaker: Next Order!

PROCEDURAL MOTIONS

EXTENSION OF SITTING TIME UNTIL CONCLUSION OF SPECIFIED BUSINESS

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move:

THAT, pursuant to the provisions of Standing Order 30(3)(a), this House orders that should the time appointed for adjournment of the House be reached before conclusion of business appearing under Order No.13 on today's Order Paper, the sitting of the House shall stand extended until the conclusion of the said business.

Hon. Members, if you look at your Order Paper, you will note that the business appearing under Order No.13 is discussion in the Committee of the whole House of the Finance Bill, which is really a critical business we have today and which has a constitutional and legal deadline for completion before the commencement of the new year. We need to have agreed, approved and enacted. A Finance Act must have been enacted and assented to before the commencement of the new financial year which is on 1st July, which is next week. It will be desirable that we are able to resolve that matter today rather than wait for Tuesday, next week with only one day to the deadline.

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So, it is in high respect that we will be asking Members, because we only have a Sitting today, that should the debate continue, and I hope it does not extend beyond 7.00 p.m., instead of going and coming back to continue on Tuesday, we complete everything as we have done in the past on critical matters affecting the nation. The rest of the agenda will be very straight forward. I pray we take a very limited time but when we get to Order No. 13, if we are able to finish everything by 4.00 or 5.00 p.m., so be it. We will continue with the rest.

However, with that unlikely event that we get over-engaged in discussion and it spills over to past 7.00 p.m., we would like to ask for your indulgence that we stay behind so that we complete this process.

Hon. Speaker, I believe this is a very straight forward issue. I beg to move and I would like to ask a seasoned Member of this House, Hon. Omboko, to second.

Hon. Speaker: Member for Emuhaya, you have the Floor.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. Thank you, Leader of Majority Party for recognising that despite the fact that I am a first time Member, I am also a seasoned Member. Without any further ado, it is very important we do those businesses as he has explained. I, therefore, second.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Next Order!

EXEMPTION OF SPECIFIED BUSINESS FROM A RESOLUTION OF THE HOUSE

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move:-

THAT, this House orders that the business appearing as Order Nos.10, 11 and 12 in today's Order Paper be exempted from the Resolution of the House on 8th June, 2021 (Alteration of the Calendar of the House (Individual Members' business)) being a Thursday Afternoon, a day allocated for Business not sponsored by the Majority Party or Minority Party or Business sponsored by a Committee.

Hon. Members, you may notice that under Order No.10, we have the approval of the Second Supplementary Estimates which is basically just for the Question to be put. Similarly, Order No.11 is for the Question to be put and Order No.12 is conclusion of the debate.

Now, the first one being a financial matter was technically covered by the approval. However, Order No.11 and No.12 are not covered by the Motion that we passed on 8th June. Today being a Thursday is reserved for Private Members business. Committee of the whole House is on Finance Bill and it is already covered. So, we do not need to exempt that one. For purposes of concluding what was carried forward from yesterday into today, and which is not Private Members business, we are asking for your indulgence that Members with Private Members business, donate their time so that we can dispense of these matters and then get back to Private Members Bills that are scheduled after Order No.14. It is a straight forward matter.

I beg to move and ask Hon. (Dr.) Pukose to second.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Leader of the Majority Party. I second.

(Question proposed)

(Question put and agreed to)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I think in future, we should not allow Hon. Pukose to second.

I just wanted to support but just ask the Leader of the Majority Party that going forward from next week, let us allow time allocated for Private Members Bills. The House cannot just be debating Government Bills. We used to do it on Wednesday. Today, the Procedural Motion is in order, but the work that is before us, the Finance Bill is so huge and that is what has precipitated the extension of the House until that business is completed. I agree but I think going forward, as the Chair of the House Business Committee, let us also allow the House to deal with Private Members Bill. That is my only concern.

Hon. Speaker: I think that was the Resolution of the House on 8th June that Thursday afternoons will be reserved for Private Members Bills. Indeed, in full recognition of that Resolution, should the House finish consideration of the business appearing as Order No.13, in the next 30 minutes... If you look at the Order Paper, Order Nos. 14, 15, 16 and 17 are all private Members Bills. In full recognition of that Resolution, that is why it is put like that. I can see an intervention from the Member for Tharaka-Nithi, Hon. Beatrice Nkatha.

Hon. (Ms.) Beatrice Nyagah (Tharaka-Nithi CWR, JP): Thank you, Hon. Speaker. I rise to request your indulgence. I initiated a Bill in 2018. I remember very well about three months ago, you said that we are now a forest in this House and Bills and Statements can get lost. Mine got lost. My Bill was under the Departmental Committee on Administration and National Security. I followed with the former Chair, I tried to defend my Bill in the Budget and Appropriations Committee, they called me to Mombasa to defend it and it was passed. However, I do not know why the Chair could not release it. I can see the Chair and his deputy here. Can I have my Bill back?

Hon. Speaker: What is the title of your Bill, if it has title?

Hon. (Ms.) Beatrice Nyagah (Tharaka-Nithi CWR, JP): It has a title. It is Publishing Co-operation Bill.

Hon. Speaker: I have seen it.

Hon. (Ms.) Beatrice Nyagah (Tharaka-Nithi CWR, JP): It has taken long.

Hon. Speaker: Hon. Mwathi, *kazi kwako*. Hon. Mwathi is from Limuru, I do not think there is any forest, neither is there a forest where the Vice-Chair comes from. So please, can he fish it out.

Hon. Peter Mwathi (Limuru, JP): Hon. Speaker there is a small forest in Limuru but the trees are scattered. It is not a thick forest.

Hon. Speaker: So, the Bill cannot get lost there?

Hon. Peter Mwathi (Limuru, JP): It cannot get lost there. I promise that I will get to the bottom of the matter and then report to the House.

Hon. Speaker: Why do you not report next Thursday?

Hon. Peter Mwathi (Limuru, JP): I will do it.

Hon. Speaker: Report back next Thursday because if it was sponsored in 2018, in fairness...I think it is an important Bill.

Hon. Peter Mwathi (Limuru, JP): I will report next Thursday. I thank you.

Hon. Speaker: Very well. Next order.

MOTIONS

APPROVAL OF THE SECOND SUPPLEMENTARY ESTIMATES FOR 2020/2021 FINANCIAL YEAR

THAT, this House adopts the Report of the Budget and Appropriations Committee on the Second Supplementary Estimates for the Financial Year 2020/2021, laid on the Table of the House on Wednesday, June 23rd, 2021, and pursuant to the provisions of Article 223 of the Constitution, Section 44 of the Public Finance Management Act, 2012, Public Finance Management Regulation 40 and Standing Order 243-

- (i) approves a decrease of the total recurrent expenditure for Financial Year 2020/2021 by Kshs16,657,599,945 in respect of the Votes as contained in the First Schedule to the Order Paper;
- (ii) approves an increase of the total development expenditure for Financial Year 2020/2021 by Kshs8,480,922,681 in respect of the Votes as contained in the First Schedule to the Order Paper;
- (iii) approves an overall decrease in the total budget for Financial Year 2020/2021 by Kshs8,176,677,264 in respect of the Votes as contained in the Second Schedule to the Order Paper; and,
- (iv) further makes the policy resolutions contained in the Fourth Schedule to the Order Paper.

(Hon. Kanini Kega on 23.6.2021 – Evening Sitting)

(Debate concluded on 23.6.2021 – Evening Sitting)

Hon. Speaker: Hon. Members, debate on this Motion was concluded last evening and what remains is the question to be put which I proceed to do.

(Question put and agreed to)

Hon. Speaker: That should pave the way for the publication of the Supplementary Appropriations Bill. Next Order.

ADOPTION OF PUBLIC ACCOUNTS COMMITTEE REPORT FOR FINANCIAL YEAR 2017/2018

THAT, the House adopts the Report of the Public Accounts Committee on the Examination of the Report of the Auditor-General on the Financial Statements of the National Government for the Financial Year 2017/2018 (Volumes I and II), laid on the Table of the House on Tuesday, 23rd March 2021.

(Hon. Opiyo Wandayi on 11.5.2021)

(Debate concluded on 23.6.2021)

Hon. Speaker: Again, Hon. Members, this is the Report of the Public Accounts Committee (PAC). The debate was also concluded last evening's sitting. What remains is for the Question to be put, which I hereby do.

(Question put and agreed to)

There is some interesting noise coming from that corner. We are about to get into the Finance Bill. I hope you will not disappear like yesterday. You can see the direction... Financial matters are important even for the *thuluthi mbili* campaigners.

Next Order!

BILL

THE KENYA NATIONAL BLOOD TRANSFUSION SERVICE BILL

Second Reading

(Hon. Joshua Kutuny on 23.6.2021 – Afternoon Sitting)

(Resumption of Debate interrupted on 23.6.2021 – Afternoon Sitting)

Hon. Speaker: Who was on the Floor? Yes, Hon. (Dr.) Robert Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. The Kenya Blood Transfusion Service Bill (National Assembly Bill No. 6 of 2020) had a lot of contributions yesterday. I think we generally exhausted it. I am standing under Standing Order No. 95 that the Mover be called upon to reply so that we can move to the other agenda.

I thank you.

Hon. Speaker: I fully agree but there was a Member who was on the Floor who has a balance of six minutes. Is the Hon. Charles Nguna present? Hon. Charles Nguna who was on the Floor has a balance of six minutes. He has the first chance. The Member not being present, having decided to take leave of absence, the Member for Endebess claim that the Mover be called upon to reply.

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

Mover! The Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to reply. On behalf of the Departmental Committee on Health because this is a Committee Bill... The Chairperson is away on training. I know that the Deputy Chairman was here yesterday and I met him earlier. He probably is still stuck in the traffic or watching the rally.

The essence of the discussion yesterday was very supportive of the blood transfusion service, the creation of the service and creating as a stand-alone unit. I believe that the comments that the Members made will be incorporated. More specifically, in that the Ministry of Health has made some very fundamental recommendations which are captured in the Report of the Committee, but which had not been carried forward into the recommended amendments at the Committee of the whole House stage.

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We agreed that the Departmental Committee on Health will be looking at those amendments plus what came on the Floor, and then bring out a comprehensive set of amendments to ensure that the Bill is then brought up to speed in terms of creating the desired blood transfusion service that is good for this country. In addition, that it takes into account all the issues to do with protection of the donors, the protection of the information about the donors, the protection of the blood itself in terms of who gets access to it, the safety concerns, and ensuring that the blood transfusion services have been spread across the entire country so that no Kenyan dies because of lack of blood and insufficiency in the whole supply and logistics chain on blood transfusion.

Hon. Speaker, those will be taken into account. I know that there are some Members of the Committee who are here and who are so passionate about that matter and will be representing us in that discussion when the matters get reconsidered in the Committee.

With those few remarks, I beg to reply.

(Question put and agreed to)

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

Hon. Speaker: Next Order. Just a minute!

COMMUNICATION FROM THE CHAIR

GUIDELINES ON SOME OF THE PROPOSED AMENDMENTS TO THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2021)

Hon. Speaker: Hon. Members, before we go to the next Order, I wish to give the following guidelines on some of the proposed amendments to the Finance Bill (National Assembly Bill No.18 of 2021).

Hon. Members, before the House proceeds to the next Order which is the consideration of that Bill, I wish to offer the following guidance with respect to amendments proposed by individual Members and the application of the provisions of Article 114 (2) of the Constitution. As you are well aware, Article 114 (2) of the Constitution provides:

“If in the opinion of the Speaker, a Motion makes provision for a matter listed in the definition of a Money Bill, the Assembly may proceed only in accordance with the recommendation of the relevant committee after taking into account the views of the Cabinet Secretary responsible for finance.”

Under Sub-Article 3 of Article 114, a Money Bill includes matters that contain provisions dealing with *inter alia*, taxation, the imposition of charges on a public fund, the appropriation, receipt, custody, investment or issue of public money, and the raising and guaranteeing of any loan or its repayment. In this regard, the Finance Bill being one that deals with taxation is clearly a Money Bill. Therefore, its consideration in the House squarely falls within the confines of Article 144 of the Constitution as well as other provisions relating to the processing of legislation in the House.

Hon. Members, having said that, as you notice in today’s Order Paper, several Members have proposed amendments to the Finance Bill 2021. They are the Member for Dagoretti South, Hon. John Kiarie; Nominated Member, Hon. David Sankok; the Member for Kikuyu, Hon. Kimani

Ichung'wah; and the Member for Moiben, Hon. Silas Tiren. Those amendments were referred to the Departmental Committee on Finance and National Planning for consideration in terms of Article 114 of the Constitution, as some make provisions for matters listed in the definition of a money Bill.

The Committee has given its recommendations, taking into consideration the views of the National Treasury as required by the law. As such, I now wish to guide the House as follows with regards to the various amendments for which a qualification has been made in the Order Paper.

(1) Amendments on petroleum products and liquefied petroleum gas (LPG).

The Member for Dagoretti South, Hon. John Kiarie, is proposing an amendment to Clause 15 to exempt petroleum products from the current 8 per cent VAT, and in Clause 22, to postpone the implementation of the 16 per cent VAT on LPG from the current proposed date of 1st July 2021 to 1st July 2024.

The Departmental Committee on Finance and National Planning has recommended that the House does not consider the amendments. In making the recommendation, the Committee notes that, if implemented, the proposals would have far-reaching implications on revenue collection and would greatly affect the implementation of the national budget and the financing of the Appropriation Act, 2021, which was passed by the House on Tuesday this week. Therefore, the amendments by Hon. John Kiarie will not be considered at the Committee of the whole House.

(2) Amendments on zero-rating of bread and maize flour and amendment relating to definition of the word "control".

Nominated Member, Hon. David Sankok, is proposing amendments to Clauses 2, 21, 22 and 23. The proposed amendments to Clauses 21 and 22 seek to zero-rate bread and maize flour, respectively, while the proposed amendment to Clause 23 seeks to remove excise duty on mobile money transfer. The Committee observes that the net effect of the amendments is reduced revenue collection which will in turn have a negative effect on the implementation of the national budget.

On the zero-rating of bread, the Committee is agreeable with the proposal as it has also proposed a similar amendment to the subject Clause. The Member's proposed amendment may, therefore, be considered alongside that of the Committee in line with Standing Order No.133, with priority being accorded to the amendment proposed by the Committee.

However, the Member's proposed amendments to Clauses 22 and 23 will not be considered on account of their effect on revenue collection and the financing of the Appropriations Act, 2021.

Similarly, the Member's proposal to amend Clause 2 to delete the definition of the word "control" will also not be considered as the Committee has proposed comprehensive amendments to the application of the said word. Keeping with our practice, I am persuaded to give priority to the proposals of the Committee given the fact that the proposed amendments are as a result of a lengthy process involving multiple stakeholders at the public participation stage envisaged under Article 118 of the Constitution.

(3) Proposed amendments to impose Excise Duty on imported onions, potatoes and eggs.

The Member for Kikuyu, Hon. Kimani Ichung'wah, is proposing amendments to Clauses 1, 7, 22 and 25 of the Bill and to also insert a New Clause 23A. The proposed amendments seek, *inter alia*, to introduce Excise Duty on imported onions, potatoes and eggs while removing Excise Duty on mobile money transactions. Additionally, the Member proposes an increase on Excise Duty on money transfer services and inclusion of drones to the list of Excise Duty items.

I am informed that upon consideration of the amendments proposed by the Member, the Departmental Committee on Finance and National Planning has recommended that the amendments to Clauses 1, 7 and paragraph (d) of the proposed amendment to Clause 25 should not be considered as they have a considerable negative effect on the revenue collection which may in turn require a reconsideration of the national budget. The said amendments will, therefore, not be considered.

Nonetheless, the proposed amendments to Clause 22, paragraphs (a), (b) and (c) of the proposed amendments to Clause 25 and New Clause 23A may proceed for consideration at the Committee of the whole House Stage.

- (4) Proposed amendments relating to the Value Added Tax Act on certain agricultural products.

The Member for Moiben, Hon. Silas Tiren, has proposed amendment to Clause 21 to include a list of 25 agricultural machinery and farm implement items as VAT exempted items under the Value Added Tax Act, 2013. The items include ploughs, harrows, manure spreaders and other farm machineries. Whereas the intention is good and may go a long way in supporting agricultural activities in the country, my hands and those of the House are tied by the requirements of Article 114 of the Constitution. Similar to the previous proposals, the Committee and the Cabinet Secretary for the National Treasury are concerned by the huge effect of the amendments to the revenue collection. The Committee has, therefore, advised against their consideration with exception of one item.

Therefore, the amendments will not be considered by the Committee of the whole House, save for the first item of paragraph (b) of the proposed amendment which is listed as proposed item No.134 being tractors other than road tractors or semi-trailers. The net effect is that, that will be considered.

In summary, Hon. Members, the proposed amendments that were received through my office and for which a disclaimer under Article 114 of the Constitution has been made in today's Order Paper, will be proceeded with in the manner that I have guided above.

As I conclude, I wish to remind the House of the provisions of Section 39 (a) of the Public Finance Management Act, 2012 which states in part:

“39A. Submission, consideration and passing of the Finance Bill

(4) Any recommendations made by the relevant committee of the National Assembly or resolution passed by the National Assembly on revenue matters shall-

(c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth;

(f) take into account the recommendations of the Cabinet Secretary as provided for under Article 114 of the Constitution; and,

(g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty.”

In this regard, due consideration should always be made when proposing amendments to a Finance Bill or other revenue related legislations to ensure compliance with the Constitution, the Public Finance Management Act, 2012 and our own Standing Orders.

The House is accordingly guided.

Hon. Members, the House resolved in the affirmative in regard to Order No.12, which was that the Bill be read a Second Time.

I, therefore, order that the Bill be read a Second Time.

Hon. Omboko Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker for the very good guidance that you have given us. It complies with the Constitution, Standing Orders and every other section of the law. As you have guided, I stand with it.

However, I notice that most of the amendments can be stepped down in future. The role of Parliament is not only to make laws but also to sensitise Kenyans about what is being done and the reason it should not be done. I beg the Chair of the Committee to allow some of the amendments by private Members to be spoken on in future, so that the public may know their stand.

Thank you, Hon. Speaker.

Hon. Speaker: The opportunity for that is always there during the Second Reading of the Bill. This is why I always encourage Members to debate in the Second Reading of the Bill. The Leader of the Majority Party said that Hon. Omboko Milemba is a seasoned Member. Debate takes place during the Second Reading of the Bill. Our rules are very clear that when you resolve into the Committee of the whole House, you should not relate and debate. This is expected to have happened during the Second Reading of the Bill. This is the stage at which you discuss the Report of the Committee. All the things which I referred to in the Communication that I have just given are in the Report of the Committee. Having listened to the Cabinet Secretary for the National Secretary, the Committee put that in their Report. Therefore, Members are encouraged to always look at the Reports of committees at all times.

I encourage the Members who always harass us about National Government Affirmative Action Fund (NGAAF) and two-thirds gender rule to participate. If you are not heard in this House, where do you want to be represented? We are about to get to the Committee of the whole House. You can almost count the number of Members from 47 Women Representatives who are here. There was a proposal to even add more women. If you do not pay attention to the Finance Bill... You should be here saying that businesses which are owned by women should be exempted from certain taxes. Where are the Members? This reminds me of an argument which was very strongly advanced between 2010 and 2011 by the grandfather of the House. He was not in the House at that time. He was sitting in a committee that was looking at the proposed 47 Women Representatives. This was immediately after the Constitution was adopted. The Member for Kitutu Chache North argued that those 47 slots should not be exclusive to women. He argued that he is a very good representative of women. I agree with him now because he has come here to represent them.

Hon. Members: Yes.

(Laughter)

(Hon. (Dr.) Robert Pukose spoke off record)

Hon. Speaker: This is a challenge. I must commend the Chair of the Departmental Committee on Finance and National Planning who has done a great job even in this Report.

(Applause)

We must give credit where it is due. Hon. Gladys Wanga, I encourage you to invite the other Members in the Kenya Women Parliamentary Association (KEWOPA) to take part in finance matters. They should be a little more active in finance matters. Do not just be active in KEWOPA. If we were discussing something about the Commission on the Status of women (CSW), I am sure this place would be full. When there is a meeting of the CSW, my office is inundated with very many requests.

(Laughter)

Pay attention to not only the CSW but also finance and taxation matters. I encourage those Members who are not present to pay attention to the Finance Bill. The numbers have gone up today because we spoke about it yesterday. This is very serious. Those of you who have not been here before should stay alert now, so that they can harness their skills by seeing how Hon. Wanga will plough through the Finance Bill. You can see how thick this Order Paper is. It is not a walk in the park. We expected many of you to be here, so that you can marvel at how it is done. However, you are in the village now. You are not here. I commend those who are here. I commend Hon. Rozaah Buyu. However, I encourage her to stay on and participate. This is very crucial. Let us proceed.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE FINANCE BILL

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are in the Committee of the whole House to consider the Finance Bill (National Assembly Bill No. 18 of 2021). As Hon. Speaker said, this is a very important process which is at the tail end of the budget-making process. You remember that the Budget Estimates were tabled here. The Committees engaged on them. The Budget and Appropriations Committee tabled a Report which the Members engaged in. We passed the Appropriation Bill in this House. The CS for the National Treasury made highlights on the revenue raising measures. At the tail end of the budget-making process, we have the Finance Bill which is extremely important. It tells us how we shall raise money and how we shall fund the Budget this year. So, this is extremely important.

Hon. Members, I hope we can carry everyone along. The Chair of the moment is the Chairperson of the Departmental Committee on Finance and National Planning.

PROVISIONS RELATING TO INCOME TAX ACT

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Hon. Chairlady, you can move both amendments under ‘(a)’ and ‘(b)’ together, if they are related. Would you want to move? I do not know why the Majority Leader is insisting you sit next to him. I think it is for consultation purposes between him and the Chair; I being the Chair.

Clause 2

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairperson. I beg to move:

THAT, the Bill be amended in Clause 2 (a) -

(a) in the proposed definition of the term “control” by-

(i) deleting the word “or” appearing in paragraph (f) (i) and substituting therefor the word “and”;

(ii) deleting paragraph (f) (ii) and substituting therefor the following new sub paragraph-

(ii) upon assessment, the Commissioner deems influence in the price or other condition of the supply of the purchases of another person;

(iii) deleting the word “or” appearing in paragraph (g) (ii) and substituting therefor the word “and”;

(iv) deleting paragraph (g) (ii) and substituting therefor the following new sub paragraph-

(ii) upon assessment, the Commissioner deems influence in the price or other condition of the sales of another person;

The import of this amendment relates to the definition of control. “Control” is when you determine that Company A has control over company B. If you look at Clause 2, there are many aspects that have been listed as control.

(a) that the person, directly or indirectly, controls at least 20 per cent of voting rights;

(b) a loan advanced by the person to another person constitutes at least 70 per cent;

(c) a guarantee by the person for any form of indebtedness of another person constitutes 70 per cent.

(d) the person appoints more than half of the board of directors.

(e) the person is the owner of or has the exclusive rights over the know-how, patent, copyright...

I am just trying to explain so that Members can tag alone. We are trying to amend the clause which says that if a person supplies at least 90 per cent of the supplies or purchases of another person, then that person is considered to control the other. We are deleting the word “or” and substituting it with the word “and”. The clause will read as follows:

‘the person or a person designated by that person –

(i) supplies at least ninety per cent of the supply of the purchases of another person; and

(ii) in the opinion of the Commissioner influences the prices or other conditions relating to the supply of the purchases of another person.’

This particular point in practical terms means, for example, the issue of the relationship between Boeing and Kenya Airways. Boeing, because of the nature of its business, supplies 100

per cent of the planes owned by Kenya Airways but, can Boeing be said to have control over Kenya Airways? So, the Committee was saying, maybe not, but it could be said to have control only if the Commissioner establishes that Boeing is playing around with prices so that Kenya Airways can lower the profits. That is why we are combining the two points. So, instead of saying “or” we are saying if you supply at least 90 per cent and in the opinion of the Commissioner you influence price or other conditions relating to the purchases or supplies. That is the improvement that the Committee is making to that particular definition in ‘f’ and ‘g’.

The other thing we are adding is that stakeholders had a problem with the word “in the opinion of the Commissioner”. So, we have said, “upon assessment the Commissioner deems that influence in price or other conditions of supply of the other person”. For part ‘(a)’ it relates to supply and ‘(b)’ relates to purchase. That if you purchase, at least, 90 per cent from the other person. The concept is the same.

Hon. Temporary Deputy Chairman, I beg to move.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What about ‘(b)’ which is specifically on infrastructure bond, or is it not under that?

Hon. (Ms.) Gladys Wanga (Homa Bay (CWR), ODM): Yes, let me also move the one on the infrastructure bond. This Bill, in Clause 2 seeks to define infrastructure bond.

I beg to move:

THAT, the Bill be amended in clause 2 (b)-

(b) in the proposed definition of the term “infrastructure bond” by inserting the words “or energy project” immediately after the words “communication network”.

So, ‘infrastructure bond’ has been defined as a bond issued by the Government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage system or a communication network. The energy stakeholder came and said that energy can also have big infrastructure projects and should also be included. So, that is what the Committee is doing.

I beg to move.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

(Question of the amendment proposed)

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

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

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

(Clause 2 as amended agreed to)

Clause 3

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have an amendment on Clause 3. Hon. Chair, as you move, please note that Members have the Order Paper. I am sure that they have done a bit of reading of the Order Paper. Please just highlight so that we make progress. You will be surprised that Members read way in advance.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you. Hon. Temporary Deputy Chairman, I am well guided. I beg to move:

THAT, the Bill be amended in clause 3 (b) in the proposed new definition of the term “digital marketplace” by inserting the words “or electronic” immediately before the word “platform”.

The amendment is to expand the definition of “digital market place” to include the word “electronic” in order to capture electronic sale transactions. When we say digital market place...

(Hon. Amos Kimunya spoke off-record)

Leader of Majority Party, let me just add one word. Just leave it to my discretion. I will take a little time.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairlady, you have your time and space taking note that we have the Order Paper.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I will just explain that ‘electronic’ would include platforms like *Netflix* into this bracket. If you just say over the internet, you leave behind television, *Netflix* and so on.

I beg to move.

(Question of the amendment proposed)

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have an amendment to Clause 5.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended in clause 5 by deleting paragraph (a) and substituting therefor the following new paragraph –

(a) by deleting subsection (1) and substituting therefor the following new subsection–

(1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a non-resident person whose income from the provision of

services is derived from or accrues in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace.

This relates to the issue of digital service tax. To confirm and clarify, this does not apply to residents. It only applies to non-residents.

I beg to move.

(Question of the amendment proposed)

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

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

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

Clause 7

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment. The one by Hon. Kimani Ichung'wah falls in light of Article 114 of the Constitution. Therefore, we have only that one of the Chairperson.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in clause 7 (a) in the proposed paragraph (j) by inserting the following new sub-paragraph immediately after subparagraph (ii)–

(iii) this paragraph shall not apply to –

(A) banks or financial institutions licensed under the Banking Act; and

(B) micro and small enterprises registered under the Micro and Small Enterprises Act, 2012;

This clause applies to the Thin Capitalisation Rule. What we are trying to do as a Committee is to exempt institutions where interest is both their profit and business. Those are banks and financial institutions licensed under the Banking Act and also the Micro, Small and Medium Enterprises (MSMEs). It is so that MSMEs do not fall in the trap of the new Thin Capitalisation Rule.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Kimani Ichung'wah.

Hon. Kimani Ichung’wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I was dejected because I had intended to delete the entire clause on Thin Capitalisation. As we have heard from the Chair, basically, the Thin Capitalisation she has talked about is in relation to banks and financial institution that make money from interest income. Even in the midst of this pandemic, it is only banks and financial institutions that are making a lot of money, profits in billions. I had also other amendments, but related to taxation of the interest income. Banks are minting billions from very vulnerable and poor Kenyans.

I would have hoped the Chair and her Departmental Committee on Finance and National Planning would agree with me, but now that they have not. I will leave it to fight another day. But we must state clearly that bank owners and owners of capital in this country should not in any way use the powers that they hold in high office, some of them hold high office, to take away from Kenyans their very hard earned incomes. Kenyans are really suffering. Every day, as Members of Parliament, we are confronted by constituents we represent who are suffering under banks that are minting billions and auctioning our people’s property. Therefore, we may be passing legislation here today, but I want to say for the record that this legislation helps capital owners at the expense of consumers, taxpayers and very hard working Kenyans who hustle every day. These Kenyans spend all the money they make from their daily hustles. They convert their hard earned income into income for capital owners, that is, the real capital owners who imagine that they own this country. A day is coming when the capital owners will know they do not own this country. They own it collectively with those who are struggling and hustling in this country.

Thank you, Hon. Temporary Deputy Chairman. It is unfortunate that my proposed deletion was under Article 114 of the Constitution. Even as I support the Chair, I have no option now but to support her. I see my good friend John Mbadi getting agitated. In the next Building Bridges Initiative (BBI) proposals, they should propose deletion of Article 114 of the Constitution to some extent.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mbadi. We will have two more Members.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, the reason Article 114 is there is to deter possible mutilation of very serious business like this one by Members who would bring frivolous and malicious amendments.

(Hon. Kimani Ichung’wah spoke off record)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Proceed as if Hon. Kimani Ichung’wah is not speaking.

Hon. John Mbadi (Suba South, ODM): My friend Ichung’wah still thinks he is still the Chair of the Budget and Appropriations Committee.

I agree with Hon. Ichung’wah that our banks sometimes become exorbitant and mistreat our people. But the right way to go is not to impose tax measures which will affect investment. As a country, we need to encourage investment because it creates job opportunities for our people. We do not live in an island or in isolation. We operate with our neighbours. The moment we make business environment in Kenya difficult, we will be telling people to go to Tanzania, Rwanda and Uganda. The best way to handle the exploitation by banks is to ask the Government to stop

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borrowing from the banks. That is the only way or route. If Government stops borrowing a lot of money from the banks, there will be enough resources for other Kenyans. Otherwise, I do not want to say much. I wanted to react to what Hon. Ichung'wah said.

I support the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us have a balance. I will give one or two Members.

Hon. Chair, you seem to have moved specifically sub-clause (A) and (B) and left out (C). Let me put the Question on (C).

Proceed. Then we carry out everything.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I would like to drop (C) because it does not relate to financial institutions. So, I would like to drop part (C).

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is fine, Hon. Chair.

*(Proposed sub-clause (C) by the
Hon. (Ms.) Gladys Wanga dropped)*

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

(Clause 7 as amended agreed to)

(Clauses 8 and 9 agreed to)

Clause 10

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have an amendment to that clause.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 10 and substituting therefor the following new clause –

Amendment of section
39B of Cap.470

10. Section 39B of the Income Tax Act is amended by deleting subsection (1) and substituting therefor the following new subsection–

(1) An employer who engages at least five university or technical and vocational education and training graduates as apprentices for a period of six to twelve months during any year of income shall be eligible for tax rebate in the year subsequent to the year of such engagement.

Based on the conversations we had here during the Second Reading, this is related to tax rebates for institutions that take in interns, Technical and Vocational Education and Training (TVET) graduates and university graduates. The Committee was trying to reduce the number to five, but based on the debate Members felt we should retain it at 10.

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The rationale of the Committee was that if you are at five then even MSMEs can benefit from the tax rebates. But based on the debate, we felt that if we encourage people to take 10, more of our TVET graduates will be actually absorbed. So, on that basis, I beg to drop that amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That one is dropped, for record.

*(Proposed amendment to Clause 10 by
Hon. (Ms.) Gladys Wanga dropped)*

(Hon. Joseph Nduati spoke off record)

Hon. Nduati, we cannot open it because there is no amendment to it. It is dropped and so we cannot open it up.

(Clause 10 agreed to)

Clause 11

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Hon. Chair has an amendment.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting the proposed Clause 11 and substituting therefor the following new clause –

Amendment of
section 41 of Cap.470.

11. The Income Tax Act is amended by deleting section 41 and substituting therefor the following new section–

Special
arrangement for
relief from double
taxation.

41. (1) Every special arrangement for relief from double taxation made with the Government of any country outside of the Republic of Kenya with a view of affording relief from double taxation in relation to income tax and any taxes of similar character imposed by the laws of that country shall, subject to sub-section (2) but notwithstanding any other provision to the contrary in this Act or in any other written law, have effect in relation to income tax, and every such agreement shall be subject to the provisions of the Treaty Making and Ratification Act, 2012.

(2) Subject to subsection (3), where an arrangement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion, or reduction shall not be available to a person

who, for the purposes of the arrangement, is a resident of the other contracting state if fifty per cent or more of the underlying ownership of that person is held by a person or persons who are not residents of that other contracting state for the purposes of the agreement.

(3) Subsection (2) shall not apply if the resident of the other contracting state is a company listed in a stock exchange in that other contracting state.

(4) In this section, the terms "person" and "underlying ownership" have the respective meanings assigned to them in the Ninth Schedule.

This amendment relates to the issue of double taxation agreement. What the Committee has done is to state... Earlier in the year, we had Mauritius Double Taxation Agreement and we considered it under the Statutory Instruments Act. In that case, the House has no role in what happens. What the Committee is trying to do is to move it, especially tax related agreements, to be considered under the Treaty Making and Ratification Act of 2012 so that the House can have a say.

We can say whether it is good or bad for the country before we pass it rather than just having it under the Statutory Instruments Act. That is the amendment that we are moving to that particular clause. I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Duale and then we put the Question.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, do not say "and then we put the Question". Those of us who have degrees have read.

(Laughter)

Those who do not have degrees are not here. I agree with the Chair of the Departmental Committee on Finance and National Planning that those who draft the Finance Bill at the National Treasury must be conversant with the legislative Acts that have been passed by this House. You cannot bring a matter that can be covered under the Treaty Making and Ratification Act. We have done it a number of times where double taxation between governments come under that Act. You cannot bring it under the Finance Bill that ideally deals with tax raising measures. I want to agree with the amendment. However, this must go to the National Treasury, the Government and the State Law Office. We must advise people that you cannot be a squatter in another legislative regime. I was concerned but I am happy the Chair has made it clear.

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

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

(Clause 11 as amended agreed to)

Clause 12

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 12 and substituting therefor the following new clause—

Amendment
of the
Second
Schedule to
Cap. 470.

12. The Second Schedule to the Income Tax Act is amended—

(a) in paragraph 1—

(i) in subparagraph (a), by deleting the words “on reducing balance” wherever they occur and substituting therefor the words “in equal instalments”;

(ii) in subparagraph (b)—

(A) by deleting the words “on reducing balance” wherever they occur and substituting therefor the words “in equal instalments”;

(B) by deleting the words “under a mining right” appearing in subparagraph (xi);

(iii) in subparagraph (c), by deleting the words “on reducing balance” and substituting therefor the words “in equal instalments”;

(iv) in subparagraph (d), by deleting the words “on reducing balance” and substituting therefor the words “in equal instalments”;

(v) in the proviso—

(A) by deleting the words “through the national grid” appearing immediately after the word “electricity” appearing in subparagraph (f) thereof;

(B) by adding the following new subparagraphs immediately after subparagraph (f)—

(g) civil works include –

(i) roads and parking areas;

(ii) railway lines and related structures;

(iii) water, industrial effluent and sewerage works;

(iv) communications and electrical posts and pylons and other electrical supply works; and

(v) security walls and fencing.

- (h) “Farm works” means farmhouses, labour quarter, any other immovable building necessary for the proper operation of the farm, fences, dips, drains, water and electricity supply works other works necessary for the proper operation of the farm;
- (b) by inserting the following new subsection immediately after subsection (1) –
- (1A). Notwithstanding paragraph 1, the investment deduction shall be one hundred per cent where—
- (a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least ten billion shillings; or
- (b) the person has incurred investment in a special economic zone.

This clause relates to investment deductions. It is moving it from making investment deduction on reducing balance and making it on a straight line so that once you have reduced, you continue reducing. So, the investment deductions will end before it is too long. That is what the amendment is trying to do. It goes further to define civil works so that it is clear. For example, roads and parking, railway lines and related structures, water, industrial effluent and sewerage works as it appears in the Order Paper.

There is also an important definition of “Farm works” Lack of a definition of “farm works” makes those who are investing in agriculture through building farm houses and labour quarters to not qualify for investment deduction. This definition makes agriculturalists and farmers have a clear understanding of it.

(Hon. (Ms.) Gladys Wanga consulted with the Leader of the Majority Party)

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is fine Chair. Consult so that we carry along everyone.

Hon. (Dr.) James Nyikal (Seme, ODM): On a point of order, Hon. Temporary Deputy Chairman.

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

(Hon. (Dr.) James Nyikal spoke off-record)

(Hon. (Ms.) Gladys Wanga consulted the Clerks-at-the-Table)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, as the Chairperson consults with the Clerks-at-the-Table, we are on page 747 of the Supplementary Order Paper. It is good to consult. The Chairperson is in order to consult.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you. You know Hon. Ichung’wah is *tangatangaring* too much around here.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I can tell where the confusion is coming from. Hon. Ichung’wah stick to your seat.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, part (b) speaks to investment deductions of up to 100 per cent for those investing outside Nairobi and Mombasa. The import is to try and encourage investors to invest away from the main cities. We want investors all over the county in Homa Bay, Nyandarua, Kisumu, Kitui, Kikuyu, Isiolo, Funyula Migori, Moiben and Wajir. In the Order Paper, this investment value is ten billion.

(Question of the amendment proposed)

I would like to move a further amendment. I do not know if I can move this one then I move the further one?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Why not move it in the amended version?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Let me move it in the amended format. I beg to move a further amendment. Part (a) will read:

(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least two billion shillings: Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020;

We are changing where it reads ten billion to two billion. The same applies to the next sentence as well.

Thank you.

(Question of further amendment proposed)

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

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman. I support what the Chairperson of the Departmental Committee on Finance and Planning has said. It is important for this country to recognise the importance of distribution of investment in the country. Therefore, the last amendment is important and I support that the threshold should be moved from ten billion to two billion to allow more investors to benefit from this.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Ichung'wah for a minute.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I rise to support. I want to encourage the Chairperson that in the next Finance Bill to vary this provision a bit. Two billion shillings in Kikuyu is not equivalent to two billion shillings in Moiben Constituency where Hon. Tiren comes from. It is because of the proximity of Kikuyu to Nairobi. We may need to have it in a varying format in the next Finance Bill such that even if you were to set up a factory in say, Marmanet Forest for Ksh1 billion... You should encourage people to go and set up factories there. You know land is more available in places that are far away from Nairobi City. It is indeed, a good amendment.

I support a further amendment to reduce that threshold to Ksh2 billion. Next time, you should consider Ksh1 billion and encourage people to move away more from the known urban centers like Eldoret, Kisumu and Nakuru. Let us see more people setting up factories in places like

Isinya, Moiben and Kisii where Hon. Jimmy Angwenyi comes from. It is a good thing to do and the right way to go. That is how to grow cities and urbanize other places outside Nairobi and its environs.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Ochieng, Kindly, have the Floor.

Hon. Pamela Ochieng (Migori CWR, JP): Thank you very much Chair. I wanted to challenge what my friend, Hon. Ichung'wah was saying. However, towards the end, he seemed to have come back to his senses and made the right statements.

(Laughter)

We are encouraging equitable, distribution of resources in Kenya.

The Temporary Deputy Chairman (Patrick Mariru): Hon. Ichung'wah, what is out of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): The honourable lady said I seem to have come to back to my senses. Is she in anyway insinuating that I was not in my right senses? She must withdraw and apologise.

Hon. Pamela Ochieng (Migori CWR, JP): I do not wish to respond to that question.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Ochieng is a Doctor of English. I do not think she meant what you heard. Hon. Ochieng, do not go that route.

Hon. Pamela Ochieng (Migori CWR, ODM): Yes. What we are doing in Kenya and why I stand with the Chair of the Departmental Committee on Finance and National Planning...

(Hon. John Mbadi spoke off-record)

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

Hon. Pamela Ochieng (Migori CWR, ODM): I need protection. Why am I not being allowed to make my point?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Ochieng, when a Member rises on a point of order, we must listen to him. This is because there could be something terribly out of order. Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Hon. Chair, you know I am a seasoned Member of this House. Let us not allow certain remarks which lower the dignity of the House. You cannot say a Member has regained his senses. Hon. Pamela needs to withdraw and apologise. We are having a debate. We are not in a *baraza* somewhere.

Hon. Pamela Ochieng (Migori CWR, ODM): Hon. Temporary Deputy Chairman, I stand guided by my Chair of the Party and the Leader of Minority Party. I withdraw. However, I am not sure what I am withdrawing. I apologise to the House. I meant to say that I stand by the amendment by the Chair of the Departmental Committee on Finance and Planning. She has put it very clear. Migori County, where I come from, is a prime place but we are missing investors. My sons and daughters who have graduated with skills from the universities and colleges are all in the streets with no jobs.

I support.

(Question, that the words to be left out be left out,

put and agreed to

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

(Clause 12 as amended agreed to)

(Clause 13 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are done with the existing clauses. However, we still have New Clauses under that. We shall do the New Clauses together in one act so that we are done with it completely. Chair, kindly, move the Second Reading of New Clause 4A.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us do these two New Clauses. Let us do one after the other. We can move quickly.

New Clause 4A

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 4—

Amendment of
section 11 of Cap.
470

4A. The Income Tax Act is amended in section 11 by inserting the following new subsection immediately after subsection (3)-

(3A) In the case of a registered trust, sub-section (3) shall only apply to-

- (a) any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing;
- (b) income paid to any beneficiary which is collectively below ten million shillings in the year of income;
- (c) such other amount as the Commissioner may prescribe from time to time and at such rate as prescribed in paragraph 5 of the Third Schedule.

This relates to Income Tax for family trusts. This is a new area. Not many of us, even if we have wealth, create trusts. This is a move to encourage creation of family trusts such that if I get my salary, it is taxed. If I put it in the trust and tomorrow I want to pay it out to my next of kin, then there is a proposal here to exempt it from tax, especially for purposes of education, medical treatment, early adulthood housing and so on. We are talking about amounts below Ksh10 billion and as may be prescribed by the Commissioner.

I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 4B

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I beg to move:

THAT, Bill be amended by inserting the following new clause immediately after Clause 4 –

Amendment of section 12D of Cap.470. of 4B. Section 12D of the Income Tax Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (e)—
(f) that person is not engaged in manufacturing and whose cumulative investment in the preceding four years is at least ten billion shillings; or
(g) that person is not licensed under the Special Economic Zones Act, 2015.

This relates to people who are engaged in businesses where the prices are controlled by Government. These are insurance businesses and those in the manufacturing industry. A person's cumulative investment in the preceding four years is at least Ksh10 billion, or is licenced under special economic zones. This is just to create a conducive environment for investment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Ichung'wah, what is out of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I am also a stickler to procedure. In the one that we have just passed, that is, New Clause 4A, if you read Sub-section (3A) it says: "any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing."

I need to get the clarification from the Chair of the Committee. I see she has moved. Does it relate to early...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Kimani! You have said you are a stickler of rules.

Hon. Kimani Ichung'wah (Kikuyu, JP): That is why I am saying, I was excusing myself because I knew we had already passed that. I tried to catch your eye because I was seated at your right.

The Temporary Deputy Chairman (Hon. Patrick Mariru): No! Hon. Kimani, the same rules say that the House has resolved. We cannot revisit. There is a manner of revisiting, but, at least, not in the manner you are doing. I am sure he knows how we can return for reconsideration.

(Hon. John Mbadi spoke off-record)

Hon. Mbadi, I will see you after I propose.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Chairman, we wanted to ask if early adulthood is defined. Which age bracket is it? When you go too fast, Hon. Temporary Deputy Chairman, sometimes...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. That is noted. Hon. Wanga, there is no way you can clarify that because the House has moved. There is a way of revisiting that one. Hon. Members, I have proposed that the New Clause 4B be now read a Second Time. I will now put the Question...

Yes, Hon. Limo, on New Clause 4B.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I am not very sure. I would like to ask if we can get more clarification on this given that the minimum tax was introduced in the last Finance Bill.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, it is good you listen to what Hon. Limo is saying.

Hon. Joseph Limo (Kipkelion East, JP): The objective of the minimum tax was to ensure that at least everyone pays tax. This is because even if you do not declare that you have income, which can be used to compute tax, at least you pay something at a very concessionary percentage. Therefore, by moving this amendment and exempting investors who have just invested at least around Kshs12 billion, we are effectively starting to erode the objective of the minimum tax before even it is properly implemented. In fact in the absence of proper explanation, I am not very comfortable supporting this amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Oundo. Do you want to speak to this?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Yes, again the same problem arises from 4A to 4B probably I do not know. We need your guidance on how we can resolve it because you never gave us a chance to ventilate on 4A and also now 4B, I do not know. How do we tie up with this issue of minimum tax? I know there is a court case to that effect. I think we need to tighten up all those issues before we go into other headwinds.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Hon. Kimani.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I was rising to oppose but I got some guidance on it. Let me just say for the record that I want to agree with what the former Chair of the Committee on Finance and National Planning, Hon. Limo, is saying. On this minimum tax business and you know this matter is still in court, I raised my objections last year during the Finance Bill and I still maintain that this minimum tax is not good for business and is not good for this country. We are now exempting people who are in retail business and whose retail prices are controlled by the Government. We did last year in the negative and basically they are very few but, when you get to insurance business again there are questions. We just did a Special Sitting last month again to exempt Kenya Airways and that tells you that this minimum tax is probably not something we really gave time and thought to. I will support but still with the same reservations, I aired last year that this minimum tax business is not good. You do not tax people on the basis of their sales or their revenue turnover. You tax based on what people make. We are killing business.

In fact, I change my position; I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, do you have something to say? Yes, Majority Leader then Minority then we have the Chair and move. Hon. Majority Leader.

Hon. Amos Kimunya (Kipipiri, JP): Yes, Thank you Hon. Temporary Deputy Chairman. I fully appreciate the importance of this amendment in terms of first understanding what was agreed last year while Government controls retail prices for fuel and hence there is really nothing much you can do. Whether you make losses or profits, the Government has set the price. On insurance business, what I like to urge the Chair to consider... The reason people went to court was because of a whole group of distributors who sell on behalf of a manufacturer but the minimum tax is being applied on the gross turnover and not the commission they receive. I wish the Chair was around to listen...

(Consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chair is doubling with quite a bit of consultations but I am sure Members are listening. The Chair is also consulting.

Hon. Amos Kimunya (Kipipiri, JP): I would like the Chair to...

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Majority Leader is pleading that you listen to what he is saying.

Hon. Amos Kimunya (Kipipiri, JP): I would like the Chair to bring an amendment. The rationale for bringing the insurance business in is because people in insurance business work on commissions. So, they are brokers and hence if you tax at the level of gross turnover then the person is being paid 3 per cent of that gross turnover; you charge one per cent effectively, they are paying tax at 33 per cent which is the same thing with distributors of fast moving goods who are charged on gross turnover of sales. The income they receive is the commission they receive on the sale. Therefore, it is a very unfair taxation on those manufacturers. I would like to urge the Chair to bring in an amendment now that we are here. Since we are in the Second Reading, in addition to what is in 4B,

Section 12D of the Income Tax Act is amended –

(a) in subsection (1) by deleting paragraphs (d) and (e);

(b) by inserting the following new subsection immediately after subsection (1)-

(1A) notwithstanding the provisions of subsection (1), a person shall not pay minimum tax if that person—

(a) is engaged in business whose retail price is controlled by the Government;

(b) is engaged in insurance business;

That we also add “who is engaged in distribution business” because their income is based on a commission and not on the turnover. If that could be done as we close part 4B in the Second Reading before we move to the Third Reading, it would be good. You should guide us whether we do it here or leave it in the amended form. This is so that we cater for that category of people who are being penalised for being distributors and are being taxed on the gross income of their principals rather than the commission they are receiving from distribution on behalf of their principals.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. I will give a few more members here on this one because I am sure the Chair is still consulting; Minority Leader, please.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, I am also wondering if we have carried out empirical studies to see where else in the world we have minimum tax. I think it is a punitive law and I completely agree but, it is in place and we are the ones who passed it in this House. Now that the Committee has seen it fit to make some proposals to save some businesses from that tax, I think we need to support it even as we wait for the court case. However, something where I support the Committee, if you look at part (c), it states-

‘(c) that person is not engaged in manufacturing and whose cumulative investment in the preceding four years is at least ten billion shillings’.

I want to support that because let us look at it in a wider perspective. Someone who invests Kshs10 billion is actually creating a lot of employment opportunities. Therefore, for that reason we should protect such a business. They may be making small profit or nothing or losses, however, Kshs10 billion in investment must have employed so many Kenyans and on that basis, I support this amendment. We need to create job opportunities. It is not just about tax. By the way Hon. Temporary Deputy Chairman, allow me to say this in one second. If you employ 1000 people how much tax do you think they will pay to this country? It is a lot. Therefore, let us not just look at the direct taxation to business. We should also look at tax that those who are employed in that business give back to the economy.

Thank you Hon. Speaker. I support this amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, I rise to support this amendment but, I think what we need look at is actually scrap this whole thing of minimum returns. This is because you are basically being on your turnover. If you look at businesses where interest is very small, for instance, if you look at the fuel industry where you really have huge turnovers, in order to make any significant interests eventually some people are being taxed when they have actually made losses. Therefore, I think we should remove this minimum tax. In my view many more businesses should actually be included.

Therefore, I support.

(Hon. Joseph Nduati spoke off record)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nduati, you want to say something before I give the Chair? Chair, I will be giving you after that so that then you...

Hon. Joseph Nduati (Gatanga, JP): Hon. Temporary Deputy Chairman, I also want to make my contributions and say that when it comes to minimum tax I also oppose. A case in point is the construction industry where you have to pre-finance the works. You pre-finance works. If you are taxed at the minimum and maybe you will be finishing that work in three years and you will make your profit towards the end, it is very hurting.

I would like to ask the Chair of the Committee as Hon. Nyikal has said, that on this one, you need to reconsider. It is really going to punish some of us.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oundo, you had a chance. You want to get a second pick? Yes, the Chair is okay.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I would like to agree with the Members who have contributed on this matter. When we get a further opportunity to discuss this issue of minimum tax, we will relook into it again. This is because it was Hon. Limo's baby and we moved it forward. I am just using Hon. Limo to represent the Government and the Committee at the time.

I did this in a very good way because Hon. Limo is my great friend and predecessor. He is a great man and did a great job in this Committee. In fact, I have a code name for him, it is JQT but I will not tell you the meaning. I would like to clarify that the amendments under A and B were already passed in the last Finance Act and this is just cleaning up. C and D are new.

I would like to move a further amendment:

THAT, New Clause 4B be further amended by inserting the following new paragraph-

(e) a person who is engaged in distribution business whose income is wholly based on a Commission.

Hon. Temporary Deputy Chairman, I beg to move.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, the Chair has clarified and I will put the Question in the amended form.

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

(The new clause was read a Second Time)

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

New Clause 8A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair for Second Reading.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 8—

Amendment
of section
25 of Cap.
470.

8A. Section 25 of the Income Tax Act is amended in subsection (7) in the definition of the term “settlement” by inserting the words “through a registered family trust or” immediately after the words “transfer of assets”.

This is a consequence of the amendments we made earlier in Clause 4A. It is just the introduction of family trust as we discuss settlement in the Income Tax Act.

I beg to move.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us deal with 8A first.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 8B

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair for Second Reading.
Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 8—

Amendment
of section
26 of Cap.
470.

8B. Section 26 of the Income Tax Act is amended in sub section (5) in the definition of the word “settlement” by inserting the words “other than a registered family trust” immediately after the word “covenant”.

The import is the same. I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

(Question, that the new clause be read a Second Time, put and agreed to)
(The new clause was read a Second Time)

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

New Clause 9A

Hon. (Ms.) Gladys Wanga (Homa Bay (CWR), ODM): Hon. Temporary Deputy Chairman I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 9—

Amendment
of section
35 of Cap.
470.

9A. Section 35 of the Income Tax Act is amended by inserting the following new paragraph immediately after paragraph (n)-
 (o) transportation of goods, other than by air or sea;

Following consultations with the National Treasury, I beg to drop this amendment. It was meant to tax non-resident transporters. It is complicated and might result in retaliatory action from our neighbours.

So, I beg to drop it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members that is dropped.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

New Clause 11A

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 11 –

Amendment
of section
41A of Cap.
470

11A. The Income Tax Act is amended in section 41A by deleting the words “specified in the notice being arrangements”.

This particular amendment is consequential to the one we had earlier made in clause 11 where we were talking about double taxation agreements and so on.

I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 11B

Hon. (Ms.) Gladys Wanga (Homa Bay (CWR), ODM): Hon. Temporary Deputy Chairman I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 11 –

Amendment of
section 133 of Cap.
470.

11B. Section 133 of the Income Tax Act is amended –

- (a) in subsection (6) by deleting the expression “31st December, 2021” and substituting therefor the expression “31st December, 2022”;
- (b) by inserting the following new subsection immediately after subsection (6) –

(7) Subject to the provisions of section 12 of this Act, any investment allowance on any written down values as at the date of commencement of this Act, shall be claimed on a straight-line basis.

Section 133 of the Income Tax Act is a transitional provision. So, the amendments in paragraph (a) are to extend the transition period given for capital expenditure on grain bulk handling facilities and supporting the Standard Gauge Railway (SGR) in its businesses. This was moved but it is like last year it did not happen. So, any extension we gave last year because of COVID-19 was closed. So, it is to give them sufficient time to finalise.

I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 11C

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 11 –

Amendment
of the First
Schedule to
Cap.470.

- 11C. The First Schedule to the Income Tax Act is amended –
- (a) in paragraph 36 by inserting the following new paragraph immediately after paragraph (h)-
 - (g) property, including investment shares, which is transferred or sold for the purpose of transferring the title or the proceeds into a registered family trust.
 - (b) by inserting the following new paragraphs immediately after paragraph 56-
 - 57. The income or principal sum of a registered family trust.
 - 58. Any capital gains relating to the transfer of title of immovable property to a family trust.

This amendment relates to the earlier amendment we had made on family trust and is now a consequence with relation to properties and so on. But it is really to just promote family trust and to remove double taxation elements in that area and transferring of shares and other items. I beg to move.

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(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 12A

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 12 –

Amendment
of the Third
Schedule to
Cap.470.

12A. The Third Schedule to the Income Tax Act is amended in—
(a) paragraph 3 by inserting the following new subparagraph immediately after sub-paragraph (p)—
(q) transportation of goods, other than by air or sea, twenty per cent of the gross amount payable;
(b) paragraph 5 by inserting the following new sub-paragraph immediately after sub-paragraph (ja)-
(jb) in respect to the disbursement of deemed income to beneficiaries under section 11 (3) (c) the rate of twenty five per cent.

This was a consequence of the earlier amendment I dropped in relation to non-resident transporters. This one also dies. Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So, it means that is dropped.

(Hon. (Ms.) Gladys Wanga consulted the Clerk-at-the-Table)

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I want to go back on what I stated earlier. The provisions that relate to non-resident transporters are dropped because of dropping of the earlier amendment, but we beg that the provisions on sub-clause (jb) stand because what we are saying in respect to disbursement of deemed income to beneficiaries should now be subjected to tax at the rate of 25 per cent. S, I have dropped New Clause 12A (a) but (b) stands.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is fine, Hon. Chair.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

Hon. Members, we are done with provisions of the Income Tax Act under the Finance Bill (National Assembly Bill No. 18 of 2021). We shall now get to the Value Added Tax Act provisions.

PROVISIONS RELATING TO THE VALUE ADDED TAX ACT

Clause 15

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is important for Hon. John Kiarie to notice that his amendment under Clause 15 was dropped under the provisions of Article 114 of the Constitution.

(Proposed amendment by Hon. John Kiarie dropped)

(Clauses 14, 15, 16, 17 and 18 agreed to)

Clause 19

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you are proposing deletion.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 19.

This is because this amendment was proposing to delete a specific regulation-making power relating to Section 20. So, if Section 20 has been proposed for deletion, this one consequently is redundant. That is why the Committee is proposing to delete it.

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

(Clause 19 deleted)

Clause 20

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 20.

This is proposal to delete. This is a matter that Members ventilated heavily on during Second Reading and it is the proposal to delete the role of the National Assembly in making of VAT regulations. So, the Committee proposes to delete this particular clause.

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

(Clause 20 deleted)

Clause 21

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have two amendments. One is by the Chair and the other one by Hon. David ole Sankok. The one of David ole Sankok is dependent on the decision of the House and that of the Committee. There was some part of it that was not dropped. The one that was dropped entirely was that of Hon. Silas Tiren.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in clause 21 by-

- (a) deleting sub paragraph (i) of paragraph (a);
- (b) deleting sub-paragraph (ii) of paragraph (a);
- (c) by inserting the following new sub-paragraphs in paragraph (a) immediately after sub-paragraph (iii)-
 - (iiia) by deleting the item “ordinary bread” appearing in paragraph 39;
 - (iii b) by deleting paragraph 111;
- (d) inserting the following tariff number and the corresponding description in paragraph (iv) in the proper numerical sequence-

Tariff Number	Description
1901.10.00	Food preparations suitable for infants or young children put up for retail sale
- (e) inserting the following items in subparagraph (xxiv) immediately after item 133-
 - 134. Taxable goods locally purchased or imported by manufacturers or importers of clean cooking stoves for direct and exclusive use in the assembly, manufacture or repair of clean cookstoves.
 - 135. Taxable supplies including fish feeding and handling, water operations, cold storage, fish cages, pond construction and maintenance, and fish processing and handling, imported or purchased for direct and exclusive use on the recommendation of the relevant state department;
 - 136. Pre-fabricated biogas digesters
 - 137. Biogas
 - 138. Sustainable fuel briquettes for household and commercial use.

139. The supply of denatured ethanol of tariff number 2207.20.00(for household cooking and heating)

140. Denatured bioethanol of tariff number 2207.20.00

141. Plant and machinery of chapters 84 and 85 used for the manufacture of goods:

Provided that the exemption shall lapse on 31st December, 2021

- (f) by inserting the following paragraph immediately after paragraph (b)–
(c) in Part II, by deleting paragraph 18A.

What I would like to do here is to drop our amendments on (a) and (b). I want to explain why. What we were trying to do by deleting these particular clauses was to protect syringes that are used for our vaccines and so on. When we had a conversation with the National Treasury, we discovered that all syringes have actually been covered under paragraph 32 of the VAT Act. So, they were deleting Clauses 33 and 34 to tidy up the Act. I have seen it with my own eyes and you can check the VAT Act. Clause 32 contains all the syringes. So Clauses 33 and 34 are just additions. So, deletion of these two is simply to tidy up. The Committee was trying to actually protect the syringes but Treasury explained that these were not to delete them but just to tidy up the Act. So, I would like to drop our amendments (a) and (b).

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

The Temporary Deputy Chairman (Hon. Patrick Mariru): You will proceed with the rest, right?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): We would like to keep (c). We would like to delete the item “ordinary bread” appearing in paragraph 39. On this particular amendment, the claim by Treasury is that bread appears both as exempt and zero-rated. So, what we have decided to do here is delete it from exempt and later on in the amendments, we will reinstate it under zero-rated so that this never becomes a debate again. This is because every time bread is touched, the word is “no, we are just cleaning it up because it is under both zero-rated and exempt.” So, here we are removing it from exempt.

We would like to drop the amendment to Clause (C) (iii b) which is deleting paragraph 111. The reason is this particular paragraph 111 speaks to the issue of maize seeds. So, if we were to delete it, we would have removed maize seeds from exemption inadvertently. So, we would like to keep that by dropping that amendment.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

We would like to drop the entire Clause (d) that speaks to food preparations suitable for infants. The reason is if you look at the list of exempt, the one that is on page 550 of the Finance Bill, codes 040221 and 040229 all contain infant milk, the ones that we wanted to exempt, but they are already exempted.

We discovered this new code which reads: “Food preparations suitable for infants”, is for cerelac. While the Committee wanted to protect baby milk, cerelac becomes a choice. You may want to give your child *uji* or cerelac. So, we would like to drop that particular (d).

Under (e), we have cerelac. ‘Cerelac’ is even a name of a coalition.

(Laughter)

Just allow me to explain. The next one on No.134, the Committee wanted to exempt cook stoves, but if you look at Paragraph 66 of the VAT Act currently, it already contains those ones. So, we drop that particular one. We will keep 135 which relates to exemption of tax supplies including fish feeding and handling, water operations, cold storage, fish cages and the rest. As fish continues to depreciate, we need to incentivise cage fishing and other forms of fishing that will continue to support that particular sector. So, we retain the prefabricated biogas digesters, biogas, except 141. We would like to drop 141 based on consultation with the National Treasury. It was said that this would result in huge loss of income that might not be possible to reinstate. So we are also dropping 141.

Hon. Temporary Deputy Chair, I beg to move.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal, you want to say something?

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, I rise to support the amendments particularly relating to milk for infants and the issue of fish. However, I would ask the Chair of the Departmental Committee on Finance and National Planning to be absolutely sure that they are being deleted because they are protected elsewhere. If that is not the case, it will be disastrous. We take her word that they are exempted elsewhere and, therefore, we do not need to do it. With fish, I think the same goes and this is important because there is dwindling fish in the lake. This country is importing fish. Other countries we are importing from are doing fish farming and, therefore, we need to support that.

I support the amendments.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Duale, then I will give a chance to the Chair.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chair, I think the Chair moved so well. I am sure the *Hansard* captured her very well, particularly for the fact that she is protecting pudding. The Bill was proposing to delete the supply of ordinary bread from the zero-rating Schedule. I have listened and I hope that plus the other, fish and many other things will be captured very well as we go to the specifics. She talked of cerelac. It should be cerelac milk. Even if it is about cerelac coalition, those must be taxed because one of them is a senior tax evader.

I do not know whether Hon. Kamket is around.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair. You have a chance.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. The former Leader of the Majority Party is my good friend and is giving us a light moment. In addition to the moving I did, there is a bit of clean up I needed to do under 139 where it says that the supply of denatured ethanol of Tariff Number 2207.20.00 to remove the words “for household cooking and heating”. The words in brackets. Also, to drop 140 because 139 and 140 are one and the same thing. Otherwise, I beg to submit.

(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)

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

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I put the global Question on Clause 21, the implication of your dropping the amendment under (C)(iii), you are not deleting Paragraph 111 which was subject to the amendment of Hon. Sankok. Hon. Sankok now has an opportunity to move his.

He is not there, so that amendment is dropped.

(Proposed amendment by Hon. David Sankok dropped)

Secondly, Hon. Tiren, some of your amendments were dropped under Article 114, but the item on 134 was saved under the same Article. So, you have an opportunity to move Item 134 under Clause 21. Hon. Tiren.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chair, I beg to move:

THAT, the Bill be amended by –

(b) inserting the following items in subparagraph (xxiv) immediately after item 133-134. Tractors other than road tractors for semitrailers.

Agriculture, being an area which has not been looked into, we thought about making considerations that farmers need to mechanise. We thought that mechanisation is part of the things that are going to help agriculture become better. We thought that although we wanted all the other additional implements and parts to be included, the National Treasury seems to have refused to take the other ones. We feel that next time, something should be done to include the other. We think that if we help farmers by removing VAT for tractors, we will improve food security.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So, essentially your amendment is around tractors, other than road tractors for semitrailers.

Hon. Silas Tiren (Moiben, JP): Exactly.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Limo, why do you not want me to propose the Question? You look quite agitated.

(Question of the amendment proposed)

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I rise to support. Tractor is a major machine in farming. By taxing them, it would have discouraged many farmers from buying tractors for their farms and it would affect food security.

Therefore, I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, I support, but we also need to be very careful. There are certain things that could be used for agriculture and other things. When we talk of other hand making machinery...

(Loud consultations)

Tractors and semitrailers, that one I agree.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, this is quite straightforward. Let me put the Question.

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

(Clause 21 as amended agreed to)

Clause 22

The Temporary Deputy Chairman (Hon. Patrick Mariru): We had four amendments, but the one of Hon. David ole Sankok and the one of Hon. John Kiarie were dropped under Article 114. So, we have two amendments remaining. One by the Chairperson and the other one by Hon. Kimani Ichung'wah. Hon. Kimani Ichung'wah is dependent on the decision of the House on the first one, namely, by the Chairperson. Hon. Chairperson.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended in Clause 22 by deleting Paragraph (b) and substituting therefore the following new paragraph:

(b) In Paragraph 1 of Part A by inserting the following items immediately after item 19:

20. The transportation of goods originating from Kenya to a place outside Kenya.
21. Transportation of sugarcane from farms to milling factories.
22. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per-cent in weight.

That is the big issue of ordinary bread. We are deleting the paragraph that is deleting bread from zero-rated items. So, in doing this particular amendment, we are bringing back bread to zero-rated and hoping that Kenyans can move along.

(Applause)

Hon. Temporary Deputy Chairman, you must protect me because there are so many people hustling behind me.

The other item to be added there is the transportation of goods originating from Kenya to a place outside Kenya. What happened is that we carried an amendment earlier that is removing exportation of taxable services from the zero-rated list. So, what we are trying to do is to save the transportation industry because our trucks are transporting mainly within the region. If you tax them, they become uncompetitive. People will just set base in Tanzania and bring trucks here and go back and you lose revenue completely. So, we are also looking at transportation of goods originating from Kenya to a place outside Kenya.

Item 21 is on transportation of sugarcane from farms to milling factories. This is to protect sugarcane farmers. This is an industry that is on its knees. If the cost of transport is too high, then it becomes a problem. I was telling someone that any English that I am speaking here is from sugarcane because my grandfather was a sugarcane farmer. My father was a sugarcane farmer. He was first a sugarcane farmer before he was a politician and the thing he fell back to when he fell from politics was sugarcane farming. So, that is a very special matter just because my father was a farmer.

Item 22 is also a very important one, which is to put maize flour, cassava flour, wheat and meslin maize flour containing cassava by more than 10 per cent in weight to zero-rated. This is the matter of *ugali*, *chapati*, *mandazi* and others to make sure that our people are also protected in this particular line. So, by the House passing these amendments, we will have shielded Kenyans and protected them. Because I want to keep moving, I will ask Hon. John Mbadi, later on, when he is contributing, to speak to this issue that the Government and this Parliament cares about the people.

I thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will particularly be keen on a Member who has not spoken on this. I see the Leader of the Minority Party has spoken, but on priority, let us have him first. Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, I fully agree with the Committee. By the way, I just wanted to correct some insinuation that I saw in today's newspaper that Members of Parliament have seen the light because our term is just coming to an end. I do not think there is any time that we have failed to protect Kenyans on essential commodities. In 2013, yes, we brought a lot of basic commodities to be vatable, but I brought an amendment in this House and we reverted them. The only time we have brought something that is controversial was the issue of fuel, but again, that time we put it at half of the 16 per cent. So, these Members are not just looking at elections.

I thank and congratulate the Departmental Committee on Finance and National Planning. That is a laudable amendment. This is going to protect the basic commodities that Kenyans use for their survival. I know Hon. Aden Duale and Hon. Kimani Ichung'wah are looking at me to add 'hustler'. No, the way I look at it is the downtrodden, not the hustler narrative that we now have in the country. Those are the downtrodden. I do not want to use that terminology which has been corrupted.

I thank you. I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let me give a few Members a chance. We can take a minute each. Let me give to that far Member there. I cannot tell who that Member is, but it looks like the Member for Lamu West. I cannot see your name, but that must be the Member for Lamu West. One minute.

Hon. Stanley Muthama (Lamu West, MCCP): Thank you, Hon. Temporary Deputy Chairman. I stand to support this Motion. As you can see, since the beginning of this year, areas like the Coast region, North Eastern and many other parts, did not get enough rains last year. By working on this, doing this amendment and zero-rating these items, it will make sure that commodities that we use like sugar, bread, *chapati* and rice in the Coast and other areas remain at a lower price. This is one of the measures that I commend and thank the Members for considering.

I thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): One minute each. Hon. (Ms.) Edith Nyenze.

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity. Let me support the Committee through the Chairperson, for considering the *mwananchi*, especially during this time of COVID-19. People have suffered. If all hope is lost, if business is lost, if people have no money, if people are suffering, then this is the right time for Parliament to consider what is happening in our constituencies because we come face to face with everyone. So, if hope is lost, there should be food on the table. This is what Parliament is doing. So, Parliament cares.

I thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Godfrey Osotsi, before I come to my right. Hon. Osotsi one minute.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, I also want to support this amendment. The Committee has, indeed, agreed with many of us who are supporting Wanjiku. We do not need to tax basic items like bread, maize and wheat flour. I also want to commend the Committee for also considering the sugar industry, tax on transportation of sugarcane from the farms to the milling factory. That is commendable. Hon. (Ms.) Gladys Wanga, thank you for your good leadership of that Committee.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. John Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Temporary Deputy Chairman. I stand to support this amendment. In a city like Nairobi, bread is the staple food for the hustlers. So, by supporting this amendment, this House is seeing what the people in the National Treasury might not see. In my contribution in the Second Reading, I said that we cannot be seen to be Marie-Antoinette who says that people should eat cake when there is no bread. I support this amendment because the hustlers in Nairobi depend on this staple food.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Hon. Aden Duale. I know everyone would like speak.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Constitution of Kenya, 2010, has given powers to this House on legislation, particularly on the Finance Bill. That is why today we have the powers to protect the poor Kenyans when it comes to bread, maize and wheat. This is why I should say that this tax could have affected majority of the hustlers of this country that we represent. Hon. Mbadi does not want to say the word “hustlers” because that logo or brand does not belong to his political formation. We are happy that this House has protected millions of hustlers.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress with this. We have many clauses to deal with.

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

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

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

(Clause 22 as amended agreed to)

Obviously, the amendment by Hon. Ichung'wah falls.

(Proposed amendment by Hon. Kimani Ichung'wah dropped)

Hon. Members, it is good to note that we are done with the provisions relating to the Value Added Tax Act and now we are on the Excise Duty Act.

PROVISIONS RELATING TO EXCISE DUTY ACT

(Clauses 23 and 24 agreed to)

Clause 25

The Temporary Deputy Chairman (Hon. Patrick Mariru): There are a number of amendments by the Chairperson as well as Hon. Kimani Ichung'wah. We shall start with the amendment by the Chairperson of the Committee. Some parts were dropped and others were not.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 25-

(a) by deleting sub-paragraph (i) in paragraph (a) and substituting therefor the following new subparagraph-

(i) by deleting the rate of excise duty appearing in the description "Imported sugar confectionary of tariff heading 17.04" and substituting therefor the following rate "Shs.35 per kg";

(b) by deleting sub-paragraph (iii) in paragraph (a) and substituting therefor the following new sub-paragraph-

(iii) by inserting the following proviso "provided that it shall not apply to glass bottles imported from any of the countries within the East African Community" at the end of the description "imported glass bottles (excluding glass bottles for packaging of pharmaceutical products)"

(c) in paragraph (a) by deleting sub-paragraph (iv);

(d) in paragraph (a) in sub-paragraph (v) by deleting the rate corresponding the description "Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences" and substituting therefor the following new rate "Kshs1,200 per kg"

(e) in paragraph (a) in sub- paragraph (v) by inserting the following new items-

Description	Rate of Excise Duty
Single use plastic bottles of tariff heading 3923.30.00	10%
Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such	20%

as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared

“Imported furniture of any kind used in offices, kitchen, bedroom and other wooden furniture of tariff number 9403.30.00, 9403.40.00, 9403.50.00 and 9403.60.00	25%
3907.91.00 unsaturated polyester	10%
3907.50.00 Alkyd	10%
3905.91.00 Emulsion VAM	10%
3903.20.00 Emulsion-styrene Acrylic	10%
3905.19.00 Homo-polymers	10%
3906.90.00 Emulsion B.A.M	10%

(f) by inserting the following paragraph immediately after paragraph (a)-

(aa) in part II by deleting the expression “the rate of fifteen percent” appearing in paragraph 1 and substituting therefor the expression “the rate of twenty percent”

(g) in paragraph (b) by deleting the word “twenty” in the proposed new paragraph 4A and substituting therefor the word “seven-point five”;

(h) in paragraph (b) by inserting the following new paragraphs immediately after the proposed new paragraph 4A-

4B. Excise duty on gaming shall be seven-point five percent of the amount wagered or staked.

4C. Excise duty on price competition shall be seven-point five percent of the amount paid or charged to participate in a prize competition.

4D. Excise duty on lottery (excluding charitable lotteries) shall be seven-point five percent of the amount paid or charged to buy the lottery ticket.

Starting with the issue of confectioneries, the Bill in its original form was proposing to impose Excise Duty on both local and imported confectionery. The Committee proposes in its amendment to delete any Excise Duty on local confectionery and increase the rate of Excise Duty on imported confectionery instead of killing our local industries by imposing taxes on local confectioneries. There are factories in this countries employing over 5,000 Kenyans in the sector of confectioneries. Apart from the ones hired in the factories, if you go to our streets and kiosks, they mostly trade in confectionery such as sweets. This amendment is meant to protect the local manufacturers, but impose further Excise Duty on imported confectioneries. If you want to eat imported chocolate, pay for it.

In (b), there is the issue of imported glass bottles. The Bill was proposing to completely remove Excise Duty on imported glass bottles. This was in relation to a case where we imposed Excise Duty on imported glass bottles. A Tanzanian company went to the East African Court of Justice and got a judgment to remove the Excise Duty. To protect our revenue, the Committee has only exempted bottles from the East African countries. Those from other countries outside East Africa should continue to pay Excise Duty, so that we can raise money for bread and *unga*.

The Committee proposes to delete the amendment under paragraph (iv). This was the issue of motorcycles where the Bill was proposing to change from a single value of Kshs11,000 to a percentage of 15 per cent. The House expressed itself on that matter and the Committee proposes to delete that particular amendment because this is an industry that employs many of our people.

In (d) and (e) as per the Order Paper, we are proposing to increase Excise Duty on certain items. I propose to move a further amendment to remove the term “single use plastic bottles” and just have it as that. Single use plastic bottles are those we use every day. Because of environmental issues, we propose to impose a 10 per cent Excise Duty on them, but change that particular paragraph to read “articles of plastics tariff heading 3923.30.00”. This is for the purposes of ease of administration of tax to ensure that the Kenya Revenue Authority can find it and impose that particular Excise Duty.

There is also the matter of imported pasta, imported furniture and imported paints at 20 per cent, 25 per cent and 10 per cent Excise Duty respectively. These are all in the spirit of protecting the local industries. In (f), we are changing the rate of duty from 15 per cent to 20 per cent.

On the issue of the other Excise Duty on gambling and betting, we are introducing new areas, so that this is increased to a value of 30 per cent. We are introducing new areas. Price competition refers to the people who call into radio stations when they are told that if they send Kshs100, they will be given Kshs500,000. Rather than just looking at one area, we are also including price competition, non-charitable lotteries, gaming and betting, so that we move it from 20 per cent to 30 per cent.

I beg to move that amendment. It had many components and that is why I took a bit of time.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give opportunity to Hon. Kimani Ichung’wah because he has an amendment related to that.

Hon. Kimani Ichung’wah (Kikuyu, JP): Yes, Hon. Temporary Deputy Chairman. Maybe just before I move the amendment...

The Temporary Deputy Chairman (Hon. Patrick Mariru): You cannot move your amendment before we finish with this.

Hon. Kimani Ichung’wah (Kikuyu, JP): Yes, I wanted to contribute to the amendments that the Chairperson has moved. I particularly support the amendment to impose more Excise Duty on things like imported pasta. Just as I said in the Second Reading, many luxurious foods are being imported into the country by people who can afford to buy those luxurious food commodities. I support the Chair that we should impose more tax on those luxurious food items and avoid taxing bread, maize flour and wheat flour, as has been proposed by the National Treasury, which are the food items that ordinary Kenyans and hustlers are eating. I support the Chair because hustlers do not eat pasta. Pasta is eaten by people who can afford it and they should be taxed. I had an engagement earlier with the Chairperson where I proposed that we should tax it at a higher rate.

I support Part (d) of her amendments. I want to be on record because I have had very intense engagements with the Chair on this particular matter. If you look at that particular amendment, it talks about deleting the rate corresponding the description “products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application, but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been

homogenised and reconstituted tobacco, tobacco extracts and essences” and substituting therefor the following new rate “ Kshs1,200 per kg.”

Hon. Temporary Deputy Chairman, as I support the Chair’s amendment, allow me to speak about my amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Is it the one in Clause 25(a)? You will get a chance to withdraw it?

Hon. Kimani Ichung’wah (Kikuyu, JP): I support the Chair’s amendment because it imposes a tax on some of these tobacco substitutes.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give you a chance to move your amendment.

Hon. Kimani Ichung’wah (Kikuyu, JP): I am not moving my amendment. I am expressing my support for the Chair’s amendment. I will come to mine. I engaged with the Chair. So, I will speak to our engagement.

I want to speak on this particular matter because there are products that are marketed as substitutes to smoking. It is good for those who smoke to encourage them to stop. However, we must also be very careful on the products we promote. I engaged with the Chair and she had an opportunity that I did not have to engage with some of the producers or manufacturers of some of these products, especially a product called Lyft. I see a lot of social media engagements on it. People say that it was banned in this country. It is a nicotine product that is marketed as a substitute to actual smoking which is a good thing. The inhalation of tobacco causes cancer and other diseases.

The Ministry of Health and the Ministry of Education must ensure that there is proper regulation of how these products are produced, marketed, to whom they are marketed to and how they are consumed. This is important so that our young children, especially those in boarding schools, do not consume them. I had a discussion with the Leader of the Majority Party.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Finish, Hon. Member.

Hon. Kimani Ichung’wah (Kikuyu, JP): Are you alerting me to summarise?

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

Hon. Kimani Ichung’wah (Kikuyu, JP): I support the Chair’s amendment. When I get to my amendment, I will speak further to it. I encourage the Chair to continue with the same spirit of taxing luxurious commodities, even some of those nicotine products. Those who smoke can choose not to do it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Rozaah Buyu.

An Hon. Member: Put the Question.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Hon. Temporary Deputy Chairman, today is a really exciting day for me. I support the amendment that has just been raised by the Chair. It is so clear that we will enhance the lives of the people in this country by going to the core where it matters, but not rhetoric on the streets.

We will remove Excise Duty on locally produced confectionery and heighten what we tax or levy imported confectionery because the local manufacturers employ thousands of Kenyans. It is also true that the *boda boda* industry takes care of so many of our young people. I am happy because the Chair of the Committee is a Member of the Orange Democratic Movement (ODM). This clearly indicates that the party that cares about the people in this country is not the one that is out on the streets with rhetoric. It is the one that brings proper legislation to the House that affects the people directly.

I support the Chair's amendment.

(Applause)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very good.

(Loud consultations)

Order Members!

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

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

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

(Hon. Kimani Ichung'wah consulted with Hon. Amos Kimunya)

Order, Hon. Ichung'wah! The Chair's amendment has been carried. The one by Hon. Ichung'wah in Clause 25(a)(v) falls. Hon. Kimani Ichung'wah, you can move the rest of the amendments apart from the new paragraph that you had sought to insert after paragraph (b). That amendment has been dropped under the provisions of Article 114 of the Constitution. However, you can move the rest of the amendments.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. What you have explained is in Clause 25 (a) and (b). Clause 25(b) has fallen under the provisions of Article 114 of the Constitution which is correct. Clause 25(a) is a replica of what the Chair did. However, I put the tax at Kshs20,000 per kg. I engaged with the Chair and the Leader of the Majority Party and I believe they mean well, especially the Leader of the Majority Party, because he has ever smoked.

Hon. Aden Duale (Garissa Township, JP): Are you saying that the Chair smokes?

Hon. Kimani Ichung'wah (Kikuyu, JP): No.

(Hon. Aden Duale spoke off-record)

(Laughter)

Hon. Temporary Deputy Chairman, you need to protect me from the Leader of the Majority Party in the hustler nation, Hon. Aden Duale. I propose to put my tax at Kshs20,000 per kilogramme, but the Chair's tax is Kshs1,200 per kg. I have supported the Chair's tax because we had a very intense engagement with the Leader of the Majority Party and her. They benefitted from a meeting with some of the stakeholders, including the British American Tobacco (BAT). I am very passionate on this particular product called Lyft because it damages a lot of our youths. From the engagements the Chair and the Committee had with BAT, they made it clear that the Lyft

products that are marketed and sold in this country are imported by other people in an unregulated manner. The BAT wants to set up Ksh2.5 billion factory.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Hon. Ichung'wah!

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, it is good that you allow me to explain.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Hon. Ichung'wah! The Chair is also very keen on what you are doing. The amendment in Clause 25(a) fell by virtue of the decision of the House earlier regarding the Chair's amendment. So, go straight to your amendment now.

When you move this amendment, I have a feeling that you will be brief.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I will be very brief. I made that clarification because I represent a constituency where the Presbyterian Church is very strong. They had taken a very keen interest on this particular matter. That is why I am very passionate on that matter of Lyft. The BAT will construct a factory which will produce and market these products in a regulated manner. I support the Chair's amendment. I am okay with my amendment being dropped.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by in Clause 25 –

(b) by inserting the following items in the sub-paragraph (v) immediately after the item “products containing nicotine...” -

Description	Rate
Imported onions of tariff heading 07.03	25%
Imported potatoes, potato chips and potato crisps of tariff heading 07.01	25%
Imported eggs of tariff heading 04.07	25%

We want to increase Excise Duty on imported onions, potatoes, potato crisps and chips, and imported eggs. The proposed amendment on imported drones fell on account of Article 114 of the Constitution. Therefore, I propose 25 per cent duty on imported potatoes, crisps and eggs. I come from a constituency which has very huge markets in Gachie and Banana where we, as the hustler nation, were shopping this afternoon, and even Wangige. We also have a huge market in Kisii. Eggs come from outside this country and flood markets in Kisii, Kikuyu, Wangige, Gachie, Kihara and Garissa.

(Applause)

I talked about potatoes during the Second Reading of the Bill. Potato crisps and chips that are sold by some of the franchised outlets like KFC are imported from South Africa. The Leader of the Majority Party grows a lot of potatoes in Kipipiri and Kinangop. Therefore, we must impose duty that will make it punitive for people to import agricultural products that Kenyans produce.

I beg the House to support this amendment. I know we want to impose this on onions grown in Loitoktok, Kieni, Ndeiya and Kitui, where Hon. (Ms.) Nyamai comes from.

I beg that Members support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very good, Hon. Kimani.

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(Question of the amendment proposed)

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

(Loud consultations)

Order Members! You must vote. At least, the Chair and the Majority Leader should vote.

(Clause 25 as amended agreed to)

New Clause 23A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kimani, please, read the Second Reading. I still hold the sense that you will be brief.

Hon. Kimani Ichung’wah (Kikuyu, JP): In fact, Hon. Temporary Deputy Chairman, I had spoken about this in the Second Reading. I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 23-

Amendment of section 7 of No.2 of 2015. 23A. Section 7 of the Excise Duty Act is amended by inserting the following new subsection immediately after subsection (3)-
(3A). A notice under subsection (2) of this section shall be laid before the National Assembly without unreasonable delay, and a resolution may be passed by the National Assembly within 21 days on which it next sits after the notice is so laid, that the notice –
(i) be approved; or
(ii) be annulled and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new notice.

Just to explain this, as I said in the Second Reading, this is on remission. I have just moved that it be read a Second Time since it is a new clause. This relates to the remission of duty on beer and wines. When the National Treasury or the Government wants to give remission on duty relating to beer or wine, that proposal must come to this House and get parliamentary approval. This is the same way we did with the Minimum Tax for the Kenya Airways. However, we must not allow the National Treasury to give remission of sin taxes. Therefore, I want to beg that Members support. This is giving power to the people’s representatives and not taking it away from them. It is also in support of Clause 20 that the Chairperson deleted relating to delegated legislation.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. (Ms.) Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you. Hon. Temporary Deputy Chairman. I would like to support Hon. Kimani Ichung'wah's amendment on the issue of bringing regulations relating to remission of Excise Duty as he has mentioned to the House. So far, regulations are handled under the Statutory Instruments Act which states that once the Delegated Legislation Committee looks at them and approves, they do not come here. They only come here if they are annulled. However, there are exemptions to this. For example, regulations under Value Added Tax and Income Tax.

This is to make sure that the House takes note when there is a remission on some of these Excise regulations, so that it is not just done outside the precincts of the House. We will also need to look broadly at the Statutory Instruments Act so that we see how much of it the House is involved in and what regulations are to be approved. This can be done another time. But I just wanted to express the support of the Committee for this particular amendment.

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

(The new clause was read a Second Time)

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

New Clause 25

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson, proceed.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 25-

Amendment of the
Second Schedule to No.
23 of 2015.

25A. The Second Schedule to the Excise Duty Act is amended-

(a) in Part I by inserting the following new paragraph immediately after paragraph 12-

13. Illuminating kerosene supplies to licenced or registered manufacturers of paint, resin or shoe polish in such quantities as the Commissioner may approve.

(b) in Part II in Item 1 by inserting the following new paragraph immediately after paragraph 2-

3. Excisable services supplied in Kenya by a mobile telecommunication service provider on the sale of a ring back tune to a subscriber.

Hon. Temporary Deputy Chairman, I will take slightly more time on this one for one reason. The first part is on exemption of illuminating kerosene for purposes of local manufacturing of shoe polish. We propose to insert a new paragraph there. I would just like to get the attention of the House on this particular one, which is to exempt excisable services supplied in Kenya by a mobile telecommunication service provider on the sale of a ring-back tune to a subscriber. This applies to the issue of *skiza* tunes.

Many of our young artists sweat blood to record and play their music. In many instances, they are not rewarded. The reward is very small compared to the investment that the young artists

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make. For instance, I have a *skiza* tune on my phone. These artists met with His Excellency the President and with the Rt. Hon. Raila Odinga and they were told that this issue of *skiza* tunes will be sorted. This is one of the ways in which we want to resolve this issue of *skiza* tunes. For example, I have a Ksh1 playback on my phone by an artist. I keep the ring-back tune not because of Safaricom, but because of the artist. That artist should be rewarded adequately. If you look at the sharing formula, the artist gets 16 cents out of Ksh1, the taxation is 25 cents and Safaricom gets 51 cents.

While today we are not dealing with the issue of sharing, I undertake to bring amendments to the Copyright Act, so that a sharing arrangement is made in such a way that the artistes get the bulk of the money. This particular amendment is for protecting artistes across this country. I really thank the President and the Rt. Hon. Raila Odinga for the commitment they made to make the lives of artistes better.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are done with provisions relating to the Excise Duty Act in the Finance Bill. We now get to the Tax Procedures Act provisions in the Finance Bill.

PROVISIONS RELATING TO THE TAX PROCEDURES ACT

(Clauses 26 and 27 as amended agreed to)

Clause 28

Hon. (Ms.) Gladys Wanga (Homa Bay CW), ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 28 by deleting paragraphs (a) and (c).

This relates to the period of time for which people are expected to keep their records. The feeling of majority of the stakeholders is that this is retained at five years.

I beg to move.

(Question of the amendment proposed)

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

(Clause 28 as amended agreed to)

Clause 29

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson, you have a deletion.

Hon. (Ms.) Gladys Wanga (Homa Bay (CWR), ODM): Yes. Thank you, Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 29.

This is a consequence of the earlier amendment. I beg to move.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Is it a deletion? Right?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Yes, to delete.

(Question of the amendment proposed)

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

(Clause 29 deleted)

(Clauses 30, 31 and 32 agreed to)

Clause 33

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chair has an amendment.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 33 by inserting the following new subsection immediately after the proposed new subsection (4B) –

(4C.) Without prejudice to the provisions of this section, once the Commissioner notifies of a decision under subsection (3) and the Commissioner is satisfied that there is an overpayment of tax, the overpaid tax shall be deemed to have been offset against the taxpayer's future tax liabilities

What we are saying is that if you have an overpayment of tax, it should be deemed to offset against your future tax liability so that you do not remain being owed by the Kenya Revenue Authority and that they do not pay you any interest as you continue to pay tax. So, that is what the amendment seeks to do.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Ojiambo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. I wish I had picked it much earlier. I would have sought a further amendment that the overpaid tax should be refunded immediately. There is always a cost to money held by the KRA. A businessman would have invested the money and remitted more taxes and created more employment in the market. But nevertheless, it is a step in the right direction. We can deal with it in the next financial year.

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

(Clause 33 as amended agreed to)

(Clauses 34, 35, 36, 37, 38 and 39 agreed to)

Clause 40

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chairperson has a deletion.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 40.

The reason for the deletion is that the clause seeks to direct the courts on whether or not or when to issue a stay when matters of tax disputes are ongoing. We cannot legislate to seek to direct the Judiciary in the principle of separation of powers on what to do and when.

(Question of the amendment proposed)

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

(Clause 40 deleted)

(Clause 41 agreed to)

Clause 42

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chairperson has an amendment.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 42 by deleting the proposed Item 14 and substituting therefor the following new Item -

14. Carrying out business over the internet or an electronic network including through a digital marketplace.

The idea here is what we had done with the digital market place including the word “electronic”. So, that is what we are introducing, so that we cover the electronic networks as well.

(Question of the amendment proposed)

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

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

(Clause 42 as amended agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are done with the provisions relating to the Tax Procedure Act. We will now get to the Miscellaneous Fees and Levies Act provisions in the Finance Bill.

PROVISIONS RELATING TO MISCELLANEOUS FEES AND LEVIES ACT

(Clauses 43 and 44 agreed to)

Hon. Chair, please, move the Second Reading of New Clause 42A
New Clause 42A

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately before Clause 43 under Part VI-

Amendment of
section 8A of No.
29 of 2016

42A. The Miscellaneous Fees and Levies Act, 2016 is amended in section 8A by deleting subsection (4) and substituting therefor the following new subsection-

(4) The levy shall not apply to a licenced or registered manufacturer of paint, resin or shoe polish.

This is consequential to the earlier amendment that we made on supporting manufacturers of resin and shoe polish.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. Members, we are done with the Miscellaneous Fees and Levies Act provisions. We will now get to the Miscellaneous Act provisions in the Finance Bill.

PROVISIONS RELATING TO MISCELLANEOUS ACT

(Clauses 45, 46, 47, 48, 49 and 50 agreed to)

Clause 51

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended in Clause 51(b) by deleting the proposed definition of the term “post-retirement medical fund” and substituting therefor the following new definition-

“post-retirement medical fund” means a fund established under this Act into which contributions are made and from which costs of medical benefits can be met in accordance with the medical fund rules”.

This is on the definition of “post-retirement medical fund.” When you are yet to retire, you do not get sick, but when you retire, it is like you have invited all manner of illnesses. So, this is defining post-retirement medical fund, so that it can be a stand-alone fund.

(Question of the amendment proposed)

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Chairman. This is one of the most progressive amendments that the Chair has brought. These are people who fall in the category of the aged. They have retired and are in the village. Their retirement benefits is little. It is good to give the Retirement Benefits Authority powers under the Act to establish something called “post-retirement medical fund.” This happens in many other jurisdictions.

I support.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. Hon. Duale has spoken for me. We need to seriously think about the life of senior citizens of this country. As you age, just like a car, there are a lot of issues. When a car ages, there are issues of friction and wear out. The same is with human beings. As you grow older, a lot of issues start coming up. As the grandfather of this House may tell you, the way he was feeling 30 years ago is not the same way he is feeling today. Even myself. The distance I used to cover 20 years ago, today, I cannot. This is progressive. We should support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Ombaka, kindly, have the Floor.

Hon. (Dr.) Christine Ombaka (Siaya CWR, ODM): Thank you, Hon. Temporary Deputy Chairman.

I am a Member of this Committee and we really deliberated on this matter. Along the way is when long-term diseases emerge and your resources also get low and you suddenly cannot afford medical care. We thought this is very important. All of us will go through it at some point in time.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Angwenyi, clearly, we must give you a chance. Kindly, have the Floor.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Thank you, Hon. Temporary Deputy Chairman for giving me a chance to contribute to this issue.

Nearly all Members here are younger than me except Hon. Muturi, who is not in.

(Hon. Aden Duale talked off-record)

Yes, Hon. Muturi Kigano. I met him at the university. As you grow older, you lose power to an extent that you cannot even salute.

(Loud consultations)

When I first came to Parliament, through a by-election, I had just done my 50th birthday. I was seated at the back and Hon. Oyondi told me that on Budget Day, the Mace was going to be broken. That meant that we were all going home. I remember asking him to tell me how long we were going to stay home and he told me until the next general election. I was young and strong. I removed my jacket, ran here and fought four to five Opposition Members who wanted to break the Mace and they all fell down. If I hit you today, you will not fall. I am the one who is likely to fall.

(Laughter)

So, please, let us provide for these people. If we were not being issued a medical cover by Parliament, maybe, I would not even be alive today. So, please, let us think about them.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That explains the power you were talking about. Hon. Nyamai. Kindly, have the Floor.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Temporary Deputy Chairman.

I congratulate the Committee and the Chair for coming up with this amendment. It is very progressive and ensures that our senior citizens are taken care of. Age brings inability, failure of organs and many other diseases and so, we need to take care of senior citizens.

This also, complements the Government's efforts of taking care of the aged.

I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Sheikh, kindly, have the Floor.

Hon. Mohamed Mahamud (Wajir South, JP): Thank you, very much, Hon. Temporary Deputy Chair. I only add my voice to what my colleagues have said. This is one of the best amendments that has occurred, particularly for our aged population. Our population is not yet aging because 70 per cent are youth. I looked at what Japan does. In reality, our aged population is not looked at the way other nations care for theirs. Therefore, it is a very important amendment that we all need to support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Jerusha, have a minute to contribute, please.

Hon. Jerusha Momanyi (Nyamira CWR, JP): Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity.

I also want to support this amendment. Old age, as we have said, is the time people are supposed to be taken care of like children because they have lived all the energy which they had. They are like children who are growing with no energy. We want to commend the Committee for the good work. I know the country is going to commend us for this.

I support.

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

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

(Clause 51 as amended agreed to)

*(Clauses 52, 53, 54, 55, 56, 57, 58, 59, 60, 61,
62, 63, 64, 65, and 66 agreed to)*

New Clause 44A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, the Second Reading of New Clause 44A. Hon. Chairperson.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Is there a New Clause 44A?

The Temporary Deputy Chairman (Hon. Patrick Mariru): 44A, New Clause.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Ah, okay. Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately before clause 45 under Part VII-

Amendment of section 52 of Cap. 480

44A. Section 52 of the Stamp Duty Act is amended in sub-section 2 by inserting the words “or a registered family trust” in paragraph (b) after the word “established”.

This relates to the issue of the Stamp Duty again on the trust issue. If you buy a house, you pay Stamp Duty. If you want to transfer it to a trust, you will be expected to pay Stamp Duty again. That is double taxation. Therefore, this is to eliminate that element of double taxation around that matter.

I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 44B

The Temporary Deputy Chairman (Hon. Patrick Mariru): New Clause 44B, Second Reading.

Hon. (Ms.) Gladys Wanga (Homa Bay (CWR), ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately before Clause 45 under Part VII-

Amendment of section 117
of Cap. 480

44B. Section 117 of the Stamp Duty Act is amended in sub-section (1) by inserting the words “registered family trust” in paragraph (h) immediately after the word “codicil”.

I beg to move that the New Clause 44B be read a Second Time for the very same reason that I explained.

I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 62A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Second Reading, Chairperson.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman,

I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 62—

Amendment of

section 53B of No.3 of 1997

62A. Section 53B of the Retirement Benefits Act is amended by—

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new sub-sections immediately after the existing provision —

The import of this particular one is where you have institutions deducting contributions, but not remitting pension contributions to the relevant authorities. Therefore, this is giving power to the trustees with the approval of the RBA to appoint KRA to collect any contributions that, especially Government institutions, deduct from their employees but do not remit them. Therefore, for us to resolve this problem, we need to give them power to appoint KRA so that they take the contributions. When you grow old and you are looking for your pension, there will be no pension because your employer deducted it from you, but did not remit it. Therefore, that is the import of that new clause.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Ndirangu.

Hon. Isaac Ndirangu (Roysambu, JP): Thank you, Hon. Temporary Deputy Chairman. This provision is very important because many pension schemes have been suffering from defaulters like public universities and the former local authorities, who failed to make pensioners'

contributions to the defunct former authorities, and now the counties. They are notorious for deducting workers' money for pension, but they do not submit it to their pension schemes.

So, this provision enables the RBA to appoint an agent and particularly KRA to collect the money and submit it to the scheme. So, it is empowering the RBA. In fact, this House may care to know that the Local Authorities Pensions Trust (Laptrust) and the Local Authorities Pensions Fund (Lapfund), which are pension schemes for many local government authorities, are owed in excess of Kshs40 billion. This provision will enable the RBA and the schemes to get that money.

Thank you, Hon. Temporary Deputy Chairman. I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Wangwe. Yes, Leader of the Minority Party, you will say something after him.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairman. Whereas I support this amendment, I would also want to caution KRA not to levy a higher commission. When they collect, they get more commission. Let them not collect at a higher cost than is supposed to be. Otherwise, I support because every human being has a license to old age. When it comes, you must get someone to lean on.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. This is a very progressive amendment. I think there is a criminal act that employers have been committing in this country and more particularly in the public sector. The only thing I wanted to point out is that in future, it should be considered because as an accountant, I like things which are clear. If the KRA collects the money, it should not keep it for any reasonable time. So, it should spell out to KRA to remit the money immediately or at what particular time. The KRA can also play games. We know how it is not even paying tax refunds to taxpayers. Maybe we need to add something going forward that they should remit immediately or we set reasonable time.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let me hear from some Members who have not spoken. Before Hon. Limo and Hon. Duale, let us have Hon. Bashane.

Hon. Ahmed Gaal (Tarbaj, PDR): Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity. This particular clause is very important. I support it because this problem is prevalent in county governments. Most statutory deductions they collect are not remitted to the relevant authorities. It is important that interest is charged and they do not repeat these mistakes.

I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman for catching me with your eye, at least, for now. Hon. Duale, you know English is foreign. It came in a plane. I support this amendment because it is very important. We are talking about retirees and when we retire, we are running into a risk of sweeping all the benefits we have worked for. It is the same thing like the one we were talking about on medical. It will sweep all your savings and you become a poor man. We normally say that education is the only equaliser and this is on the positive side. It can make the poor same as the rich. However, medical care is a worse equaliser which will make even the rich so poor.

Hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Gogo, I must check the Members who have not spoken. But I will give a chance to a few more because we are near the end.

Hon. (Dr.) Lilian Gogo (Rangwe, ODM): Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment because honestly, our retirees are suffering. When it comes to retirement, nobody applies to retire. You are just notified that you are retiring even as much as we are aware that at some point we will retire and go into old age. It is not an interesting thing to go into old age. So, when somebody is meant to pay your benefits and does not remit them, at some point, you will be unable to access them. This is really a big challenge. At this point, you already have issues of health.

I support this. Let us take care of our old people. Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Janet, and then I will come this way. You can take half a minute, so that we can make progress. You are seated too close to Hon. Mbui and that is why you do not have a microphone. You can use that one.

Hon. (Ms.) Janet Ong'era (Kisii CWR, ODM): Hon. Chairman, I need your protection from the Deputy Leader of the Majority Party.

Thank you very much for giving me this opportunity so that I can contribute to this. This is a very important amendment. I thank the Chair for bringing it particularly the question of the former local government authorities. The amounts of money that one of our colleagues mentioned here has been lying somewhere and the council of governors is not making any efforts to ensure that the retirees get their money.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Gichuhi

Hon. James Gichuhi (Tetu, JP): Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity. I also support the amendments because KRA is only coming in where we have unremitted contributions. We have been having problems with employers. So, I support the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, you know that as a House, we are not addressing... This amendment is good, but who is the custodian of pension funds? It is the National Treasury. They always bring it here through a supplementary budget and reallocate money or pension from the Consolidated Fund Services to pay other things. So, this House must first deal with the National Treasury to make sure that the amount of money allocated for pensioners is secured as per the Constitution in the Consolidated Fund Services.

Second and finally, county governments have become culprits and I want to put notice to those who want to become governors. They deduct even normal statutory deductions. In fact, next we should go and ask KRA, the Controller of Budget and the Central Bank of Kenya not to release money to counties or to entities without deducting the statutory requirements.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I think the contributions and concurrence from Members is great. I just want to follow from where the Leader of the Minority Leader has left because we are now legislating on this matter. We do not need to wait to put a time scale at when KRA must remit this money. So, I am proposing that the Chair amends her amendment further at number 7(c) for it to read "remit the attached funds to the scheme within 30 days", so that we have clarity that KRA will receive the money within that

period. I know we want to give KRA a lot of time, but once KRA has received that money, they have no business staying with it even a single day. We must remember this is pensioners' money. So, the earlier it is given to a pensioner, the better. It continues accruing the other interest and all that. If we give them so much latitude, then we will be moving from the defaulting employer and then giving it to KRA to stay with it for another 60 days. It does not make sense. Let us do it as soon as possible and emphasise the agency of the matter.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, do you want to speak to that?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I agree with the sentiments of the Members and also with what the Leader of the Majority Party has said.

I beg to move:

THAT, Clause 62A be further amended in sub-clause 7(c) by inserting the words "within 30 days" immediately after the word "scheme".

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

(The new clause was read a Second Time)

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

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, congratulations. We are done with the Finance Bill (National Assembly Bill 18 of 2021).

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. Before reporting, I would like to request for a cleanup of Clause 25. It is not an amendment, but just tidying up some codes for the records, so that it is tidy. It is not an amendment of any form.

So, Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Finance Bill (National Assembly Bill No.18 of 2021) and its approval thereof with amendments.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Did you speak to that cleaning up you talked about?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I said that before reporting, I was urging cleanup of Clause 25 under imported furniture, so that we only retain Code 9403. That code covers all the codes because the others are 9403.4, 9403.5, 9403.6 and so forth. So, we only retain code 9403. That is the cleanup.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is allowable as long as that is just barely cleaning up the clause.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE FINANCE BILL

The Temporary Deputy Speaker (Hon. Christopher Omulele): We shall now have the Chairperson.

Hon. Patrick Mariru (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Finance Bill (National Assembly Bill No. 18 of 2021) and approved the same with amendments.

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

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request the Leader of the Majority Party to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to second and thank the Members. This is one of the best attended Committees. I really want to thank the Members for their participation and the concurrence and the nice debate that has been taking place. I also want to emphasise that today, we have seen bipartisanship in action for the common good of the Kenyan people, especially the people at the grassroots that we all need to protect.

I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): I will allow just two Members, so that we can move quickly. Hon. Members, I think we can do it in the Third Reading.

(Question put and agreed to)

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

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker, I beg to move that the Finance Bill (National Assembly Bill No.18 of 2021) be now read a Third Time.

I take this opportunity to heartily thank the Members of this House for stepping out and rising to the occasion to stand up for the people that we represent, the people who brought us to this Assembly. You have made Kenyans proud. I could not say more.

I really thank, also, the Members of the Departmental Committee on Finance and National Planning. I thank the speakership and staff of Parliament for all the support they have provided throughout this process. Most time Members of Parliament are mistaken to just be serving other

interests other than the interests of the people. It is clear that Hon. Members of Parliament are in this House by the people for the people. So, I really thank them immensely.

With those many remarks, let me note that this Bill will go a long way in raising revenue for the Government. It will also balance things by cushioning the lowest level of *mwananchi* as we have done with bread, motorcycles, *unga* and artists who have been suffering.

I beg to move and ask the Leader of the Minority Party to second.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker. I second this Motion. I also want to just say a few things. I join the Chair of the Committee in not only thanking the Members and others, but also to thank the Committee and the Chairperson, herself, for the work they did in coming up with very progressive amendments to the Finance Bill. Always, Finance Bill is a very contentious Bill. The Executive is usually very resistant to support any amendment. I am happy we have managed to reach some reasonable ground with the Executive.

I just want to say one last thing that let nobody scare Kenyans that with these amendments we have made, that by us reversing some of the amendments the Executive had proposed, that we are going to lose much revenue. In 2018/2019 before Coronavirus attacked us and affected the economy, this country had managed to collect Kshs1,734,000,000. The projected revenue for this year is just Kshs1,775,000,000. It is not a tall order to streamline the management of tax regime. So, what the Government should focus on, the Executive and particularly the Kenya Revenue Authority, is using the current law, the legal framework and the tax regime that we have, to collect as much revenue as possible, so that this country can move forward. It is not a question of rates. It is the question of implementing what is in place.

Hon. Temporary Deputy Speaker, I agree and support the Departmental Committee on Finance and National Planning. You did a diligent job and this House should congratulate you and thank you for the job that you have done. I join my colleague, the Leader of the Majority Party, in saying that it is really amazing that Members are here. By the way, all the Members were very active when we had the Committee of the whole House. That demonstrates that probably, majority of us in this House have the capacity and the ability to understand the Finance Bill. Otherwise, we would not be here.

I thank you. I second the Motion.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Aden Duale was the first one to request. I will allow two or three Members.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I thank the Chair of the Departmental Committee on Finance and National Planning. The reason why this Finance Bill is not very contentious as before is because the Chair is from the minority side. The Majority Party that represents the Government is the owner of the Bill.

I thank the Committee and this House because for the first time, they have protected the powers given to the National Assembly in as far as the Value Added Tax regulations are concerned. Yesterday, I said that the Constitution of Kenya, 2010 gave the three arms of Government their space. One arm of Government cannot purport to be a squatter in the jurisdiction of another arm.

Secondly and more importantly, for the first time, we have also seen that the hustler nation's priorities have been protected in this Finance Bill. From bread to maize flour to confectioneries to retirement benefits to *boda bodas*, they have all been protected. I thank the Chairperson. In the event that you miss a space somewhere, the hustler nation will welcome you.

Finally, as we go home, please, get an opportunity to watch the chief hustler as he presents the economic blueprint of the hustler nation tonight on KTN at 9.00 p.m.

(Loud consultations)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have the Member for Migori. You are raising your hand yet I have given you an opportunity to contribute, Hon. Ochieng.

Hon. (Ms.) Pamela Ochieng (Migori CWR, ODM): I had not seen it, Hon. Temporary Deputy Speaker. Sorry. Allow me to join the entire leadership of this House in congratulating my friend and colleague, the Chair of the Departmental Committee on Finance and National Planning, the Committee and the entire House.

We all agree that what we have done today as legislators in this House is very important. However, I announce to all Kenyans outside there that today, all of us seated here, as always led by none other than His Excellency the former Prime Minister, Raila Amolo Odinga, who has been the defender of the poor and the vulnerable in this country, have spoken in one accord to mind the welfare of Atieno, Wanjiku and every small person. I am very excited and would like to thank you all very much. Today, this House has spoken in one accord. That is the leadership that we want to see in this country.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Members, the Speaker is on his feet. There cannot be anything out of order.

Hon. Members, I would like to thank all the Members who have participated in this very important business for today. I pass my special regards to my brother, the Chair, who chaired the Committee of the whole House for the whole afternoon, for a splendid job. I would like to thank the Chair of the Departmental Committee on Finance and National Planning, Hon. Wang, for a beautiful job. You are up to the job. All the contributions that have been made this afternoon have enriched this process and this Bill. The membership of the House knows when it is important to come to the Chamber. The Member for Kikuyu, Hon. Ichung'wah, has made a very good contribution to this Bill and some of his views have been carried. It is important to do the final bit on this so that we can complete the job. I have confirmed that the House is properly constituted for purposes of making this decision.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, thank you very much. That business is done. I direct that we move to the next business. We have five minutes.

BILL*Second Reading*

THE SUGAR BILL

Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you very much, Hon. Temporary Deputy Speaker. I also join in commending colleagues who spoke before me in the previous business.

Hon. Temporary Deputy Speaker, I beg to move that the Sugar Bill (National Assembly Bill No. 68 of 2019) be now read a Second Time.

As you can see from the Order Paper, the legislation was initiated in 2019. It has been pending in the House in the Departmental Committee on Agriculture and Livestock to date. Therefore, I want to thank your office and the House Business Committee (HBC) for giving opportunity for this Bill to come to the Floor of the House. Despite this Bill being committed to the Departmental Committee on Agriculture and Livestock in early 2020, they have not submitted a Report.

I want to call upon my colleagues in various committees of the House to take the business seriously, even if it is sugar. We understand that there are problems in the sugar sector. It has barons and cartels. However, they should not be allowed to penetrate up to Parliament and take control like they have done in the Departmental Committee on Agriculture and Livestock. It is a shame. The Leader of the House intervened to ensure that this Bill is brought on the Floor of the House. The Departmental Committee on Agriculture and Livestock is still keeping a Report since 2019. It is one of the reasons we think that there should be no effort to defeat legislation. This House is mandated to legislate. Members come here to legislate which is our main mandate. When the Chair and Committee Members refuse to undertake their work which they are given through the Constitution, it is a serious matter.

I was not even sure that you would allow the Bill to be on the Order Paper. I am very grateful because you and the HBC took the decision of ensuring that it comes on the Floor of the House without the Report of the Committee. It is important for our colleagues to take note of that.

This legislation is important for the sugar sector in this country. It is not only a Bill by a private Member but also I was asked to lead it by colleagues from the sugarcane growing areas. His Excellency the President, and the task force that he appointed proposed that there must be reforms, so that we revive the sugar industry in this country. For this reason, this is a very important Bill for the entire country. We are at the time when the sugar industry is on its knees. Many of our public companies have gone under, for instance Mumias Sugar Company, Nzoia Sugar Company, Muhoroni Sugar Company and SONY Sugar Company. If any of those companies has not gone under, it is on its knees. The farmers in this country are not being paid. You are aware of that because you represent them.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wamunyinyi, I want to stop you there. The main reason I allowed you to start this is because, as Members know, this is a day set aside for Motions just like yours – Members' Motions. We had excluded and especially

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allowed the previous Motion which is important to this Republic to take precedence over Members' Private Motions. Therefore, it was important for you to start even if it was for a short time. I want to assure you that we have reached the requisite time. I also want to assure you that when this will be set down again for debate, you will have a balance of 26 minutes to Move your Motion.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christophe Omulele): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Tuesday 29th June 2021 at 2.30 p.m.

The House rose at 7.00 p.m.