

Approved for tabling



B. SNA
5/8/2021

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON -
THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL (*NATIONAL
ASSEMBLY BILL NO. 23 OF 2021*)

CLERKS CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

, 2021

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 AUG 2021	DAY: Thurs
TABLED BY:	Hon. Gladys Wanga Chair, Finance
CLERK-AT THE TABLE:	Mamah Wanjiku

TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD.....	3
PART I	5
1 PREFACE.....	5
1.1 ESTABLISHMENT OF THE COMMITTEE.....	5
1.2 COMMITTEE'S SUBJECTS.....	5
1.3 COMMITTEE MEMBERSHIP	6
1.4 COMMITTEE SECRETARIAT.....	7
PART II.....	8
2 OVERVIEW OF THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 23 OF 2021).....	8
2.1 ANALYSIS OF THE BILL.....	8
2.2 REVIEW OF THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL, 2021	8
PART III	9
3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION.....	9
3.1 SISULE AND ASSOCIATES.....	9
3.2 ANJARWALLA AND KHANNA LLP.....	11
3.3 EAST AFRICA PHILANTHROPY NETWORK/ KENYA COMMUNITY DEVELOPMENT FOUNDATION.....	11
3.4 REGENT MANAGEMENT LIMITED.....	14
3.5 ASHITIVA ADVOCATES	16
3.6 ORARO AND COMPANY ADVOCATES	17
3.7 KIMAKIA MAGARA AND PARTNERS LLP	18
3.8 ROBLE OFFICE ADVOCATES	18
3.9 KEMUNTO MOTURI ADVOCATES.....	19
3.10 KISOO MUTUA & ASSOCIATES ADVOCATES.....	19
3.11 ENSAFRICA ADVOCATES.....	21
4 COMMITTEE RECOMMENDATION.....	24
PART V	25
5 SCHEDULE OF PROPOSED AMENDMENTS	25
ANNEXTURES.....	29

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Trustees (Perpetual Succession) (Amendment) Bill (*National Assembly Bill No. 23 of 2021*) which was published on **12th May 2021**.

The Bill went through the First Reading on **Tuesday, 15th June, 2021** and was thereafter committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

The Bill seeks to amend the Trustees (Perpetual Succession) Act Cap 164 seeks to enable accumulation of generational wealth for the benefit of multiple generations. It also makes provision for and defines the various types of trusts, including charitable trusts and non-charitable purpose trusts. Additionally, the Bill makes new provisions for enforcers of a trust.

Further, the Bill proposed to amend the provision on incorporation of trustees to recognize that trusts are registered with the Principal Registrar of Documents and not the Cabinet Secretary.

Following placement of adverts in the print media on Monday 21st June 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received memoranda from six (6) stakeholders. The Committee further discussed the Bill with stakeholders during a retreat held on Wednesday, 14th July 2021 at the Emara Ole Sereni Hotel, Mombasa Road. Ten (10) stakeholders attended the meeting with some submitting written memoranda.

Majority of the stakeholders noted that Trusts form the engine for wealth accumulation and the need to reinvigorate their participation in the socio-economic development of the country through registered trusts. The legal framework to re-engineer the administration and management of wealth held in trust for generational transfer is important as it guarantees perpetuity in wealth at both family and institutional level.

The primary goal of the Bill is to ensure accumulation of generational wealth maintenance and benefits accrue to multiple generations while defining the applicability of charitable and non-charitable trusts and the framework for enforcing trusts.

In considering the Bill, the Committee observed that the amendment will simplify and remove the bureaucracy and the tedious process involved in the setting up of a trust. The removal of the powers from the Cabinet Secretary to vest the powers with the Principal Registrar of Documents will fasten the process and realise growth in the number of Trusts in the country.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Trustees (Perpetual Succession) (Amendment) Bill (N.A. Bill No. 23 of 2021).

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Trustees (Perpetual Succession) (Amendment) Bill (N.A. Bill No. 23 of 2021) and have the honour to report to the National Assembly with the recommendation that the Bill be approved with amendments as contained in the report.

Hon. Gladys Wanga, CBS, M.P.

Chairperson, Departmental Committee on Finance and National Planning

PART I

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - a. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - b. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - c. ***To study and review all the legislation referred to it;***
 - d. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);*
 - g. *To examine treaties, agreements and conventions;*
 - h. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - i. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *To examine any questions raised by Members on a matter within its mandate.*

1.2 COMMITTEE'S SUBJECTS

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following Government Ministries and Departments:
 - a. The National Treasury and Planning
 - b. State Department for Devolution
 - c. The Commission on Revenue Allocation (CRA)
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission (SRC)

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was re-constituted by the House in July, 2020 and comprises of the following Members:

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County

ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu
Roysambu Constituency

Jubilee Party

Members

Hon. Jimmy O. Angwenyi, MGH, MP
Kitutu Chache North Constituency

Jubilee Party

Hon. Christopher Omulele, CBS, MP
Luanda Constituency

ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu Town Constituency

Independent Member

Hon. Daniel Epuyo Nanok, MP
Turkana West Constituency

Jubilee Party

Hon. (Dr.) Christine O. Ombaka, MP
Siaya County

ODM Party

Hon. Andrew Adipo Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency

CCU Party

Hon. Francis Kuria Kimani, MP
Molo Constituency

Jubilee Party

Hon. Joseph Maero Oyula, MP
Butula Constituency

ODM Party

Hon. Joshua Chepyegon Kandie, MP
Baringo Central Constituency

Jubilee Party

Hon. Stanley M. Muthama, MP
Lamu West Constituency

Jubilee Party

Hon. Edith Vethi Nyenze, MP
Kitui West Constituency

WDM-K

Hon. Catherine Waruguru, MP
Laikipia County

Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency

Jubilee Party

Hon. (Prof.) Mohamud Mohamed, MP
Wajir South Constituency

Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency

Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency

Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Members of the Secretariat:

Head of the Secretariat

Ms. Leah W. Mwaura

Senior Clerk Assistant

Ms. Jennifer Ndeto

Principal Legal Counsel I

Ms. Laureen Wesonga

Clerk Assistant II

Ms. Christine Nderitu

Clerk Assistant II

Mr. Josephat Motonu

Fiscal Analyst I

Mr. Chelang'a Maiyo

Research Officer II

Mr. John Njoro

Serjeant-At-Arms

Ms. Christine Maeri

Audio Officer

PART II

2 OVERVIEW OF THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 23 OF 2021)

2.1 ANALYSIS OF THE BILL

6. The Trustees (Perpetual Succession) (Amendment) Bill, 2021 (*National Assembly Bill No. 23 of 2021*) seeks to enable accumulation of generational wealth for the benefit of multiple generations. It also makes provision for and defines the various types of trusts, including charitable trusts and non-charitable purpose trusts. Additionally, the Bill makes new provisions for enforcers of a trust.
7. Additionally, the Bill proposed to amend the provisions on incorporation of trustees to recognize that trusts are registered with the Principal Registrar of Documents and not the Cabinet Secretary.
8. The Bill provides for creation of trusts with specific purpose notwithstanding the absence of any beneficiary; also provide for express revocation process where such trusts contain express powers of revocation otherwise trusts shall be deemed irrevocable where such express power is not provided.

2.2 REVIEW OF THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL, 2021

9. The Trustees (Perpetual Succession) (Amendment) Bill, 2021 contains ten (10) clauses that seek to amend Sections 2 by inserting new definitions, section 3 and Sections (5,6,8,13,16 and 17) by deleting the word “Minister” and substituting therefor the words “Principal Registrar” where it appears..
10. The Bill seeks to introduce new subsections in section 3 to provide for administration and management of trusts being charitable, non-charitable and family trusts and the procedure of adding property to a trust.
11. A trust shall be valid and enforceable in accordance with the terms of the trust by the enforcers appointed under terms of the trust and shall have access to any documents, accounts or information necessary for the performance of his or her functions.
12. Further, the Bill under clause 3G and 3H seeks to provide for the beneficiaries of a trust as well as the class of beneficiaries for purposes of clarity and consistency in implementation of the Act.

PART III

3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

13. Following the call for memoranda from the public through the placement of adverts in the print media on Monday 21st June, 2021 requesting for comments from the public on the Bill and invitation of stakeholders vide letter REF: NA/DDC/F&NP/2021/19 dated 26th May 2021 for a stakeholder engagement retreat on the Bill which was held at the Ole Sereni Hotel, Mombasa Road from 12th to 16th July 2021, the Committee received memoranda from the following stakeholders:

- i. Sisule and Associates
- ii. Anjarwalla and Khanna LLP
- iii. East Africa Philanthropy Network/ Kenya Community Development Foundation
- iv. Regent Management limited
- v. Ashitiva Advocates LLP
- vi. Oraro and Company Advocates
- vii. Kimakia Magara and Partners LLP
- viii. Roble Office
- ix. Kemunto Moturi Advocates
- x. ENS Africa Advocates

The stakeholders submitted as follows:

3.1 SISULE AND ASSOCIATES

Sisule and Associates submitted their memorandum dated 30th June 2021, the Associates proposed the following **THAT**—

14. Clause 2 be amended in the definition of “family trust” by removing the reference to section 3C and replacing it with the proper reference being clause 3D.

Committee’s Observation

The proposed amendment was adopted as it represent wrong cross-referencing in the Bill.

15. Clause 2 be amended in the definition of “Enforcer” by inserting the word “replaced” between “appointed and by”. This will explicitly acknowledge that settlers and beneficiaries have the ability to designate their own enforcers. Further propose inserting the word “of” between “benefit and the” in the definition.

Committee’s Observation

The Committee agreed to the amendment as it strengthens the definition and provides clarity on the place of enforcers in trusts.

16. Clause 4 be amended by deleting the proposed Section 3C(1) and replacing it with a new provision *“A purpose trust may be created for a specific purpose notwithstanding the absence of any beneficiary provided that the trust has enforcers and is registered or incorporated for defined legal objective”*

The Amendment proposes to cure the potential of misunderstanding of a purpose trust's distinctive feature of not having beneficiaries and other trusts.

Committee's Observation

The Committee rejects the proposed amendment as the section refers to Non-charitable Purpose Trust. The Committee further proposed an insertion of the word "non- charitable" immediately after the word "A" so as to clarify that the section relates to Non- charitable Purpose Trust.

17. Clause 4 be amended in the proposed Section 3E (2) by inserting the words "beneficially or" immediately before the words "legally"

Committee's Observation

The Committee agreed to the proposed amendment as it provides that a settlor can be beneficially or legally entitled to property of the trust.

18. Clause 4 be amended in the proposed Section 3J (i) on the appointment of an enforcer in the trust by inserting the phrase " The Principal Registrar shall maintain a separate register of enforcers of trusts which shall include their names, date of appointment, indicate their appointing authority, their relevant contact details and physical addresses and any other details the Principal Registrar may deem fit".

Committee's Observation

The Committee adopted the proposal.

19. Clause 4 be amended in the proposed Section 3J (2) by deleting the sub clause and replacing with the following.

The functions of the enforcer shall be:

- a) To enforce the terms of the trust and ensure the terms are complied and effected;
- b) To inquire from the trustees on the status of any remedial action undertaken originating from any of the beneficiaries' complaints;
- c) To report to the settler and or beneficiaries any financial malfeasance by the trustees in the execution of their mandate as trustees of the trust;
- d) To pursue any legal action on behalf of the trust and or the beneficiaries, whether criminal or civil, in any court of competent jurisdiction, against the trustees, any breach of their mandate, with the objective of recovering misappropriated trust assets; and
- e) To act, in the place of trustees, as temporal guardians and executors of the trust during the hearing and determination of any suit against the trustees, regarding any financial impropriety of the trust.

Committee's Observation

The Committee adopts the amendment as it reinforces the functions of the enforcer.

20. Clause 4 be amended in the proposed Section 3J (7) on the provision on resignation of the enforcer by inserting the phrase "*the trustees shall thereafter inform the Principal Registrar, in writing of any change of Enforcers not later than 14 days from the date of receipt of the notice of resignation or appointment of any new Enforcer(s)*".

Committee's Observation

The Committee agrees with the proposed amendment except for the period of notification. The Committee therefore adopts 30 days for which the trustees shall notify the Principal Registrar of any changes thereof.

3.2 ANJARWALLA AND KHANNA LLP

Anjarwalla and Khanna LLP in their memorandum dated 2nd July 2021 submitted **THAT—**

21. The Bill be amended by inserting a new Clause 3 K immediately Clause 3J to read that:

3K No trustee shall: (a) seek investment advice in relation to trust property from; or (b) utilise trust property to invest in; or purchase securities from,

Any company entity which the trustee and, in the case of a trustee who is a body corporate, any of its directors, shareholders or partners;

(i) owns shares in or has an interest comprised in a company or entity of at least twenty percent; or

(ii) is entitled to exercise or control the exercise of more than twenty percent of the voting power at any meeting of that company or entity.

22. The intention of the above is to introduce a new clause so that the role of a trustee is to maintain independence and solely act for the benefit of the beneficiaries of the trust. If a trustee also has business, in which the trust assets can be invested in, there could be a potential conflict of interest, as the trustee may not be acting independently and therefore not discharge their fiduciary duties improperly.

Committee's Observation

The Committee rejected the proposal as the provisions ought to be anchored under the Trustee Act Cap 167 which is the legal framework providing for the general powers, appointment and conduct of Trustees.

3.3 EAST AFRICA PHILANTHROPY NETWORK/ KENYA COMMUNITY DEVELOPMENT FOUNDATION

East Africa Philanthropy Network/ Kenya Community Development Foundation submitted their memorandum dated 12th July 2021. They also made oral presentation on 13th July, 2021. They proposed **THAT—**

23. Clause 2 be amended by expanding the definition of the Principal Registrar “ *Means such person or persons as may be appointed by the Minister to exercise the duties of Principal Registrar of Documents under the Registration of Documents Act* ” . The proposed amendment is to create clarity in the meaning of Principal Registrar and avoid reference to the Registration of Documents Act.

Committee's Observation

The Committee rejects the proposal and adopt the definition as it is already defined in the Registration of Documents Act.

24. The principal Act be amended in Section 3(b) by deleting the word “Trustees” appearing immediately before the words “ as a corporate body” and replacing it with the word “Trust”. The amendment is intended to expand the definition of Trusts and includes Purpose Trusts and Family Trusts as well as Charitable Trusts.

Committee's Observation

The Committee notes the proposed amendment but observe that the amendment has no bearing on the provisions of the Trusts listed.

25. The principal Act be amended in Section 3 (1) by deleting the section and replacing it with the following- “ *Any person or body of persons who have lawfully constituted themselves for the purpose of forming a trust as defined in this Act may apply to the Principal Registrar for a Certificate of Incorporation of the Trust as a corporate body*”. The objective of the proposed amendment is to provide that Trusts may be formed by the declaration of trust by a settlor or by the trustees declaring themselves to be a trust. By changing these sections “*to refer to the Trust and not the person of the Trustees*”. The amendment will modernize and enable the section to better reflect the sector reforms.

Committee's observation

The Committee supported the proposed amendment.

26. Section 3 (2) of the principal Act be deleted. This is because the section gives the Minister wide ranging powers and discretion in the registration of incorporated trust. These powers and discretion have resulted in serious bottlenecks in the registration of incorporated trusts as they are subject to endless bureaucracy. It also allows for unnecessary interference in the inner working of the trust.

Committee's Observation

The Committee agreed to the amendment as proposed.

27. Section 3(3) of the Principal Act be amended by inserting a new Section 3(3) (a) as follows: “ The Principal Registrar having satisfied himself that the application has complied with the applicable requirements of this Act relating to incorporation shall register the trust as a corporate body and issue a certificate of incorporation.

Committee's Observation

The Committee agreed to the amendment and recommend that the timeline for registration and issuance of certificate of incorporation by the Principal Registrar be within sixty (60) days.

28. The principal Act be amended in Section 3(3) by replacing it as follows - “The **trust** shall thereupon become a body corporate by the name described in the certificate and shall have perpetual succession and a common seal and the power to sue and be sued in their corporate name, to hold and acquire and by any instruments under the common seal to convey, transfer, assign, charge and demise any moveable or immoveable property or any interest therein now or hereafter belonging to or held for the benefit of the trust concerned in the same manner and subject to such restrictions and provisions as the trustees might so do without incorporation. The purpose of the amendment is to replace the word *trustee* with the word *trust*. The purpose of this amendment is to set out powers for the Trust to be a body corporate.”

Committee's Observation

The Committee reject the amendment as it creates distortion in the initial meaning and purpose of the sub section 3 (3) which is incorporation of trustees and not the trust.

29. The Bill be amended in section 3D (2) by deleting the word “other” appearing between the word “of and beneficiaries” also delete the phrase “ other than the settlor” so that the revised Section 3D (2) reads as follows:

“Made in contemplation of beneficiaries whether such intended beneficiaries are related to the settlor or not, or are living or not”. The section as premised may unintentionally bar a settlor from creating a trust for his/her benefit.

Committee’s Observation

The Committee agreed with the amendment as proposed.

30. Section 3D 2(b) be amended by deleting the word “Multiple”

Committee’s Observation

The Committee agreed with the amendment

31. The Bill be amended in Section 3D 2 (c) be deleting the proposal so that family wealth may be created for many purposes including generational wealth. The section may be interpreted as restrictive.

Committee’s Observation

The amendment is not supported by the Committee; noting that trusts can preserve wealth for generations.

32. Section 5 of the Act be amended by deleting section 5 (1) an inserting a new section 5 (1) as follows:

“An application to the Principal Registrar for a Certificate of Incorporation under this Act shall comprise of the following Registration Documents:

- a) A duly completed application for Registration of a Certificate of Incorporation as particularised in the schedule
- b) A deed, will or any other written instrument constituting the Trust.
- c) Such deed, will or written instrument shall be accompanied by a statement of:
 - i. The objects and purpose of the Trust
 - ii. The names and addresses of-
 - (a) The settlor(s)
 - (b) The trustee(s)
 - (c) The enforcer(s), if any;
 - (d) The beneficiaries or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; and
 - (e) Any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.
 - iii. The proposed title of the corporate body
 - iv. The proposed device of the common seal and the regulations for the use and custody of the common seal.
 - v. A statement ad short description of the property or interest therein which at the date of application is intended to be held in trust.

Committee’s Observation

The Committee rejected the amendment as the same can be provided in the schedules of the Act. The amendment tends to crowd the Bill as it provide details that would be summarised in schedules.

33. The Bill be amended by making a further amendment to section 6 (1) of the principal Act to delete the words “or by any conditions or directions inserted by the Minister under subsection (2) of section (3)” and by deleting the words “or otherwise as shall be required by those conditions or directions”

Committee’s Observation

The Committee was adopted so that the discretion is removed.

34. The principal Act be amended in section 16 (1) by inserting “*The Principal Registrar may upon application of the Trustees and/ or any beneficiary and...*”. The proposal is intended to provide clarity that an intention/ proposal to dissolve a Trust, the process of should be initiated by Trustees and/ or lawful beneficiaries only. This is so that there is undue outside interference with the Trust.

Committee’s Observation

The proposal was adopted.

35. The principal Act be amended in Section 16 (2) of the Principal Act by inserting “The Principal Registrar may upon application of the Trustees and /or any beneficiary and ...

Committee’s Observation

The Committee agreed to the amendment as it is intended to remove the Minster and replace with the Principal Registrar. The Committee therefore adopted the proposal.

36. The principal Act be amended by deleting in Section 16 (2) (a) and 16 (2) (b) the words *whereupon any land vested in it shall escheat*
(a) *if the land is Trust land, to the county council in whose are of jurisdiction the land is situated;*
(b) *if the land is not Trust land, to the Government.*
Provided that this shall not apply where such corporate body is wound up under the provisions of section 33 of the Societies Act (Cap 108)

Committee’s Observation

The Committee agreed to the amendment as it is intended to delete reference to Trust land held by county councils, which no longer exist hence no need for the provision.

3.4 REGENT MANAGEMENT LIMITED

In their memorandum and oral presentation made before the Committee on 13th July 2021, Regent Management Limited submitted **THAT—**

37. Section 2 of the Bill be amended by deleting the reference to clause 3C and replace with the correct reference of clause 3D.

Committee’s Observation

The Committee Acknowledges the proposed amendment as it clarifies the correct reference. The Amendment is supported.

38. The definition of “enforcer” in section 2 be amended by inserting the words “or replaced” in between the words “appointed” and “by”.

Committee's Observation

The Amendment expressly recognize that the settlor and beneficiaries have powers to replace their appointed enforcers.

39. Clause 3C (1) be amended by replacing sub clause 3C (1) with the following paragraph: "A purpose trust may be created for a specific purpose notwithstanding the absence of any beneficiary provided that the trust has enforcers and registered or incorporated for defined legal objective". The amendment is to avoid any potential confusion of associating a purpose' trusts unique characteristic of not having beneficiaries from being associated with other types of trust.

Committee's Observation

The committee notes the reason for the proposed amendment and agrees with the provision based on the unique characteristic of the purpose trust.

40. Clause 4 be amended by inserting the words "beneficially or" in between the words "becomes and legally" in the proposed Section 3E (2).

Committee's Observation

The Committee agrees with the amendment as it recognize property that a settlor might not yet have actual legal ownership but has beneficial ownership.

41. Clause 4 be amended by inserting the following words immediately after the proposed Section 3J (1) ; *The registrar of documents shall maintain a separate register of enforcers of trusts which shall include their names, date of appointment, physical address, relevant contact details, among other details the registrar may deem fit*". The proposed amendment is intended to create a public register of enforcers of Trusts which includes stating certain details and further elaborate the enforcers oversight role, functions and powers. In addition, the amendment is intended to state how the Register of enforcers shall be maintained in the event of a change of enforcers in a Trust.

Committee's Observation

The Committee support the amendment as it provides adequate details for oversight and administration of trusts.

42. Clause 4 be amended by deleting the proposed Section 3J (2) and replacing it with the following:

The functions of the enforcer shall be:

- (a) *To enforce the terms of the trust and ensure the terms are complied and effected;*
- (b) *To enquire from the trustees on the status of any remedial action undertaken originating from any of the beneficiaries complaints;*
- (c) *To report to the settlor and or beneficiaries; any financial malfeasance by the trustees in the execution of their mandate as trustees of the trust;*
- (d) *To pursue any legal action on behalf of the trust and or the beneficiaries, whether criminal or civil, in any court of competent jurisdiction, against the trustees, any breach of their mandate, with the objective of recovering misappropriated trust assets.*
- (e) *To act in the place of trustees, as temporal guardians and executors of the trust during the hearing and determination of any suit against the trustees, regarding any financial impropriety of the trust.*

Committee's Observation

The proposal was adopted as it will provide for the functions of the enforcer in a trust.

43. Clause 4 be amended in the proposed Section 3J (7) is amended by adding the following sentence immediately after it:
The trustees shall thereafter inform the Registrar of Documents, in writing, of any change of Enforcers not later than 14 days from the date of receipt of the notice of resignation or appointment of any new Enforcer(s).

Committee's Observation

The proposal was adopted but the timelines were increased to thirty days

3.5 ASHITIVA ADVOCATES

Ashitiva Advocates in their memorandum dated 12th May 2021 submitted **THAT—**

44. Clause 2 of the Bill be amended in the proposed Section 2 by deleting the reference to clause 3C and replace it with the correct reference of clause 3D.

Committee's Observation

The amendment is part of cross reference and clean up. The Committee Support the amendment.

45. Clause 2 of the Bill be amended the in the proposed Section 2 the definition of the term non-charitable trust by deleting the reference to section 3J and replace with the correct reference of clause 3C.

Committee's Observation

The Committee does not support the amendment.

46. Clause 4 of the Bill be amended in the proposed 3J (1) by inserting the following sentences immediately after it; *"The registrar of documents shall maintain a separate register of enforcers of trusts which shall include their names, date of appointment, physical address, relevant contact details, among other details the registrar may deem fit"*
47. The proposed amendment is intended to create a public register of enforces of Trusts which includes stating certain details and further elaborate the enforcers oversight role, functions and powers. In addition, the amendment is intended to state how the Register of enforces shall be maintained in the event of a change of enforces in a Trust.

Committee's Observation

The Committee support the amendment as it provides adequate details for oversight and administration of trusts.

48. Clause 4 of the Bill be amended in the proposed Section 3J (2) by deleting and replacing with new clause 3J (2) as follows
The functions of the enforcer shall be:
(a) *To enforce the terms of the trust and ensure the terms are complied and effected;*

- (b) *To enquire from the trustees on the status of any remedial action undertaken originating from any of the beneficiaries complaints;*
- (c) *To report to the settlor and or beneficiaries; any financial malfeasance by the trustees in the execution of their mandate as trustees of the trust;*
- (d) *To pursue any legal action on behalf of the trust and or the beneficiaries, whether criminal or civil, in any court of competent jurisdiction, against the trustees, any breach of their mandate, with the objective of recovering misappropriated trust assets.*
- (e) *To act in the place of trustees, as temporal guardians and executors of the trust during the hearing and determination of any suit against the trustees, regarding any financial impropriety of the trust.*

Committee's Observation

The proposal was adopted as it will provide for the functions of an enforcer.

- 49. Clause 4 of the Bill be amended by introduction of a new clause 3K on the licensing of Trustees; 3 (K)(1) A to read a person shall only act as trustee under this Act is a licensed trustee and that (2) the Cabinet Secretary shall make rules to provide for licensing of trustees under this Act. The amendment is intended to ensure that only licensed trustee administer Trusts to promote professionalism and integrity in the administration of Trusts.

Committee Observation

The proposal was adopted to allow for the licensing of enforcers so as to professionalise the practice. The Cabinet Secretary has been given powers to make regulations for licensing.

3.6 ORARO AND COMPANY ADVOCATES

In their memorandum submitted to the Committee on 22nd June 2021 Ref: NA.02.01.GEN they proposed **THAT—**

- 50. The Bill fails to define or make reference to what amounts to a “*family trust*.” It is proposed that the Section 2 of the Bill be amendment to define “Family Trust” as is defined in the Trustees (Perpetual Succession) Bill, 2021.

Committee's Observation

The Committee did not support the amendment. Providing for a definition of terms in reference to another Bill will be counterproductive since there is no certainty that the two Bills approved and assented to in concurrence.

- 51. For purposes of this Act, any reference to “lives in being” the perpetuity period shall not apply to family trusts. This is to enhance the possibility of safely transferring wealth from one generation to the other without depleting the available wealth.

Committee's Observation

The Committee observed that the provision is already provided for both in the definition of terms and sub section 2 (9). The Committee does not support the amendment.

3.7 KIMAKIA MAGARA AND PARTNERS LLP

Kimakia Magara and Partners LLP submitted their memorandum on 1st July 2021. They proposed **THAT—**

52. Clause 2 of the Bill be amended in the proposed Section 2 by deleting the reference to clause 3C and replacing with the correct reference 3D to correct a typographical error in section 2.

Committee's Observation

The Committee adopts the proposed amendment to correct the cross reference.

53. Clause 2 be amended in the definition of the term “Enforcer” by inserting the words “or replaced” in between the words “appointed” and “by” this will expressly recognize that settlers and beneficiaries have powers to replace their appointed enforcers.

Committee's Observation

The Committee adopted the proposal since the amendment will provide that an enforcer may be appointed or replaced by the settlor.

54. Clause 4 of the Bill be amended in the proposed 3C by replacing sub-clause 3C (1) with a “purpose trust” which may be created for a specific purpose notwithstanding the absence of any beneficiary provided that the trust has enforcers and registered or incorporated for a defined legal objective. This will avoid potential confusion of associating a purpose trusts unique characteristic of not having beneficiaries from being associated with other types of trusts.

Committee's Observation

The Committee rejects the amendment, as it will open up the application of purpose trust outside the initial definition and provisions in law.

55. Clause 4 of the Bill be amended in the proposed Section 3E (2) by inserting the words “beneficiary or” in between the words “become” and “legally”. This will recognize property that a settlor might not have yet actual legal ownership but has beneficial ownership.

Committee's Observation

The Committee agrees to the proposed amendment as it includes the settlor as one of the beneficiaries thereof.

56. Clause 4 of the Bill be amended in the proposed Section 3J by providing for the functions of enforcer in the Bill. The Motivation of the Bill is to create register of enforcers of the trusts.

Committee's Observation

The Committee agreed to the proposal and therefore proposed amendments to provide for the functions of the enforcer to a trust.

3.8 ROBLE OFFICE ADVOCATES

In their submission dated 2nd July 2021 Roble Office Advocates proposed **THAT—**

57. Section 2 of Cap 161 be amended by inserting the following definition:

“Family trust” is as defined in the Trustees (Perpetual Succession) (Amendment) Bill, 2021. The proposed adoption of the definition of ‘family trust’ shall be for ease of reference for new readers of the Act who might not be aware of an already existing definition in the Trustees (Perpetual Succession) (Amendment) Bill, 2021 (Kenya Gazette Supplement No. 93 (National Assembly Bills No 23)).

Committee’s Observation

The Committee notes that the proposed is making assumptions that the two Bills will be passed concurrently. The Committee therefore rejected the proposal.

3.9 KEMUNTO MOTURI ADVOCATES

In their submission dated 2nd July 2021, Kemunto Moturi Advocates proposed **THAT—**

58. Clause 2 be amended in the definition of the word “Family trust” by inserting the following definition:
“Family trust” is as defined in the Trustees (Perpetual Succession) (Amendment) Bill, 2021. The proposed adoption of the definition of ‘family trust’ shall be for ease of reference for new readers of the Act who might not be aware of an already existing definition in the Trustees (Perpetual Succession) (Amendment) Bill, 2021 (Kenya Gazette Supplement No. 93 (National Assembly Bills No 23)).

Committee’s Observation

The Committee notes that the proposed is making assumptions that the two Bills will be passed concurrently. The Committee therefore rejected the proposal.

59. Clause 2 be amended in the new clause 2(9) of the Bill by inserting the words “lives in being” in between the phrase “reference to” and “the perpetuity period”

Committee’s Observation

The Committee observed that the provision is already provided for both in the definition of terms and sub section 2 (9). The Committee does not support the amendment.

3.10 KISOO MUTUA & ASSOCIATES ADVOCATES

The Associates submitted in their letter and memorandum dated 1st July 2021 **THAT—**

60. Clause 2 be amended in the definition of “Family trust” by deleting the reference to clause 3C and replacing with the correct reference of clause 3D.

Committee’s Observation

The Committee notes that the proposed is making assumptions that the two Bills will be passed concurrently. The Committee therefore rejected the proposal.

61. Clause 2 be amended in the proposed definition of the term : “Enforcer” by inserting the words “or replaced” between the words “appointed and by”

Committee’s Observation

The Committee agreed with the proposal because it will provide that an enforcer may be appointed or replaced by the settlor.

62. Clause 4 be amended in the proposed Section 3C by deleting clause 3C (1) and replacing thereof with the following- “A purpose trust may be created for a specific purpose notwithstanding the absence of any beneficiary provided that the trust has enforcers and registered or incorporated for defined legal objective”.

Committee’s Observation

The Committee rejects the amendment, as it will open up the application of purpose trust outside the initial definition and provisions in law.

63. Clause 4 be amended in the proposed Section 3E (2) by inserting the words “beneficially or” in between the words “becomes and legally”

Committee’s Observation

The Committee agree with the amendment as it provides that the settlor has legal ownership of the property.

64. Clause 4 be amended in the proposed Section 3J (1) by adding the following sentences immediately after it. “ the Registrar of documents shall maintain a separate register of enforcers of trusts which shall include their names, date of appointment, indicate the appointing authority, their relevant contact details and physical addresses among other details the Registrar may deem fit”.

Committee’s Observation

The Committee support the amendment as it provides the relevant details of enforcers for reference and management by the Principal Registrar.

65. Clause 4 be amended in the proposed Section 3J (2) by deleting the provision and replacing with –
The enforcer shall-

- (a) To enforce the terms of the trust and ensure the terms are complied and effected;*
- (b) To inquire from the trustees on the status of any remedial action undertaken originating from any of the beneficiaries;*
- (c) To report to the settlor and or the beneficiaries any financial malfeasance by the trustees in the execution of their mandate as trustees of the trust.*
- (d) To pursue any legal action on behalf of the trust and or beneficiarie, whether criminal or civil, in any court of competent jurisdiction, against the trustees, any breach of their mandate, with the objective of recovering misappropriated trust assets and;*
- (e) To act in the place of trustees, as temporal guardians and executors of the trust during the hearing and determination of any suit against the trustees regarding any financial impropriety of the trust.*

Committee’s Observation

The Committee agreed on the proposal because it will provide for the functions of a trust enforcer.

66. Clause 4 be amended in the proposed Section 3J(3) be amended by deleting sub clause 3J(3) and replacing with “A person shall not be eligible to be appointed as an enforcer if he or she

- *has been convicted by a court of competent jurisdiction for any economic or financial crime that is occasioned by fraud on the part of the enforcer, or bankrupt,*
- *is of unsound mind, or*
- *has been previously removed by the settlor or beneficiaries, in the case of a family trust, due to an economic malfeasance, or*
- *is a director or officer of the trust corporation appointed as the trustees of the same trust, the trustees of the same or in the case of unincorporated trust, a trustee a trustee of such trust.*

Committee's Observation

The Committee rejected the amendment as it may not be necessary since the Committee has already clarified on the functions of an enforcer.

3.11 ENSAFRICA ADVOCATES

ENSAfrica Advocates in their memorandum dated 12th May 2021 submitted as follows, **THAT—**

67. Section 2 on the definition of a “family trust” be amended by deleting the reference to clause 3C and replace with the correct reference 3D.

Committee's Observation

The Committee agreed with the proposed amendment as it will ensure that the correct reference is provided.

68. Clause 4 be amended in the proposed Section 3B (2) by deleting the phrase “A trust shall be deemed to be charitable if” and replacing it with “A trust created for one or more of the purposes set out in subsection 3B (1) shall be deemed to be charitable notwithstanding”

Committee's Observation

The Committee rejects the proposal as presented by ENSAfrica Advocates since the conditions set out in the Bill are necessary for clarity.

69. Clause 4 be amended in the proposed Section 3(B) (2) (b) by replacing with the phrase “(b) are beneficial to the community in Kenya or elsewhere” with “that the purpose may not be for the benefit of the general public, but may benefit a section of the public”

Committee's Observation

The Committee agreed with the proposed amendment as it seeks to recognise that a charitable trust may be for the benefit of the general public or a section.

70. Clause 4 be amended in the proposed Section 3C by replacing sub clause 3C (1) with the following “ A purpose trust may be created for a specific purpose notwithstanding the absence of any beneficiary provided that the trust has an enforcer, is registered or incorporated and does not violate public policy.

Committee's Observation

The Committee did not agree with the proposed amendment since it creates a proviso that a trust can be created for a specific purpose as long it has an enforcer, is registered or incorporated.

71. Clause 4 be amended in the proposed Section 3C (2) by deleting the word “Non-charitable” this is to allow for common reference and definition of the charitable trusts.

Committee’s Observation

The Committee rejected the proposal as the Section refers to the Non- charitable trusts.

72. Clause 4 be amended in the proposed Section 3C (2) (a) by replacing the “word or with of”

Committee’s Observation

The Committee agrees with the proposed amendment

73. Clause 4 be amended in the proposed section 3E (3) by inserting the words “title” immediately before the words the “better” and to add the word “other” after the word “property” and to add the word “what” after the word than and to delete the word “of”.

Committee’s Observation

The Committee agreed to the proposal as it is intended to clean up a missing word.

74. The Bill be amended by introducing a new sub section 3F (5) be inserted as follows “ Sub section 3F 2(b) does not apply to a purpose trust, such a trust may continue in force notwithstanding the absence of any beneficiary”

Committee’s Observation

The Committee agree to the proposed amendment since it will recognise that the requirement for beneficiary to be identifiable or ascertainable does not apply to charitable trust.

PART IV

4 COMMITTEE RECOMMENDATION

75. The Committee having considered the Perpetuities and Accumulations (Amendment) Bill, 2021 recommends that the House approves the Bill with amendments as proposed in the schedule in chapter V.

PART V

5 SCHEDULE OF PROPOSED AMENDMENTS

The Committees proposed the following amendments to be considered by the House in the Committee stage:-

CLAUSE 2

76. THAT, clause 2 of the Bill be amended -

- (a) in the definition of the term “family trust” by deleting the expression “section 3C” and substituting therefor the expression “section 3D”;

Justification

The amendment is to clean up the cross referencing.

- (b) in the definition of the term “enforcer” by inserting the words “or replaced” immediately after the word “appointed, and by inserting the word “of” immediately after the word “benefits”.

Justification

The amendment is to provide that an enforcer may be appointed or replaced by the settlor.

CLAUSE 3

77. THAT, the Bill be amended by deleting the clause 3 and substituting therefor the following new clause-

Amendment of section
3 of Cap. 164.

3. The principal Act is amended in section 3 by -

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

(1) Any person or body of person who have lawfully constituted themselves for the purpose of forming a trust as defined under this Act may apply to the Principal Registrar for a certificate of incorporation.

- (b) deleting subsection (2) and substituting therefor the following subsection-

(2) The Principal registrar shall within sixty days of receipt of an application for incorporation of a trust under subsection, grant or reject the application.

(2A) Where an application is rejected, the Principal registrar shall give written notice to the applicant and the notice shall state the reason for rejecting the application.

(2B) Where an application for incorporation is approved by

the registrar, he may grant a certificate accordingly, subject to such conditions or directions.

Justification

The amendment is to give the principal registrar to approve an application for registration of a trust within sixty days of receipt of an application. Further, to provide for giving of reasons where an application is rejected.

CLAUSE 4

78. THAT, clause 4 of the Bill be amended

(a) in the proposed clause 3B (2) by deleting paragraph (b) and substituting therefor the following paragraph-

(b) the objects are beneficial to the general public or section of the public;

Justification

The amendment is to recognise that a charitable trust may be for the benefit of the general public or a section.

(b) in the proposed clause 3C (1) by inserting the words “non-charitable” immediately after the word “A”;

Justification.

The amendment is a cleanup for consistency of use of terms.

(c) in the proposed clause 3D in subsection (2) -

(i) by deleting the words “other than the settlor” appearing in paragraph (a);

(ii) by deleting the word “multiple” appearing in paragraph (b);

Justification

The amendment is to ensure that even the settlor can be a beneficiary of the trust.

(d) in the proposed clause 3E -

(i) in subsection (2) by inserting the words “beneficially or” immediately before the word “legally”;

Justification

The amendment is to provide that a settlor can be beneficially or legally entitled to property of the trust.

(ii) in subsection (3) by inserting the word “title” immediately before the word “better”;

Justification

The amendment is to clean up a missing word.

(e) in the proposed clause 3F by inserting the following new subsection immediately after subsection (4)-

(5) The provision of subsection 2(b) do not apply to a trust established under section 3C.

Justification

The amendment is to recognise that the requirement for beneficiary to be identifiable or ascertainable does not apply to non charitable trust.

(f) in the proposed clause 3J -

(a) by deleting subsections (1) and (2) and substituting therefore the following new subsections-

(1) An enforcer may be appointed in accordance with the terms of the trust.

(2) The functions of an enforcer shall be to-

(a) enforce the terms of the trust;

(b) inquire into the status of implementation of the trust;

(c) require the trustee to take remedial action, where there is breach of the terms of the trust;

(d) report to the settlor or the beneficiaries any financial or other breaches by the trustees; and

(e) pursue legal actions against the trustees, whether criminal or civil.

(2A) The enforcer may act in the place of the trustees during the hearing and determination of any suit under subsection (2).

Justification

The amendment provides for the functions of an enforcer.

(b) by inserting the following subsection immediately after subsection (7)-

(8) The trustees shall notify the Principal Registrar, in writing, of any change of enforcers at least thirty days from the date of the notice under subsection (7).

Justification

The amendment is to provide for the timeline for notifying the registrar of any change in an enforcer.

CLAUSE 5

79. **THAT**, the Bill be amended by deleting clause 5 and substituting therefor the following new clause-

Amendment of section 6 of Cap. 164 5. Section 6 of the principal Act is amended –

- (a) by deleting the word “Minister” and substituting therefor the words “Principal Registrar” wherever it appears;
- (b) in subsection (1) by deleting the words “or by any conditions or directions inserted by the Minister under subsection (2) of section 3; and
- (c) by deleting subsection (2).

Justification

The amendment is to remove the Minister and replace with the Principal registrar.

CLAUSE 9

80. **THAT**, the Bill be amended by deleting clause 9 and substituting therefor the following new clause –

Amendment of
section 16 of
Cap. 164

9. Section 16 of the principal Act is amended -

(a) by deleting the word “Minister” wherever it appears and substituting therefor the words “Principal Registrar”;

(b) in subsection (2) by deleting the words -

“whereupon any land vested in it shall escheat-

(a) if the land is trust land, to the county council in whose are of jurisdiction the land is situated;

(b) if the land is not Trust land, to the Government:

Provided that this shall not apply where such corporate body is wound up under the provisions of section 33 of the Societies Act (Cap.108).”

Justification

The amendment is to remove the Minister and replace with the Principal registrar. Further, the amendment is to delete reference to trust land held by county councils, which no longer exist.

SIGNED.....

DATE.....

THE HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ANNEXTURES

1. Adoption Schedule
2. Minutes of the 52nd and 53rd sittings held on 14th July, 2021
3. Newspaper Advertisement – Submission for Memoranda for Public Participation



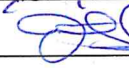


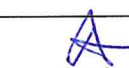







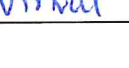

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE

***ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE TRUSTEES
(PERPETUAL SUCCESSION) (AMENDMENT) BILL (N.A. BILL NO. 23 OF 2021)***

DATE:

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRPERSON	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, CBS, MP	
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON. EDITH NYENZE, MP	
15. HON. CATHERINE WARUGURU, MP	
16. HON. JAMES GICHUHI MWANGI, MP	
17. HON. PROF. MOHAMUD SHEIKH MOHAMED, MP	
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

**MINUTES OF THE 65TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD IN COMMITTEE ROOM 9, MAIN
PARLIAMENT BUILDINGS ON THURSDAY, 5TH AUGUST, 2021 AT 10:30 A.M.**

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Andrew A. Okuome, MP | | |
| 5. Hon. David M. Mboni, MP | | |
| 6. Hon. Edith Nyenze, MP | | |
| 7. Hon. James Gichuhi Mwangi, MP | | |
| 8. Hon. Joshua C. Kandie, MP | | |
| 9. Hon. Francis K. Kimani, MP | | |
| 10. Hon. Catherine Waruguru, MP | | |
| 11. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, CBS, MP
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. (Dr.) Christine Ombaka, MP
5. Hon. Joseph M. Oyula, MP
6. Hon. Stanley M. Muthama, MP
7. Hon. Peter Lochakapong, MP
8. Hon. Qalicha Gufu Wario, MP

**INATTENDANCE
SECRETARIAT**

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Brigitta Mati | - | Legal Counsel II |
| 3. Mr. John Njoro | - | Serjeant-At-Arms |
| 4. Ms. Christine Maeri | - | Audio Officer |
| 5. Ms. Hannah Mwangi | - | Intern |

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Adoption of Reports on the following Bills:**
 - i. Report on the Pensions (Amendment) Bill (*National Assembly Bill No. 26 of 2020*)
 - ii. Report on the Public Procurement and Asset Disposal (Amendment) Bill (*National Assembly Bill No. 34 of 2020*)
 - iii. Report on the Public Finance Management (Amendment) Bill (*National Assembly Bill No. 39 of 2020*)
 - iv. Report on the Kenya Deposit Insurance (Amendment) Bill, 2020(*National Assembly Bill No. 43 of 2020*)
 - v. Report on the Central Bank of Kenya (Amendment) Bill (*National Assembly Bill No. 47 of 2020*)

- vi. Report on the Public Procurement and Asset Disposal (Amendment) Bill (*National Assembly Bill No. 49 of 2020*)
- vii. Report on the Central Bank of Kenya (Amendment) Bill (*National Assembly Bill No. 10 Of 2021*)
- viii. Report on the Trustees (Perpetual Succession) (Amendment) Bill (*National Assembly Bill No. 23 of 2021*)
- ix. Report on the Perpetuities and Accumulations (Amendment) Bill, 2021 (*National Assembly Bill No.24 of 2021*)

5. Any Other Business

6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/298: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:10 a.m and a prayer was said.

MIN.NO.NA/F&NP/2021/299: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2021/300: ADOPTION OF REPORTS ON BILL
The Chair invited Members to consider the following Reports which were subsequently adopted as follows: -

1. Report on the Pensions (Amendment) Bill (National Assembly Bill No. 26 of 2020)
Proposed by- Hon. Jimmy O. Angwenyi
Seconded by -Hon. James G. Mwangi
2. Report on the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020)
Proposed by- Hon. Isaac W. Ndirangu
Seconded by -Hon. David M. Mboni
3. Report on the Public Finance Management (Amendment) Bill (National Assembly Bill No. 39 of 2020)
Proposed by- Hon. Edith Nyenze
Seconded by -Hon. Jimmy Angwenyi
4. Report on the Kenya Deposit Insurance (Amendment) Bill, 2020(National Assembly Bill No. 43 of 2020)
Proposed by- Hon. Jimmy O. Angwenyi
Seconded by -Hon. James G. Angwenyi
5. Report on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020)
Proposed by- Hon David M. Mboni
Seconded by -Hon Jimmy O. A
6. Report on the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)
Proposed by- Hon. James Gichuhi, M.P
Seconded by – Hon. David Mboni, M.P

7. Report on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 Of 2021)
Proposed by- Hon. David Mboni, M.P
Seconded by -Hon. Jimmy Angwenyi, M.P
8. Report on the Trustees (Perpetual Succession) (Amendment) Bill (National Assembly Bill No. 23 of 2021)
Proposed by- Hon. Jimmy Angwenyi, M.P
Seconded by – Hon. Waihenya Ndirangu, M.P
9. Report on the Perpetuities and Accumulations (Amendment) Bill, 2021 (National Assembly Bill No.24 of 2021)
Proposed by- Hon. Jimmy Angwenyi, M.P
Seconded by - Hon. David Mboni, M.P

MIN.NO.NA/F&NP/2021/301: ADJOURNMENT/DATE OF NEXT
MEETING

There being no other business to deliberate on, the meeting was adjourned at 11:28 a.m. The next meeting will be held on notice.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED..........DATE.....5th August 2021.....

**MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM
AT EMARA OLE-SERENI HOTEL ON WEDNESDAY, 14TH JULY 2021 AT 2:00 P.M.**

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Mr. Anthony Njoroge | - | Director, Litigation |
| 2. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 3. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 4. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 5. Mr. Chelang'a Maiyo | - | Research Officer II |
| 6. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 7. Mr. John Njoro | - | Serjeant-At-Arms |
| 8. Ms. Christine Maeri | - | Audio Officer |

NATIONAL TREASURY AND PLANNING

1. Hon. Nelson Gaichuhie
2. Mr. Eric Korir
3. Mr. Elijah Nyamamba
4. Mr. Peter Ndung'u

AGENDA

1. Prayers
2. Communication from the Chairperson
3. **Meeting with the National Treasury to consider the Trustees (Perpetual Succession) (Amendment) Bill, 2021; the Perpetuities and Accumulations (Amendment) Bill, 2021; the Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Richard Tongi, MP; and the Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Benjamin Gathiru, MP**

4. Clause by Clause consideration of the Trustees (Perpetual Succession) (Amendment) Bill, 2021; and the the Perpetuities and Accumulations (Amendment) Bill, 2021
5. Briefing on the Amendments Proposed to the Parliamentary Pensions (Amendment) Bill 2019 By Hon. Andrew Mwadime, MP
6. Any Other Business
7. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/241

COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.10 p.m. and a prayer was said. The Chairperson then called for introduction of those present before welcoming the Chief Administrative Secretary, National Treasury to present National Treasury's submissions.

MIN.NO.NA/F&NP/2021/242:

CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/243:

MEETING WITH THE NATIONAL TREASURY TO CONSIDER THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL, 2021; THE PERPETUITIES AND ACCUMULATIONS (AMENDMENT) BILL, 2021; THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2020 BY HON. RICHARD TONGI, MP; AND THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2020 BY HON. BENJAMIN GATHIRU, MP

The CAS, Hon. Nelson Gaichuhie informed the meeting that the National Treasury will send submit written memoranda on the Trustees (Perpetual Succession) (Amendment) Bill, 2021 and the Perpetuities and Accumulations (Amendment) Bill, 2021 by Friday, 16th July 2021.

The Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Richard Tongi, MP

The National Treasury did not support all amendments to the Bill except the amendment proposed to section 157(9) of the Public Procurement and Asset Disposal Act.

The Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Benjamin Gathiru, MP

The National Treasury did not support Hon. Gathiru's amendment because allowing the amendment implies that the CS shall set thresholds of above KSh. 20 billion for citizen contractors (firms wholly owned and controlled by Kenyan citizens). This will lock out local contractors (firms registered in Kenya with above 51% Kenyan shareholding) and foreign contractors (firms owned by foreign nationals).

MEMBERS' DELIBERATIONS

Regarding comprehensive amendment to the Public Procurement and Asset Disposal Amendment Act, the meeting was informed that National Treasury had submitted 50 amendments to the Attorney General for submission to the National Assembly for consideration.

Details of the amendments proposed by National Treasury on the two Bills are contained in Part III of the Reports on the consideration of the Public Procurement Asset Disposal (Amendment) Bill (N.A. Bill No. 34 of 2020) and the Public Procurement Asset Disposal (Amendment) Bill (N.A. Bill No. 49 of 2020)

MIN.NO.NA/F&NP/2021/244:

**CLAUSE BY CLAUSE CONSIDERATION OF
THE TRUSTEES (PERPETUAL
SUCCESSION) (AMENDMENT) BILL, 2021
AND THE PERPETUITIES AND
ACCUMULATIONS (AMENDMENT) BILL,
2021**

The Perpetuities and Accumulations (Amendment) Bill, 2021

The meeting deliberated and agreed as follows on the Bill:

Clause 1: Agreed to

Clause 2: Agreed to

Clause 3: Amend 19(2) as per Prof. Tom Ojienda's proposal.

The Trustees (Perpetual Succession) (Amendment) Bill, 2021

The meeting deliberated and agreed as follows on the Bill:

Clause 1: Agreed to

Clause 2: Amend as per stakeholder comments

Delete definition of the word "*discretionary trust*"

Clause 3: (3)(1) amend as per Kenya Community Development Foundation/East Africa Philanthropy Network proposal

Clause 4

3A: Agreed to

3B: Redraft

3C: Amend (1) by inserting the words "*non-charitable*".

3D: Agreed to

3E: Agreed to

3F: Agreed to

3G: Agreed to

3H: Agreed to

3I: Agreed to

3J: Agreed to

The Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Tongi

The meeting deliberated and agreed to adopt National Treasury's position on the Bill.

MIN.NO.NA/F&NP/2021/245:

**BRIEFING ON THE AMENDMENTS
PROPOSED TO THE PARLIAMENTARY
PENSIONS (AMENDMENT) BILL 2019 BY
HON. ANDREW MWADIME, MP**

The Chairperson invited Mr. Anthony Njoroge, Director Litigation to brief the meeting on amendments proposed by Hon. Peter Kaluma, MP and Hon. Wafula Wamunyinyi during consideration of the Bill in the Committee of the Whole House.

Mr. Njoroge implored on Members not to insist on the non-contributory post-retirement medical scheme as it will take away the benefits carried in the Parliamentary Pensions (Amendment) Bill, 2019. He noted that the PSC had consulted with the Salaries and Remuneration Commission before the Bill was drafted.

MIN.NO.NA/F&NP/2021/246:

ADJOURNMENT/DATE
MEETING

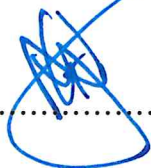
OF

NEXT

There being no other business to deliberate on, the meeting was adjourned at 4.49 p.m. The next meeting will be held on Thursday, 15th July 2021 at 9.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED.....



DATE.....

5th August 2021

**MINUTES OF THE 52ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM
AT EMARA OLE-SERENI HOTEL ON WEDNESDAY, 14TH JULY 2021 AT 9:00 A.M.**

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Ms. Christine Maeri | - | Audio Officer |

SISULE AND ASSOCIATES ADVOCATES

1. Mr. Mutua Mutuku
2. Ms. Cynthia Chebet
3. Mr. Moses Mathini

ANJARWALLA & KHANNA LLP

Ms. Mona Doshi

EAST AFRICA PHILANTHROPY NETWORK (EAPN)

Mr. Evans Okinyi

KENYA COMMUNITY DEVELOPMENT FOUNDATION (KCDF)

1. Ms. Grace Maingi
2. Ms. Susan Githaiga

INTERNATIONAL CENTER NOT-FOR PROFIT LAW

Ms. Faith Kisinga Gitonga

HAVELOCK NDUATI AND CO. ADVOCATES

1. Ms. Wanjiru Nduati
2. Ms. Evelyne Mueni
3. Ms. Betty Mueni Mwanza
4. Mr. Edgar Kinyua Warui

AGENDA

1. Prayers
2. Communication from the Chairperson
3. **Briefing on the Trustees (Perpetual Succession) (Amendment) Bill, 2021 and the Perpetuities and Accumulations (Amendment) Bill, 2021**
4. **Stakeholder engagement on the Trustees (Perpetual Succession) (Amendment) Bill, 2021 and the Perpetuities and Accumulations (Amendment) Bill, 2021**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/236

COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.20 a.m. and a prayer was said. The Chairperson then welcomed the legal counsel to brief the Committee on the Trustees (Perpetual Succession) (Amendment) Bill, 2021 and the Perpetuities and Accumulations (Amendment) Bill, 2021.

MIN.NO.NA/F&NP/2021/237:

CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/238:

BRIEFING ON THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL, 2021 AND THE PERPETUITIES AND ACCUMULATIONS (AMENDMENT) BILL, 2021

The Legal Counsel, Ms. Jennifer Ndeti, briefed the Committee on the two Bills.

Members agreed that it is important to listen to stakeholders then make a decision on the two Bills.

MIN.NO.NA/F&NP/2021/239:

STAKEHOLDER ENGAGEMENT ON THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL, 2021 AND THE PERPETUITIES AND ACCUMULATIONS (AMENDMENT) BILL, 2021

The Chairperson called for introduction of those present before inviting stakeholders to make submissions on the Trustees (Perpetual Succession) (Amendment) Bill, 2021 and the Perpetuities and Accumulations (Amendment) Bill, 2021. They submitted as follows:

Sisule and Associates Advocates

The Perpetuities and Accumulations (Amendment) Bill, 2021

The Bill maintains the original goal of the Act of prohibiting perpetual property ownership. It will allow family trusts to function forever for multiple generations therefore creating and preserving generational wealth.

The Bill will lessen, intergenerational poverty, wealth gap between generations, nesting seasons of Kenyan youth and less fortunate seemingly inexorable reliance on the elusive generosity of others. This will allow Kenyans to make more professionally managed investments, increasing the tax base, discretionary income and the number of potential passive income sources.

Trustees (Perpetual Succession) (Amendment) Bill, 2021

They proposed a number of amendments to the Bill with a view of making the legislation better.

MEMBERS' DELIBERATIONS

1. On their proposed amendment to the term "*enforcer*", they stated that the devil is in the details hence the need of the Act to be as detailed as possible in order to prevent misinterpretation.
2. On why the legal fraternity has shown a lot of interest in the two legislation, the meeting was informed that this is because clients have been inquiring on how they can preserve their wealth with few squabbles. Additionally, the Bills have diverse effects across many areas hence the interest.
3. On what causes issues during inheritance, the meeting was informed that this happens mainly because of sibling rivalry and this law will sort it out.

Anjarwalla and Khanna LLP

Trustees (Perpetual Succession) (Amendment) Bill, 2021

The Bill will provide legal and secure ways to pass wealth to generations. It provides an opportunity to keep wealth in Kenya and attract wealth to Kenya.

Trustees should however be accountable to beneficiaries and should not be in a place of conflict of interest. Measures should be put in place to ensure that trustees do not invest in their companies.

MEMBERS' DELIBERATIONS

1. Regarding investment of the trust fund in illegal businesses, Ms. Doshi stated that trustees should be cognizant that they should not be involved in money laundering or any prohibited business.
2. On whether their proposed amendment to stop trustees from investing money in the trust fund in their companies will stop trustees from doing business, the meeting was informed that this will not be the case since trustees can invest their personal funds.
3. With regards to hiding money in off-shore accounts, the meeting was informed that most off-shore trust havens have updated their legislation due to the previous issues that arose in order to ensure that wealth is no longer hidden in their countries and the jurisdictions are not used as tax havens.

East Africa Philanthropy Network and Kenya Community Development Foundation

Trustees (Perpetual Succession) (Amendment) Bill, 2021

The Bill is addressing the bedrock foundation for trusts and foundations in Kenya. This will keep wealth in Kenya.

Registering a trust has been difficult, it would take between three to five years to register one. This Bill will play a big role in reducing the time significantly.

MEMBERS' DELIBERATIONS

1. On the minimum amount required to start a trust, the meeting was informed that there is no threshold on this.
2. With regards to investment by trusts, the meeting was informed that trusts should be supported to make income, own property, have businesses, open bank accounts e.t.c. However, this needs to be protected so that it is not abused by trustees.
3. On why the registration process has been long, the meeting was informed that this is because the process of movement of the deed from the office of the Principal Registrar to the Cabinet Secretary is not clear in the current law. From the Cabinet Secretary, the deed would go through vetting then go back to the office of the CS who goes through the vetting report before issuing approval.
4. Regarding dissolution of trusts, the meeting was informed that it is important to incorporate both voluntary and involuntary dissolution of trusts in law.

Details of the amendments proposed by stakeholders on the two Bills are contained in Part III of the Reports on the consideration of the Trustees (Perpetual Succession) (Amendment) Bill, 2021 and the Perpetuities and Accumulations (Amendment) Bill, 2021.

MIN.NO.NA/F&NP/2021/240: ADJOURNMENT/DATE OF NEXT
MEETING

There being no other business to deliberate on, the meeting was adjourned at 12.52 p.m. The next meeting will be held at 2.00 p.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED..........DATE..........

National News



National Assembly Speaker Justin Muturi

BRIEFLY

Speaker Muturi lobbies for use of telemedicine amid pandemic

KISUMU National Assembly Speaker Justin Muturi has called for fast-tracking of the use of telemedicine in hospitals during the Covid-19 pandemic as a step towards achievement of Universal Health Care. Speaking as he closed the Kenya Medical Association Annual Scientific conference, he said: "It is time to embrace more advanced technology that will make tele-health, Nano-medicine and robotic surgery possible within our shores." Ruth Mbulu

Father stabs two minors after quarrel

NYANDARUA Two minors are fighting for their lives at a Nyahururu hospital after they were reportedly stabbed by their father at Ziway Estate in Nyandarua. According to police, Ken Mburu stabbed the two minors aged one and seven years on Saturday after a quarrel with his wife before he set their house ablaze. Steve Njuguna

Two arrested over murders of children

UASINGISHU Police in Uasin Gishu County have arrested two suspects in connection with Mo's Bridge serial killings of minors aged between eight and 14 years. The arrest came after residents staged a demo, accusing police of laxity. County Police Commander Ayub Gitonga said the suspects will be arraigned in court this week. Titus Ominde

Magoha takes blame for placement mess

BUNGOMA Education CS George Magoha has taken the blame for the Form One student placement mess that saw a boy from Bungoma County placed in a girls' school. Spencer Wangila received the letter from Natoru Girls in Nyeri. But speaking on Friday, Prof Magoha assured the family that the mess has been fixed. Francis Mureithi

Ransom Bosire's wife had been given seven days to raise Sh2 million

Man, 79, narrates ordeal at the hands of kidnappers



Mr Kennedy Bosire Nyabwari at his Bwayi home in Malili Saba, Trans Nzoia County. PHOTO IPOOL

Bosire, a relative of Senator Sam Ongeri, was held for over two weeks

BY GERALD BWISA

When Mr Kennedy Bosire Nyabwari left his Kitale home on a Sunday afternoon to visit his ailing aunt in Kisii, it never occurred to him that he would end up in captivity.

The 79-year-old ran into trouble as he was abducted, kept in different houses for more than two weeks, and his family asked to fork out a Sh2 million ransom.

That's the ordeal Mr Bosire, a relative of Kisii Senator Sam Ongeri, endured until his rescue by a team of detectives last Tuesday evening. On June 6, Mr Bosire had left his home at 5pm, somewhat in a hurry, following news of his ailing aunt at a Kisii hospital. He badly needed to see her.

His wife, Rhoda, even raised an issue that the travel was planned in a hurry, asking him to leave in

the morning, instead.

But Mr Bosire wanted to go. He took a Sh70 motorbike ride to Malili Saba stage, but he soon realised his journey to Kisii might not be possible as all the cars available only wanted to terminate their trips in Eldoret.

Keen to take the earliest matatu out of the town to Kisii, the old man decided to book a room, instead of going back home, and do the trip back to the matatu stage in the morning.

An attempt to book a room at Skynest Hotel was not possible as a room, going for between Sh2,000 and Sh3,000, was beyond his plan.

He went further down the road and paid Sh600 for a room.

"I had a nice meal and later on requested the attendant to wake me up the following morning around 4am since I had a long journey and wanted to be in Kisii early for the hospital visiting hours," a scared but happy Mr Bosire told the Nation at his home last Thursday.

At around 3am, Mr Bosire was already up, prepared himself and left his room. At the gate, he

asked a watchman if he could get a motorbike to town and was told to walk towards the road, where he could easily get one.

He waited but did not see any boda boda so he decided to walk slowly towards town hoping to get a rider. "When I reached Ali Salts Cathedral area near Skynest Hotel, I saw a motorbike approaching from the other side of the road. I asked the rider if he was heading to town, which he agreed at Sh50," he said.

However, after connecting the T-junction to the main road towards Kitale town, the rider diverted to a different direction towards Kenya Forest Service.

Worried, Mr Bosire beckoned on the rider to get back to the right route.

The rider said he was dropping the other passengers with him, before heading to town through a short route he knew.

When all the other passengers alighted, and in the dark of the early morning breeze, two men emerged just as the motorbike was near the Kitale Showground. They commanded Mr Bosire off the motorbike, and asked him to switch off his mobile phone. "As I was being ordered, one of them covered my head with a sack. That is when I realised that my life was in danger," he recalled.

Knife on neck

They jumped on the motorbike and sandwiched him. One was holding him from behind, and the other was holding the sack covered on his head as the rider took charge to an unknown location. On arrival at the house that became his home for a few days, Mr Bosire was thrown into a room until 7pm when he was given food, his first meal that day.

Even though he should have been hungry, a confused Mr Bosire refused to eat.

He was woken up late in the night by someone who placed a knife close to his neck asking him why he had not eaten.

"I was so scared the only words that came from my mouth was 'please allow me to eat the following day,'" he narrated.

The following morning, unsure what was happening to him, Mr Bosire attempted suicide.

"I was so scared that I wanted to take my own life. I tried to look for a place but the ceiling was too low, it could not tie my shirt and allow me space to hang. But then I heard a sharp knock at the door that forced me to abandon the idea," he explained.

Unknown to him, the kidnappers had contacted his wife,

Rhoda, and asked her to fork out Sh2 million for his release.

She had been given seven days to raise the money.

When he refused to eat, the kidnappers called the wife in his presence, demanding that she asks her husband to eat. "I pleaded with him to obey the instructions and not to give up. I know my husband and he listens to me," Rhoda recounted.

Meanwhile, the desperate search for the Sh2 million ransom had begun.

Rhoda had told the kidnappers to allow her to sell a piece of her land. But while she sought for a buyer, she informed police of the events, providing key details like the kidnappers' phone numbers.

A team of detectives from Special Service Unit and Crime Research and Intelligence Bureau, supported by investigators based in Kitale, was immediately mobi-

lised to track down the kidnappers. At some point, when the seven-day deadline ended on Monday night, the kidnappers threatened to take Mr Bosire to Tanzania to "sell him there."

Scared, Rhoda promised to send a down payment to save her husband. But she did not get to do it.

Under the cover of darkness, detectives, who had been pinpointing the phone signal, swooped in, raiding a home at Malili Saba on the Eldoret-Kitale highway.

"Following suspected abduction report of Kennedy Bosire Nyabwari, we managed to raid the house of one Jackson Atei Nyauindi, who escaped through his homestead fence," said County Criminal Investigations Officer Francis Kihara. Grace Kerubo (wife of the escapee), Richard Okali Matunda and Samuel Atuya were arrested in the operation.



REPUBLIC OF KENYA THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT (FIFTH SESSION) DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

In the matter of Article 118 (1)(b) of the Constitution and National Assembly Standing Order 127(3) and

in the matter of consideration by the National Assembly of the:

1. Trustees (Perpetual Succession) (Amendment) Bill (National Assembly Bill No. 23 of 2021);
2. Perpetuities and Accumulations (Amendment) Bill (National Assembly Bill No. 24 of 2021); and
3. Certified Managers Bill (National Assembly Bill No. 25 of 2021)

INVITATION FOR PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order (S.O.) 127(3) provides that "The Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House."

The Trustees (Perpetual Succession) (Amendment) Bill (National Assembly Bill No. 23 of 2021) introduced by Hon. Gladys Wanga, CBS, M.P. seeks to enable accumulation of generational wealth for the benefit of multiple generations. It makes provisions for and defines the various types of trusts, including charitable trusts and non-charitable purpose trusts. Additionally, the Bill makes new provisions for enforcement of a trust. The Bill also proposes to amend the provisions on incorporation of trustees to recognise that trusts are registered with the Principal Registrar of Documents and not the Minister.

The Perpetuities and Accumulations (Amendment) Bill (National Assembly Bill No. 24 of 2021) introduced by Hon. Gladys Wanga, CBS, M.P. seeks to limit application of the Act to dispositions relating to immovable property and allow for the accumulation of the income of a trust so that it can benefit multiple generations of beneficiaries, particularly in a family trust. The intention is to create an enabling legal framework for preservation of generational wealth.

The Certified Managers Bill (National Assembly Bill No. 25 of 2021) introduced by Hon. Gladys Wanga, CBS, M.P. seeks to establish the Institute of Certified Managers and to provide for a legal framework for the registration and regulation of the standards and practice of the profession and for connected purposes.

The Bills were read a First Time on Tuesday, 17th June 2021 and committed to the Departmental Committee on Finance and National Planning for consideration in accordance with the provisions of Standing Order 127(3).

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3) of the National Assembly, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bill.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday, 2nd July 2021 at 5.00 p.m.

Copy of the Bill is available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

MICHAEL R. SIALAL, CBS
CLERK OF THE NATIONAL ASSEMBLY

21st June, 2021

