

**PARLIAMENT OF KENYA**  
**THE NATIONAL ASSEMBLY**

**THE HANSARD**

**Thursday, 31<sup>st</sup> March 2022**

The House met at 2.30 p.m.

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

**PRAYERS**

**QUORUM**

**Hon. Speaker:** Ring the Quorum Bell.

*(The Quorum Bell was rung)*

**Hon Speaker:** Very well.

**PAPERS LAID**

**Hon. Speaker:** Chairperson, Budget and Appropriations Committee.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Mediation Committee on the County Governments Grants Bill (Senate Bill No. 35 of 2021).

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairperson, Departmental Committee on Trade, Industry and Cooperatives.

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Trade, Industry and Cooperatives on its consideration of the National Electronic Single Window Bill (National Assembly Bill No. 15/2021).

Many thanks indeed.

**Hon. Speaker:** Very Well. Hon. Members, today being a Thursday and noticing how we are operating, I have rearranged business so that we go to Order Nos. 8, 9 and 10. Once we close that business, I will go back to Order No. 2.

Proceed that way.

**PROCEDURAL MOTION**

## REDUCTION OF PUBLICATION PERIOD FOR A SPECIFIED BILL

**Hon. Speaker:** Chairperson, Budget and Appropriations Committee.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. As earlier said, this is a Procedural Motion to reduce...

**An Hon. Member:** You have to move it first.

**Hon. Kanini Kega** (Kieni, JP): Sorry Hon. Speaker, I think I am handling many things at once.

Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order No. 120, this House resolves to reduce the publication period of the Supplementary Appropriation Bill (National Assembly Bill No. 14 of 2022) from 7 days to 1 day.

Hon. Speaker, this House is aware that we did the Report on the Supplementary Budget on Tuesday and owing to the urgency of resources needed to be disbursed including the National Government Constituencies Development Fund, Government intervention on fuel and the drought experienced in the country, I beseech this House that we reduce the publication period from seven days to one day.

I beg to move and request the Leader of the Majority Party to second.

**Hon. Speaker:** Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I think the facts speak for themselves. I rise to second and ask the House that we support this initiative and indeed go through all the processes today so that we can unlock the resources that are required for taking our country forward.

I beg to second.

*(Question proposed)*

**Hon. Members:** Put the Question.

**Hon. Speaker:** Very well. As the House desires.

*(Several Hon. Members withdrew from the Chamber)*

Member for Mumias East, please, let us just finish this business.

*(Question put and agreed to)*

**BILLS***First Reading*

## THE SUPPLEMENTARY APPROPRIATION BILL

*(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)*

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*(Several Hon. Members withdrew from the Chamber)*

**Hon. Speaker:** Hon. Members, even those who are coming in for two minutes, I thought that what the Leader of the Majority Party said a while ago should be reason enough for us to sit through this session. All of you are talking about things to do with constituencies and the like but the Leader of the Majority Party appealed to us to sit through this session. I know that there are some of you who do not have the capacity to sit in the House for more than 10 minutes, but they will be out there shouting that they have passed this and that law. I can now see them on their way out. Please, we know that you have commitments in the constituencies, but this is very important to all of you and to the institution of Parliament. So, please, just spare some little time today and stay for at least one hour.

*(Loud consultations)*

Exactly, as Hon. Pukose says, stay until we finish with Order No.12. Now those ones have left? Member for Malava, please, do not leave. The Constitution states that we cannot pass some of these Bills unless we have quorum. Tell your colleagues to just stay *kidogo*.

## CONSIDERATION OF REPORT AND THIRD READING

### THE HEALTH LAWS (AMENDMENT) BILL

**Hon. Speaker:** Hon. Members, debate on this Motion was concluded in the Committee of the whole House and what remained was for the Question to be put about agreement with the Committee.

*(Question put and agreed to)*

**Hon. Speaker:** Where is the Mover?

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move that the Health Laws (Amendment) Bill (National Assembly Bill No. 2 of 2021) be now read a Third Time.

I want to thank the many Members who have contributed to this Bill. It has gone through three public participation sessions and it is just over one-year-old. At last, we are just about to conclude with it so that it can find its way to the Senate. I also want to thank the Departmental Committee on Health and all the people who appeared before it to make this Bill what it is today.

I beg to move and request Hon. Wangwe to second.

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

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon Speaker. I second.

*(Question proposed)*

**Hon. Members:** Put the Question!

**Hon. Speaker:** Is it the desire of the House that I put the Question?

**Hon. Members:** Yes.

**Hon. Speaker:** Hon. Members, having confirmed that the House is still quorate, I proceed to put the Question.

*(Question put and agreed to)*

*(The Bill was accordingly read the  
Third Time and passed)*

**Hon. Speaker:** Hon. Members, we will go back to Order No. 2 before we proceed with Order No. 7.

### COMMUNICATION FROM THE CHAIR

#### CONSTITUTIONALITY OF THE FIRST SUPPLEMENTARY ESTIMATES FOR FY 2021/2022

**Hon. Speaker:** Hon. Members, you will recall that during the afternoon Sitting of the House on Tuesday, 29<sup>th</sup> March 2022, the Member for Garissa Town, Hon. Aden Duale rose on a point of order and raised a number of questions of constitutional propriety of the First Supplementary Estimates for 2021/2022 Financial Year as presented to the House for approval by the Cabinet Secretary for the National Treasury and Planning. Hon. Duale noted that, whereas Article 223 of the Constitution allows the Executive to utilise monies that are yet to be appropriated by the House, the same is subject to a maximum of 10 per cent of the approved Estimates of the particular financial year on each Vote and strict conditions on the timelines within which the Cabinet Secretary must seek the approval of the House. It was Hon. Duale's submission that the Supplementary Estimates presented by the Cabinet Secretary did not adhere to the strict timelines imposed under Article 223 of the Constitution.

Hon. Members, to buttress his claim, he contended that no approval of the monies used was sought either within two months of their first disbursement, or at least two weeks after the resumption of the House from a recess as contemplated under Article 223 of the Constitution. Hon. Duale also asked the House to note that Article 223(4) of the Constitution only allows the introduction of an Appropriation Bill for monies spent yet the request for approval from the Cabinet Secretary for the First Supplementary Estimates for 2021/2022 Financial Year includes the potential appropriation of monies yet to be spent. These, he disputed, essentially constitute new undertakings by the National Executive at an advanced stage of the financial year. The Member also contended that these actions of the Cabinet Secretary, and by extension, the National Executive did not accord to the letter and the spirit of the Constitution, Sections 43 and 44 of the Public Finance Management Act, 2012, which impose limitations on accounting officers to reallocate appropriated funds and the responsibilities of the national government in submitting a Supplementary Budget, respectively; and Regulation 40 of the Public Finance Management (National Government) Regulations, 2015 on the responsibilities of each Accounting Officer of the national Government when submitting items related to Supplementary Budget Estimates.

Hon. Members, in the ensuing debate, several Members were in support of the point raised by Hon. Duale including Hon. David Sankok, Hon. Ndindi Nyoro, Hon. Kimani

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Ichung'wah and Hon. George Murugara, who beseeched the Speaker to make a ruling on the matters before proceeding with debate on the Estimates.

On their part, the Leader of the Majority Party, the Chairperson of the Budget and Appropriations Committee and Hon. Mark Nyamita, MP, Member for Uriri, urged the Speaker to allow debate on the Motion for Approval of the First Supplementary Estimates for 2021/2022 Financial Year on the basis of the past practice and precedent of the House in dealing with Supplementary Estimates submitted to the House, noting that issues such as those raised by the Member for Garissa Township have either not been previously raised or have been unanimously overruled by the House when raised. Further, the Leader of the Majority Party offered an interpretation of Article 223(5) of the Constitution with respect to the scope and what constitutes the "10 per cent" limit imposed on the sum of expenditure under Supplementary Appropriation, an interpretation which I must admit is most persuasive, as opposed to the claim that the constitutional limit is imposed on each Vote.

Hon. Members, as I have previously held, and upheld the rulings of my able predecessors, a question of the constitutionality or otherwise of any matter under consideration by the House may be raised at any stage of its consideration as the Constitution obliges the Speaker to respect, uphold and defend the Constitution.

This obligation is further expressly outlined in Standing Order 47(3) relating to instances which the Speaker may declare a Motion inadmissible for being unconstitutional. While allowing resumption of debate on the First Supplementary Estimates for the Financial Year 2021/2022, I did reserve the delivery of a ruling on the matter until today on account of the urgency of the business in question and bearing in mind that the approval of the Motion on Supplementary Estimates is not the end of the process. Indeed, as the House is aware, the approval of such a Motion is followed by consideration of the necessary Supplementary Appropriation Bill.

Hon. Members, I note, from the outset, that I have previously guided that, with regard to the constitutional propriety of matters before the House, the obligation of the Speaker is circumscribed to procedural aspects and facilitation of the proceedings of the House. Any attempts by a Speaker to address the substantive legal aspects of such business would, at the very least, be usurpation of a role reserved for the High Court under Article 165(3) of the Constitution.

Therefore, Hon. Members, in addressing the point raised by the Hon. Duale, I shall limit myself to the procedural aspects relating to the First Supplementary Estimates for the Financial Year 2021/2022 as presented by the National Treasury and the need to guide the House in its consideration of the Business relating to Supplementary Estimates.

Hon. Members, Article 223 of the Constitution provides as follows with regard to a Supplementary Appropriation, and I quote:

- “(1) Subject to clauses (2) to (4), the national Government may spend money that has not been appropriated if—
- (a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or
  - (b) money has been withdrawn from the Contingencies Fund.
- (1) The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money, subject to clause (3).

- (2) If Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.
- (3) When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.
- (4) In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.”

Hon. Members, you will agree with the Member for Garissa Township, that the provision is quite clear on the threshold to be met by the Cabinet Secretary for the National Treasury in making any submissions to the House, that may require the approval of a supplementary appropriation, over and above the sum appropriated by the House arising from the annual estimates.

However, whereas Article 223 of the Constitution imposes strict conditions on how the national Government may spend money that has not been appropriated, it also prescribes timelines within which the approval of the House should be sought and caps the maximum amount that may be spent. It does not make any further provision with regard to what is expected of Parliament thereafter apart from noting that the House may, by resolution, increase the limit of additional spending allowed. The Article does not also set a limit within which the House is to grant or deny the approval.

Hon. Members, I further note that, in line with settled House practice, the First Supplementary Estimates for the Financial Year 2021/2022 were tabled in the House by the Leader of the Majority Party on 1<sup>st</sup> February 2022. In keeping with the requirements of the Standing Orders, they were referred to the Budget and Appropriations Committee.

The Committee was expected to conduct public participation and engage the Departmental Committees and the National Treasury in order to make relevant recommendations to the House. A perusal of the Schedule to the First Supplementary Estimates for the 2021/2022 Financial Year incorporating the recommendations of the Committee indicate that the net sum contained is a request to the House to approve the expenditure of Kshs139,752,936,287. When compared to the sum of Kshs1.942 trillion approved in the Budget Estimates for the 2021/2022 Financial Year, the supplementary figure constitutes approximately seven per cent of the approved Estimates. At face value, this seems well within the 10 per cent threshold set by Article 223(5) of the Constitution.

Let me resume my seat to allow Members to make their way in. I took my seat to allow you to come in. Have you done so?

*(Several Hon. Members walked into the Chamber)*

Very well. I will continue.

Hon. Members, what, therefore, remains in contention is whether the submissions from the National Treasury adhered to the constitutional timelines relating to Supplementary Estimates, and whether the House should approve additional expenditure of monies on projects and undertakings not contained in the approved Estimates for the 2021/2022 Financial Year.

While recommending approval of revised proposals by the National Treasury, the Report of the Committee does not delve into the issue of the contested timelines.

Though I note that with regard to previous Supplementary Estimates the National Treasury has invariably submitted most requests for approval of spending of monies not appropriated by the House pursuant to the limits under Article 223 of the Constitution, I have perused the records of the House and confirm that my office is not in receipt of any such request with regard to the First Supplementary Estimates for the 2021/2022 Financial Year.

The question before the Speaker at this stage is whether this anomaly should now vitiate the process already undertaken by the Budget and Appropriations Committee, the Departmental Committees and indeed change the entire course of the First Supplementary Estimates for the 2021/2022 Financial Year, which now awaits consideration of the Supplementary Appropriation Bill.

I am of the considered view that, whereas the Cabinet Secretary for the National Treasury has evidently failed to meet the prescribed timelines with respect to seeking approvals for the first and subsequent withdrawals, consideration of the propriety of the Supplementary items as submitted and the attendant legislation remains a task that this House cannot escape. Presently, the Standing Orders of this House do not guide on the form and manner in which the National Treasury seeks approval of expenditure in excess of the approved estimates and how several of such requests should be processed by the House, pending the submission of the consolidated Supplementary Estimates. Additionally, no procedure is currently in place on how a request made outside the timelines prescribed under Article 223 of the Constitution should be treated.

Noting the lack of an express procedure it would, therefore, be unfair for the Speaker to abrogate to himself the sole responsibility over a matter that is legislative in nature. You will recall that Article 124 of the Constitution requires the House to make rules for the orderly conduct of its proceedings. The Speaker may only refer to Standing Order No.1 relating to matters not provided for, to provide guidance where no procedure is prescribed by the House.

Pursuant to Standing Order No.1 I am, therefore, persuaded to allow the House to conclude the process of approval of the First Supplementary Estimates for the 2021/2022 Financial Year by way of consideration of the Supplementary Appropriation Bill, 2022, which is now before the House. I have chosen this option largely for three critical reasons. First, Article 259 (1)(d) of the Constitution requires any person to interpret the provisions of the Constitution in a manner that contributes to good governance. Any determination made with regard to the matter before this House ought not to terminally imperil the financing of Government on account of administrative laxity or inaction.

Secondly, I am not aware whether the Cabinet Secretary has indeed been interrogated by the Committee on the failure to adhere to the timelines relating to the requests made to this House and whether the restricted timelines for considering the Estimates allow the House adequate opportunity to obtain the required information.

Thirdly, as a non-voting Member of this House, it would be imprudent on the Speaker to solely allow what is essentially a procedural technicality to override the important objectives intended to be achieved through consideration and approval of the Supplementary Estimates. The horse seems to have bolted at this stage and the House must resolve this matter, one way or the other. The ultimate authority on the matter lies with this House.

Hon. Members, my reading of Article 223 of the Constitution requires this House to make a decision on any requests made by the national Government that are outside the Estimates approved by the House and the monies appropriated to finance the operation of Government.

Hon. Members, you will recall that Article 206(2) of the Constitution grants the House the primary role of authorising the withdrawal of any monies from the Consolidated Fund through legislation. Any request for withdrawal of monies from the Consolidated Fund or approval of monies spent from the Fund without prior authorisation may also only be done by the House. Similarly, any authorisation given to the national Government or the manner it may request authorisation for spending squarely lies with the House.

I will once again stop to allow those Members to make their way in.

*(Several Members walked into the Chamber)*

I allowed Members to make their way in but I can see that others are taking off. It seems that the Member for Kakamega has finished today's legislative work.

Hon. Members, please make your way in. You will deal with attendance matters later. Please come to the front. It is not injurious. The Members seated at the front are not harmful to you.

*(Hon. George Sunkuyia walked into the Chamber)*

Is that Hon. Sunkuyia? There are Members who like to sit near the toilets so that they can sneak out.

*(Laughter)*

As you can see, there are quite a number of spaces at the front and you do not have to hide at the back.

*(Hon. Daniel Wanyama walked into the Chamber)*

I am sure that is the Member for Webuye West.

*(Laughter)*

**An Hon. Member:** How did you know?

**Hon. Speaker:** Surely, how can you fail to identify Hon. Wanyama with his height? Hon. Kamoti is just making his way in but a villager has called him and he has now stopped to pick the call.

Let us proceed.

Hon. Members, my direction that consideration of the Supplementary Estimates and the Supplementary Appropriation Bill continues does not excuse the failings noted with regard to the Supplementary Estimates presented to this House. The obligations imposed on the Cabinet Secretary in their interactions with the House should not be taken lightly. I do remind the Cabinet Secretary for the National Treasury to strictly adhere to the timelines affecting any

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Supplementary Estimates presented to this House. Administratively, and to prevent any future non-compliance, I direct that the Clerk maintains a specific register for noting any requests for approval made by the Cabinet Secretary for the National Treasury pursuant to Article 223 of the Constitution and facilitate the timely tabling of all such requests before the House. Each request must be reported to the House by the Budget and Appropriations Committee which must confirm compliance of such requests with the timelines prescribed under Article 223 of the Constitution. This administrative direction is to be referred to the Procedure and House Rules Committee to consider its inclusion during the revision of the Standing Orders.

Hon. Members, decisions of the House granting or denying approval sought under Article 223 should be specific and unequivocal. To aid the House to make such a decision, the National Treasury should separate expenditures under Article 223 of the Constitution from any ordinary reallocations and/or additions for each Vote, under separate Schedules.

With respect to spending under Article 223, the Schedules should also indicate the amount and the purpose under each Vote and Item. The Report of the Budget and Appropriations Committee on the examination of the same should also separate these two, in addition to the Schedules of Financial and Policy Resolutions.

Further, since the Constitution expects the National Treasury to seek approval of the House within two months after the first approval, in future, the House will be at liberty to consider the approval ahead of the Supplementary Estimates for the particular year and consolidate the two at the relevant legislative stage, including at the stage of publication of the attendant Supplementary Appropriation Bill.

Hon. Members, with regard to the lacuna that is evident in the procedures of the House, as directed, I refer this matter to the Procedure and House Rules Committee. The Committee should recommend suitable text to codify the aforementioned procedure for processing requests from the National Treasury, including the registration, noting and reporting of the requests to the House and the scrutiny of the compliance of the requests with prescribed timelines by the Budget and Appropriations Committee.

I also thank the Member for Garissa Township for raising this matter and the Members who contributed to the ensuing debate for their valuable insights that undoubtedly shall enrich future interactions between the House and the Executive with regard to budgetary matters.

Hon. Members, in summary it is therefore my considered finding—

1. THAT, the request to the House to approve the additional expenditure of Kshs139,752,936,287.00 when compared to the sum of Kshs1.942 trillion approved in the Budget Estimates for Financial Year 2021/2022, constitutes approximately seven per cent of the approved Estimates which, at face value, is well within the 10 per cent threshold set by Article 223 (5) of the Constitution;
2. THAT, since Article 259(1)(d) of the Constitution requires any person interpreting the provisions of the Constitution to do so in a manner that contributes to good governance, it would be imprudent on the part of the Speaker to allow a procedural technicality to override the important objectives sought to be achieved through Supplementary Estimates. In this regard, pursuant to the provisions of Standing Order No. 1, the House shall continue with the process of approval of the First Supplementary Estimates for FY 2021/2022 by way of consideration of the Supplementary Appropriation Bill, 2022, which is now in its Second Reading;

3. THAT, the Cabinet Secretary for the National Treasury must, going forward, strictly adhere to the timelines required with respect to any future Supplementary Estimates submitted to the House;
4. THAT, in future, the decision of the House granting or denying approval sought under Article 223 must be specific and unequivocal. To aid the House to make such a decision, the National Treasury must separate expenditures under Article 223 of the Constitution from any ordinary reallocations and/or additions for each Vote, under separate Schedules. With respect to expenditures under Article 223, the Schedules must also indicate the amount and the purpose under each Vote and Item; and when the first withdrawal of the said money was made. The Report of the Budget and Appropriations Committee on the examination of the same must also separate these two, in addition to the Schedules of Financial and Policy Resolutions;
5. THAT, since the Constitution expects the National Treasury to seek approval of the House within two months after the first approval, in future, the House will be at liberty to consider the approval way ahead of the Supplementary Estimates for the particular year and thereafter consolidate the two at the relevant legislative stage, including at the stage of publication of the attendant Supplementary Appropriation Bill;
6. THAT, to avoid any future non-compliance, the Clerk shall maintain a specific register for noting any requests for approvals made by the Cabinet Secretary for the National Treasury, pursuant to the provisions of Article 223 of the Constitution, and facilitate the timely tabling of all such requests;
7. THAT, each request must be reported to the House by the Budget and Appropriations Committee which must confirm compliance of such requests within the timelines prescribed under Article 223 of the Constitution; and,
8. THAT, to address the lacuna in the procedures of the House, in its ongoing review of the Rules of Procedure of the House, the Procedure and House Rules Committee urgently interrogates the provisions of Article 223 of the Constitution and proposes relevant text for inclusion in the Standing Orders to codify the aforementioned procedure for processing requests from the National Treasury for approval of additional expenditure.

The House is accordingly guided.

## QUESTIONS AND STATEMENTS

### ORDINARY QUESTIONS

The first Question is by the Member for Luanda, Hon. Omulele.

*Question No.093/2022*

FACILITATING THE RETURN OF MS. BEATRICE AYORO  
FROM SAUDI ARABIA

**Hon. Christopher Omulele** (Luanda, ODM): Thank you, Hon. Speaker, for that wonderful ruling. I rise to ask Question No.093 of 2022 to the Cabinet Secretary for Foreign Affairs:

- (i) Could the Cabinet Secretary state the steps the Ministry is taking to facilitate the return to Kenya of Ms. Beatrice Ayoro, holder of Passport No.BK198627 who was working as a domestic worker in Najran City in Saudi Arabia but is currently sick and confined in a house with no means of communication with her family members?
- (ii) Could the Cabinet Secretary also explain the action being taken against the Directors of M/S Two Stars Safaris Limited located on sixth floor, Pioneer Plaza, Kenyatta Avenue in Nairobi, the agency responsible for the recruitment and placement of Ms. Ayoro to Saudi Arabia for failing to facilitate her return to Kenya?
- (iii) What steps is the Ministry taking to provide a lasting solution to the rampant cases of violence and inhumane treatment of Kenyans working in the Middle East, particularly in the Kingdom of Saudi Arabia?

Thank you, Hon. Speaker

**Hon. Speaker:** The Question will be duly replied to before the Departmental Committee on Defence and Foreign Relations. Next is the Member for Taita Taveta, Hon. Lydia Mizighi.

*Question No.094/2022*

REGISTRATION OF ELDERLY PERSONS FOR THE CASH TRANSFER FUND  
PROGRAMME IN TAITA TAVETA COUNTY

**Hon. (Ms.) Haika Mizighi** (Taita Taveta CWR, JP): Thank you, Hon. Speaker, I rise to ask Question No.094 of 2022 to the Cabinet Secretary for Labour and Social Protection:

- (i) Could the Cabinet Secretary state the criterion used in the identification and registration of elderly persons to benefit from the Older Persons Cash Transfer Fund Programme in Taita Taveta County?
- (ii) Could the Cabinet Secretary explain why data for a large number of older persons registered under the programme in the county since 2017 is yet to be captured in the system, therefore, denying them the benefits from the said programme?
- (iii) Could the Cabinet Secretary undertake to ensure that all the elderly persons in Taita Taveta County, registered under the programme, are duly enrolled and paid accordingly including arrears accrued since their registration, without undue delays?
- (iv) What measures has the Ministry put in place to ensure that all the eligible elderly persons aged 70 years and above in Taita Taveta County are duly registered and receive their payments accordingly?

Thank you, Hon. Speaker.

**Hon Speaker:** The Question will be replied to before the Departmental Committee on Labour and Social Welfare. The next Question is by the Nominated Member, Hon. David ole Sankok.

*Question No.095/2022*AMOUNT OF FINES COLLECTED FROM *BODA BODA* OPERATORS

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. I would like to thank you for the wise and well researched ruling that you have given, which can only be equated to the Solomonic ruling of the Supreme Court delivered today that declared BBI as dead as a *dodo*.

Hon. Speaker, I arise to ask Question No. 095/2022 to the Cabinet Secretary for Interior and Coordination of National Government:

- (i) Could the Cabinet Secretary state the total amount of money collected per county as fine from the motorcycle (*boda boda*) riders crackdown carried out across the country during the month of March 2022 and particularly starting from Tuesday, 8<sup>th</sup> March 2022?
- (ii) Considering that there are over two million motorcycles registered and operating in Kenya, which does translate to over KShs35 billion if half of them paid the KShs35,000.00 fine, could the Cabinet Secretary indicate the specific Government agency or department to which the said monies were sent including precise Appropriations-in-Aid? KShs35 billion was enough to buy “Watermelon” into *Azimio la Utapeli*.
- (iii) Could the Cabinet Secretary confirm that indeed the said monies have since been reflected in the National Treasury? And if yes, indicate under which Vote and how they have been utilised.

Thank you, Hon. Speaker.

**Hon Speaker:** Hon. Sankok, you said that the fines were imposed by the courts of law. Is it?

**Hon. David ole Sankok** (Nominated, JP): Yes.

**Hon Speaker:** It is in very rare circumstances that fines would be treated as A-in-A. But you are asking for specifics, precise Appropriations-in-Aid. Do you want this Question to be answered by the Departmental Committee on Administration and National Security?

Anyway, it is your choice.

*(Loud consultations)*

**Hon. David ole Sankok** (Nominated, JP): Ministry of Interior and Coordination of National Government.

**Hon. Speaker:** Very well. The Question will be replied to before the Departmental Committee on Administration and National Security. The next Question is by the Member for Emuhaya, Hon. Omboko Milemba.

*Question No.096/2022*

## ESTABLISHMENT OF A CIVIL REGISTRATION CENTRE IN EMUHAYA

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker, for giving me this chance. I wish to also make a quick comment: Your decision was very wise especially because it

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went for the holistic good of everyone and the country given that we need that Supplementary Budget.

Hon. Speaker, I rise to ask Question No. 096/2022 to the Cabinet Secretary for Interior and Coordination of National Government:

- (i) What measures is the Ministry putting in place to ensure that a civil registration centre is established in Emuhaya Constituency to facilitate service provision to the large population in need of registration services in the area, considering that the only registration centre that serves the area is located over 35 kilometres away in Mbale Town and is overwhelmed, as it also serves the residents of Hamisi, Sabatia, Vihiga and Luanda constituencies?
- (ii) Could the Ministry consider ensuring that each sub-county in Kenya has a civil registration centre with adequate staffing?

I thank you Hon. Speaker.

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

The last Question is by the Member for Mwatate. Hon. Mwadime

*Question No 097/2022*

CONSTRUCTION STATUS OF THE MTWAMWAGODI - WUNDANYI - BURA ROAD

**Hon. Andrew Mwadime** (Mwatate, ODM: Thank you Hon. Speaker, I wish to ask the following Question to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) What is the status of construction of the Mtwamwagodi-Wundanyi-Bura Road in Taita Taveta County?
- (ii) Could the Cabinet Secretary explain why the construction of the road has stalled and yet, funds had been allocated, and indicate when the construction works will resume?
- (iii) Could the Cabinet Secretary state the expected completion time for the said project?

I thank you, Hon. Speaker.

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

Let us have the Statement by the Hon. Leader of the Majority Party.

**STATEMENT**

BUSINESS FOR THE WEEK COMMENCING 5<sup>TH</sup> TO 7<sup>TH</sup> APRIL, 2022

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(a), I rise to give the following Statement on behalf of the House Business Committee (HBC) which met on Tuesday, 29<sup>th</sup> March 2022 to prioritise the business for consideration.

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Hon Speaker, as Members are aware, we have had a very protracted process in the consideration and approval of the report of the Budget and Appropriations Committee (BAC) on the Supplementary Estimates for the FY 2021/2022. I am happy that we were able to move this process forward. I thank you for your considered communication on this and enable the publication of the Supplementary Appropriation Bill, 2022 to actualise the financial provisions made. I urge the House to expedite this process to finality today through the passage of the said Bill.

Hon Speaker, I, however, wish to underscore that this is a very busy season for the House, in addition to the on-going activities outside Parliament. As Members will appreciate, we still have conclusion of the Division of Revenue Bill, 2022 and County Allocation of Revenue Bill, 2022, consideration and approval of the Budget Estimates for the Fiscal Year 2022/2023 and the Finance Bill, 2022 ahead of us. There may also be other Bills that need to be expedited before the *Sine Die* Recess, which is slightly more than two months from today.

In this regard, I wish to encourage Members and Committees to expedite any urgent business to give the House adequate time to consider and process it.

Hon. Speaker, on Tuesday next week, the following business has been scheduled for consideration:

1. Committee of the Whole House for the Universities (Amendment) Bill, 2021, if the Coffee Bill is not completed today.

2. Second Reading of the following Bills:

(i) The National Electronic Single Window System Bill, 2021;

(ii) The Huduma Bill, 2021;

(iii) The Children Bill, 2021; and,

(iv) The Advocates (Amendment) Bill, 2021.

Hon. Speaker, I am reliably informed that there are no questions scheduled to be answered by Cabinet Secretaries in the coming week. Once the Chairpersons finish consolidating the Questions, I shall report on that next week.

Hon. Speaker, the House Business Committee will reconvene on Tuesday, 5<sup>th</sup> April 2022 to schedule the business for the rest of the week.

I now wish to lay this Statement on the Table of the House.

I thank You, Hon. Speaker.

*(Hon. Kimunya laid the Statement on the Table of the House)*

**Hon. Speaker:** I see there are some Members who are putting in some interventions. However, I want to plead with ourselves that if we know the processes and if the House approves the Supplementary Appropriations Bill, both in Second Reading and the Committee of the whole House, then it will be read a Third Time and that will conclude its consideration.

Remember it has to be taken to the Government Printer for printing and thereafter the warrants. People think that you just pass the Bill and the money starts flowing. There will be warrants which will be drawn by the National Treasury so that some of the issues that you have been raising; it is those warrants which will authorise the withdrawals.

However, they also have to be based on the authority of the Supplementary Appropriations Bill, which is the reason why we were appealing to as many of you as possible to, at least, remain around so that you can finish this. If you push it to next week, it also delays

some of the things that you may want to have. If we conclude by tomorrow, the process of assent and signing of the warrants can be completed, so that you can begin doing your other things; including sorting out your constituencies as soon as possible.

Though I see a few of you have put intervention requests, please ensure that your intervention does not go beyond two minutes. We will ask the Clerk to ensure that it remains so.

I see the Member for Nyando has an intervention.

**Hon. Jared Okelo** (Nyando, ODM): Hon. Speaker, I thank you for giving me the opportunity, and I regret taking you back.

As you were reading the ruling, I was pricked to say something; and that is by applauding you for such a very important ruling that you have come up with. We had found ourselves in a ditch going by the Question raised by Hon. Aden Duale, but I thank you for wiggling out. It had the potential to create a gridlock for the entire country.

Hon. Speaker, one thing that I appreciate is your recognition of Article 159 of the Constitution that, Justice shall be administered without undue regard to procedural technicalities. I thank you for bringing that forth and for creating a pathway going forward that we shall not be in such a similar ditch. However, I also reckon that Corona virus may have also interfered with our Calendar to a large extent and that calls for extraneous circumstances hence extraneous interventions. Therefore, we may have overlooked certain things not because we wanted to, but circumstances dictated so.

I thank you, Hon. Speaker.

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

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you Hon. Speaker. As the House Business Committee reconvenes next week on Tuesday, my prayer is that I have a Bill which has taken long - the Kenya Food and Trucks Authority - which is a very important Bill. It will be an injustice to this nation if that Bill is not sorted out. It is now at the Committee of the whole House, and I would wish that it be scheduled.

Secondly, based on today's Supreme Court Ruling; I also had a referendum Bill which has gone through the Budget and Appropriations Committee and it has been approved. I would wish that also the Referendum Bill be scheduled by the House Business Committee because it is a very important Bill. This is so that in future when we decide to do a referendum, then we will have a law that can guide the process.

I thank you Hon. Speaker.

**Hon. Speaker:** Hon. Sankok, you also have an intervention or that was the original one?

**Hon. David ole Sankok** (Nominated, JP): Yes, Hon. Speaker. I just wanted to congratulate you for that wise ruling. I will love it as a Kenyan. We respect the ruling, but the HBC should expedite most of the Bills.

Hon. Speaker, the ruling in the Supreme Court also concurs well with yours. It is a good ruling and we thank the Judges. The "Handshake brothers" love you Building Bridges Initiative, but Kenyans hated you more. Rest in peace, Building Bridges Initiative (BBI)!

**Hon. Ndindi Nyoro** (Kiharu, JP): On a point of order, Hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, this is not the right forum for this debate. Hon. Ndindi Nyoro.

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**POINT OF ORDER**

## SUPREME COURT RULING ON BBI

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much, Hon. Speaker. I rise on a point of order to seek your indulgence. I know that this is not procedural. That is why I seek for your indulgence through Standing Order No. 1. We had a monumental ruling today by the Supreme Court of Kenya. This is a process that came to this House.

I seek your indulgence. We need a Motion for Adjournment for a few minutes to ventilate and congratulate our Judiciary, following the very good ruling that they gave today. As citizens of Kenya, you are aware that this process was marred with a lot of unconstitutionality. A lot of public funds were spent in this process. The ruling today was that the President is immune. That does not also confer immunity to the many public servants who were engaged in this illegal and unconstitutional process like the Principal Secretary for Interior and Coordination of National Government. He told Kenyans that they would swallow that process like malariaquine. That is why I seek your indulgence for us to ventilate and congratulate our Judiciary for this very good ruling that they gave today. It has stopped the BBI reggae shenanigans and the conman-ship that wrapped the entire process.

Hon. Speaker, I seek your indulgence under Standing Order No. 1 that we ventilate and add our voices on this very important ruling.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Yes.

**Hon. Members:** Yes.

*(Several Hon. Members spoke off-record)*

**Hon. Speaker:** Hon. Members, Standing Order No. 1 only applies where there are no specific provisions. If you had intentions of moving a Motion for Adjournment, you could have brought it to me and you know within which timelines. I am surprised because the Member for Suba North is saying, “yes” all of a sudden. I know her to be a strict observer of the rules. Hon. Ndindi, unfortunately, it cannot happen now. Nothing stops any of you, even outside on the streets, to go and congratulate the Judiciary. We also have a media centre here.

Hon. Otiende Amollo.

**An Hon. Member:** Hon. Speaker, my system is not working.

**Hon. Speaker:** Even Hon. Otiende Amollo’s system is not working.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. The Supreme Court decision excites a number of Members, especially those who do not understand the law like Hon. Sankok.

*(Laughter)*

Allow me to inform Hon. Sankok that, contrary to his celebration, he should be mourning. Out of seven fundamental points, the Supreme Court allowed five grounds.

*(Applause)*

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The fundamental importance is that it has set the stage for reggae to resume immediately after the elections.

Thank you.

*(Applause)*

*(Loud consultations)*

*(Hon. (Ms.) Odhiambo-Mabona danced in the Chamber)*

**Hon. Speaker:** Hon. Members, you are introducing a language that is not applicable in the House; reggae.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Reggae *bado iko*.

**Hon. Speaker:** Hon. Millie Odhiambo, you are already doing a jig.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker. Let me also add my voice to this issue. When people do not understand the import of a ruling, it is sad sometimes. The most dangerous concept that was raised in that process was the basic structure doctrine. If the courts had allowed it, reggae would be as dead as a dodo. The basic structure concept equates the Constitution to a Bible or Koran that cannot be amended at all. The judges have said that we should do it in the right way. Reggae is back. All we need to do is go on in August and reggae will be back.

*(Laughter)*

**Hon. Speaker:** I will hear the last comment from the Member for Kitui South.

**An Hon. Member:** On a point of information, Hon. Speaker.

**Hon. Speaker:** Whom are you informing? You cannot inform somebody who does not want to be informed.

**An Hon. Member:** He wants to be informed.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you very much, Hon. Speaker for giving me a chance to also make a comment. I was not as excited as Hon. Sankok and Hon. Ndindi. As much as I am not a lawyer, by sitting in this House, I understand processes, procedures and products. I believe that they should not celebrate. Five fundamental points out of seven is wonderful.

Kindly, give me a chance to make a comment on your ruling which was very good. We have understood it. You have taken us through the process of the Supplementary Estimates which was good. We have identified the areas of weakness. You have given us a very good way forward. The Cabinet Secretary for the National Treasury must adhere to timeline in the future. You have given us areas where there is lacuna in law which needs to be handled.

As the Member for Kitui South, I was shocked because Members were shouting loudly that the national Government can spend, under Article 223 of the Constitution, more than 10 per cent of the sum appropriated by Parliament for a particular financial year. That is what they kept on saying. It is only 7 per cent. We would like to thank you very much. Continue guiding this House. May God give you many more days, so that you continue giving us guidance.

Thank you, Hon. Speaker.

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**Hon. Speaker:** Member for Samburu County.

**Hon. (Ms.) Maison Leshoomo** (Samburu (CWR), KANU): Ahsante sana, Mhe. Spika. Wanasheria wamefanya kazi katika BBI. Naunga wenzangu mkono. Kulingana na vile Mahakama imesema kuhusu sheria ya BBI, hakuna mtu anaweza sema tumeshinda ama tumeshindwa. Wanasheria wamefanya kazi yao. Maoni ni ya wananchi. Bado tunatarajia BBI itarudi na itakuwa sawa. Wale ambao wanataka kusherehekea, wafanye hivyo kama kawaida. Wanasherehekea kitu ambacho hakina mguu, mbele na nyuma. Washerehekee, lakini BBI bado iko kwa laini.

Ahsante, Mhe. Spika.

**Hon. Speaker:** The Member for Alego-Usonga also wants to weigh in.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Speaker. I want to applaud your ruling on the issues which were raised by Hon. Duale on the constitutionality of the Supplementary Estimates. After Baba serves for 10 years, you can take over.

*(Laughter)*

There is the issue of Article 223 of the Constitution which we all agree that it has been abused by the National Treasury in the past. They spend resources which should not be applied in Article 223 of the Constitution. This is something which this House must take note of. More fundamentally is that the National Treasury must abide by the constitutional regulations on when to notify Parliament when they spend resources under Article 223 of the Constitution. This is very substantial. I urge the various Departmental Committees to ensure that the National Treasury applies your ruling. There was a time the Salaries and Remuneration Commission (SRC) spent resources according to Article 223 of the Constitution. When the matter was brought before the Departmental Committee on Finance and National Planning, we refused to approve it. But the National Treasury refused to punish them. What we want to do is that we must ensure that this House applies the Ruling you have given.

Secondly, on Building Bridges Initiative (BBI), I echo the sentiments of my sister, Hon. Millie Odhiambo that, indeed, we are very happy. *Baba* has said that BBI will be back. “Reggae” will be back as soon as *Baba* is sworn in as the 5<sup>th</sup> President of the Republic of Kenya.

Thank you.

**Hon. Speaker:** Hon. Members, that should suffice so that we go back to business. Many of you are walking out. They have forgotten the issue about the Supplementary.

I am sure, many of you would applaud the fact that it has now been settled and it is now trite law; that what is contained in Article 255 of the Constitution with regard to which Articles may be amended in which way and what is contained in Articles 256 and 257 of the Constitution. It has been settled by the highest court on the land. Therefore, finding the basic structure principle is not universally acceptable and that it is only applied in a few jurisdictions is important.

*(Applause)*

Indeed, that Ruling agrees with some of the Rulings we have made here. If you recall, Members raised issues here when the Bill was here, our own Ruling here with regard to the power of the House and the power of any Member to move amendments has been restated. It is

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good for the country. For me, that is important. The issue of immunity, too! Those two issues were very crucial for me. The rest are the usual things that we can do and the Member for Suba North said they can be dealt with at an appropriate time. That is important.

Let us go to the next Order, the critical business of the day.

## BILL

### *Second Reading*

#### THE SUPPLEMENTARY APPROPRIATION BILL

**Hon. Speaker:** Chairman, Budget and Appropriations Committee.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I start by thanking you for the Ruling you have given. It is timely, Solomonic and something that I have been grappling with. But as you know, this is a House of precedence and procedures. We found it happening, we tried to help the situation, but we are happy, Hon. Speaker, that you have been firm. I want to assure you because I believe that there would be other supplementary budgets that will be becoming our way. We will make sure that the rules and procedures are followed to the letter. I want to inform Members that last week, we concluded the debate on the Supplementary Budget.

Hon. Speaker, I beg to move that the Supplementary Appropriation Bill (National Assembly Bill No.14 of 2022), be now read a Second Time.

As I move, the critical issues that are highlighted in the Supplementary Budget 1, is that we have put the Kshs4.9 billion that were in arrears for the National Government Constituencies Development Fund (NG-CDF). We have made the funds available and we will, with the conclusion of this debate and the assent of the Bill, definitely mean the funds should be disbursed to respective constituencies. I understand each constituency is supposed to get about Kshs12 million.

The fuel crisis that has hit the world has not spared Kenya. If we compare the fuel prices between Kenya and our neighbouring countries, we find that our fuel prices are a bit lower. For example, vehicles from Uganda fuel in Kenya. That tells us that fuel prices in Kenya are far much lower. I have already confirmed that in Uganda, it costs about Kshs160 whilst in Kenya, it is about Kshs130. That is courtesy of the fuel stabilisation which from the calculations we got from last week, we spend about Kshs8 billion going to Kshs10 billion. Those are some of the funds we have made sure we allocate.

There is the issue of pending bills. Pending bills have been a cancer in this country which has brought many companies down; companies that supplied Government and government agencies, but have not been paid. We have tried as much as possible to push for those payments. It is not good enough but, at least, we have tried in this Supplementary Budget.

The COVID-19 pandemic is still with us. Many people may have forgotten that. There are so many interventions which are being done to address COVID-19 related interventions.

In this Supplementary Budget, the Government will construct 50 new Level 3 hospitals. The 50 new Level 3 hospitals will be constructed in each of the 47 counties. This is after the very successful implementation of the same in our informal sector. If you go to Kibra, Mukuru kwa Njenga and all the informal settlements here in Nairobi, you will find a Level 3 hospital. Patients who were going to Kenyatta National Hospital no longer go there and it is no longer congested

because the new Level 3 hospitals that have been done in Nairobi through the Nairobi Metropolitan Service (NMS) have offloaded the many patients that were going to Kenyatta National Hospital. The Government has seen it fit to replicate the same in all the 47 counties and three in some of the informal settlements.

I also inform this House that we have also put provision for alleviating the famine and hunger in the country. There have been failed rains for the last one year. We have appropriated funds to make sure that we alleviate that situation.

This is just a repetition of what we discussed last week.

Without saying much, I beg move. I request the Majority Whip, Hon. Wangwe, to second.

**Hon. Speaker:** Hon. Wangwe.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Speaker, I beg to second the Supplementary Appropriation Bill (National Assembly Bill No.14 of 2022).

This Bill is going to lessen the heavy shocks that exist in the country today. Most of us are experiencing constraints in what we consume because the production or suppliers to the Ministries have not been paid because there is no money. Therefore, I urge my colleagues that we pass this Supplementary Appropriation Bill very fast this afternoon so that money trickles down quickly and we stabilise the challenges existing in the country. Those trading with Ministries and Semi-Autonomous Government Agencies (SAGAs) say there is no money. Once there is no money in Government, it means generally that the private sector does not have money at all. Therefore, it is important that we push this Supplementary Appropriation Bill so that we get everything stabilised in the country.

The amount that is being proposed in this Bill is the Kshs4.9 billion that is going to the NG-CDF. We are towards the end of our term and it is important that all the pledges made are achieved by all our colleagues notwithstanding those who will come back and those who will not. It is important that they fulfil what they pledged to the constituents and it is good that the amount is put in the Budget.

I would not want to take most of the time as my Chair has said.

I now wish to second. Thank you.

**Hon. Speaker:** Member for Samburu North. No! I am not giving you a chance to speak. I am sure the Member for Samburu must have been conversing in the local *lingua* where he was and so he did not hear what was being...

*(Question proposed)*

**Hon. Members:** Put the Question.

**Hon. Speaker:** I hear that there is a proposal I give two Members the opportunity to speak. Very well! Where are the two members? Hon. Shamalla, do you want to contribute?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Speaker. I have listened carefully to the Chairperson of the Budget and Appropriation Committee. I recognise and appreciate that pending bills must be settled. This is important because we will have money circulating within the economy.

However, there is one thing that deeply concerns me and my heart was aching when Hon. Florence Mutua, the woman Representative for Busia County, was discussing the slashing of

funds from the schools feeding program. This concerns me because it is about children. Children need to be nourished; they must be healthy and developed in order for them to learn. Then I saw online a recurrent expenditure of Kshs500 million under the National Land Commission (NLC). I even brought an amendment to the effect that this amount be removed and taken to the schools feeding program. It was on this premise and under the access to information because food is a basic human right. What was this recurrent expenditure which has now been reduced from Kshs500 million to Kshs250 million and why was it such a bigger priority than feeding the children of Kenya?

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

**Hon. Alois Lentoimaga** (Samburu North, JP): Thank you, Hon. Speaker. I support this Supplementary Appropriation Bill. It is important to fast-track it because where I come from, we are facing serious drought. There is no water or food for our people. The Government had stopped the supply of relief food to pay for cash-transfer which is also not available because registration has not been done. I hope this Bill will go ahead and fasten the supply of cash instead of food stuff, and to also alleviate the hunger that our people are facing. Parents do not have school fee and we are re-opening schools in the next one month. This money should be refocused to cash-transfer so that parents can get fees for children.

Hon. Speaker, the other thing is about the Equalisation Fund. It is almost four years now and we have not received the funds. Yet, there were some projects which were awarded already. The works have not started because the contractors are not sure whether they are going to get the money or not. This Bill will assist in disbursing money for the Equalisation Fund.

On the issue with the Constituency Development Fund (CDF), I want to thank the Chairman and the Committee for remembering the outstanding and pending bills that were done by CDF committees in the previous years. This will assist in availing money to the local people for circulation among the communities within our areas.

The last issue is on insecurity. We are still facing a lot of problems. If you watch news, we have been having problems in Northern Kenya, especially where I come from and even in our neighbouring counties of Baringo, Elgeyo Marakwet and West Pokot. I hope that this money will help in beefing up security in those areas. We still feel that the Government is not providing enough especially in terms of police in that region. We still feel that the police are not able to contain the insecurity in Northern Kenya, especially in the Rift Valley areas like Suguta Valley and its environs. As leaders from that region, we feel like the National Police Reserve (NPR) can back up the local police. If they can recruit, vet, train and support them with some allowance like what they have been doing before, then the issue of insecurity in those areas can be addressed. I see that this Supplementary Appropriation Bill has allocated money to the Ministry of Interior and Coordination of National Government. I hope that money will assist in providing and supporting policing in that area and in assisting *nyumba kumi* and all the stakeholders helping the Government to reduce insecurity.

Otherwise, we need to urgently address the supply of water and food for our people. Thank you, Hon. Speaker.

**Hon. Speaker:** There was an indication that...

**An Hon. Member:** There was nobody on the left.

*(Hon. Ferdinand Wanyonyi raised his hand)*

**Hon. Speaker:** I can see the Member for Kwanza. It is only that he is raising his hand very half-heartedly. Hon. Kevin Wanyonyi, are you sure you want to contribute?

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you very much, Hon. Speaker for the opportunity to contribute to this Supplementary Appropriation Bill. As mentioned by the Chairperson, we have a serious problem of fuel in this country. Coming to Nairobi from Western was an issue for me. I had to fuel my vehicle thrice at a very high price. I do not agree with the Chairman saying that our fuel prices are lower than those in Uganda. He should ask me because we have people going to Uganda to fuel. The Chairman was wrong because fuel prices in Uganda are lower than in Kenya. I say this because I come from the border and I know what is happening. It is good that you have allocated money to that sector.

The other thing is that, it is a bit unfortunate that in this Appropriation Bill, we do not have money for the seeds and fertilisers for the farmers in western Kenya. The rains have delayed and we have a problem as far as farming is concerned because the prices of fertiliser are very high. I have not read this Bill in detail and I hope that there is some subsidy money for the farmers.

All in all, I support this Bill and I hope it will trace some of the issues affecting Kenyans. For example, issues to do with fertiliser, fuel and CDF. He has mentioned that they have allocated money for the incomplete CDF projects. I think this Supplementary Appropriation Bill has addressed that. I hope that helps those who are depending on completion of projects of the National Government Constituencies Development Fund (NG-CDF), and that the projects will be completed in good time. As we know, the election period is just around the corner.

I support.

**Hon. Speaker:** Hon. Members, we need many of you here. I can see everybody is just walking away. Let me hear the Member for Othaya.

**Hon. Gichuki Mugambi** (Othaya, JP): Thank you, Hon. Speaker. I stand to support the Bill, more so the critical areas the Bill has addressed and, particularly the NG-CDF - the Kshs4.9 billion. This is the time we need those funds to support parents who are about to take children back to school. I am sure our Hon. Members will appropriate enough money for bursaries because we know that there are difficulties down there. The cost of living is for sure high. The only way to support our population is through interventions like bursaries and the other areas.

I also appreciate the inclusion of over Kshs400 million to pay pending bills. This will go a long way in ensuring that there is money in circulation. It will also support contractors who are certainly suffering a lot when they are not paid on time.

I also applaud your solomonic Ruling on the issue of Article 223. Going forward, it is very important that Article is fully observed by the National Treasury. It will go a long way in ensuring that we consider all matters during budgeting. It is during budgeting that we do real planning so that we do not leave many critical projects unfinanced or do them haphazardly. It is very important you have given that Ruling, particularly the procedure of accommodating requests from the National Treasury. For sure, there was no procedure on ensuring that every request comes to this House for approval within the two-month period. I think we will take advantage of your Ruling today to ensure that this House, which is a budget-making House, is fully involved in all that goes on in the budget-making process. It is a Ruling that we all need to applaud.

I support.

**Hon. Speaker:** On public demand, let us have the Member for Kiharu.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much, Hon. Speaker. I understand most of my colleagues contributed last week. I thank you for giving me this opportunity because, maybe, I was attending to other issues last week.

At the onset, supplementary appropriation across the world should be for the unseen. But in Kenya, it has become perpetual there has to be a Supplementary Budget every time we need the main Budget, most of whose breadth covers just the normal things. We should uphold what the supplementary appropriation across the world should cater for. That is for the unseen and some things that could not be put in the main Budget. Going through the many Supplementary Budgets, we have passed in this House in the recent past, there is always an increment of funds to the security sector. Even in the last like three years, there has been perpetually increment of funds to the Nairobi Metropolitan Services (NMS).

If you look at the main Budget, we have always increased our budgeting in these two main areas. The reason I am speaking about these two areas is that, in this time, we slashed some of the money meant for the School Feeding Programme and increased money to the security docket. Looking through what we are increasing, we increased around Kshs500 million to Huduma Namba, a project that does not necessarily benefit the Kenyan people.

Also, it would have been my wish that we looked at our farmers in terms of lowering the prices of fertiliser. As I said, when I was moving my amendment to this Supplementary Budget, we needed to lower the prices of inputs for agriculture, mainly fertiliser. We need to be seen as people who understand what Kenyans are going through. Coming here to increase money for Huduma Namba and at the same time not think about our farmers, especially by lowering the prices of fertiliser, is very insensitive.

We as a country need to bite the bullet when it comes to pending bills. It has become a chorus that every time we are talking about the budget-making process and every time the President addresses the nation, we keep referencing pending bills. I do not think our words match our actions. It is because there are many vendors out there and people who have done business with Government who are wallowing in poverty because they are everywhere chasing their payments after doing business with Government. We need to look at this issue of pending bills with finality. I wonder why we are introducing new projects which are not of an emergency nature, yet there are so many people who have done business with Government and they are owed colossal amounts of money by the Government. The issue of pending bills is very important to the velocity and circulation of money in our economy. In the long run, this hurts our economy even at the bottom.

The issue of debt that I keep talking about here is very important when you are talking about budget-making and even as we talk about supplementary appropriation. Generally speaking, the amount of money our country is using and we are appropriating just to pay interest rates on our loans has exceeded the amount of money we pay for salaries to our civil servants.

As a House and nation, we need to be very mindful of fiscal prudence. We have over borrowed. I have said in this House that even after we input the cap of Kshs9 trillion, if we tabulate the amount of money that has been borrowed directly by the National Treasury, including the other monies like the fall-back position of the PPP and the guarantees, we are exceeding the Kshs11.9 trillion. This is unsustainable in the long run. As I said, we cannot be a borrowing nation. Many people in this House always argue that most economies actually borrow. Most of us cite the USA and even Japan. But, our conditions are different. In a country like Japan that has over borrowed by beyond 200 per cent of their GDP, they lend to other countries.

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But our borrowing is one way. We only borrow. We do not lend. I think we need to be very mindful of fiscal prudence in this nation. We should borrow what is sustainable. We should try to budget within the limits of our revenues.

With that, I submit.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I rise under Standing Order No.95 and request that the Mover be now called upon to reply. We had agreed that we shall have two Members from that side and two Members from this side contributing. Since most of the contributors are in agreement with the Supplementary Budget Estimates, we can proceed to the Committee of the whole House to do the necessary tidying up.

**Hon. Speaker:** Before I put the Question on Standing Order No.95, I want to go back to Order No.6 because of certain businesses that are bearing between the two Houses to allow the Chairman of the Budget and Appropriations Committee to give notice so that the business can be put on the Order Paper for Tuesday.

### NOTICE OF MOTION

#### REPORT OF MEDIATION COMMITTEE ON COUNTY GOVERNMENT GRANDS BILL (SENATE BILL NO.35 OF 2021)

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

Report on the Mediation version of the County Government Grand Bill, Senate Bill No.35...

**Hon. Speaker:** The notice is that this House adopts the Report. If it goes to that *Hansard* as is, it will look like...

*(Laughter)*

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I take it back. I beg to move that this House adopts the following Motion.

**Hon. Speaker:** You are giving notice. You are not moving.

**Hon. Kanini Kega** (Kieni, JP): Sorry. Report of the mediated version of the...

**Hon. Speaker:** No! Hon. Kanini. Please, is it that it is not written? It is so simple. That, you wish to give notice of the following Motion:

That, this House adopts the Report of the... It is so simple.

**Hon. Kanini Kega** (Kieni, JP): Hon. Speaker, as you know, today we are handling so many things.

**Hon. Speaker:** I know but we do not want people to look at our *Hansard* Records and find something funny.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker, for your indulgence.

I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the County Government Grands Bill, Senate Bill No.35 of 2021 laid on the Table of the House today and approves the mediated version of the County Government Grands Bill (Senate Bill No.35 of 2021).

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Sorry for the mix up.

**Hon. Speaker:** Very well. We go back to the current Motion. The Member for Endebess rose in his place and claimed to move under Standing Order No.95 that the Mover be called upon to reply. I want to find out the mood of the House.

*(Hon. Jimmy Angwenyi spoke off record)*

That mood of the House is not found in Kitutu Chache North. It is found in the chamber here.

*(Laughter)*

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

**Hon. Speaker:** As you can see, it is not in Kitutu Chache North. Hon. Kanini Kega.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I want to thank everyone who has contributed. I have heard their concerns and I will make sure that they are addressed either in Supplementary II or the Estimates that we will be considering in a few days to come. I also want to notify the House that I will be moving some amendments on the First Schedule in the Committee of the whole House.

I beg to reply.

**Hon. Speaker:** Very well. Hon. Members, I have been informed that we still have quorum. Thank you for staying this far.

*(Applause)*

I beg you to, please, continue both in the Committee of the whole House and during the Third Reading.

*(Question put and agreed to)*

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

**Hon. Speaker:** Before we move to the next Order, the Chairman of the Departmental Committee on Agriculture and Livestock had an intervention. Where is the Chairman of the Departmental Committee on Agriculture and Livestock? He has placed an intervention. Member for Moiben.

**Hon. Silas Tiren** (Moiben, JP): Thank you, Hon. Speaker. I was caught unaware. My request is on the issue of coffee amendments. We signed them yesterday and we are not ready. I am requesting for deferment until next week.

**Hon. Speaker:** You are not ready?

**Hon. Silas Tiren** (Moiben, JP): Yes, Hon. Speaker. We signed it yesterday and I am surprised that it is on the Order Paper.

**Hon. Speaker:** Very well. The Chairman had contacted me earlier, before lunch, and indicated that he may be unable to move the amendments in the Committee of the whole House on this Bill. Hon. Tiren, be ready then on Tuesday next week. The Bill must come. We need to clear as many of these Bills as possible, so that they can go to the other House to conclude the bicameral consideration of Bills.

Hon. Members, when we go to Order No.12, the business appearing as (ii) has been deferred to Tuesday next week. It will not be considered in the Committee of the whole House. The Committee of the whole House will only consider what appears as (i).

*(Consideration of Coffee Bill (Senate Bill No.22 of 2020) in  
Committee of the whole House deferred)*

Next Order.

### COMMITTEE OF THE WHOLE HOUSE

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Hon. Christopher Omulele) took the Chair]*

### THE SUPPLEMENTARY APPROPRIATION BILL

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Order, Hon. Members! We are now in the Committee of the whole House to consider the Supplementary Appropriation Bill (National Assembly Bill No.14 of 2022).

*(Clauses 2, 3, 4 and 5 agreed to)*

### *First Schedule*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Chair, there is an amendment to this. Proceed.

**Hon. Kanini Kega** (Kieni, JP): Thank you. Hon. Temporary Deputy Chairman, from the onset, I would like to mention that under Vote D1091-0202000 - Road Transport Programme. There is a proposed reduction of Kshs1 billion from the resources in the annuity road programme and an increase of the same Kshs1 Billion to low volume seal roads and critical roads interventions. This was inadvertently left out as we were concluding the amendments to the Motion on the Report of the Supplementary Estimates. It has nil effect because basically it is moving from within the same Vote.

Hon. Temporary Deputy Chairman, I beg to move:  
THAT, the First Schedule be amended—

- (a) in respect of Vote D1091 (State Department of Infrastructure) under Programme 0202000 (Road Transport) by deleting the expression “Kshs3,438,000,000” and substituting therefor the expression “Kshs3,138,000,000”.

The justification is to cater for budget realignment on account of allocation that was wrongly added as we concluded the consideration of the Supplementary Estimates. Do I do all or one by one?

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): It is in the same Schedule, and so, you can proceed with all of them.

**Hon. Kanini Kega** (Kieni, JP): Thank you.

- (b) in respect of Vote D1109 (Ministry of Water, Sanitation and Irrigation) under Programme 1017000 (Water and Sewerage Infrastructure Development) by deleting the expression “Kshs956,500,000” and substituting therefor the expression “Kshs1,206,500,000”.

The Justification is to cater for the realignment on the account of an allocation that was wrongly left out and included in the transport budget as we concluded the consideration of the Supplementary Estimates. The figures that have moved from roads are the actual figures that came to water.

*(Loud consultations)*

- (c) in respect of Vote D1222 (State Department for Regional and Northern Corridor Development) Infrastructure) under Programme 10130000 (Integrated Regional Development Program) by deleting the expression “Kshs850,000,000” and substituting therefor the expression “Kshs900,000,000”.

The purpose of this amendment is to cater for the budgetary realignment on account of an allocation that was wrongly left out and included in the transport budget as we concluded the consideration of the Supplementary Estimates.

- (d) in respect of Vote R1214 (State Department for Youth Affairs) under Program 0711000 (Youth Empowerment) by deleting the expression “Kshs29,628,874” and substituting therefor the expression “(Kshs8,437,371)”.

The purpose is on account of the need to realign the Vote Head in the correct categorisation from recurrent to development.

- (e) in respect of Vote D1214 (State Department for Youth Affairs) under Program 0711000 (Youth Empowerment) by deleting the expression “Kshs2,129,268,901” and substituting therefor the expression “Kshs2,167,335,146”.

The justification of the amendment is on account of the need to realign the Vote ahead in correcting the categorisation of development to recurrent. Those are the amendments.

Thank you, Hon. Temporary Deputy Chairman.

*(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)*

*(Programmes 0202000, 1017000, 10130000 and 0711000 as amended agreed to)*

*(The First Schedule as amended agreed to)*

*(The Second Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Mover to move reporting.

**Hon. Kanini Kega** (Kieni, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Supplementary Appropriation Bill (National Assembly Bill No.14 of 2022) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker (Hon. (Ms. Jessica Mbalu)) in the Chair]*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, can we have the Chairperson to report to the House.

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE SUPPLEMENTARY APPROPRIATION BILL**

**Hon. Christopher OMulele** (Luanda, ODM): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Supplementary Appropriation Bill (National Assembly Bill No.14 of 2022) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Mover of the Bill to move agreement with the Report.

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

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Kimunya for seconding.

**Hon. Amos Kimunya** (Kipipiri, JP): I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Mover of the Bill to move the Third Reading.

**Hon. Kanini Kega** (Kieni, JP): Hon. Temporary Deputy Speaker, I beg to move that the Supplementary Appropriation Bill (National Assembly Bill No.14 of 2022) be now read the Third Time.

I request Hon. Kimunya to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I thank the Members for the effort and time they have put in the processing of this, and sacrifices made despite the other onerous responsibilities calling out for them out there, so that we can give Kenyans a break in terms of financing of activities.

I second.

*(Question proposed)*

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have a comment.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me hear Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. I beg your indulgence and I will not take much time. I want to congratulate the Chairman and Members of the Budget and Appropriations Committee. I also want to point out that, indeed, the Communication the Speaker made is well informed. Whenever the National Treasury goes against the law, we have a precedent in the BAC refusing to approve anything that is ultra vires to Article 223 of the Constitution. You will remember this House declined to approve the payment of Kshs1.5 billion for the Ruaraka land. That is a record before this House. I want to encourage the Committee to in future reject anything that is ultra vires to the Constitution. This House has a mandate of rejecting such proposals. The matter will then go to the Public Accounts Committee. It is my hope that PAC and other investigative agencies will get to the root of the Ruaraka land case. This House disapproved the payment of the Kshs1.5 billion. Therefore, action should be taken against the Ruaraka land thief and his collaborators.

With those remarks, I support.

**Hon. Members:** Put the Question.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The mood of the House is that I put the Question. I have confirmed that the House is properly constituted.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

## BILL

### *Second Reading*

#### THE ELECTIONS (AMENDMENT) BILL

*(Hon. Amos Kimunya on 30.3.2022)*

*(Resumption of debate interrupted on 30.3.2022)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): This is resumption of debate interrupted on 30<sup>th</sup> March 2022 during the Afternoon Sitting. Top on the request list is the Member for Navakholo. I have confirmed that the Leader of the Majority Party was moving the Bill.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I had started moving the Bill. I had identified its four key objectives and I do not need to repeat them. I was discussing the third objective, which is the extent to which this Bill seeks to align the Act with the court judgments that have been made following challenges with previous elections. I did indicate that as a result of the judgment in the Katiba Institute decision, Section 39(1)(c), (d), (e), (f) and (g) were declared invalid for being unconstitutional. I did indicate yesterday that the risk we still have is that these provisions still look as if they are part of the Act. Anyone downloading the Elections Act (No.24 of 2011) will still find these provisions. Until Parliament pronounces itself on what provisions to be deleted from the law book, they will still remain there. They are redundant provisions, but they are still part of the Act. This Bill seeks to expunge them from the law books because the courts have declared them unconstitutional.

In terms of Section 39(1)(c)(a), the court was unhappy with the way it is worded. Consultations between the Attorney-General's office and the IEBC as the primary stakeholders have come up with a new formulation to entirely replace the provisions with a more systematic formulation that starts from the polling station. The court did underscore the primacy of Forms 34A and 34B. Results declared at the polling station are final. The Bill seeks to capture the flow of results. Once results are announced at the polling centre, the presiding officer will electronically transmit the image of the results directly to the national tallying centre and will also manually transmit the same to the constituency tallying centre. The constituency returning officer is then required to collate the constituency results and declare the winner and physically deliver the collated results to the national tallying centre. The job of the Commission is to verify, tally and declare results of the presidential election.

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You will note that in the same section, there is a provision which requires the IEBC to publish the polling station results forms on a public portal maintained by the Commission. This is part of the challenges that we witnessed. That has been removed so that we let the Commission do what it has to do and announce results in accordance with the Constitution. The issue of provisional results has raised emotions unnecessarily. People get into the portal and pick what they want to see. Some media houses hype what they want to see. It is the hyping of results that causes unnecessary tensions among the people. When results move in the direction they do not want, the standard conclusion of the Kenyan people is that the election is being rigged. We want the process to be the same as at the constituency level. All results should come in and be tallied. There is no reason why candidates should not do their own tallying individually from their agents. But we should not have the hype. I believe that is why the court prohibited live transmission by the media because it was causing unnecessary tension. We saw what happened in 2007 and 2017. We should also note that, according to the IEBC, there are about 11,000 polling centres that do not have 3G coverage to facilitate electronic transmission of results. Waiting for results while creating hype causes problems.

This was also in the 2017 election petition where the court decreed that the final election results was what was contained in the election declaration forms, which are the primary document and I have explained that. Further, the court took issue with some of the amendments then which had been introduced in 2016. These are the ones that were declared unconstitutional that had eliminated the term “prescribed form”. So, we are reinstating that form in the prescribed form not just any form. So, the main issue that the court had warranted the declaration of invalidity of Section 39 was failure to indicate the results to be submitted in the prescribed form, which is the famous Form 34A series at the polling station, Form 34B at the constituency tallying centre, and I believe Form 34C at the county. So, that 34 series is important and it must be in the prescribed form not just results being transmitted. That is what the court ordered. Basically, if you allow me to quote part of that decision in the court, the Judge observed that:

“The problem in so far as I can see is with regard to transmission of results from polling stations to the constituency, to the national tallying centres as required by the New Section 39(1)(c)(a).”

That section states thus:

“For purposes of a presidential election, the Commission shall electronically transmit and physically deliver the tabulated results of an election for the president from a polling station to the constituency tallying centre and to the national tallying centre.”

So, what the Judge observed then is first is that there is no requirement for the results to be transmitted in any prescribed form, which was an essential requirement in the deleted subsection. This was also an essential safeguard that guaranteed verifiability, transparency and accountability of the election results transmitted from polling centres, to the constituency and national tallying centre. This is made even more troubling by the fact that results will also be physically delivered to the constituency and national tallying centre, but in no particular prescribed form. This not only opens the results to possible adulteration and manipulation, but also mischief. The amendment obviously reverses the gains the country had made in electoral reforms including results transmitted in a particular form.

Hon. Temporary Deputy Speaker, at the very core, this Bill tries to streamline and accord regards to the decision of other courts in both 2017 court challenge as well as the Katiba Institute Decision of 2018. Furthermore, I am reliably advised that the Committee may be making some

amendments to this to make it even more elaborate to avoid any doubt and I am sure by the time we come to the Committee of the whole House, we would have the benefit of what the Bill proposes, and what the Committee is fine-tuning it into, so that we can avoid having to go against the decision or have an election nullified on a matter of process or just an amendment coming from this House.

The other bit I did mention is that the Bill has mandated the Commission to ensure the establishment of a complimentary mechanism for transmission of results. I am reliably informed that the regulations are currently being worked on and should be in the House for consideration within time, certainly before the House breaks. This is the crux of the matter. I know there is also an issue that Members have raised on some amendment to Section 27(16) of the Act, which is basically looking at closing some window.

I just want to highlight that currently, independent candidates as per the Constitution are required to be out of parties 90 days before the elections. For people sponsored by parties, their registers are given 120 days before, and then you have nominations for this particular year, and the schedule is that they should have been cleared by 22<sup>nd</sup>. So, between 22<sup>nd</sup> April when the results of the political parties' candidates are finalised and 9<sup>th</sup> May, there is an open window of 14 days when people could as well move from political parties to be independent.

It seemed unfair that first of all, people were almost being stopped from moving from one political party to another after the nominations, but you can become an independent candidate. Also, it seemed unfair for people who really put a lot of effort into the election and the people they beat in a nomination come back to challenge them as independent candidates. It does not look fair and I think that is why the IEBC, as part of tidying up, requested that we need to synchronise those two dates, so that what is good for the goose is also good for the ganders.

If you chose to be independent, do it *abinitio*. If you chose to be a party sponsored candidate, do so at the beginning. Those two processes should take place simultaneously within May rather than what we are doing within April and others have an advantage of having to do it in May when they have the advantage on the ground and what is happening. It does not look like fair play. So, there is an amendment in Article 16 which hopes to tidy out realistically and I think that is what we need to think. We had delays in the publications and in processing of the Bill. By the time we pass these through the Senate, I'm sure the nominations would have taken place.

So, this clause may not work for the 2022 Elections. I want the House to have it in mind that we are doing it for posterity. If we believe that that is the future of elections and that is how it should be, then we should not limit ourselves who are here and say that it will affect us. It will not because we are already on, first tomorrow, and by the time some parties have already done nominations, others are doing from next week. Completion will be by 22<sup>nd</sup> and certainly, this would not affect because parties have already done and the IEBC is not going to revise its schedule for nominations because of this. So, this is for the 2027 elections in all probabilities.

I do not really need to go through other parts because that was a fundamental thing that I just wanted to highlight to the House, so that as we make decisions, we make them with full disclosure. It is open for debate and Members are at liberty to express themselves on what they feel about that. It is futuristic rather than for now.

The rest is like I had indicated yesterday. It is a very simple Bill. Very straight forward and I look forward to the support of Members. We are already late in processing of this Bill because it will be good that by the time people are going for elections, they know the operating law guiding the elections. Like I said, a number of the clauses here are more of nomenclature. It



is about sorting out between what is a nomination, which is within the realm of the Political Parties Registrar, and what is the registry of candidates, which is within the IEBC. Terms which are being confused because they are contained and we keep talking about nominations, but we clarify all those.

The other is defining political parties. It is within here in accord with what is defined in the Political Parties Act just for avoidance of doubt. I am very happy that when we were doing the Political Parties Act, we had opposition because people thought we were creating a coalition for one side of the House. In the event, we now have two coalitions running, namely, the Azimio Coalition on one hand and the Kenya Kwanza Alliance on the other side. So, the law we did has helped both sides of the divide to move forward. For them to actualise the benefits of moving forward, we need one final step, which is to allow or facilitate how either of the two alliances, plus several others that will form, to submit their nomination rules, which is provided in law, and is being provided in this new law.

I am very passionate about this thing. I am very happy that the Departmental Committee on Justice and Legal Affairs has been looking at this Bill even when it was a legislative proposal. They had a lot of time with the IEBC and discussed it. Even by the time it came for publication, I am sure that they had already agreed on most of the issues.

On that note, Hon. Temporary Deputy Speaker, I beg to move the Bill and request Hon. T. J. Kajwang', the Vice-Chair of the Departmental Committee on Justice and Legal Affairs, to second.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION OF STUDENTS FROM KIANDA AND RIARA SCHOOLS

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Before Hon. T. J. Kajwang' seconds the Bill, Hon. Members, please join me in welcoming two students from Kikuyu Constituency, who are seated in the Speaker's Gallery: Ms. Angela Wamuyu from Kianda School, and Ms. Emy Mumbi from Riara School. You are welcome to the National Assembly.

*(Applause)*

Can we have Hon. T. J. Kajwang'?

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Speaker, I thank you for giving me an opportunity to second this Bill. May I know whether I have 30 minutes to contribute so that I can plan accordingly?

This Bill is a culmination of several Bills that---

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. T. J., you have 30 minutes because you are contributing on behalf of the Chair of the Departmental Committee on Justice and Legal Affairs.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Yes. Hon. Temporary Deputy Speaker. This Bill is a culmination of several legislations that we have made to safeguard the electoral process. You know that we worked on Political Parties Act and several Bills which touch on campaign financing. This is the last one that anchors the electoral process in Kenya.

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It is an important Bill for Members. Everybody has said that election legislation should not come in the middle of an election cycle. It is not wise. However, as we can see, it is here. The problem of making a legislation is that Government Bills emanate from the Cabinet through the Attorney-General. This is where there is a disconnect. We need to see how to process these things in a manner that gives the House the teeth that it has for making legislation. The Cabinet takes as long as it wants. They bring us these Bills at the tail end of an exercise. So, we do the best that we can with what we have. However, we still have a situation such as this. While players are on the field and a referee has already held the whistle, he holds the game and changes or seeks to change the rules. It is not fair. We have said so. We told the Independent Electoral and Boundaries Commission (IEBC) and the Executive that this House will express itself very strongly in future on such processes that change rules of the game. For example, because of this Bill, Members are reacting naturally, because it has come at a point which people have taken interests. There is the anxiety and perplexity of the unknown. When you find changes in the middle of the ship, it is problem.

Having said so, I want to assure the country and Members that we, as a Committee, have looked at this Bill in and out. The text that the Committee has come up with is, so far, the cleanest and safest that there has been in the history of electoral practices in Kenya. The Bill is very raw. However, it gives the skeleton or structure of the amendments that are necessary to keep it strong. I urge Members that before they look at the Bill and make opinions, please look at the Report of the Committee, which is available even on the portal. The members of the public can access the portal and read the Committee's views. They have legislative proposals that will amend what you will find in the Bill. When you consider them closely, put them together with the parent Act and then look at what the Bill suggests; you will be persuaded, no doubt, that this is the clearest text that we have to progress the process of our electoral system.

There are only four objectives in this Bill which have been adverted to very well by Hon. Kimunya. He has done a lot of full disclosure. He said everything that needed to be said the way it is in the Bill. Let me just summarise them in four subsets. One, the Bill deals with transmission of results, which is in Section 39 of the parent Act. It was declared unconstitutional by the courts. Many of the provisions under that Section were declared unconstitutional by the courts. If we proceed with this parent Act the way it is, there will be no legal framework that will control the transmission of results. What is declared void is not there anymore. In other words, there is no legislative framework. There is a Constitution, but there must be a legislation that operationalises it. If you go into an election which cannot be transmitted, it will be shambolic. It will lead to serious chaos. It will be a big problem that will affect the national security of this country. So, this Bill is very important.

A Member said yesterday that we can just go into elections with the parent Act. I dare say that if we go into an election without these amendments--- I am sure that the Members of the Senate are listening. It is important to them. We cannot withhold these amendments. We need to process them, so that we can have a credible, verifiable and mature election that can measure up to the Constitution.

Two, it is on data processing. Kenya has Turkana County, Wajir County, Ruaraka Constituency and all sorts of places. Young people tell you that there is something called 5G, 4G, Thuraya and all these technologies that have come. You have seen the issues in petitions, one after the other, including the presidential elections that we have. There are some parts of this country which you are unable to get these technologies. An election officer travels 300

kilometres to look for that network. He goes under a tree or into a spot in which he can transmit the results. That has to be regulated. We called it a complementary mechanism in the other amendment. If you do not have it, you leave the IEBC to do whatever they wish to do with the results. You will find a returning officer who is unable to transmit the results. He takes five days in his House with the results. He then walks to Lokitaung and tries to find how to travel to Nairobi because there is no regulation.

The second thing that this Bill deals with is the complementary mechanism of transfer of that information. Since it is something which is case by case, and since it is something which is detailed, the IEBC must give us Regulations which tell us exactly how this Thuraya will be used, exactly how the 4G or 5G network will be used; and if somebody switches off the light at night, what must be done. We have said in this Bill that we must see these Regulations in this House 30 days from assent of this Bill, meaning that by May, they will have to give us the Regulations and we will scrutinise them to know that they fit the Bill.

The third thing is that we have to crystallise the court cases that have come about. Remember the Supreme Court, the Raila 1 and the Raila 2 petitions. Remember the second presidential vote, remember several cases that have happened, starting from the *Katiba* that the Leader of the Majority Party talked about, to the others that emanate from the Supreme Court decision. This is how democracy works. We make the law, but somebody else interprets it and somebody enforces the law. When we did our best as at that time, the courts have scrutinised some of those specific provisions and have found them unconstitutional, void or some cannot be operated. If you do not work on them, then you have a vacuum. You cannot allow the law to operate in a vacuum. Law must be there. Members need to know Hammurabi, the law giver. We cannot shy away. We must give the law. If the court says that this is unconstitutional, we must address that situation and say what the law must be. We have summarised all those kind of cases and identified which of those have been affected, and in what manner they can be rectified. Those are not idle issues; they are important.

I want to underpin the importance of this legislation and how it will affect the elections to come. Specifically, we interacted with this Bill when it was a legislative proposal, that is before even the Leader of the Majority Party conceive it to be a Bill. I was telling him the other day that we have engaged on this for more than eight months, but he did not believe me because he was shown these proposals much later. But because of that, we have some background. We also interacted with the stakeholder. This Bill has gone through very serious public participation from the finest legal minds you can find in this country. I assuage Members who may feel that there is something which they do not know in this Bill. What human beings can do has been done in this Bill, and it is safe.

In the first page, we noted that as raw as the Bill was, we needed to make it in such a manner that it can be consumed, and so we have small things like having a valid Kenyan passport. You may wonder why we are saying valid Kenyan passport. A passport is a passport. It must be valid. An expired passport is not a passport. But for abundance of caution, because that is what Kenyans understand, especially the diaspora. One may have been in America for ten years or for donkey years and, of course, they do not have a passport; or have an expired passport. But because it is one's democratic right, they are in Los Angeles and say they must vote, and produce a passport. But that is not a passport; it is an expired document. So, for abundance of caution, we have added the word "valid" so that the owner knows that it is his duty to renew that passport. By the time they are identified and are voting, that passport must be valid.

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Of course, in Clause 3 there are issues of nomenclature that we have had to deal with to clean up the text. Clause 3 deals with the situation of Mariga in Kibra. Somebody knew there was a by-election and he could not register in that constituency, so he went to Ruaraka and got registered and because he is a registered voter, he goes to Kibra and says he must vote. That is Clause 5. We are saying that we have to find a solution. We read the law correctly in Section 5 of the parent Act. In fact, Mariga should not have happened. Section 5 of the parent Act, immediately there is a by-election, registration ceases in the whole country. That surprised me. Just because there is one by-election, there should be no registration during that by-election. So, Mariga should not have been allowed to register even wherever he went to enable him to go to Kibra. But at that time, it may have been an oversight on the part of the IEBC to have allowed Mariga to register. But again, that begs the question why a by-election in Kipipiri, for example, would be a hindrance to people in Kibra to continue registering, because that by-election only affects one electoral area. So, we have crafted a legislation which, therefore, ties it only to Kipipiri. If you are going to vie in Kipipiri in that affected area, then you must have registered there so as to participate; so that the Mariga issue will be solved.

In Clause 4, we are trying to create empirical distinction or normative distinction between what is inspection and what is rectification. Inspection is a process that goes on throughout, and that is how it should be. As for rectification, just a couple of days to the election, a voter should have a right to inspect the register and say his name has been misspelled, or the area in which he is supposed to vote is not captured correctly. There is a difference between inspection and rectification.

Over the page, we are deleting Clause 5. I want us to talk about this, Leader of the Majority Party, with a lot of fairness.

*(Laughter)*

I am the one who understands the question of mass voter movement, because this is an urban problem. In Ruaraka, somebody may decide – and K.J. will tell you that because this is an urban area next to the other; and because K.J. has been blessed as he usually is with some little money in his pocket – that all members from Ruaraka want to troop to his constituency just to benefit from the little that he has. As soon as that process is done, they run again to the other side to the NG-CDF, looking for an opportunity for KJ to sign something or the other. This is a worrying trend in Kenya. You find that as the Leader of the Majority Party said, decisions which are made in that constituency are not made by people who live or who have interest there.

Fair enough, Leader of the Majority Party, we agree. But my concern is that the Constitution is supreme than all the other issues that I see. I want to understand the policy decisions that the IEBC is bringing. I can see the mischief correctly, but how do they want to approach it? In the Bill we have, they are saying that you should be ordinarily a resident; you should be carrying on business, you should be employed or you should possess land or residential building. Surely, if you come to Ruaraka, you are literally abusing the people of Ruaraka. How do you expect somebody in those beautiful cartons that we have as houses to start saying “I have to be employed”? Who in Ruaraka is employed? Who is responsible for the unemployment in Ruaraka? Then you say the person should have possessed land. Which land should I possess in Ruaraka? Who should be responsible? He says that the people should have tenants. Yes, you can add that. You see, the Hon. Leader of the Majority Party lives in Karen. If

he does not live in Karen, maybe he lives in Upper Muthaiga, where there is a beautiful lease drawn by fabulous lawyers which can show that he is a tenant. Now, how am I supposed to show that I am a tenant in those carton houses? This is an affront to Kenyans. Until Article 43 and those social rights are enforced, the country must work towards uplifting the majority of Kenyans to such a level that you can then ask some of these questions. Why would you want to make the voter have the burden of proving himself to enjoy his rights? The Independent IEBC is asking people for letters from the Chief. Which Chief will show that I am a resident? This process has been abused. You have to pay Chiefs money – Kshs100 – to give you a letter.

So, we said that whereas we see the mischief, the manner in which you have told us, under Article 38(3), is not reasonable for the enjoyment of those political rights. In any case even then, these are rights which can be limited. All right. But, you know that, under Article 24(2), you have to show how that limitation is going to work, the extent of the limit, and exactly what you are limiting. We write the law but policy makers, the IEBC, are the primary people. Let them produce that which works around this subject. When that is done, then we will accept. For example, they may think of more innovative approaches like creating some discretion on a returning officer to ask one or two questions that will show what a person is. Another one is to create an offence of people who are paying people to move from one constituency to the other. Member for Suba North, this is very clear: when the time comes, we will propose legislation amendments. This is really unconstitutional. That is the view that we took, both in Clauses 13 and 14. It tries to say that the voter must be a voter in that electoral unit. This is for a vacancy if, for example, somebody leaves the Assembly either by death or by resignation. Then the law would have said that somebody must have been a voter in that electoral unit. We think that is adding a restriction that the Constitution did not envisage.

Section 25 of the Act deals with what qualifies for qualification and disqualification. This is over and above what the law says. Clauses 15 and 16 have been spent. If you look at the Political Parties Act, you will see that we took them over in the consequential amendments. So, they have been spent. That is why we are preferring to delete them.

Something that is close to the heart of the Member for Suba North, and this is the sweetener, is on independent candidacy. I really wish all Members would see this. Member for Dagoretti South, in the view of the Committee, we are not going to restrict anybody's movement to be an independent once you have finished with the parties. Hon. Kimunya has admitted that this is something that will affect the 2027 elections. Let us be fair. Let us work as Government. Let the Executive and the Legislature work towards attaining some political stability in political parties. Everybody knows that political parties have not been developed to the sense that they have organs which can really do those things that the Constitution requires them to do, whichever constellation you are thinking about.

Let us work on non-legislative interventions. Not everything should be legislated. We should legislate on how to give more money for voter education and civic education by insisting that parties create structures. Those are the non-legislative interventions so that we can reach to a level where we will say that political parties are stable. If you choose to be independent, you should decide from day one and you are independent. Germany has independent Members of the Bundestag who are very few; like 12, but they are there. In fact, right now, they are in the ruling coalition because of their sturdiness in democracy. So, we are not just going to leave it for 2027.

The sweetness is that we have, as a Committee, decided to delete it. We will persuade the Leader of the Majority Party to let this sweetener be here so that, at least, we are assuaged that

things can still work. Especially to the Member for Suba North, I am sure she is not going to stand as an independent. But, she must be vigilant to create some space for herself. There is no politician who wants to close himself. Which cat would want to have a house without a window? We will just be less than wise if we were to do anything like that. So, Member for Suba North, I know you have a direct ticket in your hand or somewhere in your purse. But, if something happens – because something can happen – you still have a period of some 13 days by which you can still be an independent candidate.

Now, there is a new clause that is not so serious. What is serious is Clause 20, which is dealing with Section 39 of the parent Act. This is what I may want to spend a few more minutes on. The Leader of the Majority Party has explained very well. When you look at a case, there is what is *orbiter dicta*, and there is what is called *raison d'être*. People have been saying this section is unconstitutional and it is void. But, we went into those cases and read them page after page – as you have ably read them there – to know what was in the mind of judge and what the judge found offensive. We went into all these sections and we found that the problem with electronic transmission was not that it was not clear. The problem the judge found was that there was a piece of legislation which is saying that results will be transmitted. However, it does not say what will be transmitted. Then it says a returning officer will go there physically. So, the judge said: “How could you have thousands of people trooping in the national tallying centre with nothing, and they claim to be transmitting things?”. ---

I think you will have to give me time---We have been here since--- I am summarising. I will be there. He says there is an essential ingredient which is called “Prescribed form;” that was the word which that legislation missed. So, the moment we fixed “prescribed form,” it was sorted.

We need to talk about complementary mechanism. The Leader of Majority Party, we need to see regulations being approved by the House. In fact, we have done it in text so that it does not have to go to delegated legislation. We are going to scrutinise it here in Plenary. If we are thorough with it, we will allow it. I know that Section 83 was a problem. So that we avoid the problem we had with Section 83, we have decided to let it go and let the Constitution and the law speak for itself.

The last one is settlement of disputes. I have just received a text from the IEBC that is persuading me to rework the contents of Clause 22 so that IEBC has a jurisdiction of dispute settlement, and that dispute settlement should be in 72 hours from the final date of registration of candidates. The timing is still 72 hours, but they are saying it must be after registration of all candidates. If you do not do that and let them publish, it will be final. The question then will be, now what---

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me add him two minutes so that he can summarise.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Speaker, the question will be, what are you going to dispute over when a gazette notice has gone and it is final? So, they are urging us to say that we will have 72 hours from the time of registration of all the aspirants instead of the 48 hours provided.

This legislation is safe. In any case, this is Second Reading. Let us debate it with robustness that we can. Let us all come to the Committee of the Whole House stage. I want to urge Members to proffer as many of their proposed amendments as they can. With the leadership of the Leader of the Majority Party, we can sit down and harmonise all those view points and

come up with a legislation that will be passed by the Senate without mediation. That is where we can have a problem. It can be held there for a long time, and yet this process must go on.

I want to thank you for the opportunity to second this Bill. I thank the Leader of the Majority for the services of his office. You provided us with a very competent legal young man I have never seen. I did not know that there are so many young men in this campus that are so sharp. Thank you.

From the office of the Hon. Temporary Deputy Speaker, you provided us with a staff and a clerk who helped us work on this legislation. I thank you and may God bless you.

I hereby second.

Thank you.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Dagoreti South, Hon. Waweru Kiarie. You are on intervention.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you, Hon. Temporary Deputy Speaker. This afternoon, there were two main reasons why we came to the House. There were two critical businesses that were on the Order Paper, and one of them is this Bill. We are going to do fundamental changes to an election law that is going to affect the country and Members of this Assembly. I am told that the Speaker is blind. Looking around the House, I want to call your attention to the quorum in the House. You can count the people in the House with one hand. It will be sacrilegious to discuss a matter of such national importance without quorum. The best we can do, with your direction, is to bring to the attention of the Members who are within the precincts of Parliament that we do not have quorum in the Chamber by ringing the Quorum Bell for 10 minutes. It will be sacrilegious for us to process this Bill in a House with four Members sitting. I am calling your attention to the quorum situation in the House.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, Hon. Kiarie has rose in his place objecting that there is not a quorum present. From where I sit, I can confirm that the House is not properly constituted. Therefore, I order that the quorum Bell be rung for 10 minutes.

*(The Quorum Bell was rung)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Members. Can the Quorum Bell be stopped; it is now ten minutes. It is past ten minutes of the Quorum Bell ringing, and we are still not in a position to raise numbers. The time being 5.40 p.m., this House stands adjourned until Tuesday, 5<sup>th</sup> April, 2022, at 2.30 p.m.

The House rose at 5.40 p.m.