

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Tuesday, 5<sup>th</sup> October, 2021**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****PETITION****PROPOSED AMENDMENT TO THE CONSTITUTION TO INTRODUCE  
TERM LIMITS FOR KEY ELECTIVE POSITIONS**

**Hon. Speaker:** Hon. Members, Standing Order No. 225 (2) (b) requires the Speaker to report to the House any petition other than those presented by Members. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, I wish to report to the House that my Office has received a Petition signed by Mr. Jonah Gachuki of National ID No.24631866. The Petitioner claims that whereas Articles 142 and 180 of the Constitution fixes the term of office for the President and county Governors, respectively to two terms, the provisions do not apply to the following other elective offices –

- (i) Deputy President;
- (ii) Speaker of the National Assembly;
- (ii) Speaker of the Senate;
- (iii) Member of Parliament;
- (iii) Deputy Governor; and,
- (iv) Member of County Assemblies.

The Petitioner is concerned that the above exemptions are discriminatory. Hon. Members, the Petitioner is, therefore, praying that the National Assembly amends Articles 102, 148 and 180 and other related provisions so as to limit the term of office for the above-listed elective positions to a maximum of two terms as is the case for the President and county governors. Having determined that the matters raised by the Petitioner are well within the authority of this House, I order that, pursuant to the provisions of Standing Order No. 227 (1), this Petition be committed to the Departmental Committee on Justice and Legal Affairs. The Committee is required to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order No. 227(2).

I thank you!

**Hon. Speaker:** I can see an intervention from Hon. Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): It is true the Constitution allows anyone to petition this House. Looking at this Petition, I have no doubt that this House has what it takes to look at it favourably. Since it also requires public participation, we are just requesting the relevant committee to look at the Petition objectively and bring the matter on the Floor of this House. As we speak about this, there are unique functions particularly of the officers that he has talked about. There are also issues to do with discrimination, I have no doubt that Wanjiku had decided on the issue of discrimination in the 2010 Constitution. In case they want to amend, we will take it back to the people and I have no doubt that this House will give a favourable response.

I thank you.

**Hon. Speaker:** Member for Endebess.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. This Petition by Jonah Gachuki on various elective offices is misplaced because, if he seeks to do a constitutional amendment on Article 102, 148 and 180, he needs to collect one million signatures, just like those who were promoting BBI did. These are careers and they are determined by the people. After every five years, the constituents will decide. Even in your case, Hon. Speaker, we are the ones who elect you because we are satisfied with your performance. In elective positions, I think, you seek the mandate from the people as we are heading into the next general elections. I think this is a waste of resources and committees' time. I think the committee should be spared from these kinds of petitions. They have more work to look into issues that are more productive to this country.

With those few remarks, I reject.

*(Laughter)*

**Hon. Speaker:** Member for Kimilili

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Speaker. While the Petitioner has a right to petition this House, we also have a civic duty to advise the Petitioner that this country is struggling with officers whose term is capped to two terms. Most governors who are doing their last term have gone rogue. Some have even disappeared from their offices because they say they are going home. So, as much as the Petitioner has a right to petition this House, in future, we are thinking of removing term limits so that one can run for as long as they have a level playing field for Kenyans to decide. The section that the Petitioner seeks to amend falls within what the court referred to as 'eternity clauses'. They can only be amended through a referendum. I do not think the Committee should waste taxpayers' money going through this Petition. It should be dismissed and the Petitioner advised accordingly. I do not support.

**Hon. Speaker:** Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. This is an interesting Petition. As you have correctly observed, every Kenyan has a right to petition the House so that it can consider whatever matter that comes before it, and especially if it is of great interest. First and foremost, the reason why the terms of the President and the governors were capped was due to the fact that those are CEOs of the Republic and of the county. The rest, including us, are just about there, hang-about and possibly without positions that are clearly defined as far as those offices are concerned. That is why nobody cared to limit the terms; the people limit the terms themselves. However, having been properly committed to the Justice and Legal Affairs Committee, we will consider the Petition, the various sections that apply to confirm whether there are eternity clauses in this or we can do this through a parliamentary initiative instead of going through a referendum and they are not protected *per se* in accordance to the finding of the Court of Appeal and the High

Court that there are some clauses which form part of the good norm of our Constitution and they cannot be touched in whichever way. Let us just look at it, spare him the agony of knowing that we do not like it very much but, to be frank and honest, I think it is not quite merited.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Rarieda.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. Whereas everyone has a right to petition this House, I think this House must also develop ways of dealing with petitions that are unmeritorious. This is one of those which, although you have now committed it to the committee, it would be one for summary dismissal. First of all, it has a factual error in so far as it says that the Office of the Deputy President does not have a term limit. That is not true. Under the Constitution, there is a term limit. You can only be deputy president for a maximum of two terms. Secondly, there are very good historical legal and factual reasons why only the Office of the President and the governor were limited and not these other elective offices. I think that even if the committee were to sit and return a verdict, their verdict would not be for this House. It would be for the rest of the Kenyans. I think that the Committee will do itself great justice by summarily dismissing this Petition. Thank you.

*(Applause)*

**Hon. Speaker:** Member for Kabuchai.

**Hon. Majimbo Kalasinga** (Kabuchai, FORD-K): Hon. Speaker, I think this is one of the most unpopular petitions. It is unpopular because it cuts and curtails the democracy of a people. There are people who elect those offices and they have a right to do so for as long as they want. I know wherever the Petitioner is, he must be following up and he must have known the outcome before bringing it here.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for North Imenti.

**Hon. Rahim Dawood** (North Imenti, JP): Hon. Speaker, thank you. I want to support this Petition. In this country, we tend to be thinking that we have a right to be elected each and every time. There comes a time that we have to give others space as well. I believe that if it is possible, let it be prosecuted and I will be one of those who will be voting for it.

I support the Petition.

**Hon. Speaker:** Member for Nyaribari Chache.

**Hon. Richard Tong’i** (Nyaribari Chache, JP): Thank you, Hon. Speaker. I think the Petitioner has a very good thinking. He thinks that we have selective judgment on elective offices. If the President can only serve for two terms, why would the other officers be exempted? Parliament is a training ground for bigger responsibilities in the Republic of Kenya. Therefore, when we have people training for lack of a better way to put it, it horns their skills so that whenever they are given bigger assignments, they will be able to serve Kenyans in a more informative and in a better way than they are doing now. Dismissing the Petitioner summarily will be unfair because he has reasons why he raised the Petition and it is only fair to listen to him and get to know what he has to say. It is only fair now that we have many elective offices, we have the governor and the senator and, maybe, you need to do two terms in one office and move to the next one. He is encouraging people not to get to their comfort zone in one area so that they can think of other options which are there. Like you, Hon. Speaker, you are going in for the presidency and I think you can make a very good President of this Republic. We support it because Parliament has

been a good training ground for you. You have served as a very good Speaker for two terms and it is only fair that you move up to the next level.

The Petitioner has a good reason. We need to listen to him and if he convinces us like he has with my brother from Meru, I will also be following keenly to see if it has merit, so that I can support it. For the time being, without having the benefit of the information that he has or the thinking behind his Petition, I support it.

**Hon. Speaker:** Let us have the Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Hon. Speaker, in this country, we have what we call busybodies. This is one of those busybodies. The Petition is from his perspective. Maybe, he has tried to be a Member of the County Assembly (MCA) or a Member of Parliament (MP) and has failed many times. It is frustration. It does not make sense. I am asking the Committee to which you have referred this Petition to dismiss it right here and now, unless they have nothing to do. This is just a waste of time. I do not think he has any reason.

This person is a busybody out there. Although he has the right, he is a frustrated individual. I do not think we have to waste time on this one. You can put a Question and we see what we can do.

**Hon. Speaker:** Well, how do I put a Question to a Petition? Unless you return to sender!

Let us have the Member for Marakwet West.

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Speaker. As a majority of the Members have said, this Petition is from a busybody out there who may have tried to contest. Because the sitting MP has become difficult to unseat, we should give an opportunity for the Member to retire and then the Petitioner will have an opportunity.

The retired President Kibaki was a Member of Parliament from the 1960s up to when he was elected as President. That means that if there were term limits back then, he would not have become the President of Kenya. That also applies to the current President. This is just a busybody.

Being re-elected, especially as Members of the National Assembly and the Senate, is based on your performance, not because of the time that you have served. We need to dismiss it immediately.

**Hon. Speaker:** Let us have the Member for Soy.

**Hon. Caleb Kositany** (Soy, JP): Thank you, Hon. Speaker. The Petitioner has a right and we need to listen to him because, maybe, he has issues with his Member of Parliament and has decided to come and attack him. We would have loved it if the Petitioner had divulged more information. Has he attempted to run for office against the Member of Parliament and failed? Was he denied a bursary? What services was he denied such that he is now cross with his Member of Parliament? It is also good to note that when we are given a position to serve, we should do so to the best of our ability and let the people decide how long we can serve as Members of Parliament.

**Hon. Speaker:** Let us have the Member for Kajiado Central.

**Hon. Memusi ole Kanchory** (Kajiado Central, ODM): Thank you, Hon. Speaker. I was waiting to contribute to a Statement by Hon. Sossion, but let me just add to the voices of my colleagues on this Petition. The Petitioner is within his constitutional right to petition this House, however unpopular that might be.

However, something has concerned me. Hon. Didmus mentioned that it would be important to review term limits. The Hon. Member is a staunch supporter of the Deputy President. I do not know if that is what they plan to do if by any chance the Deputy President becomes President by bad luck. That concerned me, but I look forward to the Committee's recommendation on the same.

**Hon. Speaker:** Hon. Members, it is always advisable to avoid discussing people who are not in the House to defend themselves. Let us have the Member for Matayos.

**Hon. Geoffrey Odanga** (Matayos, ODM): Thank you, Hon. Speaker. I also want to say that the Petitioner is well within his rights to bring the matter to the House. If it has been discussed by the House Business Committee, we cannot say that it should just be killed right away. Let the Members of the relevant Committee do their duty and from there, we shall get a report.

I find it interesting because I do not know of any jurisdiction in the world where elected leaders like Members of Parliament or MCAs who represent the people have term limits. Even as it goes to the Departmental Committee on Justice and Legal Affairs, I urge them to make sure that it dies on arrival.

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

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I agree that everyone has the right to petition. I concur with what Hon. Amollo Otiende has mentioned. It is not just the Deputy President; even the deputy governor is restricted to two terms. Factually, the Petition is founded on the wrong premise that it is only the President and the Deputy President who have term limits.

As the Petition goes to the Committee, I would like them to look at whether it offends the provisions of Article 38 of the Constitution, which gives everyone the right to elect a person of their choice, and whether the capping for the President is actually restricted to his or her work in the Executive rather than in terms of representation of the people.

I agree with my colleagues that we have opened a door for us to receive all manner of petitions. Perhaps, we need a law on petitions to get a criterion that can then be popularised in terms of what kind of petitions we will entertain or the threshold that we need, so that we do not end up with lots of things. I am not sure whether or not it will contradict the Constitution. Perhaps, we can consider it within a review of our Standing Orders. I have seen other petitions talking of removing *harambees* and making a lot of noise that they should not be entertained.

The Petitioner is within his rights, but we probably need to advise him that he is not likely to go far. We know where a constitutional amendment that also affects the Bill of Rights is going. Let him be patient.

**Hon. Speaker:** Well, the Committee can sit and determine to return it to sender. As per Standing Order No.227, the Committee does not need to table any report in the House. It just has to write back to the Petitioner advising him on what they found.

Next Order!

## PAPERS LAID

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

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Legal Notice No. 184 of 2021 relating to the Breast Milk Substitutes (Regulation and Control) (General) Regulations, 2021, and the Explanatory Memorandum from the Ministry of Health;

Legal Notice No. 194 of 2021 relating to the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2020, and the Explanatory Memorandum from the Ministry of Defence;

Report to Parliament on all new loans contracted by Government from 1<sup>st</sup> April 2021 to 31<sup>st</sup> August 2021, from the National Treasury and Planning;

Annual Report for the 2020/2021 Financial Year from the Kenya Law Reform Commission;

Report of the Auditor-General and Financial Statements in respect of the Central Bank of Kenya for the year ended 30<sup>th</sup> June 2021, and the certificate therein;

Report of the Auditor General and Financial Statements in respect of the Wiper Democratic Movement for the year ended 30<sup>th</sup> June 2020, and the certificate therein; and,

Reports of the Auditor-General and financial statement in respect of the following constituencies for the year ended 30<sup>th</sup> June 2019, and the certificates therein:

- a. Bomachoge Borabu;
- b. Homa Bay Town;
- c. Kabondo Kasipul;
- d. Nyaribari Chache;
- e. West Mugirango;
- f. Lunga Lunga;
- g. Wundanyi;
- h. Malindi;
- i. Kikuyu;
- j. Kangema;
- k. Mathira;
- l. Githunguri;
- m. Karachuonyo;
- n. Laikipia East;
- o. Kuria West; and,
- p. Ruiru.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairperson the Departmental Committee on Administration and National Security.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House, Tuesday, 5<sup>th</sup> October 2021:

Report of the Departmental Committee on Administration and National Security on its consideration of the President's Memorandum on the Refugee Bill, (National Assembly Bill No.62 2019)

Thank you.

**Hon. Speaker:** Chairperson of the Departmental Committee on Lands.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House Tuesday, 5<sup>th</sup> October 2021:

Reports of the Departmental Committee on Lands on its consideration of:

Public Petition No.50 of 2020 by registered owners of land parcel in Tiwi, Shimba North Kundusti B, in Matuga Constituency regarding irregular annexation and fencing of private land by Greatcom Limited.

Public Petition No.24 of 2021 by the residents of Mtomwagodi Ward in Mwatate Constituency regarding complaints against of irregular establishment of Diaspora University.

Public Petition No.3 of 2021 by East Mau Forest Evictees regarding resettlement of East Mau Forest evictees

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order.

### ORDINARY QUESTIONS

**Hon. Speaker:** The first Question is by the Member for Homa Bay Town, Hon. Peter Kaluma.

*Question No.371/2021*

#### DELAY IN DISBURSEMENT OF HELB LOANS

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Education the following Question:

- (i) Could the Cabinet Secretary explain why the Higher Education Loans Board (HELB) is yet to release funding for students joining universities and other institutions of higher learning for the 2021/2022 academic year across the country and, in particular, for the first year students who are joining the University of Nairobi?
- (ii) What steps is the Ministry taking to ensure that the said money is released to students? Could the Cabinet Secretary provide the timelines for the release of the said monies?
- (iii) What procedure has HELB instituted to enable eligible students who have not attained the age of 18 years to access funding?

Thank you, Hon. Speaker.

**Hon Speaker:** The Question will be replied to before the Departmental Committee on Education and Research.

The next Question is by the Member for Marsabit County, the Hon. Safia Sheikh.

*Question No.377/2021*

#### DISCONTINUATION OF THE POLICE RESERVIST PROGRAMME

**Hon. (Ms.) Safia Sheikh** (Marsabit CWR, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) Could the Cabinet Secretary explain why the National Police Reservists Programme in Northern Kenya, particularly in Marsabit County, was discontinued?
- (ii) Are there plans to reinstate the programme in Marsabit County as it will go a long way in complementing the work of the police, facilitate restoration of peace and security in the County and prevent further loss of lives and properties arising from insecurity in the region?
- (iii) What steps is the Government taking to enhance security in Northern Kenya, particularly in Marsabit County?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Administration and National Security.

The next Question is by the Member for Kisumu West, Hon. John Olago Aluoch.

*Question No.382/2021*

## HOLDING OF JULIUS NYERERE'S BODY BY REALE HOSPITAL

**Hon. Olago Aluoch** (Kisumu West, FORD-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Health the following Question:

- (i) What is the Government's policy regarding detention of patients and bodies of patients by hospitals over unpaid hospital bills?
- (ii) Could the Cabinet Secretary explain why Reale Hospital in Eldoret continues to hold the body of the late Julius Nyerere Odera who had been hospitalised at the said facility until 1st June, 2021 when he passed on, leaving a hospital bill of Kshs.4 million, of which his widow, friends and relatives paid Kshs.1.6 million?
- (iii) Could the Cabinet Secretary compel Reale Hospital to release the body of the deceased, considering that the family has continued to incur a charge of Kshs1,000 per day being mortuary charges?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Health.

The next Question is by the Member for Mumias East, the Hon. Washiali.

*Question No.389/2021*

## GRADING CRITERIA FOR EMPLOYMENT OF TEACHERS

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Speaker, I rise to ask the Teachers Service Commission the following Question:

- (i) Could the Chairperson explain the new grading criteria for employment of teachers, which accords additional weight to intern teachers and yet, the opportunities for internship are only available to a few teachers under the age of 35 years against the very many qualified, aged and interested teachers?
- (ii) How will teachers above the age of 35 years access employment opportunities considering that the Teachers Service Commission, while carrying out the national recruitment exercise in July 2021, awarded 30 points to those who were on internship programme over and above other requirements and yet, for a teacher to qualify as an intern, one must be 35 years of age or below thus locking out teachers who are above 35 years of age from ever being enlisted?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is for a written reply by the Teachers Service Commission. The last Question by the Member for Kajiado Central, Hon. Memusi.

*Question No.390/2021*

## STATUS OF ROADS UNDER CONTRACT NO. KURA/DEV/HQ/336/2019-2020

**Hon. Memusi ole Kanchory** (Kajiado Central, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

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- (i) Could the Cabinet Secretary provide the construction status of the roads under Contract No. KURA/DEV/HQ/336/2019-2020 in Kajiado Central Constituency?
- (ii) Could the Cabinet Secretary explain what has led to the inordinate delays in the execution of the contract and provide the expected timelines for its completion?
- (iii) Could the Cabinet Secretary provide the contract details including the contract sum, the number of employees engaged and the amount of funds that the contractor been paid so far against the works done?
- (iv) Could the Cabinet Secretary explain how the contractor incorporated corporate social responsibility (CSR) while undertaking the project?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

The next segment is Statements.

## STATEMENTS

### MEASURES TO REVIVE TOURISM IN KENYA

**Hon. Owen Baya** (Kilifi 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 Sports, Culture and Tourism, regarding measures to revive the tourism sector in the country, particularly at the Coast region, during the COVID-19 pandemic period.

Until January 2019, the tourism sector was the second highest foreign exchange earner in the country, contributing approximately 10 per cent of the GDP and employing over two million Kenyans directly and indirectly. In addition, at least 60 per cent of the Kenya Coast economy has always been driven by the tourism and hospitality industry.

Regrettably, the COVID-19 pandemic has spelt doom on the industry and the economy of the country, particularly in the Coast region, resulting to massive loss of approximately 80,000 jobs and closure of businesses.

The traditional international tourism markets have continued to blacklist destinations in Kenya, with Italy, which is the major tourism market for the Coast region, maintaining Kenya on the red list, and most other European countries doing the same. This, coupled with COVID-19 restrictions and protocols, has seen destinations such as Kilifi, Malindi, Watamu and Mamburui which have become ghost towns, registering negligible hotel occupancy. This has affected not only the economy, but has also compromised the livelihoods of the area population.

It is against this background that I seek for a statement from the Chairperson of the Departmental Committee on Sports, Culture and Tourism. In the statement, the Chairperson should address the following issues:

- (i) Are there plans by the government to carry out a vaccination programme for tourism and hospitality workers, particularly in the Coast region?
- (ii) Does the Ministry have in place a tourism recovery plan, including marketing campaigns and public relations strategies with a view to reviving the tourism sector?
- (iii) What measures has the government put in place to cushion tourism sector players, businesses and investments in the tourism and hospitality industry, including but not limited to waivers and amenities on tax, tourism licences and catering levy?

(iv) Could the Government consider rolling out economic recovery support measures, including social protection measures, for the local people who lost their jobs following the outbreak of COVID-19 to cushion them from the effects of the pandemic?

(v) What measures is the government putting in place to enable fully vaccinated travellers into and out of the country, in line with the set protocols without undue inconveniences?

(v) Could the government consider subsidising the cost of COVID-19 PCR tests on outgoing and incoming tourists to make Kenya a competitive tourism destination?

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Makau.

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker. These are very weighty matters that the Member has raised. As you are aware, yes COVID-19 has affected tourism the world over. If you give us two weeks, we will come up with a good answer to that.

Thank you.

**Hon. Speaker:** If you want to raise a point of order, you know how to intervene, Hon. Baya.

**Hon. Richard Tong’i** (Nyaribari Chache, JP): Thank you, Hon. Speaker. There is a Member who has walked in and sat where Hon. Millie Odhiambo normally sits. I cannot tell whether she is really Hon. Millie Odhiambo. We would want the Member to identify herself. I thought the late Hon. Orié Rogo Manduli had walked into the House. We need the Member to identify herself or else we have a stranger in the House.

**Hon. Speaker:** I believe the Member has been sufficiently identified by the Serjeant-at-Arms. Given where the Member is sitting and as you can see, that must be Hon. Millie Odhiambo-Mabona. What do you mean? Does she have another name?

Hon. Millie, you have not been provoked. Have you?

**Hon. (Ms.) Odhiambo-Mabona** (Suba South, ODM): Thank you, Hon. Speaker. I want to thank the Member for identifying me in my elegant headgear. We have just come from the funeral service of Orié Rogo Manduli and it was an elegant affair. We have sent her in the style that befits her. It was colourful. It was loud. It was boisterous. It was everything good you can imagine. This is what all this headgear is all about—celebrating the life of Orié Rogo Manduli.

*(Applause)*

Other than that, I am yours truly Hon. Millie Odhiambo aka *Geza Geza*.

**Hon. Speaker:** Now you have added another name to yourself, which is unofficial.

Hon. Wanga.

#### EXTENSION OF TIME FOR CONSIDERATION OF PETITIONS ON FUEL PRICES

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Thank you, Hon. Speaker. You will recall that on 21st September 2021, you referred two petitions regarding fuel prices to the Departmental Committee on Finance and National Planning for consideration and reporting within 14 days. The period is set to expire tomorrow, Wednesday, 6th October 2021. It is worth mentioning that in the process of considering the petitions, the Committee has made significant progress. We have met over 10 stakeholders and received several written submissions. Further, the Committee has received new information regarding the matter. The Committee received new information regarding demurrage charges, which has a bearing on the retail cost of fuel. In this regard, the

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Committee wants to inquire into the matter of demurrages. For the information of the House, demurrage charges are due to delayed cargo clearance.

It is against this that the Committee seeks your leave for extension of the period by seven days. Above all, Hon. Speaker, I want to assure you and the entire august House that the Committee is committed to dispensing its mandate promptly with regard to business referred to it, so as to hasten and facilitate the oversight role of this House as enshrined in the Constitution.

That is my request.

**Hon. Speaker:** I think that is a fair request. Do I see the Member for Matungulu wants to say something?

**Hon. Stephen Mule** (Matungulu, WDM-K): Thank you, Hon. Speaker. I want to thank Hon. Wanga. I request you to give the Committee at least seven more days so that we can exhaust all issues on the cost of fuel in Kenya, and give this country relief from the high cost. As a Petitioner, I agree with the Committee and I believe it is for the good of the country to have a lasting solution to this issue of fuel prices.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Duale on the same.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I really want to thank the Chair. I am happy that the Cabinet Secretary for Petroleum and the Principal Secretary for Treasury last week came out and stated clearly that in July last year, the Petroleum Development Levy was at 0.4 per cent per litre. Hon. Munyes, through a Gazette Notice, increased it to Kshs5.4 per litre. The objective of that increment was to use those resources to subsidise the oil marketers not to increase the fuel prices. I want to ask the Chair of the Departmental Committee on Finance and National Planning, using our Budget Office, to confirm that between last year July and September this year, Kshs31.8 billion was collected and only Kshs8.5 billion was used as subsidy. Nobody knows where the remaining amount of money is. The PS for the National Treasury said we have used only Kshs12 billion for infrastructure projects. In the absence of that, if we have that levy in place to subsidise the oil marketers, then the prices of fuel should come down. We cannot collect Kshs5.4 per litre from ordinary citizens with the objective of subsidising the oil marketers only for the National Treasury to use that money for other purposes.

In their Report, I want them to go to the bottom of this matter. For the first time, we have a former Director-General of EPRA in this House, namely; the Member for Bonchari. I am sure he can confirm because when the Gazette Notice was published, he was in the House. He knows what has been going on. So, this is a very important matter, and I am glad that the Committee is on top of it. Let us make sure that the Kshs5.4 per litre that is being collected is used for the intended purpose – to cushion Kenyans from the escalating oil prices globally and domestically. That money should be given to oil marketers so that they reduce or do not increase the fuel prices in our country.

**Hon. Speaker:** I see the Chair of the Departmental Committee on Energy wants to say something. He has been missing in action.

**Hon. David Gikaria** (Nakuru Town East, JP): Thank you, Hon. Speaker. Last week, we were given an opportunity by Hon. Cheboi to visit Ghana on some exchange programme. It was a very educative tour.

I agree with the request by my dear sister, Hon. Wanga. Hon. Speaker, I thought you gave the right direction because the pricing is under the Departmental Committee on Finance and National Planning. However, even as a Committee, we are trying to look at how we can implement the open tender concept on petroleum products in this country, which has already been taken up

by other countries. We now want to look at the complexity of the whole concept on how we do our businesses surrounding the petroleum sector. As the Departmental Committee on Finance and National Planning consider the pricing aspect, my Committee will be engaging the relevant Ministry and other stakeholders to be able to see how best we can address this issue, particularly through a review of the Petroleum Act of 2019.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Junet seems to have fallen to the bad ways. He has also been missing in action. Hon. Junet.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, you are right. I forgot my card. It depends on where you were yesterday. I want to support the Chair of the Departmental Committee on Finance and National Planning for the request she made on the extension of time. This is a very serious matter that needs to be looked into properly.

Hon. Speaker, the issue of fuel pricing in this country is much bigger than taxation. As a country, we have to look into this thing holistically, right from the procurement and see whether we can actually control the price. The market forces should be allowed to determine the price of fuel. There are companies which can source for cheaper, middle priced and high priced fuels. Let us allow the market forces to determine the kind of pricing for the country in terms of fuel consumption. In my view, price control is the old way of fixing things. When price control was introduced, the dealers of petroleum products in the country were few and they were behaving like cartels. They would sit down somewhere and fix the fuel prices the way they wanted. The energy sector has since been liberalised. There are now many players, and that should benefit the country. The Government should stop fixing the prices of petroleum products. Instead it should focus on creating conducive environment for doing business. Why does the Government not fix the prices of food commodities? Why can they not fix the price of maize flour at Kshs50 or Kshs40 per two kilogramme packet? This time round the House must come up with a comprehensive way of handling this matter properly. That is why I support the Departmental Committee on Finance and National Planning on their request for extension of time.

Thank you.

**Hon. Speaker:** Member for Nyando.

**Hon. Jared Okelo** (Nyando, ODM): Thank you very much, Hon. Speaker. As you have said, this is a worthy request by the Chair of the Departmental Committee on Finance and National Planning. This is a matter that has taken big space in the media. This House has been hit so hard by the Press and certain Members of the Cabinet, who came out to say that they did not cause this problem but rather the problem emanated from Parliament because it is this House that passed those punitive tax regimes.

This matter needs to be put to rest as soon as possible because a few days ago, some Members of the Cabinet promised that within this week, something good will come out of it. The same Members of the Cabinet are out again trying to castigate this House for passing the punitive tax laws. They are creating confusion amongst Kenyans. The people would not want to hear anything; they would want this matter addressed so that the prices of petroleum products can drop. The Departmental Committee on Finance and National Planning needs to put this matter to rest quickly so that we move together as one unitary society.

Hon. Speaker, last week you made a ruling to the effect that this House cannot handle a matter that is active before a court of law. We have seen Cabinet Secretaries castigating this House on a matter that is being handled by its Committee. Those Cabinet Secretaries need not go out

there making pronouncements that have the potential of creating friction between the electorate and Members of Parliament.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Majority Whip.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. I thank Hon. Gladys Wanga for seeking extension of time to comprehensively deal with this matter comprehensively. It is appropriate. When this matter came to the House, I asked that the Committee deeply looks at the applicable formula. The Committee is now looking at the demurrage being charged, which is just part of the formula. I also want to seek that the Committee looks at the losses being incurred by oil marketers. The issue of losses is two way. There are losses that are realised at the jetty in Mombasa and losses realised at the pipeline along the depots. Once the loss aspect is analysed and addressed, we will be able to make a big saving that will reduce the cost of fuel in the course of pricing.

Thank you.

**Hon. Speaker:** Member for Kibwezi West.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Speaker for giving me this opportunity. While I support the Committee's endeavour to comprehensively look into the issue of fuel pricing, I would like to draw the attention of the House to the principles of taxation – fairness and equity to the citizenry. One of the things I would ask the Committee to pay special attention to is the high Corporate Tax burden in Kenya, which currently stands at 32 per cent. We cannot have commodities in Kenya that have been taxed over and above; 30 per cent, 32 per cent and 60 per cent. As an enabler to the economy, fuel is one of those instances. As we are getting tax measures being proposed through the Finance Act, we need to have a principle that ensures that individuals are not being encumbered by individual commodities of their own; partaking through their taste and preferences such that what they are paying in terms of indirect taxes. It is actually overwhelming to what they are contributing in the form of direct taxes to the country. I think this need to be a principle so that we know the drivers to our economy is savings which is equals to investment.

Hon. Speaker, many people end up working purely to pay bills for survival. We are not seeing mobilisation of savings and I think this would be a very big pointer for the Committee to address so that we can see how we can propel this country forward.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. When the Petroleum Levy Order came before the Committee on Delegated Legislation, we were convinced to approve the increment from five cents to five shillings and forty cents for two reasons; One, we were told that the five cents that was in existence in the legislation was passed in 1972 and therefore, going by inflation mathematics, Kshs5.40 cents was almost commensurate, and we agreed on that. We were also told that the Petroleum industry had enforced the order even before it was ratified by Parliament. This was such that the Kshs5.40 cents was already incorporated into the prices of petroleum and as such there were billions of shillings lying somewhere in an account meant to cushion just in case there was inflation. We were convinced and we actually agreed to this in July. Recently, prices went up and no one mentioned what happened to those billions that were raised before July and after July. Therefore, the Departmental Committee on Finance and National Planning should thoroughly investigate where that money went. This is because if it is applied as

the law says; prices of petroleum products in Kenya would definitely go down. This is absolutely important.

**Hon. Speaker:** Member for Endebess.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I find the time sought by the Chair of the Departmental Committee on Finance and National Planning inappropriate. This is because Kenyans expect us to work and we should not be extending time when people are expecting results from us. I think it is a failure by the Committee to take this matter very seriously. This is because if we agreed that within two weeks they were supposed to table a report before this House, then we should have stuck within those two timelines. Today, when she sought time, she should have given us a progress report on whatever they have so far done. It is unfortunate that they have failed to issue a progress report and the status of the money in the Petroleum Levy Fund that is supposed to cushion Kenyans. I think we are taking Kenyans for a ride. Since this House will be going on recess in the next one week, we will then receive that report after recess. I find that the Committee is not taking this House seriously and I do not agree with the time extension. I think the Committee should have just presented a progress report today.

Thank you, Hon. Speaker.

**Hon. Speaker:** I think I should defend the Committee because I have seen the reports and they are almost ready. They have even made draft proposals for amending certain legislations. They have also made specific recommendations, which I have read; suggesting that in matters to do with these levies, let this House be involved as a House as opposed to the route that Hon. Murugara has explained. It is better when it goes that way because sometimes no one seems to know what exactly the Ministries are up to.

Hon. Pukose, I have actually seen the report and it is almost ready. It has been delayed by this new matter and the Committee has actually written to specific people to appear before them to proffer evidence particularly in the area of demurrage. This is because whatever is charged on demurrage ends up being factored in the cost of fuel. I have discussed with the Chair and you can obviously see something very suspicious as to why ships at the Port of Mombasa would come and stay there for several weeks yet you are paying demurrage. Why are they allowed to go and hang out there? Do we not have a way that you can organise yourselves well enough to ensure that once a ship comes in to discharge, it does so within the shortest time possible? That is what is happening in other ports. There are certain inefficiencies. This is what has made the Committee to request for just an extra time to allow these people to appear so that they do not say that they have not been given sufficient time to prepare.

Therefore, I want to defend the Committee because I have seen the draft report, which is ready. Hon. Pukose, I always go through these reports. The Committee has actually moved with a lot of speed and I think you may also have taken note of some of the statements by those who appeared before it: Hon. Duale noted that levies that have been collected have been applied elsewhere as opposed to being applied for purposes for which they were levied.

Therefore, all these issues need to be dealt with. I think that report will be sufficiently informative to Hon. Members to make a determination. This is because you cannot provide to collect this levy for a certain purpose and then somehow go and dip your fingers there and remove it for another purpose. No one seems to know where it is paid. Hon Pukose, I am sure you know how people harvest honey in the villages; they just go dipping their fingers all over. That is what appears to be happening and I think I like what the Committee has done to identify some of those fingers. As a House, you will make a determination about what to do with those fingers. You can even decide to cut them, is it not so?

Hon. Mohamed Sheikh, I can see you are burning to say something. You also seem not to have a card.

**Hon. Mohamed Mohamud** (Wajir South, JP): Thank you, Hon. Speaker. In the beginning, just before you spoke, I felt a bit irritated by Members saying that the Committee had the opportunity to deliver the report on time. However, you actually defended us and you have said all that I really wanted to say. However, I only want to add one point. We visited the Port of Mombasa and we noted the reasons why these challenges are happening, particularly the demurrages. They are quite extensive; actually in billions. Therefore, unless we do thorough investigations and come into the point that this is the reason why we are losing these amounts of billions of shillings, we cannot bring a half-baked report to the Table. Therefore, that is the whole reason. You have already defended us and so let me stop there.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. Let us allow the Committee the extra seven days. I am persuaded that they are doing a good job. Let us just give them the extra seven days.

Hon. Sossion, you have a general Statement under Standing Order No. 43.

### GENERAL STATEMENT

#### WORLD TEACHERS' DAY AND STATUS OF TEACHERS IN THE WAKE OF CORONAVIRUS 2019 PANDEMIC

**Hon. Wilson Sossion** (Nominated, ODM): Thank you, Hon. Speaker. I rise pursuant to Standing Order No. 43 to make a general Statement regarding the World Teachers' Day and status of teachers in the wake of corona virus 2019 pandemic.

Hon. Speaker, World Teachers Day was proclaimed by the United Nations Educational Scientific and Cultural Organisation (UNESCO) on 5<sup>th</sup> October 1994 to celebrate the great steps which were made by teachers on 5<sup>th</sup> October 1966 when a special intergovernmental conference convened by UNESCO in Paris adopted the UNESCO/ILO Recommendation Concerning the Status of Teachers.

Hon. Speaker, on Teachers Day, the services of teachers and their contributions to the education sector are acknowledged, their role and importance for the development of students and society are appreciated. The Teachers Day is an occasion that pays tribute to the teachers and tends to resolve some of the issues regarding their profession and hence tries to attract the brightest young minds towards the profession.

The 1966 ILO/UNESCO Recommendation Concerning the Status of Teachers covered all school-level teachers from pre-primary through to secondary level whether in public or private institutions. The 1966 recommendation set international standards for a wide range of issues which relate to professionalism, social, ethical, initial and continuing training, recruitment, professional freedom, participation in educational decision-making, negotiation, conditions for effective teaching and learning, and social security among many others.

The Recommendation formed the basis on which Education for All (EFA) and lately Education 2030 Incheon Declaration of 15<sup>th</sup> May 2015 adopted by UNESCO in Paris on 3<sup>rd</sup> November 2015 as the Framework for Action (FFA), towards inclusive and equitable quality education and lifelong learning for all were made.

In the Incheon Declaration, the Kenyan Government committed to offer quality education and improve learning outcomes which requires strengthening inputs, processes and evaluation of

outcomes and mechanisms to measure the progress. Our Government is dedicated to ensure that teachers and educators are well-trained, professionally qualified, empowered, adequately recruited, motivated and supported within well-resourced, efficient and effectively governed systems.

The 2021 World Teachers Day with a befitting theme “Teachers at Heart of Education Recovery” comes at a time when Kenyan teachers are disoriented, demotivated and feel abandoned by the State especially in the period when the COVID-19 scourge is exacerbating educational inequalities across the country. For Kenya’s already fragile education system, the coronavirus pandemic has generated unprecedented challenges for teachers, learners and parents. These have already exposed some of the cracks in the country’s education system particularly on poor infrastructural development strategy, low budgetary allocations, teacher shortage, inadequate teaching and learning resources and worse of it all, hurried implementation of the Competency Based Education (CBE) without any plausible research data.

Hon. Speaker, education is the most important productive asset most people will ever own. Apart from its economic effects, education is intimately linked to socio-cultural and political inequalities. It is important to note that education is at the heart of the UN 2030 Agenda for Sustainable Development and essential for the success of all the 17 Sustainable Development Goals (SDGs). While recognising the important role of education, the UN 2030 Agenda highlights education as a stand-alone goal (SDG 4).

In the same spirit, the Incheon Declaration observes that teachers are the key to achieving all targets in the Education 2030 Agenda. Hence, in the wake COVID-19, teachers need to be fully supported since they are at the heart of education recovery. Teachers need to be empowered, adequately recruited and remunerated, motivated and supported with adequate teaching resources. I call on the Government of Kenya to make available adequate resources to hire all qualified teachers on permanent and pensionable terms who have stayed out of employment for over five years after training as an urgent action towards protecting the profession. Immediate engagement of teachers after training makes them good teachers.

Hon. Speaker, since teachers are central to teaching and learning, they should be continuously encouraged to play a critical role in policy reforms. More so, teachers have actively participated in crafting legally binding instruments such as treaties, conventions, memoranda of understanding, protocols, as well as international recommendations and declarations on the right to education through the Global Voice Education International (GVEI). This alone is enough to honour the role the teachers play to ensure successful education policy reforms.

It should be appreciated that where important progress has been made in education, especially in terms of adequate coverage of curriculum, better constructed schools and increased supply of teaching tools - textbooks, guides and other resources - at least a teacher has been involved in one way or the other. Therefore, in the midst of the COVID-19 pandemic, it should be realised that tutors can equally play a significant role to ensure successful education policy reforms.

Hon. Speaker, I wish all teachers in the world a Happy World Teacher’s Day. I wish Susan Hopgood, the President, and David Edwards, the General Secretary, all the very best as they rally teachers worldwide towards the delivery of quality public education within the SDG framework. For teachers in Kenya, it is *aluta continua* through one united front. I humbly ask this House to rise to the occasion and support all legislative policy and budgetary reforms towards strengthening the teaching profession.

I thank you, Hon. Speaker.



(Applause)

**Hon. Speaker:** Hon. Sossion, just for your information, I waived the requirements of Standing Order 43 to allow you make this Statement at this hour. Ordinarily, you should have made it at 6: 30 p.m. when people would have gone home but, because it is an important day, I waved those provisions of Standing Order 43.

Any Member speaking on a general statement does not speak, even including yourself, for more than three minutes. That is again the provision. Therefore, any other person who is going to make a comment on this, be informed.

I can see the Hon. Member for Homa Bay wants to make a comment.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, let me join Members in celebrating the good work our teachers do across our country to make our society. The fact is that we are because of teachers and we thank them for the discharge of that noble duty they are doing to make us progress.

Hon. Speaker as we remember this day, as a country we need to think very seriously about the environment under which our teachers are working. I am talking about this from the point of recruitment to how we retire our teachers who have served. We need as Members of Parliament to not only look at the law but also ensure the environment under which our teachers are serving is right.

We graduate very many teachers after the Teachers Training Colleges (TTCs) but, it takes so many years for them to be recruited to serve and they have to attend interviews again whose purposes we never understand. We have teachers who have graduated but they are taking over 30 years to get employed. They are hitting past employment age before the employment. The salary of teachers is very bad, and delocalisation is there with haphazard transfers.

I have very young families serving as teachers in Homa Bay. You get a lady aged below 30 years serving in Homa Bay and her husband is in North Eastern and you wonder how that family is keeping up. All those measures among others are ones which MPs and the society should think about as we review the terms of service of teachers. Look at where we are with teachers right now, like proposing they go back to colleges, and we are even determining the colleges they ought to go to at their own cost without increasing their pay.

As we recognise the good work teachers are doing across the country, let us think of the environment under which they are teaching. Let us upgrade them, value their services and as Members of Parliament review what we can do to improve their lot.

Thank you, Hon. Speaker.

**Hon. Speaker:** In a special way the Hon. Dennitah Ghati.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you, very much, Hon. Speaker, for the opportunity to celebrate our teachers. I pay tribute to the teachers of Kenya on this day. I want to tell you that teachers are the unsung heroes of the Kenya education system. I am born of a teacher, educated and mentored by one and this is how I found myself seated in this House.

Teachers in this country must be respected and remunerated accordingly because many of us are their products. I pay tribute to teachers with disabilities in this country because when you look at how many of them are heads of institutions or schools, you hardly find any. As my colleagues have said, as a House we must speak seriously about the infrastructure where teachers operate.

Allow me to say, that the World Teachers Day must be translated into a public holiday, so we are able to celebrate our teachers. Allow me to pay tribute to the teachers of Migori County and those in my community, Kuria land for all they have done to educate our children. On this specific day allow me to say, that teachers are selfless. We must look at the various legislative proposals that come into this House to advance the welfare of our teachers. We have thousands of our graduates who have finished university and have Teachers Service Commission (TSC) numbers but hardly get posted or posting takes forever. In this country, we must remunerate our teachers well so they are able to work. Allow me to celebrate our teachers and say they are the most selfless unsung heroes of the education system.

**Hon. Speaker:** Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. Allow me to pay my remitting tribute to teachers in the country, my constituency and in every other constituency. For sure teachers belong to a noble professional as many of us have claimed. Teaching is a calling and not a trade, where you just have to teach under whatever conditions and circumstances. It is a profession of professionals.

Allow me to say, it pains a lot to see the Government mistreating teachers because they practice under very difficult circumstances. Today, when we go to our constituencies, we see the Kenya National Union of Teachers (KNUT) is a pale shadow of what it used to be. This is because the Government walked in, interfered with their union and reduced it to a shell. This is not fair especially knowing for sure that these teachers are not well remunerated. After they retire, they earn very partly pensions. You will see retired teachers walking in the villages as paupers engaging in that life of ordinary mortals which cannot be celebrated.

Knowing that teachers let us get into the law, make their lives better, pay them and make their conditions better so they are able to educate our children. I pay great tribute to the teachers of Tharaka Constituency because this is a hardship area. I am glad that TSC pays them hardship allowance, in spite of the fact that they teach under very strenuous circumstances with very poor school infrastructure, there is no electricity or it is scarce and poor roads. In spite of this, Tharaka shines as an education centre and a constituency that does very well when it comes to examinations. TSC should not in any manner try to remove hardship allowance from Tharaka Constituency and the neighbouring Igambang'ombe Constituency as I have been told. This is because we need to take care of the teachers in these areas.

**Hon. Speaker:** Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. I want to take this opportunity to salute all the teachers on this World Teachers Day. The theme of this year is 'Teachers at the heart of education recovery'. We are undergoing very extraordinary circumstances under the challenges of COVID-19 but our teachers have worked tirelessly to ensure the education calendar is achieved as planned.

There is a Swahili saying, "*uchungu wa mwana, aujuaye ni mzazi*" but "*uchungu wa mwanafunzi aujuaye ni mwalimu*". We are here today including you Hon. Speaker and were it not for a teacher, you could not be seated in that coveted seat. Therefore, we salute our teachers. When it comes to Trans Nzoia County, we have lagged behind in many aspects but when it comes to education matters, we shine because of the teachers. I want to salute them and recognise TSC, Kenya National Examinations Council (KNEC), KNUT, Kenya Union of Post Primary Education Teachers (KUPPET), Kenya Primary Schools Head Teachers Association (KEPSHA) and Kenya Secondary Schools Heads Association (KESSHA) for the wholistic role they have played in improving the education standards in this country.

As my colleagues have mentioned, teachers are working under very difficult conditions. When you look at the rule of thumb in terms of the ratio of a teacher to pupils, we can see teachers struggling with a ratio of 1:200. As far as the Competency Based Curriculum (CBC) is concerned, TSC must increase their numbers so they can cope with the changes. As we move forward, we also salute the Ministry of Health and Ministry of Education for their combined efforts to get our teachers where they are. We want to tell our teachers we love and respect them because we are where we are because of them. We thank them for the good work they are doing.

Thank you, Hon. Speaker.

Member for Endebess.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker for allowing me on this World Teachers Day to congratulate our teachers for what they have done. We can say that for doctors, when your patient heals you feel good. For teachers, when students excel and pass with distinctions, they walk with pride. Teachers are the only people who will never feel jealous of a child performing well. In fact, they take time with a child who is not improving in class to sit down and empower that child to do well. I think teachers are people who are gifted with good hearts and intentions and this is where morals are built. Teachers spend more time with our children and are actually the next parents.

Therefore, on this important day, I take this time to salute them and especially teachers in my constituency Endebess for the good work they are doing. In Endebess, we see that almost every secondary school sends children to university and this was not the case before I became a Member of Parliament. To me they do a marvellous job and I want to encourage them on this particular day to keep up with the good work in all the schools. I will keep supporting them through the National Government Constituencies Development Fund (NG-CDF) and any other means to ensure our children perform well. This is because education is the key to life and an equaliser.

Hon. Speaker, with those few remarks, I want to appreciate all the teachers wherever they are in this country.

**Hon. Speaker:** Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker for this opportunity. I also join my colleagues and the rest of the people in the world in celebrating the World Teachers Day. As I have always said and believed, after a parent the most important person in a child's life is a teacher. I stand here today, to sincerely thank and celebrate my teachers who taught me at Bujwang'a Primary School from 1978 to 1985, those who took me through Starehe Boys Centre and School from 1986 to 1989 and definitely those who took me through the three degrees at the University of Nairobi. This is because a teacher is a teacher whether at primary school or at the university. We are all teachers who teach as we go along.

Hon. Speaker, a teacher is a very important person. As I have always urged teachers, a teacher does not only teach how to read and write. A teacher moulds characters, instils positive values and generally shapes the life of a child. Therefore, as we stand here today, we sincerely thank the teachers. On my behalf and on behalf of the people of Funyula Constituency, I also join my colleagues as I celebrate the teachers of Funyula Constituency. I know we have had so many challenges but we have managed to surmount those challenges. Indeed, we will continue to address the emerging challenges so that we are able to solve the problems.

Finally, as a country, we need to learn to treat teachers well. The situation in which we currently find teachers is not very good. Teachers' unions have been dismantled by the strong arm of the Teachers Service Commission (TSC) and they are no longer able to talk for the teachers. They are scattered all over. Teachers' welfare can no longer be addressed. I just urge the teachers

that the best way to solve their problems is to have one united voice. Divided we fall, united we stand. Therefore, they need to come together in big numbers and have a strong voice to enable them agitate for their rights. As they embark on the Competency Based Curriculum (CBC), many challenges have emerged. The idea of asking teachers to pay for their own training is bad. It shows how badly we treat teachers in this country.

With those few remarks, I join the teachers on this Teachers Day.

**Hon. Speaker:** Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker, for giving me this opportunity. Teachers are the masters of the development of our children. Teachers spend more time with our children than parents do. Teachers are not only important to our children in terms of the knowledge they impart on them but also in terms of character development. When schools were closed for a long time during the earlier times of COVID-19, and the children were sent home to be with their parents, we all saw what happened. We now realise that teachers not only teach but they are also guardians of our children. I really applaud the teachers of this country.

There are many reforms going on in the education sector but it appears like there is a problem of harmonisation. There is de-localisation of teachers, 100 per cent transition from primary to secondary school and implementation of the CBC. All these are actually happening at the same time but I do not get the impression that teachers are as fully involved as they should. This is going by what we have seen happening with teachers' unions. It reached a point where teachers were actually being persuaded to leave some unions so that they could get promotions. We should protect teachers from such issues.

There is a lot of unemployment in the teaching sector. We have many trained teachers who have not been employed. Ironically, many public schools do not have enough teachers. Many teachers in primary and secondary schools are on Board of Management (BoM) payrolls. Many teachers work in severe hardship areas and sometimes you do not know the criteria used in identifying hardship areas. You will see one constituency is a hardship area while the next one is not. We must treat the teachers equally.

I applaud the teachers in my constituency of Seme. Let me just remember one teacher who is long dead, Mr. Awuor Otoko. When I was in Standard Four, my grandfather died and I stayed home for three weeks. I did not know why. When I went back to school, I could not cope with Mathematics. They had moved on and I was actually dropping out of school. This teacher came to our home and told my parents that he would stay with me at his place for one week without being paid anything, eating his food and tutoring me. When I went back to school, I was number one in Mathematics until I went to university. That is how important teachers are. I applaud the teachers of this country.

**Hon. Speaker:** Member for Limuru.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. Let me start by appreciating all teachers worldwide, those in our country and those in Kiambu County, specifically Limuru Sub-County – where I have seen a dedicated lot of teachers who have been doing great work despite their meagre pay.

The other day, as I was discussing with members of a teachers' union from Limuru, I realised that they are under a lot of pressure and agony, especially as a result of a programme called "delocalisation." One of my colleagues said that teachers who are recently married or are single parents, find themselves leaving behind their spouses and children in that constituency as they are taken away from that place without any consideration of the status of the lives they are leading. It

is true that the TSC needs to sit down with teachers to listen to their plight, especially with regard to the delocalisation programme.

The other issue that came out the other day is that of having to do continuous professional development where teachers have to pay from their own pockets. They are actually required to do so. It is almost a must that they pay. The Government knows that teachers get meagre pay. The Chairperson of the Departmental Committee on Education and Research is here. Listen to our teachers. They are getting the same amount. They are supposed to pay Kshs6,000 per semester. Get a kitty. Let the Government subsidise that expense. Get funding for it if you really love our teachers. We know the kind of work they do. We know the kind of output we get from teachers. We can only be fair if we can assist them to do those courses, if they must; because it is continuous development. Just budget for it and get that agony off our teachers.

With those remarks, I pay tribute to all the teachers in the country. You are, indeed, doing work out there. Continue doing the same and we will stand with you where we can.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Nambale

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. I also stand to join my colleagues in appreciating the role of teachers in our society. Teachers are affecters in a life-long way. I have values I acquired from Standard One, Two and Three. In Standard One and Two, I got beatings for missing school on the second day and I never missed school again thereafter. I still appreciate those teachers. They have gone to the Lord. It has been a long while.

Fast forward to today, I think the management of the education sector in this country needs a review. The way teachers get treated seems to be with anger. Managers in the education sector seem to act as if teachers are to blame for something. We need to appreciate the policy pronouncements and the compensation system that is in place. Teachers are not allowed to organise themselves so they can speak for themselves. This is an important day to remember. Let us remember it from the perspective of managing teachers well for purposes of improving the quality of our society. Education is a big concept that deals with the development of learners so that they can face their future with confidence. Teachers are critical in this regard.

Lastly, I want to strongly agree with the sentiment that the re-tooling that is now being proposed in the CBC should be subsidised by the Government at 100 per cent or partially. Soft interest-free loans should be offered. Do something. You cannot let a parent who has sold a piece of land to see a child through a teacher training college to go back for another nine months or a year paying for further training. You cannot expect somebody who sacrificed in a similar way, and who has been out of employing for the last 10 years, to go back and do it again. There is something missing. We need those links closed so that we can appreciate the role of teachers fully.

I thank you, Hon. Speaker.

**Hon. Speaker:** Very well. Hon. Members, we cannot go beyond there. If you want to speak, place your requests. I am not able to know if anybody wants to speak unless they have put in their request. The reason why I allowed this Statement by Hon. Sossion at the hour that I did... Ordinarily it is 6.30 p.m. for only 30 minutes so that by 7.00 p.m, even if you had wanted to speak and it is 7.00, the House has no option but to adjourn. The Chairperson of the Departmental Committee on Education and Research.

**Hon. (Ms.) Florence Mutua** (Busia CWR, ODM): Thank you, Hon. Speaker for this honour of giving me a few minutes to recognise and celebrate the teachers of this country. It has been said how our teachers are uncelebrated and we must celebrate them today. We all remember how our teachers suffered during the COVID-19 pandemic time. We ensured our children went

back to school and the teachers too went back to school despite the fact that everybody was scared of COVID-19. We even changed the calendar of schools. So, we must celebrate our teachers. We must also remember what happened when we were on the COVID-19 break. We came to realise as a country, our children are actually safer in schools than at home because of what happened. There were too many pregnancies and too many issues that happened to our children. We therefore must celebrate our teachers who are more than second fathers and second mothers to our children. They are our moulders and we must celebrate them.

The other issue is delocalisation. Delocalisation breaks marriages. Some teachers are newly married and when they get jobs, one is posted to Kitui and another one is sent to the Coast region. So, the family being the basic unit, we must ensure that this is reviewed. I must inform Members that we are actually looking at the TSC Act afresh, so that we ensure that some of these things are looked at before the end of this term. We are happy that we have all the commissioners on board now. Some of these things will be easily fast-tracked so that we ensure our teachers are happy wherever they are.

We have teachers who have stagnated in one grade for even 20 years or more. We are also looking at this as a Committee to ensure that our teachers progressively move forward in their jobs. There are hazardous areas. When we speak of their pay, it is so little. We need all these things reviewed and as a Committee, I can assure Members that we are looking into this. It was unfortunate that Hon. Omboko's petition was taken to court. It was going to cure the issues that we are talking about. We cannot allow teachers to be deducted about Kshs6,000 from the little pay they have yet they were not even informed and there was no public participation with regard to that issue. It was unfortunate. We hope that the courts will give a way forward on that.

When it comes to issues of infrastructure, I must assure Members that the Ministry of Education is doing the best it can to have classrooms built. My appeal to Members is that when we are doing the supplementary estimates, support us as a Committee to be able to hire enough teachers. We need about 10,000 teachers so that they can be put in the various constituencies to be able to cover...

**Hon. Speaker:** It must end there because that is not business as yet. Now, let us go to the next order. You know, as we move closer, I am able to see what is happening. I have seen a number of Members who walk in through here, pretend to be saying a lot to a few Members, they walk round then the next thing. I see them out there saying they have participated in the debate. They go out there to say that they have passed this thing very well. I have just seen them. It is part of the way business is done here.

I just wanted to clear this preliminary business. Next Order.

## BILL

### *Second Reading*

#### THE PERPETUITIES AND ACCUMULATIONS (AMENDMENT) BILL

*[Hon. (Ms.) Gladys Wanga on 23.9.2021]*

*(Debate concluded on 23.9.2021)*

*(Question put and agreed to)*

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

### MOTIONS

#### ADOPTION OF REPORT ON RATIFICATION OF VARIOUS PROTOCOLS UNDER THE MARITIME LABOUR CONVENTION AND THE INTERNATIONAL LABOUR ORGANISATION

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the 2014 and 2018 Amendments to the Maritime Labour Convention, 2006; the International Labour Organisation Convention C185 (Amended Convention on Seafarers Identity Documents, 2003); the International Labour Organisation Convention C188 (Work in Fishing Convention, 2007); the International Convention on the Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel, 1995; and the Cape Town Agreement of 2012 on Safety of Fishing Vessels, laid on the Table of the House on Thursday, 23<sup>rd</sup> September 2021, and pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012, approves the ratification of –

- (i) the Amendments to the Maritime Labour Convention, 2006 (2014 and 2018 Amendments);
- (ii) the International Labour Organisation Convention C185 (Amended Convention on Seafarers Identity Documents, 2003);
- (iii) the International Labour Organisation Convention C188 (Work in Fishing Convention, 2007);
- (iv) the International Convention on the Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel, 1995; and,
- (v) the Cape Town Agreement of 2012 on Safety of Fishing Vessels.

*(Hon. David Pkosing on 30.9.2021)*

*(Debate concluded on 30.9.2021)*

*(Hon. Patrick Musimba consulted loudly)*

**Hon. Speaker:** Member for Kibwezi, you get excited every time you sit next to the Member for Busia.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order.

ADOPTION OF REPORT ON PETITION REGARDING RECOGNITION  
OF THE PEMBA PEOPLE OF KENYA AS KENYAN CITIZENS

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on its consideration of a public Petition regarding recognition of the Pemba people of Kenya as citizens of the Republic of Kenya, laid of the Table of the House on Wednesday, 11<sup>th</sup> August 2021.

*(Hon. Peter Mwathi on 30.9.2021)*

*(Debate concluded on 30.9.2021)*

*(Hon. Joseph Nduati walked into the Chamber)*

**Hon. Speaker:** Member for Gatanga, just take a seat even where you are, it is not harmful.

*(Laughter)*

It is very easy to walk out from there. I always take note of the people who like sitting at that corner and that other corner because they have a way of exiting the Chamber.

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Duale, what is it?

**POINT OF ORDER**

CONSTITUTIONALITY OF THE HEALTH LAWS (AMENDMENT) BILL

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I rise under Standing Order No. 83 to raise a point of order on a very fundamental constitutional question touching on the Health Laws (Amendment) Bill, 2021. I ask you to indulge me because it is in Order No. 13. I am not imputing any bad motive on the Deputy Speaker and the Speaker's Panel, but by the time we reach there, you will not be in the Chair because of Order No. 11. Allow me to raise this matter so that as our substantive Speaker, you can guide the House.

From the outset, this Bill intends to amend a total of 17 Acts of Parliament in the health sector including the Pharmacy and Poisons Act, the Mental Health Act, the Medical Practitioners and Dentists Act, the Nurses Act and the Kenya Medical Training College Act among others. Those amendments seek to align the appointments of various boards under the several Acts with the Mwongozo Guidelines.

I have read the Report of the Departmental Committee on Health and gone through their deliberations when they met stakeholders. I had to get a copy of the *Hansard*. I went through it the whole of Monday until late in the evening. I was lucky because Facebook and WhatsApp were suspended last night and were not working, so I had a lot of time to read.

The fundamental issue that I want to raise is that this Bill was committed to the Departmental Committee on Health for public participation in terms of Article 118 of the

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Constitution and Standing Order No.127. I do not want to restate what you have severally guided this House on before that public participation, within the reading of Article 118, should not be a cosmetic exercise. We all know what happens to Bills that have been subjected to a cosmetic public participation process - they all die. Several Bills of this House have suffered that fate when challenged in a competent court of law.

It is against that background that despite several bodies in the health sector, including the Kenya Union of Clinical Officers (KUCO) and the Kenya Clinical Officers Association (KCOA) - the bodies that regulate medical doctors, pharmacists and nurses, among others, in this country - submitting memoranda to be considered by the Committee, they can confirm to this House that the Committee in its Report completely disregarded their submissions. In disregard of Article 118 of the Constitution, the Committee never considered one single memorandum, neither did it give some of those institutions and bodies an opportunity to appear before it to prosecute. I am not saying it out of the blue. I have looked at the Report.

In this regard, the question that begs is to what extent this Bill can proceed for Second Reading when the Committee had not properly conducted public participation as required by the Constitution and our own Standing Order No. 127. You have ruled a number of times that a Bill without public participation is as dead as a dodo.

The Bill before the House has made several proposals for various boards of parastatals in the health sector to be fully represented by the Government without any representative from the private sector or professional bodies, not even the medical practitioners. Without checks and balances, to what extent shall the national values and principles in Article 10 of the Constitution be achieved, including good governance? The hallmark and basis of those boards is anchored on good governance. Even Mwongozo is based on good governance. The Government running boards without any checks and balances is a total negation of Article 10 of the Constitution. This will become a Government body. Will those amendments not throw out accountability and transparency? Where there is no second voice in anything, tyranny and impunity set in. Who represents the private sector interests on such boards? Who represents the interests of the many professional bodies which are recognised in the statutes passed by this House?

It is notable that although the boards are allowed to nominate four other persons - not being public officers - to be members, those ones shall only be the appointees of the Cabinet Secretary. Cabinet Secretary Kagwe will have the leeway to pick who he wants and not bodies that are functional and have members that pay their subscriptions to their organisations. If we go down that route, this House will set a very bad precedent.

This is the same House that, when I was the Leader of the Majority Party, established the Law Society of Kenya Act of which you are a member. The Cabinet Secretary can dictate to whoever he wants to appoint. These amendments are, therefore, untenable and negate the realisation of the national values and principles as provided in Article 10 of the Constitution.

I raised my hand when we were speaking for teachers, but I also want us to speak for nurses, clinical officers, pharmacists and doctors whose interests we represent as Members of Parliament.

I seek your guidance on the constitutionality of the Health Laws (Amendment) Bill, 2021, as far as the requirements of Articles 10 and 18 of the Constitution and Standing Order No.127 are concerned.

**Hon. Speaker:** Let us have Hon. Eseli.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD – K): Thank you, Hon. Speaker. I would like to state from the outset that I am a Member of the Departmental Committee on Health. However, I am aggrieved because this Report of the Committee is before the House fraudulently. I wanted

to make a minority dissenting report, but the Clerk declined and denied me secretarial services to do that arguing that I cannot do a minority report on a Bill. I was so aggrieved and felt that there was a sinister motive behind the Health Laws (Amendment) Bill. I agree with Hon. Duale that you should look at it carefully before you allow any debate on those amendments to go on.

As a professional and a highly qualified doctor, if I were to be regulated by the Kenya Medical Practitioners and Dentists Board, I would pay my subscriptions. That is the money that runs the Council and has built the magnificent building next to the Department of Defence. How can I be told that I cannot be part of the regulation; I cannot be on the board; and I cannot be on the Council and that somebody else be put in the Council to regulate me? For lack of a better word, it is madness. Hon. Speaker, as a professional yourself, a lawyer of high standing in this country, you know how self-regulation is supposed to be.

Hon. Speaker, I beg you to look at this amendment Bill properly before you allow the House to continue debating it.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. T.J.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Speaker, they are coming for the nurses and the doctors. Next, they will come for the lawyers. If they get the lawyers, I suppose they are going to come for the Council of Former Speakers which Hon. Speaker, you will not join since the faithful one will be the President of this country...

*(Laughter)*

Allow me to say that the Mwongozo being touted all over... I sat on the Committee on Delegated Legislation for the full term that I served in the other Parliament. Mwongozo was never brought to us as an instrument to consider as the law requires. We took it that Mwongozo was just like any other paper in the beautiful offices and as long as it did not affect us, we would leave it at that. Under the Constitution, any edict of law or anything which appears or demands Kenyans to obey in some way, must have force of law that can only be granted by this or that other House. That is the law. In fact, looking at interpretation of the word "instrument" under the Instruments Act guidelines, it is specifically provided for. If the Mwongozo guidelines has that type of force of law, the first thing they must bring as a substantive policy underlying the Health Laws would be to bring the policy before us for approval then it will become something fundamental on which they can predicate the amendments they are talking about.

How many times will we talk about miscellaneous law amendments? We have spoken about it. In the other Parliament, the environment was a little sour but we have agreed on many things in this Parliament including the fact that if there are issues which demand substantive legislation, they must be introduced as stand-alone Bills or amendment Bills to be considered on their own merit. I have been with the Leader of the Majority Party in several forums and he agrees that you cannot bring fundamental issues and call them miscellaneous amendments. He knows that. I do not know at what point there is a disconnect between this House and those other people sitting in palatial offices. I am sure they are not taking instructions from the Leader of the Majority Party. If they were, he would have told them that this is not how legislation is done. Let them give him small things which merely cure the gaps or *lacuna* in law but not weighty issues such as this.

Kenya, by dint of the Constitution, is bound by international conventions. International convention is about freedom of professional practice. So, doctors are governed and regulated by peer regulations. They must regulate themselves. All over, all literature suggests that when

professionals regulate themselves, there is better value because they are the professionals and they want to make things much better for their professions. Any time world over when Government has had to intrude into such management of internal organisations, they fail. Think of a situation that maybe the Attorney-General or the Solicitor General or somebody wants to regulate how the Law Society of Kenya must function including who and who not to give practice certificates in the legal fraternity. We hold no brief for being professionals. We are because that is what God made us to be but allow Kenyans to get best services from professionals. If they want to rein in and I know they have reined in... In fact, I have seen a Bill which has been published targeting lawyers. We will speak on it when the time comes. I do not know where the appetite for foraging on professionals comes from. Today, they are on lawyers, the next day on architects and on another they are on engineers. The other day they were on accountants. It can only be that there is an ulterior motive which is not advised or which does not come from a point of reasoning or a point of professional discussion.

So, Hon. Speaker, together with the decision that Hon. Duale has begged you to give on its constitutionality, you may want to consider whether this is in keeping with international best practices and international conventions of which Kenya is a party; and whether since the memorandum of this Bill is tied to Mwongozo, there is something, in your view, called Mwongozo. Until such a time it is presented before you and discussed by this House, I beg you for the last time... The Cabinet Secretary for Health is a veteran or was a Member of this House but I do not know between this House and the other one what would have happened. When you examine his reasoning, you wonder whether graduating from this House to the other House creates a problem in people's way of appreciating things. So, for the last time, please, show by way of a detailed ruling during your tenure how miscellaneous legislation should look like and how substantive legislation should look like. That is for avoidance of doubt and so that in future we do not have these running battles about miscellaneous regulations or legislation or substantive legislation.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kitutu Masaba.

**Hon. John Mose** (Kitutu Masaba, JP): Hon. Speaker, I also support and entirely agree with what Hon. Duale said. This kind of omnibus Bills tend to be introduced with a view to lock out... If we allow these kind of Bills, which in one way or the other intrude into professions as Hon. Eseli said, it would create a mess. We would appreciate that you give your reasoned decision on this matter.

Thank you, Hon. Speaker. I support.

**Hon. Speaker:** Member for Rarieda.

**Hon. (Dr.) Otiende Amolo** (Rarieda, ODM): Thank you, Hon. Speaker. I have carefully considered this Bill. Its essence is to abolish the more progressive approach of allowing self-regulations by professionals for the more retrogressive approach of control of professional bodies by the State. There are many reasons, and if it was to graduate to that, why we would oppose this. Personally, I identified over 20, but in the context Hon. Duale has raised, there are four points to consider.

The first one is that in the objects, this Bill purports to say that these amendments are being done to align these laws with the Constitution and the Mwongozo code for State corporations. There are two problems with that. There is nothing in the Constitution that requires an amendment to any of these laws at all and the Report does not purport to identify that.

Secondly, the Mwongozo Code is not a law. It is a code. It is a policy. You cannot purport to amend substantive legislation to accord with policy. It should be vice versa.

*(Applause)*

More importantly, Hon. Speaker, the bodies sought to be reorganised are not State corporations. These are professional bodies that operate outside of the State. Therefore, the premise of the amendments is wrong. To the extent that these bodies comprise professionals who pay subscription, they are associations that are protected by Article 36 of the Constitution. If you were to abolish or reconstitute them to the extent that the professionals lose control, it is like withdrawal of registration. That is expressly prohibited by Article 36(3)(a) and (b) of the Constitution. In fact, Article 36(3)(b) goes further to say even if you were to consider withdrawing registration, there must be proper and fair hearing. That proper and fair hearing has not been given to any of these professional organisations by the Committee.

Thirdly, the Bill offends a very basic principle: the constitutional principle of restraint of State power. State power should be exercised only for the organs that belong to the State, not for organs outside of the State. To the extent that the Bill now seeks to give the President power to appoint chairpersons of all these professional bodies and the Cabinet Secretary appoints other people and reducing the number of members from the professions, this is allowing the President and the Executive to exercise State power outside of the State. That cannot be constitutional.

I invite you to consider a more fundamental issue. A careful reading of Article 132 of the Constitution thoroughly restrains powers of the President. It states what he can do and cannot do. The only leeway it allows is under Article 132(4)(a), where the President is allowed to establish a public office and before that is done, there must be legislation that enables it. So, the only extension that the President gets is if legislation allows him to exercise that power and if it is a public office. These are not public offices. These are professional offices. How then can the President come in to determine to professionals who to be their chairperson? That is unconstitutional.

Lastly, if you look at what is proposed as Clause 3(2), it is even more intriguing and it is repeated for all the other bodies. It allows the Cabinet Secretary to appoint some four persons through conventional board resourcing procedures, including through applications, referrals and knowledge of the market. I do not know whatever that means.

*(Laughter)*

The one thing it certainly means is that it throws out Articles 10 and 132 of the Constitution that require transparency and meritocracy in appointive offices. It now purports to give the Cabinet Secretary discretion to appoint anyone. If you ask, they will say it was through a referral or knowledge. That cannot be constitutional.

Hon. Speaker, I urge you to save this House time and the embarrassment that might be caused even by debating this proposed Bill.

Thank you, Hon. Speaker.

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

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I am actually surprised that we have hijacked debate on a Bill by trying to pre-empt it from coming to the Floor. I want to, first of all, clarify that contrary to what the Senior Counsel has said that this Bill purports to link the Act to the Constitution, it is very clear you have not read the Bill. If you had, you would see that Clause 9 is about changing the nomenclature to Cabinet Secretary in line with the new

Constitution. That is across many other laws. So, it is actually true that the Bill is premised on aligning various laws in the health sector to the Constitution.

The Bill is not based only on professional bodies. KEMSA and NHIF are not professional bodies but they are being affected. The Bill affects several laws in the health sector and this is not the first time this is happening. We did it in 2017. We have done it with the Tax Laws (Amendment) Act, where we looked at all laws to do with tax and amended them within one omnibus Bill. The thread that runs across the Bill is the management bodies of all those institutions under the health sector. Whether you bring 27 standalone Bills or one Bill... I remember we had this discussion just last week at the Committee of the whole House. Members suggested that instead of having many Bills, why do we not have one omnibus Bill that basically changes all reference to Minister in all laws to Cabinet Secretary? It is not true to say that this is a Miscellaneous Amendment Bill. This is specific to laws within the health sector and it covers various bodies.

There has been talk about the Mwongozo code and harmonisation. Since I came to this House in 2017, every law that changes composition of a board, and you can check in the *Hansard*, has been clear that we are doing so to comply with the Mwongozo code. Business in this House is regulated through precedents and practices. We have already set a precedent in this House that all laws are harmonised with the Mwongozo code. Even if that code has never been brought here, we have internalised it. It is in the *Hansard* and we have justified why we are changing directors to conform to the code. When it does not favour us, let us not start saying perhaps we were wrong. We will open a Pandora's Box. All those laws that we passed to set board membership to accord with the Mwongozo code would then be illegal. We have already legitimised it in this House through internalising it and applying it to various laws.

**Hon. TJ Kajwang'** (Ruaraka, ODM): On a point of order.

**Hon. Speaker:** What is your point of order, Hon. Kajwang'?

**Hon. TJ Kajwang'** (Ruaraka, ODM): Hon. Speaker, is it in order for the Leader of the Majority Party to misguide the House that in application of practices of this House, issues to do with precedents can take over legal consequence of legislation? If legislation demands that something must be done, is he in order to mislead the House that we can avoid prescription of law and apply this thing he is calling precedents and traditions of the House? Can you advise him on how application of these concepts is done?

**Hon. Amos Kimunya** (Kipipiri, JP): I am not a lawyer, Hon. Speaker, but I am a lawmaker. I know, even when you go for judicial interpretation, the question that will be asked is: What was the thinking of the lawmakers when they made the law? We may not be guided by all those things, but at least this House has been guided by a certain code, the Mwongozo code, and it has been quoted extensively. I sit in every Committee of the whole House. If you look at the *Hansard*, is very clear that the justification has been that we are doing this to accord with the code. Again, it is up to you, Hon. Speaker, to guide this House.

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

**Hon. Speaker:** There is a point of order.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I do not want to interrupt my colleague and the Leader of the Majority Party. I think what Hon. TJ raised is that we use the Constitution and Standing Orders. In the event where the Speaker finds necessary, then you go to traditions of other jurisdictions and practices. Where you do not find all those, then the Speaker uses Standing Order 1. That is the matter.

Hon. Speaker, the Leader of the Majority Party is out of order to mislead this House that we are raising a matter of constitutionality under Articles 10 and 118 of the Constitution and Standing Order No.126. Hon. Otiende Amolo raised other provisions in law and we are now at the constitutionality of a piece of legislation before the House. So, you cannot bring the issue of precedence. The Leader of the Majority Party needs to guide us. I am a ranking Member. I must say it, and this has been so. Even in other jurisdictions, the issue of precedence arises when there is no express provision in the Standing Orders to address the matter. That is why you refer to what happened, say, in the USA on a similar matter that is not provided for in our Standing Orders and the Constitution in your own rulings. Lawyers will tell us that the courts use previous judgements and other reference materials authored by professors of law schools. The matter before us is whether the Health Laws (Amendment) Bill is constitutional. We are raising the unconstitutionality of it. So, the Leader of the Majority Party must restrict himself to that aspect and refrain from taking us through the sideshows of practices and precedence.

*(Laughter)*

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I am not quite sure how that fits in. What I was basically requesting of you, as you make a ruling on this matter, is not to dismiss the references to the Mwongozo Code because it has constantly been used in this House. If we challenge it now, what will be the implication of all the other laws that have been premised on application of the Mwongozo Code? What we are doing here will have the impact of people going to court to argue that this has been quashed. So, what happens to other laws that have been referenced to the Mwongozo Code? I am just highlighting the issues that came out, that the Bill has precedence in terms of an amalgamation of laws over certain sector with an example of the Health Laws of 2017 and the Tax Laws (Amendment) Bill.

This Bill has more than the professional bodies. If Members have a problem with referenced professional bodies, then, those should be brought out in debate during the Second Reading. Indeed, no Member will be denied an opportunity to bring amendments during the Committee of the whole House because that is how we make laws here. So, trying to kill a Bill because we do not like its provisions is perhaps not exactly what we would want to do as a House. That way, we will be encouraging people out there, and even the courts, to start telling us not to debate certain Bills yet we have opportunity to raise any issues on the Floor of the House and propose amendments to refine the draft law. It is only after a Bill has gone through the Third Reading that people can take it for interpretation. As for now, it is work in progress. I urge that we continue with this work in progress. Let those who have issues with this Bill to raise them on the Floor of the House. Let them be on HANSARD rather than make pronouncements through the media or fighting the Bill on social media platforms like WhatsApp. Let any issues be captured in the HANSARD, so that every Member can have opportunity to see the logic of why a Member is opposed to certain provision of the Bill. If a Member persuades us, we will bring amendments during the Committee of the whole House. That is how we make laws.

I urge that we do not kill the spirit of the universal health coverage (UHC) by stifling debate on this Bill because some of us are uncomfortable with the fact that health management boards are being opened up to professionals other than the traditional ones. This is a trend that would be seen not just in the health profession. Even in the Accountants Council, there are more than accountants sitting there! In the Engineers Board, we have more than engineers sitting there! We have lawyers and accountants, and that is what we want. We want to ensure that there is a variety of expertise

in each board, so that they can enrich the decision-making process rather than having people locking up themselves in silos.

Hon. Speaker, we will be getting through all this when we get to the actual debate. We do not need to kill it until we have opportunity for Members to debate it for as long as we can and convince one another. I urge you that, as you look into the constitutionality aspect, you also look at what point Parliament can be stopped from carrying out its constitutional work, which is to legislate.

Thank you.

**Hon. Speaker:** Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker. I have listened to Hon. Duale, our ranking Member, and those who have spoken in his support. They appear to be very persuasive. We have also listened to the Mover of the Bill. While I may agree with what Hon. Duale and those speaking in support have said, I do not agree with them in terms of the manner they are proposing we deal with the matter. The Bill is listed as Order No. 13. It has not yet been called. A number of us here, possibly, came to debate it. We are being told there are unconstitutional provisions within the Bill and we are not being told whether it is the entire Bill or just some parts of it. In all fairness, I was going to propose that as you determine the issue, you allow this matter to be moved. Hon. Duale and the other Members who are of the view that there are unconstitutional provisions in the Bill can then raise those issues so that the House can make a decision on them once and for all.

I fear that if we push all these matters to the Chair, we will put the Chair in a very awkward position. Persons initiating Bills will be blaming the Chair of this House for killing Bills. I, therefore, want to reserve my position on the matters that have been raised. Some very sensitive matters have been raised. We are lucky that through their representations, we already know that there could be problems. Let us debate the Bill and proceed. Unless the Mover persuades us on those issues, the Question will be put and we kill it with alacrity at the end of Second Reading. Luckily, Hon. Duale and company have raised our antennas on it. However, we will not be doing justice to you to expect you to make a determination on constitutionality of the Bill, which appears to touch on certain sectors, without reference to the House. Let the House, as an institution, make the ultimate decision on some of these things.

Thank you, Hon. Speaker.

**Hon. Speaker:** I can see a few more requests. Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. Having listened very keenly to Hon. Duale, one of the key issues which he raised is that of public participation. If medical professionals, nurses, doctors and pharmacists were not accorded an opportunity to appear before the departmental committee to give their views, then it means public participation was not done. How do we debate something that did not have full public participation? Looking at the ruling by both the High Court and the Court of Appeal in the BBI case, public participation is not just to be seen to be done, but must have been done properly.

Listening to what the Leader of the Majority Party said about the Mwongozo Code, what we have been borrowing is good governance. It is not just a question of the numbers and everything. What this Bill intends to do is to bring bad governance into professional bodies. When you say you want to open up professional bodies to persons from other professions, what do you mean? People form professional bodies to cater for their own interests. If we form a professional body for doctors and there is a professional body for lawyers, at what stage do we need somebody else to come and participate? Why should you have someone imposed on you and then you are

told that they are part of your team? How do you appoint a doctor to sit on the board of the Law Society of Kenya (LSK) and deliberate on matters pertaining to the LSK? It does not happen like that. I am a Member of the Kenya Medical Practitioners and Dentists Board and the Kenya Medical Association. These are professional Associations that we sit on to do professional development. When we have continuous medical education, how would you want to have someone who is not part of you to be in the governing council? It does not work like that! I just want to stand with what Hon. Kaluma is saying. We will ask you to give a ruling on the constitutionality of the issue of public participation, but if it fails, then we will have it debated on the Second Reading and we kill it from there.

Thank you, Hon. Speaker.

**Hon. Speaker:** When you use the word “kill”, are you are suggesting that we could be murderers?

*(Laughter)*

Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, what I meant by 'killing' is that we shall reject it by voting Nay.

**Hon. Speaker:** Member for Matungulu.

**Hon. Stephen Mule** (Matungulu, WDM-K): Thank you, Hon. Speaker. I want to agree with Hon. Kaluma and Hon. Duale. Coming from the medical profession, I know the intentions of this Bill are not so clear. I want to give you a very simple example, say, where we change the rules governing the Central Organization of Trade Unions (COTU) and we have it that the Cabinet Secretary for Labor, Social Security and Services will be guiding the labor organisation to elect Atwoli! All the things in this Bill are squarely professional. As we speak, I have a Bill for biomedical engineers and we need them to govern themselves as professionals. We have just had a participation in Mombasa with the Budget and Appropriations Committee (BAC) and they have agreed that the Bill can proceed so long as the biomedical engineers can pay the subscription and the board does not get any money from the Exchequer.

Hon. Speaker, most of these professional bodies rarely get any money from the Exchequer. Why do we want to curtail them? The Bill on clinicians that was brought by my brother, Hon. Sang, was passed in the last Parliament, and it gives directions of training and mechanisms of reporting matters of the profession. These are the professional bodies that advise the Ministry. How do you make the boss of that professional body to be the same Ministry which is supposed to receive recommendations from the professional bodies in order to enhance health in this country?

Hon. Speaker, I know you are a man of wisdom. I know you will make a determination. Allow us to proceed with this issue and probably murder it completely, once and for all, at the Second Reading.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. (Dr.) Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. As I stand to contribute to this Bill, I must say I am a Member of the Departmental Committee on Health. The first thing that I want to talk about is public participation. The matter was raised by Hon. Duale. This is what happened: When we called public participation, all the professionals who came had so many issues with the Ministry. It was agreed that they sit down with the Ministry and bring to



the Committee points they would agree on. The Ministry came with some points that were purportedly agreed on. What then surprised the Committee is that all the bodies started saying they did not know anything about those things. To that extent, and in my view as a Member of the Committee, that public participation was a sham and I blame the Ministry for it.

Hon. Speaker, let me now come to the context. I am not a lawyer, but this thing violates basic principles. Lawyers will say their laws, cite the Constitution, and eventually guide us on this matter. This thing violates the principle of representation. We are talking about regulatory boards. The Leader of the Majority Party was right that they are regulatory boards and also management boards. We have regulatory boards like the Nursing Council, the Medical and Dentists' Council and management boards like the Kenya Medical Supplies Authority (KEMSA) and the National Hospital Insurance Fund (NHIF).

Now, when we come to regulatory boards, you find that the representatives of the various professions are appointed by the cabinet secretary. In fact, if you read all of them, they are principal secretaries (PSs) and then, I think, there are three people appointed by the cabinet secretary. Therefore, the professionals that are the stakeholders are not represented. Obviously, those people appointed in that manner will have their allegiance to the cabinet secretary and not to the interest of the profession. I think there is something wrong with that constitutionally in terms of representation.

Hon. Speaker, there is another issue, that I think is wrong here, which is the principle of self-regulation. If you have a regulatory authority and the professionals, who are the people with technical content, are few, say, two or three appointed by an authority like the ministry, and the quorum you put is such that even in their absence the deliberations can go on, it is quite possible that you will have a situation where you are even looking at an issue of professional conduct and yet the people are not there! So, how are you going to have self-regulation? How are you going to know if someone said they did not look after a patient properly? Do you expect lay people to know whether they did not look after the patient properly? You certainly need technical input.

Hon. Speaker, in my view, a third violation is that this Bill fails to make the distinction that the Leader of the Majority Party was talking about. When you have regulatory boards, their structures must obviously be different from boards that are managerial, like KEMSA, where you have a lot of Government money. The KEMSA gives service. You need representation of all the people there like accountants and auditors. That is okay. However, when you are dealing with a body that is regulating professionals whose income is not even from State coffers, but by members' subscription and contributions, then, why do you want to bring in all these other people? Normally, their funds are not often that much. So, why is that necessary?

The fourth point is that you get the impression that in the management of the health sector or any other sector, you need not have the technical information. There is a strange thing happening in this country. We have the Director-General who is serving in an acting position, but when he goes to the World Health Organisation (WHO), which is the actual custodian of health, he is the Chair of the Executive Board of WHO. The Chair of the Executive Board of WHO is the boss of the Director-General of WHO! He is the boss, but in this country, he is serving in an acting capacity! We realise that there is a general feeling that technical input is not really required in the management sector.

Let me say that if you take all the ministries, what distinguishes one ministry from another is the technical arm. The management arm of the ministry that consists of the PS, the finance officer, the accountant and all those procurement people are the same in all ministries. What will distinguish them is when you have the technical people, namely, the Director of Water and the

Director of Agriculture. If you start saying that in certain bodies you do not need those technical people, then what is the source of your information?

The other day we said that we do not need the Director-General in the Board of the National Hospital Insurance Fund and yet all the money that is being collected is used to purchase health. Who is going to advise that body on what health to purchase?

**Hon. Speaker:** Hon. (Dr.) Nyikal, you know, ordinarily, I do not like interrupting you, but Hon. Duale claimed that the Bill was unconstitutional. You, for the longest time, have been dealing with the contents of the Bill. In which case then, if you look at your Standing Order 85, you are anticipating debate because you are now debating the Bill and not the issue of constitutionalism or otherwise.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Speaker, I have heard you. The last point is that whereas we have this Bill that will become the Health Act, all these amendments we are making could have been corrected by that. Maybe that would fall in the same area. I started by saying that I am not a constitutional lawyer, but I can see the biggest issue we have here is that all the professionals and many other stakeholders including various unions feel they have not been represented. I may have gone beyond that, but whatever we do, whether we bring it and kill it as Hon. Kaluma says, or whether we murder it, what is important for this House is that we should not go into debate when we already are sure that what we are going to get is not going to serve the country. That is my point. Thank you very much. We should not spend too much time discussing that which will not be productive for us. The rest is for you and the lawyers to decide.

I thank you, Hon. Speaker.

**Hon. Speaker:** Can we hear those who are not in some murderous rage. Let us have Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. Let me take this opportunity to thank the former Leader of the Majority Party for highlighting issues at hand. It is not the first time you have been invited to make a ruling on the constitutionality of a Bill. You have been severally invited and you have made a considered ruling. At the core here are two fundamental issues.

First is public participation. It has been a debate in this country for many years. I sit in the Committee of Delegated Legislation and one of the sore issues that we have tried to deal with is what constitutes public participation. Is it just a talking show, or is it something where people come, make presentations and the Committee or regulations-making authority does not give any due consideration? Here is an issue that we need to consider. In the past, when a similar issue was raised, you ordered the committee to go back and do public participation afresh. What is emerging from the presentation by Members of the Departmental Committee on Health is that it seems there was some form of public participation, not a substantive one, but just a farce. That is the first issue that you need to consider.

Secondly, it has been an argument in this House, for some time, as to what constitutes miscellaneous or omnibus amendments. Honestly speaking, with so many Bills being amended at a go, it becomes extremely difficult for Members to give an enriched debate in respect of the matter. We have invited you on this matter many times and you have made rulings the other way. Again, this is an opportunity for you to make a ruling.

Thirdly, on the other side, this Bill is before the House for debate. During debate, Members persuade each other on the merits or demerits of the Bill. It might be important that at this particular time we test the Members of this House to see how many of us are keen debaters. How many of us will keenly follow the debate, pick out what is bad and what is good? When we come to voting

at the Second Reading, can we vote based on issues in the discussion at hand? Or are we basically a chorus House that votes Yes and No without due consideration of the contents and the debates in the House?

We have had an argument here. Many times during the Second Reading when we debate Bills, do chairmen of the committees ever bother to listen to what Members are saying so that they can prepare the amendments for the Committee of the whole House? Do they ever consider those issues? We are being invited here to literally repeat the workings and operations of committees. At this particular point, I believe those of us who have issues with this Bill will be candid enough to persuade our colleagues that the provisions of this Bill are bad. Those for the Bill will also have their time to persuade us that what is in this Bill is good. It is time for Members of this House to rise to the occasion, debate soberly and view the issues at hand. When it comes to Second Reading, at the point of voting, let us vote for the people of Kenya.

I would suggest that you allow debate to proceed. Let us debate here. It is time to test whether Members really care, whether they come here to debate for the benefit of Kenyans, or they come here to debate for other reasons. Do they pay attention or not? I would request that you allow that we debate this Bill at the Second Reading. Let us test whether Members understand or not.

I thank you, Hon. Speaker.

**Hon. Speaker:** Now, we must bring this to an end because it is just a matter of... One minute each, please.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, on the matter that Hon. Duale has raised, the most pertinent issue is the question of public participation. That is what he anchored his request to you on. That, you hinge your decision on it. This is not the first time. You remember during the National Aviation Bill, you ceased debate on that Bill principally because of the question of public participation. All you did was to ask the Committee to go back and ensure that it does proper public participation. What we are asking you is to, maybe, give the Committee an opportunity to go and conduct proper and actual public participation so that we do not run the risk of spending taxpayers' time. We will be paid to sit here and debate that Bill in the Second Reading only to end up being trashed in court because of the issue of public participation.

Therefore, Hon. Speaker, because my minute is over, I wish to state that it is only fair to Kenyans that you accord the Committee time to go back and carry out actual public participation. We can debate the other issues. I agree with Hon. (Dr.) Oundo.

**Hon. Speaker:** Member for Dagoretti South.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you, Hon. Speaker, for this one minute. What you are being invited to do is not something strange and it will not be a first. At this preliminary stage, you are being invited to make a decision on a matter of constitutionality that touches on Article 10 on the principles that the Constitution dictates. You are also being invited to make a ruling on whether sufficient public participation happened on this Bill. Proceeding without looking at this preliminary issue is inviting this House to participate in an illegality because it is required by even our laws in this Parliament for us to ensure that everything that is debated here is done constitutionally. So, what you are being invited to do is not...

**Hon. Speaker:** Member for Nyando.

**Hon. Jared Okello** (Nyando, ODM): Thank you, Hon. Speaker a clear reading of all the Articles in the entire Constitution points to something that ought to have been rectified. We see a tendency of dictatorship and yet the new Constitution came in to provide a panacea to this effect. If, indeed, a proper public participation was not undertaken in the Health Laws (Amendment) Bill,

then it should be annulled *ab initio*. I know you have created this platform before and come up with traditional rulings, which pay much credence to public participation. Our courts of law have stood firmly for the Constitution. They have provided an enabling environment for public participation to occur. I also remember that in part of your rulings, you have said that it is very difficult to determine with certainty what amounts to public participation.

**Hon. Speaker:** The Majority Whip.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. Hon. Duale, does not dispute there was public participation. He said it was there, but what was submitted to the Committee was not properly utilised. Therefore, this means you have to define in your ruling what constitutes public participation.

Hon. Speaker, you have also ruled that a matter of constitutionality can be raised at any time during debate, or whenever a Member wants. Now, that Hon. Duale has raised an issue of constitutionality, you will make a ruling based on how well you have understood it. I know he is inviting you to make a ruling which you have already made before, that, a committee report need not stop debate of a particular Bill. Therefore, you will have to make a decision at what stage...

**Hon. Speaker:** Member for Chepalungu.

**Hon. Gideon Koske** (Chepalungu, CCM): Thank you, Hon. Speaker. I have listened clearly to contributions from most Members here, especially Hon. Nyikal whom I respect. I have checked and seen he is a Member of the Departmental Committee on Health. I am wondering whether the threshold of this Bill was met before getting into Parliament. Public participation is a key and important element. A Bill must be subjected to the key stakeholders. Looking at this Bill, there are more than five stakeholders. So, Hon. Speaker, before we kill it, I request you murder it.

**Hon. Speaker:** So, before you kill it, you request it be murdered. Anyway, Hon. Members, a number of issues have been raised to the extent of Articles 10, 118, and 232 of the Constitution. There may be need for me to look at all that happened between the Committee and those who appeared before it. This is available from the Report and the records. So, it should not be problematic.

For the time being, it is true that a matter on constitutionalism may be raised at any stage. So, we will allow debate to continue and the ruling will come in due course. This is because there may be some issues to do with... You know the courts have touched on this issue of omnibus and guided on a number of occasions that we should not deal with very substantive matters, if we will do the Statute Law (Miscellaneous) Amendments Law. This means that I have to look at the Bill as it is and determine what it is. For instance, does it make very substantive proposals to amend the various laws? Where would their place be in the legislative process, as the courts have guided in the past? We have a number of authorities dealing with this matter. Therefore, it should not be a problem.

With time allowing, you may proceed, although there are some who intend to murder it. I think it is fair that Hon. Members be available to persuade one another. Just like Hon. Oundo said, you will notice there is some trend here. There are Members who are very keen on debating and participating in the Committee of the whole House and usually there is no quorum to put the Question. The next day, when we put the Question, the ones who vote have absolutely no idea what they have voted for one way or another. They are part of those who do not pay any fare. In *mtaani*, this is called *sare* and the Member for Dagoretti South seems to understand this language very well. They are not paying fare and so it is another challenge.

I agree with Hon. Oundo that it is not possible to ensure those who took part in the serious business of the Committee of the whole House are the same ones who come to vote the next day.

You find that when you have a Committee of the whole House on a Thursday, the Question will be put on Tuesday afternoon. Those who have just come from the villages to vote in one way or another will have absolutely no idea, but they still, nonetheless, vote. Hon. Oundo this is a challenge which is impossible to rectify, unless we insist that everything be by roll call, which will be very inconveniencing for the House. But obviously, this affects the quality whether we like it or not. Let us hope you are able to persuade one another.

The issue of Hon. (Dr.) Eseli not being allowed to do a minority report is a serious one. I think whoever is clerking the Committee should be taken for a refresher course, so as to understand it is the right of every Member who wishes to do a minority report to do so! I do not know whether Hon. Nyikal or Hon. Mule signed the Report for the majority. Sometimes, it is very difficult because it is not possible for somebody to walk in and expect to be given a chance to speak since they may not know where we have reached at some point.

We will leave it at this point. You may commence debate, but I will also make a determination on the number of issues raised, especially those touching on the Constitution and the place of the Bill, whether it is a Miscellaneous (Amendment) Bill, or not, depending on the proposals contained in it. So, we will leave it at that. The Chair of the Committee... We do not want to re-open debate.

*(Loud consultations)*

No! Go to the *Hansard*. You know it is now 5.30 p.m. So, it is not right. There are Members who have been here since 2.30 p.m. or before that time. Anyhow, the Chair of the Committee will have an opportunity to move the Bill or second it. Leader of the Majority Party, the Bill is in your name.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. Hon. Speaker, you do recall that I rose on a point of order some time back during the Special Sitting. The Chair of the Departmental Committee on Finance and National Planning and the Chair of the Departmental Committee on Administration and National Security were not in the House, but today they are here.

Hon. Speaker, you did give direction on the two matters that they were inquiring into, namely, one being the question of the Turkish national, on which I sought a Statement on 10<sup>th</sup> August. The Chair of the Departmental Committee on Administration and National Security had indicated that it would take him two weeks. It is two months now since then and we are yet to get a response. Hon. Wanga was inquiring into something that we saw before the Committee. You directed from your Chair that it was expected that the two committees would, indeed, table a report on the inquiry that the Departmental Committee on Finance and National Planning was making on its own motion. You remember that is the substantive issue that I had risen on.

The issue that the Departmental Committee on Finance and National Planning was inquiring into was that which touched on Equity Bank and investments by an East African national in Uganda. As much as we debated here, and it was indicated that, indeed, the Committee could move on its own motion to inquire into a matter that is of interest to the nation, the Committee moved on its own motion, made an inquiry and got a lot of media bleats with the two issues, namely, the issue of Aydin and that of inquiry into the investments in Uganda through Equity Bank.

You indicated that the two committees must table a report before this House. Up to today, neither the Departmental Committee on Finance and National Planning nor the Departmental Committee on Administration and National Security has bothered to respond to the Request for Statement on the issues that I raised on 10<sup>th</sup> August. Since they are here, maybe, Hon. Wanga can also tell us whether she has begun, on her own motion, anything to do with the pandora papers. Hon. Wanga will be more apprised on the pandora papers than the Chair of the Departmental Committee on Health, who is already asking what that is. Maybe, on her own motion, Hon. Wanga can tell us whether she has begun a new inquiry since she had a penchant for picking up things from the media. This particular one came from the international media. She may also have picked it up and begun an inquiry. She could as well apprise the House. If she does that, in line with your ruling, she will also be able to table a report in the House, so that Members can have an opportunity to debate it.

**Hon. Speaker:** Hon. Mwathi, do you have the Statement? Is it ready?

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, indeed, we held a session with the Cabinet Secretary and apart from the answer they brought, we also requested that we get a written response. We have a preliminary Report on what he said, but we need that Statement to come so that we can attach to the same. I am talking about the one on the Turkish national. The Statement was sought about one Harun Aydin, who is a Turkish national, and who was purportedly deported by the Kenya Government back to his country. I think that is the matter he is speaking to.

**Hon. Speaker:** Hon. Ichung'wah, that is the one you sought a Statement on. That is the one in respect to you. It is him who sought the Statement on 10<sup>th</sup> August.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, it is true. On the day I sought the Statement, the Chair indicated that they were going to meet the Cabinet Secretary the following week, and he would give a response in two weeks' time. Fortunately, or unfortunately, they happened to be in Mombasa with the Cabinet Secretary and I saw the matter in the media being canvassed in a meeting with the Cabinet Secretary even before the two weeks the Chair had requested lapsed. So, I expected that the following week or the week after, they would be kind enough to bring to the House what the Cabinet Secretary had said. This is because some of the issues that I had raised in the Statement were on whether Mr. Harun Aydin was actually deported from Kenya.

Of course, as per our parliamentary procedures, we expect that if he was deported, the deportation order and other requisite documents would be attached to the response to the Statement that the Chair would bring. From what I hear him saying, he is waiting for a copy of the Statement to attach to the Report. He could not have canvassed that matter with the Cabinet Secretary if he did not have the issues at hand. It means, therefore, either the Committee clerk had the Statement or the Clerk's Office can give him a copy of the Statement. I even have it on WhatsApp. I can send it to him now if that is all he needs. In fact, I have just sent it to him. Let me send it to him again.

**Hon. Speaker:** Hon. Mwathi.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, I do not know whether he is purporting to be the Chair of the Committee, but I said here, if the Member cared to listen, that indeed, before the week was over, we would meet with the Cabinet Secretary and we would be asking about that matter. Indeed, he came and orally did the submission. The other issue is that the Member sought a Statement and it must be brought in the normal way whereby Statements come through committee secretariats and then they are delivered to the House. So, I do not know how he got that Statement.

**Hon. Speaker:** So, when are you going to respond to the request?

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, give me until next week on Tuesday.

**Hon. Speaker:** Very well. Hon. Wanga. Apparently, you do not have a card.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Speaker. I render my apologies for not having my card.

Hon. Ichung'wah did raise the issue of my Committee looking into Kshs15 billion that was purportedly loaned by Equity Bank to a certain businessman. Being the Committee responsible for financial institutions and their stability in this country, we felt that this was an important matter because if a phone call could result in loaning of Kshs15 billion, then it means we had reason to worry. The Committee is in the process of inviting other people, including the Kenya Revenue Authority (KRA), and the Central Bank of Kenya (CBK). We will get to the very bottom of this matter. We will not be intimidated, neither will we be rushed or work on somebody else's timelines. The Committee has its timelines and schedules. Therefore, at the point at which we are ready, we shall present our report to this House. That is the way it is.

There are specific timelines on a petition, namely, 60 days, within which we must bring our report. If on our own motion we are conducting an inquiry, we will come to the House when we are prepared with the report. We still have to listen to KRA, CBK and the financial reporting centre on this very matter. So, we are on track. We will move. This Committee will not be intimidated neither will we listen to side shows. We will bring a report to this House that is worthy the Floor of this House. If you open the Pandora's box, the one that Hon. Ichung'wah is talking about, then we will have to look very deeply and some people will not be smiling any more.

Hon. Speaker, thank you.

*(Several Hon. Members rose on points of order)*

**Hon. Speaker:** There is something that you need to appreciate. That was the Committee doing an inquiry on its own motion. Hon. Wanga is actually right. They were not moved by a Motion here. It was the Committee on its own volition.

*(Hon. (Ms.) Esther Passaris walked into the Chamber)*

Is this what we call skirting around, stilettos, or cat-walking? Please, let us not do that. We are on the hallowed Floor of the House. It cannot be space for cat-walking. Hon. Mwathi, with regard to your matter.

**Hon. Peter Mwathi** (Limuru, JP): Yes, Hon. Speaker. Hon. Ichung'wah has put it on record that he has a statement which I do not have. In fact, what he has sent me is a copy of his Request for Statement. So, he does not have the Statement he is purporting to have. He has put it on record. He said he has a statement and he wants to share with me, but in terms of response, he does not have. I would want that on record.

**Hon. Speaker:** Did he say he has a Statement? Hon. Ichung'wah, did you say you have a Statement? Hon. Members, you know today you are not in the mood of doing business.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, you know Hon. Mwathi is my good friend and neighbour. Besides being my neighbour, he is my good friend and maybe he was not listening to what I was saying. I said that I made a request for a Statement. He has said that he is waiting for a copy of that Statement to attach. Therefore, I said if he needs a copy, I can even WhatsApp it to him. That is what I have just forwarded to him. The question that I am asking for a response on is the Statement that I sought on 10<sup>th</sup> of August. The other substantive matter to do

with Hon. Gladys Wanga, it is, indeed, true that it was on the committees own volition, but remember when I rose on a point of order, if the Chair, Departmental Committee on Finance and National Planning, Hon. Gladys Wanga, can listen to me, I was aware and I indicated that it is on the Committee's own volition. What I was trying to avoid is Members of this House or chairpersons of committees using our committees to drive certain political perceptions.

It is very possible today that as a Member, I can use this Floor or even committees' sittings, with the media present, to drive certain perceptions regarding the pandora papers. It is, therefore, not fair for Hon. Wanga to tell us that because the Committee was moving on its volition, she can take whatever amount of time she desires. That will be an abuse of our own processes and procedures to use the Floor of the House or the committees of the House to drive political agenda. I am asking this on a very serious note. If you sit as Speaker and allow Members to either use the Floor of committees to drive political perceptions, we may as well know we are free to do that and we can use our committees to discuss in the media and elsewhere anything on the pandora papers and those who have stashed money out of our economy by investing elsewhere. We can also do it on our own motions!

**Hon. Speaker:** Now, Hon. Ichung'wah, Hon. Wanga stood and explained that, yes, they moved on their own volition and they took evidence from certain people. She has indicated that they are yet to take evidence from KRA, CBK and the Financial Reporting Centre. Are we disputing that they are yet to take evidence from those entities? That is what she has said and it is on HANSARD. Some other date, you could rise and ask whether they have taken evidence from those people, but now she has said that those are the people they are waiting to take evidence from. We should give the Committee the time to do that. Obviously we know, if something appears like it is taking inordinately too long, then, as a House, we will make a determination one way or the other. Let us allow the Committee, as the Hon. Wanga has said, time to take evidence from those three different institutions and, maybe, any other. Let us not cast aspersions. Let us not deal with... I do not want us to even open that box. Hon. Okello, do not open that one.

**Hon. Jared Okelo** (Nyando, ODM): I thank you very much, Hon. Speaker. You have already given a direction on that matter, but I want to invite the House to Article 1 and Article 95 of the Constitution on representation. We are here to represent the plight of the Kenyan people. It is incumbent upon every person to come up with full disclosure so that we do not just engage in an exercise in futility. If such a thing would have happened to a Kenyan citizen in Turkey, I can assure you, it would not invite the attention of the Turkish Parliament. Two years ago, a media personality was killed in the same Turkey and it was never discussed in their Parliament. Why, then, would a Member of Parliament of great reputation such as my friend, Hon. Kimani Ichung'wah, engage us in a charade of a foreigner whose interests have not been declared here to date? Hon. Kimani Ichung'wah has not told us in specific terms why he is very much interested in this particular individual.

I thank you.

**Hon. Speaker:** He sought a Statement and Hon. Mwathi has said he is going to issue it by next week.

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

*(Laughter)*

Hon. Members, let us now relax. Let us go to the next Order.



**COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

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

**IN THE COMMITTEE**

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

**THE REFUGEES BILL**

*(Consideration of Memorandum from His Excellency the President)*

**Hon. Chairman:** Order, Hon. Ichung’wah. Hon. Members, please, take your seats. Hon. Ichung’wah, you will keep your peace.

Hon. Members, we will move very fast. We have two Bills to work on. One is the President’s Reservations to the Refugees Bill (National Assembly Bill No.62 of 2019). We can proceed.

*Clause 2*

Let us have the Leader of the Majority Party.

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

THAT, Clause 2 of the Bill be amended in the definition of the phrase “transit centre”, by inserting the words “and includes a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre” after the words “security screening”.

This is to accord with the recommendations of His Excellency the President.

*(Question of the amendment proposed)*

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

*(Clause 2 as amended agreed to)*

*Clause 8*

**Hon. Chairman:** Let us have the Leader of the Majority Party.

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

THAT, Clause 8 of the Bill be amended in Sub-clause (2) by inserting the following new paragraph immediately after paragraph (w)-

“(x) promote, insofar as is practicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes.”

This is for the reasons that were contained in the President’s Memorandum.

*(Question of the amendment proposed)*

**Hon. Chairman:** What is your point of order, Hon. (Dr.) Makali Mulu?

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Chairman. I know that we have the Order Paper and what is supposed to be changed is written very well. However, I thought it would be important for the Mover to mention the import of all these amendments, so that it goes to the *Hansard*. That makes a lot of sense because he is just saying, "As per the Order Paper."

**Hon. Chairman:** Hon. (Dr.) Makali, in any case, this is a Bill that had been canvassed and transacted.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Yeah, but the President has proposed some...

**Hon. Chairman:** I believe you should be seized of that Bill. Leader of the Majority Party, feel free to give some brief explanations. Since we had progressed on this one, you can do it briefly.

**Hon. Amos Kimunya** (Kipipiri, JP): The assumption, when dealing with a memorandum is that Members have a copy of the President's Memorandum. It was circulated. It contains the justification as to why he is referring a matter back here.

For this particular matter, the import is basically to task the Commissioner for Refugees to promote procurement of local goods, which will enhance growth in the development of those areas. It is very clear cut. If you read the Order Paper, it says exactly the same thing.

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

*(Clause 8 as amended agreed to)*

#### Clause 18

**Hon. Chairman:** Let us have the Leader of the Majority Party.

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

THAT, Clause 18 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4)-

"(4A) The provisions of Section 17(2), (3), (4) and (5) shall, with the necessary modifications, apply to the revocation of refugee status by the Commissioner."

This is basically to provide for the procedure to be adopted by the Commissioner for Refugees before revoking a refugee status.

*(Question of the amendment proposed)*

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

*(Clause 18 as amended agreed to)*

#### Clause 28

**Hon. Chairman:** Let us have the Leader of the Majority Party.

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

THAT, Clause 28 of the Bill be amended by inserting the following new sub-clause immediately after Sub-Clause (7)-

“(8) A person from a partner State of the East African Community who has been recognised as a refugee under this Act may opt to voluntarily give up his or her refugee status for the purposes of enjoying any of the benefits due to him or her under the Treaty for the Establishment of the East African Community, the Protocol for the Establishment of the East African Community Common Market, and any other relevant written law.”

This is to enhance the rights of refugees in Kenya by affording them better avenues such as work permits. They should enjoy as well as exercise the right to work, among other things.

*(Question of the amendment proposed)*

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

*(Clause 28 as amended agreed to)*

#### *Clause 31*

**Hon. Chairman:** Let us have the Leader of the Majority Party.

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

THAT, Clause 31 of the Bill be amended by inserting the following new sub-clause immediately after Sub-Clause (4)-

“(5) Any refugee or asylum seeker residing outside a designated area at the commencement of this Act shall, as soon as is practicable after the commencement, notify the Commissioner in the prescribed manner of his or her situation and the Commissioner shall make such orders as may be necessary in the circumstances.”

This is basically to provide for a transition mechanism for persons who are refugees and are residing in an area that is not a designated area.

*(Question of the amendment proposed)*

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

*(Clause 31 as amended agreed to)*

**Hon. Chairman:** Let us have the Mover of the Bill to move reporting.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Chairman, I beg to move that the Committee does report to the House its consideration of the Presidential Memorandum on the Refugees Bill (National Assembly Bill No.62 of 2019 and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Chairman:** Hon. Members, we now move to the next Bill.

THE TAX APPEALS TRIBUNAL (AMENDMENT) BILL

**Hon. Chairman:** Hon. Members, we now move to the Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No.19 of 2021). It will also be a quick one, so, please, pay good attention.

Let us have the Chairlady of the Departmental Committee on Finance and National Planning. How do we get you there? You do not seem to have a card.

*Clause 2*

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Chairman.

Hon. Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended by deleting the proposed Clause 4B and 4C and substituting therefore the following new clause-

(4B) The Chairperson and members of the Tribunal shall be recruited and appointed in accordance with the provisions of the Third Schedule to the Judicial Service Act, 2011.

(4C) The Commission shall appoint the members of the Tribunal in a staggered manner so as to ensure that, at all times, at least one third of the members are in office.

These amendments are to provide that members of the tribunal shall be recruited and appointed in accordance with provisions of the Judicial Service Act rather than providing a whole new set of appointment laws.

I beg to move.

*(Question of 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 2 as amended agreed to)*

*Clause 3*

**Hon. Chairman:** Hon. Wanga.

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

THAT, Clause 3 of the Bill be amended by-

- (a) deleting paragraphs (c) and substituting therefor the following new paragraph-  
(c) by deleting subsection (3);
- (b) deleting paragraph (d) and substituting therefor the following new paragraph-  
(d) by deleting subsection (4);
- (c) deleting paragraph (e) and substituting therefor the following new paragraphs-  
(e) by deleting subsection (5);
- (f) by deleting subsection (6);

This is cleaning up; it is removing the Cabinet Secretary from suspending or removing members because it has been moved from the Executive to the Judiciary.

*(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 3 as amended agreed to)*

#### Clause 4

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Chairman, I beg to move: THAT, Clause 4 of the Bill be amended in the proposed new clause 7 –

- (a) in subsection (1) by deleting the words “Public Service Commission” and substituting therefor the word “Commission”;
- (b) in subsection (2) by-
  - (i) deleting the words “or other relevant institution recognised in Kenya” appearing in paragraph (a);
  - (ii) inserting the words “five of which should have been in senior management” immediately after the words “paragraph (a)” appearing in paragraph (b);
  - (iii) deleting paragraph (e);
- (c) by renumbering the second subsection (2) as (3) and by deleting the words “Public Service Commission” and substituting therefor the word “Commission”.

This is essentially to remove the Public Service Commission from appointment of a secretary to the Appeals Tribunal and leave it to the Judiciary.

*(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 4 as amended agreed to)*

*Clause 5*

**Hon. Chairman:** Hon. Wanga.

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

THAT, the Clause 5 of the Bill be amended in the proposed Clause 7A by deleting paragraph (f).

This is to delete the function of the secretary submitting approved estimates to the National Treasury. This will be done by the Judicial Service Commission and not by the Tribunal.

*(Question of the amendment proposed)*

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

*(Clause 5 as amended agreed to)*

*Clause 6*

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Chairman, I beg to move: THAT, Clause 6 of the Bill be amended in the proposed new Clause 8-

(a) in subsection (1) by deleting the words “Cabinet Secretary” and substituting therefor the word “Commission”;

(b) in subsection (3) by deleting the words “Cabinet Secretary” and substituting therefor the word “Commission”;

This is to replace the Cabinet Secretary setting remuneration with the Judicial Service Commission setting it.

*(Question of the amendment proposed)*

**Hon. Chairman:** What is it Hon. (Dr.) Makali?

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Chairman. There is the Salaries and Remuneration Commission (SRC) and there is the Judicial Service Commission (JSC). Are we talking to the JSC or the SRC? That clarification is important. Issues of salaries are normally...

**Hon. Chairman:** I thought you are a Member of the Departmental Committee on Finance and National Planning.

**Hon. Makali Mulu** (Kitui Central, WDM-K): I am not.

**Hon. Chairman:** You are a Member of the Budget and Appropriations Committee. Hon. Wanga, do you have something to say about that?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you. The JSC sets the general terms in consultation with the SRC. It will be the JSC and not the Cabinet Secretary in consultation; but the JSC in consultation.

**Hon. Chairman:** That is actually the amendment.

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

**Hon. Chairman:** I believe that *daktari* is okay with that.

*(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 6 as amended agreed to)*

#### Clause 7

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

THAT, the Bill be amended in clause 7 by—

(a) deleting the proposed new clause 8A and substituting therefor the following new clause Expenses of the Tribunal

8A. The expenses of the Tribunal shall be paid out of the Judiciary Fund.

(b) deleting the proposed new clause 8B.

This is in line with the earlier amendment that the Tribunal does not set its own budget or estimates but goes by the estimates of the JSC.

*(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 7 as amended agreed to)*

#### Clause 8

**Hon. Chairman:** Let us proceed, Hon. Members.

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

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause

Amendment  
of section  
11 of No.40  
of 2013.

8. The principal Act is amended by deleting section 11 and substituting therefor the following Clerk of a panel.

11. (1) There shall be a clerk for each panel, who shall be the secretary to the panel.

(2) A clerk to a panel shall be designated by the Secretary to the Tribunal from among the staff of the Tribunal.

This is to allow for separate panels of the Tribunal so that they move faster with the cases. It is to allow for designation of clerks to the various panels.

*(Question of the amendment proposed)*

**Hon. Chairman:** Hon. Oundo Ojiambo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Chairman, for sure I agree to the extent to speed up the process, but this is a purely administrative matter that does not need to be legislated. I am just wondering; once the Tribunal is in place it should be allowed to organise their ways. Is it really necessary for it to be put in legislation? Probably they can explain for us to understand.

**Hon. Chairman:** Let us hear Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): If we do not outline it then they might not feel the need to operate in those panels. That is why we currently have 500 cases pending before the Tax Appeals Tribunal. The other idea is to ensure that through this, we are able to deal as quickly as possible with all the tribunals because we are dealing with money. They more they stay, the more. If they have not found the need so far, this is just to push them in that direction.

Thank you, Hon. Chairman.

**Hon. Chairman:** What is it, Hon. Kaluma?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Chairman, we are moving the Tribunals from the Executive to the Judiciary, as the Constitution demands. Within the Judiciary, they have staff and the employment scheme. I, therefore, do not think this provision is necessary. Automatically, immediately it moves, the Office of the Chief Registrar of the Judiciary will designate clerks there. This is a superfluous provision.

**Hon. Chairman:** Maybe. But what Hon. Wanga could be asking is if it is harmful at all. It is good that Members are debating.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): It does not hurt.

*(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 8 as amended agreed to)*

*Clause 9*

**Hon. Chairman:** Hon. Wanga.

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



THAT, Clause 9 of the Bill be amended in paragraph (c) in the proviso by deleting the word “Tribunal” and substituting therefor the word “panel”.

This is in line with the amendment we have just made earlier to provide room for the panels.

Thank you, Hon. Chairman.

*(Question of the amendment proposed)*

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

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

*(Clause 9 as amended agreed to)*

*(Clauses 10, 11, 12 and 13 agreed to)*

*(Loud consultations)*

**Hon. Chairman:** Order, Members. The Member for Lari and your team, please maintain some peace and consult in lower tones.

*Clause 14*

**Hon. Chairman:** Hon. Wanga.

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

THAT, clause 14 of the Bill be amended in the proposed new clause 29A—

(a) by deleting the proviso appearing in subsection (1);

(b) by inserting the words “within fourteen days after receipt of the application” at the end of subsection (3).

This is to set timelines within which the tribunal can set aside or vary an order, at 14 days. 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  
be inserted, put and agreed to)*

*(Clause 14 as amended agreed to)*

*(Clauses 15, 16 and 17 agreed to)*

*Clause 18*

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

THAT, clause 18 of the Bill be amended in the proposed subsection (5) by deleting the words “Public Service Commission” and substituting therefor the word “Commission”.

This is to move the function from the Public Service Commission to the Judicial Service Commission. I thank you, Hon. Chairman.

*(Question of the amendment proposed)*

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

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

*New clause 7A*

THAT, the Bill be amended by inserting the following new clause immediately after clause 7-

Amendment of section  
9 of No.40 of 2013

7A. The principal Act is amended in section 9 by deleting the words “Cabinet Secretary” appearing in subsection (2) and substituting therefor the words “Chief Justice”.

**Hon. Chairman:** Let us have the Chair to move Second Reading.

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Thank you, Hon. Chairman. I beg to move that the new clause be read a Second Time. This is to move the Tribunal from submitting its annual report to the Cabinet Secretary and to submit the same to the Chief Justice. I beg to move.

*(Question proposed)*

*(Question put and agreed to)*

*(New clause 7A read a Second Time)*

*(New clause 7A agreed to)*

*New clause 10A*

THAT, the Bill is amended by inserting the following clause immediately after clause 10-

Amendment of section  
21 of No.40 of 2013.

10A. The principal Act is amended in section 21 by deleting the words “one hundred” and substituting therefor the words “five hundred”.

**Hon. Chairman:** Mover, move for Second Reading of the new clause.

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Thank you, Hon. Chairman. I beg to move that new clause 10A be now read a Second Time. This clause varies the penalty for the offence of contempt of the tribunal from Ksh100,000 to Ksh500,000. I beg to move.

*(Question proposed)*

*(Question put and agreed to)*

*(New clause 10A read a Second Time)*

*(New clause 10A agreed to)*

*New clause 15A*

THAT, the Bill be amended by inserting the following new clause immediately after clause 15-

Insertion of new section

32A in No.40 of 2013

15A. The principal Act is amended by inserting the following new section immediately after section 32—

Filing of documents

32A. Any notice, application, decision or other document that is to be made in writing under this Part may be submitted in hard copy or by electronic means.

**Hon. Chairman:** Let us have the mover.

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Thank you, Hon. Chairman. I beg to move that new clause 15A be now read a Second Time. It relates to filing of documents to the Tribunal. It provides that documents can be submitted in hard copy or through electronic means.

**Hon. Chairman:** The Member for Lari, I know the kind of team that you lead. Please do not lead it here. Let us proceed.

*(Question proposed)*

*(Question put and agreed to)*

*(New clause 15A read a Second Time)*

*(New clause 15A agreed to)*

*New clause 1A*

THAT, the Bill be amended by inserting the following new clause immediately after clause 1-

Amendment of section

2 of No.40 of 2013.

1A. The Tax Appeals Tribunal Act is amended in section 2 by inserting the following definition in the proper alphabetical sequence-

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution;

**Hon. Chairman:** Let us have the Mover.

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Thank you, Hon. Chairman. I beg to move that new clause 1A be now read a Second Time. It relates to defining the Commission not as the Public Service Commission but as the Judicial Service Commission. I beg to move.

*(Question proposed)*

*(Question put and agreed to)*

*(New clause 1A read a Second Time)*

*(New clause 1A agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Chairman:** Let us have the mover to move reporting. Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Chairman, I beg to move that the Committee do report to the House its consideration of the Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021) and its approval thereof with amendments.

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORTS AND THIRD READING

### THE PRESIDENT’S RESERVATIONS ON THE REFUGEES BILL

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): We shall start with the report of the Committee of the Whole House on the President’s reservations on the Refugees Bill. Chair?

**Hon. Moses Cheboi** (Kuresoi North, JP): I thank you, Hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the President’s reservations on the Refugees Bill (National Assembly Bill No. 62 of 2019) and its approval thereof without amendments.

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

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said report. I request Hon. Mwangi, the Chairperson of the Departmental Committee on Administration and National Security, to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mwathi.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. This is basically to pave way for recognition, protection and management of refugees to accord with the various international protocols.

I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, do you have something to say to the amendment?

**Hon. Peter Kaluma** (Homa Bay Township, ODM): Hon. Temporary Deputy Speaker, what has happened this afternoon, even as we move to conclusion, is historic in our country. The President's Reservation to the Refugees Bill has walked a very long journey. This particular Bill was moved in the 11<sup>th</sup> Parliament. His Excellency the President returned it because of inadequate public participation. This time around, we engaged a lot of stakeholders, including the United Nations High Commission for Refugees (UNHCR) and the Refugee Consortium of Kenya among and various other agencies.

I stand to speak at this time because for the first time in the two Parliaments in which I have been a Member, the President has referred a Bill back to Parliament with provisions we totally agree with. This is something we needed to say in signature. The President has not only improved the Bill that we had passed as Parliament and sent to him for assent, but he has introduced provisions which are going to better the welfare of refugees. The refugees living in Kenya – be they in Dadaab, Kakuma or integrated refugees – can now not only work within Kenya because of this intervention by the President, but also across the East African Community. This is a great improvement to the Bill.

Secondly, in terms of the purchases to sustain the refugees, it is going to be focused on our goods. It is a great thing. I pray that we expedite the remaining processes. I urge my colleagues to support it. We are going to occupy a very special place in matters of human rights and refugee protection, both within the region and across the country. I congratulate the President for a well thought-out intervention by way of this Memorandum.

I thank you, Hon. Temporary Deputy Speaker; the Chair, who is doing great; and the Leader of the Majority as the Mover.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, allow me to comment on the Tax Appeals Tribunal (Amendment) Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Oundo, we are not yet there.

**Hon.(Dr.) Wilberforce Oundo** (Funyula, ODM): Okay, thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Pukose.

He is not in, even though he had shown interest.

Is the Member at the back there Hon. Masara? Proceed.

**Hon. Peter Masara** (Suna West, Independent): Thank you, Hon. Temporary Deputy Speaker. Today I am a very happy man because for the first time since I joined Parliament, my Committee has done a real job. I am a Member of the Departmental Committee on Administration and National Security.

We went through the journey, visiting the refugee camps in Kakuma, Dadaab and Nakuru. This Bill will put Kenya on the international map as one of the countries where a president has prepared a well-researched Memorandum. I am saying this because for the first time in this country's and region's history, refugees will get an opportunity to live like any other person, because they will be allowed to engage in business, work and earn a living. Above all, the countries hosting refugees will not consider refugees as a burden. As things stand now, refugees become a burden of the hosting country. The passage of this Memorandum will allow them to do business and work. Some young people arrived in Dadaab without any academic qualifications, but by the time we went there, we found that they were able to do some things that enable them to earn a living; but the existing refugee law does not allow them to engage in business. I, therefore, congratulate our able Chairman because he has steered us well, as a Committee. Above all, I laud His Excellency the President, Hon. Uhuru Kenyatta, for his wisdom. This was a very controversial Bill. This country is now moving in the right direction. From the time of the handshake, things have been moving well. When Hon. Raila Odinga greeted President Uhuru Kenyatta outside Harambee House, things started moving. Before then, the President used to have a lot of pressure. He was stigmatised because things were not moving. However, following the handshake, he has had time to reason, research, and propose legislation that can be accepted by the whole House.

May God bless Kenya, our Speaker, our Chairman and the Committee!

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I direct that the next steps on this Bill be undertaken when the matter is settled down for consideration by the House again.

*(Putting of the Question on the Bill, as amended  
by His Excellency the President, deferred)*

#### THE TAX APPEALS TRIBUNAL (AMENDMENT) BILL

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Temporary Deputy Speaker, I beg to Report that a Committee of the whole House has considered the Tax Appeals Tribunal (Amendment) Bill (National Assembly No.19 of 2021) and approved the same with amendments.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I request Hon. Oundo to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, allow me to make one or two comments. The issue of tax administration in this country has become very emotive because of the high handedness of the KRA and others involved in tax matters. Many people have genuine complaints to do with taxation, but the courts take so long to arbitrate; and the KRA is non-responsive. I believe these amendments which are putting the Tax Appeals Tribunal squarely under the Judiciary will help in expediting pending appeals and ensure justice for all in this country.

Thank you, Hon. Temporary Deputy Speaker.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Township, JP): Hon. Temporary Deputy Speaker, let me thank the Departmental Committee on Finance and National Planning for processing this Bill. We passed the Constitution in 2010. Within it, we said all judicial functions will be carried out by the Judiciary, thus moving all the tribunals to the Judiciary. So, this amendment is long overdue.

The fact of the matter is that we want some judicial independence in decisions being made by such tribunals so that even if it is dealing with taxes, we do not want a tribunal which is under the Executive choosing who to favour and who not to favour; who to pursue and who not to pursue. With this Tribunal going to the Judiciary, there will be impartial dispute resolution on tax matters or tax appeals. This will be done in a timely manner to save monies which people will possibly be losing.

Hon. Temporary Deputy Speaker, while I appreciate the Leader of the Majority Party for introducing this particular Bill to the House to put this critical tribunal under the purview of the Judiciary, like other tribunals, may I request him to also look at the court system called Court Martial? Previously, that was a peer review mechanism. Despite our Constitution saying that Court Martial is one of the three subordinate courts that we have in this country, non-judicial officers still preside over Court Martial proceedings, and a person called “advocate” merely advises them as they make rulings. They decide as they want. We have many injustices still being purveyed at our court martial proceedings across the country. As we commend the Leader of the Majority Party, I would also request him to look at that as we support this one to progress to the next level.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, very well spoken. We must have a very clear system where decisions can be made and the principles of *stare decisis* can be developed in this jurisprudence for tax matters in this country.

Hon. Shadrack Mose, the Member for Kitutu Masaba.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to also join my colleagues in saying that this is a serious milestone that we have achieved. In my view, moving the tribunal to the Judiciary is one of the landmark decisions that has been made.

As you would appreciate, in a number of occasions, there have been a lot of procrastination and bureaucracies hanging around the tribunals and more particularly, this particular tribunal that deals with taxes. It is actually going to assist in the expeditious disposal of many of these tax matters that have been delayed in tribunals. Tribunals in a number of administrations are ideally skewed and are waiting to hear the direction they want to take. However, now with the alignment of these tribunals to the Judiciary, I am sure that we are going to see expeditious disposal and determination of these matters. I herald this kind of achievement that we have attained today.

Thank you, Hon. Temporary Deputy Speaker.

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I direct that the Third Reading in this regard be undertaken when this matter will be set down again on the Order Paper for consideration.

I direct that we move on to the next Business on the Order Paper.

**BILL***Second Reading*

## THE LANDLORD AND TENANT BILL

*(Hon Amos Kimunya on 29.9.2021)**(Resumption of Debate interrupted on 29.9.2021)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Shadrack, Member for Kitutu Masaba.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker. I want to proceed from where I left. The Landlord and Tenant Bill is one of the serious milestones that we have achieved by way of this Bill. It seeks to introduce a legal framework which balances the interest of the landlord *vis a vis* that of the tenant. I am sure you are aware that there has been a lot of confusion in this area. More particularly, the landlords have been very draconian in how they exercise their rights *vis a vis* the tenants. At the same time, the tenants have also been cunning in trying to avoid their obligation.

Hon. Temporary Deputy Speaker, this Bill balances the interest of both parties. In so doing the landlord will be able to earn a just living out of their investment of putting up a building. In most cases, you will find that a landlord has taken a facility and put up a premise and because the tenants are cunning, they are unable to earn a just and fair earning from their investment.

However, this Bill balances the rights and the obligations of both parties. One of the things that is a serious improvement of this Bill is that the aspect of rent increase is mutual. However, in a number of occasions, that is not done. The landlord normally arbitrarily increases the rent because they contend that the property is theirs and that undermines the rights of the tenants.

However, this Bill gives the tribunal an opportunity to balance both rights. It is on this core that this Bill also gives the Chief Justice the right to establish tribunals across the country. This is really a step in the right direction because establishment of tribunals across the 47 counties would also ensure that the landlord and the tenant can access those tribunals and that there will be proper adjudication of their matters.

I have also seen in the Act that the tribunal has been empowered to deal with the issues of illegal and arbitrary evictions. What I used to see previously was that the landlord could arbitrarily throw out the tenant from their premises and the moment the tenant moved to the tribunal, they would be told the tribunal has no powers to reinstate them. This Bill now gives the tribunal the powers to reinstate a tenant where the evictions have been unfair.

Hon. Temporary Deputy Speaker, there are generally good issues that have come up in this Bill; The tribunal will also have the right to determine what is fair rent and deal with the increase and decrease of rent. The issue of the notice of termination of tenancy has also been addressed in this Bill. There is also the issue of sub-letting or the issue of assigning some premises. You will realise that many tenants in this country take tenancy and sub-let the premises to third parties. In that circumstance, you will find that the tenant who has sub-let from the main tenant is actually not protected. However, this Bill stamps authority in dealing with some of those issues.

Hon. Temporary Deputy Speaker, in this Bill, the landlord is actually required to keep records of the tenancy and the payment of rent. This will ensure that once an issue arises, it will



be easier to determine those issues because they are well documented and recorded. This is unlike in the past where the landlord was not obligated to do that. This is a clear improvement from what used to happen, particularly on the issue of distress for rent and how the auctioneers used to behave.

Hon. Temporary Deputy Speaker, auctioneers were hooligans. They would come up with all sorts of ways and maneuvers to evict tenants. With this Bill coming into effect, that will be history. The housing sector needs that we rein on it and improve it so that it is very clear, and ensure that we do not have unethical and unorthodox means of dealing with tenants who are the cadre that is normally threatened.

With those few remarks, I support

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Let us have Hon. (Dr.) Oundo Ojiambo, Member for Funyula

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute on this matter. Let me go on record that I have spent almost 30 donkey years administering the various legislations in this particular field. So, it is an area that I am extremely conversant with, and I know the challenges that have been there before that led to this particular Bill in the House today.

The idea to collapse the various Acts dealing with the relationship between the landlord and the tenant has been on the table since early 1990's. We have had the Distress for Rent Act, the Rent Restriction Act, the Land Lord and Tenant Shops Hotels and Catering Establishment Act that have generally set and determined the relationship between the landlord and the tenant.

A relationship always arises between a landlord and a tenant. A landlord is an investor who has invested in a property for the sole purposes of getting returns. The returns could be regular income in terms of rent as well as capital appreciation which can be realised at the point of disposal. A tenant is someone seeking shelter, has no place of his own and has no present capacity to have an own housing. So, it is a purely commercial and economic arrangement where there is demand and supply. Obviously that indicates that there are some fundamentals that need to be observed as we move forward.

Secondly, there has been this talk that everybody in this country requires housing, although the definition of housing has been misunderstood all over by people who do not understand the principals and policies of housing. It does not mean all housing is housing. As long as you have shelter and you can pay for it, you indeed have housing. Naturally we would have a legislative framework that underpins or organises the sector as an economic activity, and to some extent, as a social activity. Many times there have been cries and complains from both sides of the divide. The landlords have complained that the existing laws especially dealing with the so called Controlled and Restricted Tenancy have been a major distortion of the market. It has also been a major disincentive to invest in housing and any form of housing and real estate that is controlled by those restrictive Acts of Parliament.

On the other side, the so called tenants and occupants ,at a cost or a fee, have complained that landlords have acted draconian and outside the law in terms of increasing the rent, terminating the tenancy, eviction and maintaining the physical structure of the properties. That is why this journey begun when I was a Member of the Executive Committee of the Institution of Surveyors of Kenya, and we started this journey with the Ministry of Lands, Housing and Urban Development, as it was then. I am happy that it has culminated into a combined Bill that seeks, in Clause 65, to repeal the various Bills I have referred to; and luckily enough, they preserve all the matters before the relevant tribunals for the time being.

Hon. Temporary Deputy Speaker, the Bill basically sets the terms and conditions of the relationship. More fundamentally, it sets a single tribunal, unlike in the past where we used to have separate tribunals; One for residential housing and another one for commercial. Good enough, it moves the management of the tribunal from the Cabinet Secretary (CS) in charge of the matter presently, to the Judicial Service Commission (JSC) as required in the Constitution. It is hoped in such a manner, therefore, that we would have a more robust and professionally run tribunal that can offer justice to the litigants who come before it. I have had in many occasions appeared before the Business Premises Rent Tribunal (BPRT) as an expert, and you could see the short comings and the lack of capacity in arbitrating the matters before them. We believe that these changes will make the tribunal more accountable and better at arbitrating issues at hand. I must commend whoever drafted the Bill for doing their best. However, there are fundamental mistakes that seem to be creeping back, and yet they were the main causes of complaints based on the existing legislation that we are purporting to be deleting by this one.

The world all over, through literature, seems to be a conclusion that any form of rent controls based on the amount of rent paid is counterproductive in the market. It distorts the market. If there are any people in this country that are under housed, they are the low income earners; those ones under the restricted rent of Kshs.2500 and below. Those are the people who are inadequately housed simply because no sane investor would want to invest in that category of housing and have to spend most of his time before the tribunal trying to resolve even basic issues between a landlord and the tenant. It has always been the talk all over. Literature and research has proved this. Any form of rent control ends up being counterproductive. It does not help in enhancing the housing sector and protecting the rights and interest of the various actors.

The second issue that seems to have been brought back here that might have to be relooked at later is protections of rights. Both the tenant and the landlord are expected to have some rights. However, looking at the Bill, it is jumbled up. It is never clear exactly why each party gets their rights. There are quite a number of issues in the Bill that do not come out clearly. A tenancy is a commercial arrangement between the landlord and the tenant. The talk all over the world is that we need to have less Government, less interference, less high handedness by the Government in matters commerce and so there should be less interference.

One of the issues when we were dealing with the ease of doing business – which was scrapped by the World Bank because of unethical practices – has been the issue of how we handle our property laws. One of the reason why our ranking has never gone high is because our laws are draconian, and they become an impediment in solving issues. In this Bill, the same practice has been maintained. We will have endless cases before the tribunal and it is defeating the whole purpose why we chose to make these changes. Another issue that seems not very clear is the process of eviction. The Bill has various provisions dealing with evictions. For you to evict a tenant, there must be a justifiable cause or a reason that has arisen. For example, a tenancy has ended and discussions to extend have failed, so what should the landlord do where the tenant refuses to move out? On the flip side, why would you allow a landlord, on flimsy grounds during the subsidence of a tenancy, purport to terminate a tenancy and evict a tenant? There is so much to be said, but I believe during the Committee of the Whole House, we will raise sufficient issues to be addressed and deal with those matters.

Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kiaraho

**Hon. David Kiaraho** (Ol Kalou, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to ventilate on this issue. I must say that I have looked at this Bill very keenly

and submit holistically that it has very good intentions and points. I have also identified some grey areas which require streamlining.

The Bill seeks to consolidate all the laws on residential and commercial tenancies, ensure regulation of this sector in Kenya and, more so, introduce a legal framework which balances the interests of the landlords and tenants aimed at promoting the sustainable growth of the rental sector in Kenya. There are some issues I identified as I went through this Bill which require to be looked into. Just as the Member who has spoken before me has mentioned, there are some areas which need to be relooked into. As we talk, I am in the process of coming up with amendments which I will introduce when we get to the Third Reading.

Just to mention a few, one area I found to be a little bit confusing and contradicting is the issue of termination of tenancy without reference to the tribunal. Clause (25)(1) (a) states:

“(1) A landlord shall be entitled to terminate a tenancy without reference to the Tribunal upon the following grounds that –

(a) the landlord has given prior notice of not less than 24 months in the case of business premises, and not less than 12 months in the case of residential premises.”

I stand to be corrected, because I know that most residential leases as they stand go for one year renewable depending on the mutual agreement between the tenant and the landlord. When terminating a residential tenancy, we are talking of 12 months and this, by itself, is contradicting. In my opinion, I feel that the 24 and 12 months respectively, termination notice by the landlord for commercial and residential tenancy is too long. In my view, it should be reduced to three months for residential and six months for commercial.

On the same note, looking at clause 32(2), it states about the landlord being at liberty. I feel the landlord should be at liberty to allow or decline any subletting request without giving reasons. This is one of the areas with a lot of disputes and this issue of subletting should be scrapped from the Bill. If you look at clause 58, I feel that the landlord should be allowed to use the services of a debt collector and/or auctioneer to recover any outstanding rent arrears without seeking approval from the tribunal.

As Hon. Oundo said, I think that in the 1990's, there was a Commission constituted to look at the Distress Act, and they came up with a very well thought out document. In my view, I feel that at the Committee level, including those who contributed as we came up with this Bill, we should not water down what was achieved earlier. This is one very sensitive area and the main objective is to come up with a well harmonised document which will protect both the landlords and tenants. I feel that some of these issues need to be looked at in a very sober manner. If need be, we can get the input of professionals, if at all we have not achieved what we are looking at. This is one area we cannot afford to jump into because it can be a recipe for chaos.

Looking at some of the issues in the Bill like timelines of dispute resolution by the tribunal. Clause 7 states that the tribunal must determine a dispute within three months, failure to which the Chairperson shall record the reasons and immediately fix a date. Even with the best intentions, the dispute resolution process can be dragged on by parties resulting into losses and inconveniences and, worse, parties intentionally breaking the law as the required process is ineffective. A suggestion is to provide a maximum of 45 days within which disputes must be resolved with the following timeframe. An applicant to lodge dispute together with supporting evidence on day one; a respondent to provide its response within 14 days; and the tribunal to make a determination within 14 days. This totals to 35 days and, therefore, leave a balance of an additional 10 days within the maximum prescribed 45 days.

On the same note on the issue of timelines of dispute resolution by the tribunal, since this is very key and important considering developers who have put up these units. Let us take into consideration they have put in money and some of them are probably paying mortgages. So, the sooner these disputes are resolved the better for all the parties concerned. As I was saying in Clause 45, there is no defined timelines for provision of variation which can lessen the process to the disadvantage of both the landlord and the tenant. Given Kenya's leadership in the digital platform, I suggest that we should encourage the integration of digital interface, whereby all tribunal applications and determinations will be available on a digital portal. This will assist in promoting strict timelines kept by the tribunal; and promote the availability of data or market rentals which, in itself, will promote efficiencies in the tribunal.

On the issue of equity of risk, looking at clause 25(1)(c), it states, that a landlord can terminate a lease without reference to a Tribunal, if a tenant has defaulted for three consecutive months. I suggest, the period after which a landlord can terminate a lease without reference to the tribunal should be ringed to the period of security deposit held by the landlord. For example, if a landlord holds three months security deposit, then, the landlord needs to wait for a three months period of rent default prior to terminating the lease.

On the same note, if you look at clauses 59 and 60 of the Bill, they require the landlord to keep a unit for 60 days in case of a tenant's death or abandonment. This places undue burden and hardship on a landlord for events outside their control. I suggest a period of 30 days in case of death of a tenant and 15 days in case of abandonment of goods by a tenant. Let us note that landlords are paying facilities on their property which are due even when there is no tenant. These provisions disadvantage the landlord, who may have a ready tenant but loses out because of time.

Another key concern that we need to look at is the equity of risks in clause 3(1), which states that the bill will not apply to residential premises whose monthly rent does not exceed such amount as the Cabinet Secretary may prescribe. It is currently not clear whether the Bill will not apply to informal settlements, as the rent flow is unknown. Hence, extensive stakeholder consultation is required in determining the rent flow and the same should be adjusted in line with the market forces at a minimum of every five years.

On some of the issues I have just pointed out, we are in the process of coming up with various amendments. As Hon. Oundo has just said, he has also noticed that there are quite a number of grey areas which need to be looked into. I request that we join forces with other people who have found areas which need to be streamlined. I believe that if we do so, we will end up with a very clean document which will be very good for all of us.

Thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kiaraho, you have raised very fundamental concerns which I believe go to the root of coming up with this particular Bill. You should link up with Hon. Oundo and approach the Leader of the Majority Party so that we come up with a law that will be protecting capital in this country and, at the same time, protecting the underprivileged who cannot afford to put up their own shelters in this country. However, we should not do it at the expense of those who have invested to punish them unduly. So, I think this is an area that needs some polishing and you have spoken well to it. I urge you and Hon. Oundo to be useful to this country in that regard by ensuring that we polish up those areas and come up with a law that will be useful to all of us in this area.

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, the time being 7.00 p.m., the House stands adjourned until Wednesday, 6<sup>th</sup> October 2021, at 9.30 a.m.

The House rose at 7.00 p.m.