

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 10<sup>th</sup> March, 2016

The House met at 2.30 p.m.

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

### PRAYERS

### MESSAGE

#### APPROVAL OF MEDIATED VERSION OF THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL

**Hon. Speaker:** Hon. Members, pursuant to the provision of Standing Order No. 41(5), I wish to report to the House that I have received a Message from the Senate regarding the approval by the Senate of the mediated version of the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013), which is a Bill originally introduced by the Member for North Horr Constituency, Hon. Francis Chachu Ganya, MP. The Message reads as follows:-

“That, the Senate on Tuesday, 1<sup>st</sup> March, 2016, considered the Report and the version of the National Drought Management Authority Bill (National Assembly Bill No.42 of 2013) as developed by the Mediation Committee appointed pursuant to Article No.113 (1) of the Constitution and approved the same version of the Bill.”

Hon. Members, you may recall that on 17<sup>th</sup> February 2016, the National Assembly had considered the Report and approved the same version of the said Bill in the form developed by the Mediation Committee. In this regard, therefore, I will now proceed to present the Bill for assent by His Excellency the President, in accordance to the provisions of Article 113 (3) of the Constitution.

I thank you.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 10<sup>th</sup> March, 2016:-

Sessional Paper No.1 of 2016 on the Government Guarantee on Borrowing by the Kenya Ports Authority for the construction of the Second Container Terminal (Phase II).

The Report of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2013, and the certificates therein:-

- (i) Chama Cha Mwananchi;
- (ii) Wiper Democratic Movement Kenya; and,
- (iii) Farmers' Party

The Report of the Auditor-General on the Financial Statements of the Kenya Law Reform Commission for the year ended 30<sup>th</sup> June 2015 and the certificate therein.

*(Hon. A.B. Duale laid the documents on the Table)*

**Hon. Midiwo:** On a point of order, Hon. Speaker.

**Hon. Speaker:** What is it, Hon. Midiwo?

**Hon. Midiwo:** Hon. Speaker, even though we were laughing and giggling when those unknown political parties were being mentioned, it is just a matter of curiosity to remark, note or even question how the Auditor-General knows where those people are. I have talked to Members from the Jubilee Coalition-dominated zones and from the CORD-dominated zones. The law requires a political party to have offices in, at least, 24 counties. Nobody from either side of the House has heard of those political parties, and we keep on talking about them. I am tempted to suggest that the Departmental Committee on Justice and Legal Affairs engages the Registrar of Political Parties in the direction that most of those briefcase parties which survive to harvest as we move towards the next general election, are de-registered.

It is not good to use public funds to purport to be auditing a political party that is non-existent. Something is not right. It is not good for the Leader of the Majority Party not to question the existence of such political parties. He must tell us who those briefcase---

**Hon. Speaker:** Well, the reports tabled are on the financial statements in respect of those parties as at 30<sup>th</sup> June 2013. So, it is quite possible that they have long ceased to exist. But of course, your point is still valid. The Departmental Committee on Justice and Legal Affairs, which oversees the Registrar of Political Parties, has a duty to this House and to the country to let us know where those outfits are hidden. That is why the Auditor-General has brought a report on the financial statements of those outfits as of 2013. It is possible that they will eventually re-appear.

**Hon. A.B. Duale:** Hon. Speaker, Hon. Midiwo wants to kill political parties. I want to go on record that he wants to kill the Farmers' Party. It is a requirement of this House for the Auditor-General to audit anybody using public resources. The Farmers' Party has been audited by the Auditor-General. If I read the last comment of the Auditor-General, he is very happy with how they have spent the money that they have raised internally.

When you see Hon. Munuve shaking his head and what is going through in Wiper Party, maybe, this is the party that can save him in 2017. So, I will ask Hon. Jakoyo, before he talks about those parties at the Registrar of Political Parties, he first gets a copy of this audited report so that he can read. He will be convinced and, maybe, join this party one day because he and I were in the Liberal Democratic Party (LDP).

**Hon. Member:** KANU!

**Hon. A.B. Duale:** We have never been in KANU with him. This KANU thing should not be revived.

*(Laughter)*

We were with him in LDP. We came to ODM. Now, he is in CORD. I want to go on record. This KANU thing should not be revived.

**Hon. Speaker:** With regard to the audit reports, the Committee chaired by Hon. Gumbo will give the House their own findings about how those parties have utilised the public resources given to them up to 30<sup>th</sup> June, 2013. Maybe, that is the time they had monies that required to be audited.

The Chairperson, Departmental Committee on Energy, Communication and Information, Hon. Kiptanui?

**Hon. Kiptanui:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today Thursday, 10<sup>th</sup> March 2016:-

The Reports of the Departmental Committee on Energy, Communication and Information on:-

- (i) The 13<sup>th</sup> ITU World Telecom Conference from 30<sup>th</sup> November to 2<sup>nd</sup> December 2015.
- (ii) The World Radio Conference held in Geneva, Switzerland, between 21<sup>st</sup> and 29<sup>th</sup> November, 2015.

Thank you.

*(Hon. Kiptanui laid the document on the Table)*

**Hon. Speaker:** Member for Cherangany, Hon. Wesley Korir.

**Hon. Korir:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today Thursday, 10<sup>th</sup> March 2016:-

Report of the Joint Committee on Parliamentary Broadcasting and Library on proposed amendments to the Standing Orders of both Houses regarding media-related activities in the precincts of Parliament Buildings.

*(Hon. Korir laid the document on the Table)*

## NOTICES OF MOTIONS

### ADOPTION OF REPORT ON PROPOSED AMENDMENTS TO MEDIA-RELATED ACTIVITIES

**Hon. Korir:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Joint Committee on Parliamentary Broadcasting and Library on proposed amendments to the Standing Orders of both Houses regarding media-related activities in the precincts of Parliament Buildings laid on the Table of the House today, Thursday 10<sup>th</sup> March 2016.

Thank you.

### GOVERNMENT GUARANTEE ON BORROWING FOR SECOND CONTAINER TERMINAL

**Hon. A.B. Duale:** Hon. Speaker, I beg to give notice of the following special Motion:-

THAT, pursuant to the provisions of Article 213 of the Constitution, Sections 50 and 58 of the Public Finance Management Act Cap. 41(2)(c) and Section 4 of the National Government Loans Guarantee Act, 2011, this House notes Sessional Paper No.1 of 2016 on Government Guarantee on Borrowing for the construction of the Second Container Terminal Phase II and approves the Government of Kenya guarantee against a loan of Japanese Yen, ¥32.116 billion equivalent to Kshs27.3 billion at the current exchange rate to be borrowed by the Kenya Ports Authority (KPA) from the Japan International Co-operation Agency (JICA) negotiated at the rate of 0.11 per cent per annum and repayable in 34 years with a six-year moratorium to finance Phase II of the development of the second container terminal at the Port of Mombasa as part of the Mombasa Port Development Project.

Thank you.

**Hon. Speaker:** Next Order.

### STATEMENT

BUSINESS FOR THE WEEK COMMENCING 15<sup>TH</sup> TO 17<sup>TH</sup> MARCH, 2016

**Hon. A.B. Duale:** Hon. Speaker, pursuant to Standing Order No. 44(2)(a)(c), and on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 15<sup>th</sup> March, 2016: The HBC sat on Tuesday this week at the rise of the House to give priority to business. The HBC resolved to give priority to Bills with constitutional timelines as well as committee reports and Motions awaiting debate.

The following Bills have been given priority, should they not be concluded today:-

- (i) The Seeds and Plant Varieties (Amendment) Bill, National Assembly No. 43 of 2015.
- (ii) The Roads Bill, National Assembly Bill No. 26 of 2015.
- (iii) The Public Finance Management (Amendment) Bill, National Assembly Bill No.4 of 2015.
- (iv) The Warehouse Receipts System Bill, National Assembly Bill No.12 of 2015.
- (v) The Miscellaneous Fees and Levies Bill, National Assembly Bill No.30 of 2015.
- (vi) The Kenya Defence Forces (Amendment) Bill, National Assembly Bill No.41 of 2015.

Hon. Speaker, on Questions before the Committees, the following Cabinet Secretaries (CSs) are scheduled to appear before the Committees on Tuesday, 15<sup>th</sup> March 2016:-

- (i) The Cabinet Secretary for the National Treasury at 10.00 a.m. before the Departmental Committee on Finance, Planning and Trade to answer Questions from Hon. Francis Mwangangi, Hon. Irshadali M. Sumra and Hon. Kabando wa Kabando.
- (ii) The Cabinet Secretary for Education at 10.00 a.m. before the Departmental Committee on Education, Research and Technology to answer Questions from Hon. Peter Kaluma, Hon. Abdinoor Mohamed and Hon. David Gikaria.

(iii) The Cabinet Secretary for Lands, Housing and Urban Development at 10.00 a.m. before the Departmental Committee on Lands to answer Questions from Hon. David Wafula, Hon. Kinoti Gatobu, Hon. Francis Waweru Nderitu, Hon. Geoffrey M. Odanga, Hon. (Dr.) Robert Pukose and Hon. Johana Ng'eno.

Finally, the HBC will convene on Tuesday, 15<sup>th</sup> March 2016 at the rise of the House to consider the remaining business for that week. I now wish to lay the Statement on the Table of the House.

Thank you.

*(Hon. A.B. Duale laid the Statement on the Table)*

**Hon. Gikaria:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Gikaria, what is your intervention about?

**Hon. Gikaria:** Thank you, Hon. Speaker. Early last week, I sought your guidance and ruling regarding the---

**Hon. Speaker:** What did you say?

**Hon. Gikaria:** Last week, I sought some ruling from Hon. Deputy Speaker, Dr. Joyce Laboso, regarding the General Oversight Committee. The question was whether the CS can give me a written response to the Question I had asked. I asked a Question regarding the Wildlife Conservation and Management Act.

This is the third year. The CS, in the Act, is mandated to appoint a chair of a compensation committee. Three years down the line, it has never happened. We are at the planting season. The residents of the same ward that I have been complaining about are asking: "Do we plant? Wild animals could come." So, these are the issues. If they could give us a written response so that if I have a further clarification, maybe, I could wait for that kind of sitting---

**Hon. Speaker:** You are saying you sought clarification or a ruling?

**Hon. Gikaria:** Some guidance regarding whether the CS can give a written response instead of me going to that meeting to get the response. Some of these things are very urgent.

**Hon. Speaker:** Why would you want a ruling when the Standing Orders are clear?

**Hon. Gikaria:** I needed guidance.

**Hon. Speaker:** You just need to look at the Standing Orders and you will see. If you require a written answer, it can be done. You can indicate and it will be done. On the other hand, if you require oral response, it will still be done. The Standing Orders even as amended, provide for both of those. There is no need for any guidance to be issued. You can indicate that you would want the CS, when he comes, to come with a written answer or come and give the answer orally.

**Hon. Gikaria:** What I meant is if she can answer that within a week and I get the copy through the clerks. If it is about an appointment, then I can follow with the other Members at the county level. Those are the issues we are asking, but I stand guided.

**Hon. Speaker:** Unfortunately, I am not aware of the question. I do not know the nature of the question so that I can give direction. You are asking the CS to appoint somebody?

**Hon. Gikaria:** What is happening is that under the Wildlife Conservation and Management Act, it stipulates that the CS is supposed to appoint a chair of a compensation committee which is at the county level. Since we made the amendment one year and a half ago, it

has not happened. As it is now, we do not have the compensation committee in Nakuru County. We have forwarded our claims for compensation.

I have lost four people to buffaloes and farmers have lost crops worth millions of shillings in one of the agricultural wards within my constituency. We have made these complaints and still, we are being told to wait for the committee to be formed so that they can start processing them. So, I was asking if he can confirm in writing that he has appointed the chair then I can make a follow up. I will then go to the county because the other members are supposed to be appointed by the county government. I would appreciate if he could give me a written response.

I am just using Nakuru as an example. The issue is affecting the whole country. It might take another four months before the CS in charge of that department of KWS---

**Hon. Speaker:** Can you do the Question?

**Hon. Gikaria:** I have already done it. I was told that it is waiting on the queue. I did one for students. The Government has already given directive on exams and I will get an answer tomorrow.

**Hon. Speaker:** Now we are getting mixed up. If the Question is there and you require a written answer, then we direct the CS to give a written answer.

**Hon. Gikaria:** I stand guided. Thank you.

**Hon. Speaker:** Next Order.

## PROCEDURAL MOTION

### RESCISSION OF RESOLUTION ON THE APPOINTMENT OF BUDGET AND APPROPRIATIONS COMMITTEE

**Hon. A.B. Duale:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order 49(2)(a), this House resolves to rescind its decision of Tuesday, 16<sup>th</sup> February 2016 (Afternoon Sitting) regarding the appointment of Members to the Budget and Appropriations Committee.

Hon. Speaker, following the rejection of the names of the reconstituted Members of the Budget and Appropriations Committee on 16<sup>th</sup> February 2016, we are left with three options.

In the HBC that took place this week, that agenda was brought as a substantive agenda to discuss this matter. The matter that was brought to the House Business Committee (HBC) was that the Liaison Committee which you referred this matter to has said, through its Chair, Hon. Deputy Speaker, that they are facing a number of difficulties in dealing with the matters relating to budgetary estimates, money Bills in as far as Private Members Bills are concerned, taxation and division of revenue in the budget-making process.

The HBC deliberated that matter for over three hours and a number of issues came up. One of the issues is the delay in Private Members' Bills or legislation that touches on Article 114, where the Cabinet Secretary for National Treasury must concur, but the Budget and Appropriations Committee might not agree with him. The option left for us, as a House, is to rescind this matter. We have three issues with the Liaison Committee through its Chair. The Liaison Committee is composed of the Chairs of all Committees. All Chairs of all Committees have left their respective Departmental and Select Committee functions and are attending only the Liaison Committee within the budget-making process.

The second issue is that the budget-making process is supposed to be a function of both coalitions of the whole House. Within the Liaison Committee, it is a club that is mainly composed of the Jubilee Coalition with only two members of CORD coalition - the Chair of the Public Accounts Committee (PAC) and the Chair of the Public Investments Committee (PIC). A number of Members have said that their Bills are unable to move because members are not efficient.

The third issue is on reconstituting the 52-member Budget and Appropriations Committee. That, again, in the third year, I have talked to all my colleagues - those who are in the Departmental Committee on Energy, Communication and Information, PIC, PAC, Department Committee on Education, Research and Technology and Departmental Committee on Health. They do not want to move.

**Hon. Omulele:** Put the Question.

**Hon. A.B. Duale:** There are only two issues. If you have nothing to contribute, then wait for the Question to be put. I have a lot to contribute.

Hon. Speaker if you could protect me from the Member for Luanda who always has a boundary dispute with Hon. Olago Aluoch--- This is not about the boundary between Maseno and Luanda. This is about serious business. You better spend that energy and time to solve the Maseno-Luanda boundary dispute.

**Hon. Speaker:** Hon Omulele, you will attract the wrath of the Chair. He has no capacity to put any Question. I am told from the records that I have read that you trained in law. By now, I am sure you know he is not the one who puts the Question. You are totally out of order.

**Hon. A.B. Duale:** Hon. Speaker, either way, the budget-making process will continue. Those of us who are in the Liaison Committee have no choice because you have sent the Budget there. As leaders, sometimes, we must rise to the occasion. We cannot even have the Budget to be discussed by only one section of the House.

Hon. Speaker, I think we agreed and deliberated on that. One of the issues that came up was a provision in the Constitution regarding Private Members' Bills. In as far as Article 114 of Constitution is concerned; it is not very explicit in that it should be referred to the Budget and Appropriations Committee. It states that the relevant Committee should take up that. If a Private Members' Bill concerns a health issue, then the Departmental Committee on Health should handle the matter in accordance with Article 114 of the Constitution. We realized there was a lapse and that everything to do with Article 114 of the Constitution must go there.

Finally, taxation measures concerning both the Government and Private Members' Bills will go to the Departmental Committee on Finance, Planning and Trade. As it was before, it was sent to the Budget and Appropriations Committee, which will no longer deal with issues to do with taxation-related matters. If there is a problem, we should look at it and fix it. The problem that we had with the Budget and Appropriations Committee – and that caused their names to be rejected - was the pork barrel allocation they were getting. How do we fix it? We must bring legislative intervention measures so that if the pork barrel is allocated, then it must go to all constituencies and Members. We must fix it. In every presidential system, pork barrel is a parliamentary privilege that is even in the United States of America (USA). But in our case, the pork barrel was going to a select few in the Budget and Appropriations Committee. Can we bring a legislative intervention that whatever 1 or 2 per cent we receive through the pork barrel must go to all Members across the board? That is what we have agreed on.

I would like to ask Hon. Midiwo to second. The choice is with the House.

**Hon. Speaker:** Hon. Members, let us allow Hon. Midiwo to second. You approved the Report of the Liaison Committee on the Budget Policy Statement (BPS). I have heard some Members asking for various documents as if you did not read what the Liaison Committee recommended. You have gone past that. You should read the Report of the BPS by the Liaison Committee. Remember it is on that Report that the Cabinet Secretary (CS) is supposed to base his estimates. You have taken care of that by adopting the Report of the Liaison Committee last week on Thursday.

**Hon. Midiwo:** Thank you, Hon. Speaker. I rise to second. I would like to say a few things on this Procedural Motion. I opposed this list and I realized many Members had the same anger at the Budget and Appropriations Committee.

*(Hon. Simba consulted loudly)*

Hon. Speaker, please, protect me from Hon. Arati. I realized the anger is still there.

*(Applause)*

We are Members of Parliament and we are in charge of the BPS for this country. Our laws, including our Standing Orders, contemplate a scenario where we must always have a Budget and Appropriations Committee. The solution we found to take us through the BPS was a temporary measure. As a member of the House Business Committee (HBC), a member of the leadership of this House and a person who raised this issue, we must find our way out of this issue guided by you. I would like to ask my colleagues to hear me. The decision lies with the House because that is the purpose of the Motion on the Floor.

Today, we had a lot of Committee confrontations. I am just from the Departmental Committee on Defence and Foreign Relations where Members were angry at the Chairman, but we have sorted out those issues. There were accusations. We affirmed that as Members of Parliament, we always have reasons for doing certain things. In that regard, we sorted out our issues. On Tuesday night and during the leadership meeting at the Serena Hotel in Mombasa, we agreed that we must find a solution that only this House can make. As the leadership of this House, we must give guidance. We agreed to find ways and I took it upon myself to consult the Budget Office about the issues and loopholes that I thought the Budget and Appropriations Committee may either have deliberately misunderstood or was ignorant of its mandate. The BPS that was laid, debated and passed in this House a week ago had cured most of my concerns. Members never read what the BPS guided us to do and it is good to inform them.

Two years ago, I complained that the Budget and Appropriations Committee was giving itself undue advantage over the rest of the House Members by allocating their constituencies funds without following the due process. That has been cured in the BPS. The National Treasury must make sure that if there is a pork barrel to be divided among constituencies, then there should be a formula. There is a recommendation on that in what we passed. Further to that, it is good to inform ourselves because I do not think we can wriggle ourselves out of this. But we can only bring new Members to the Committee. It is also good to lower ignorance.

*(Loud consultations)*



Hon. Speaker, please, protect me from these noisy Members.

*(Hon. Naicca stood up in his place)*

**Hon. Speaker:** The Member for Mumias West, please take your time to understand the Motion before the House. Sit down because nobody has given you a chance to talk. I will throw you out. You are not in Mumias.

Hon. Members, it is important that you understand what Hon. Midiwo is saying. The Motion before the House is for rescinding the earlier decision. It is not the Motion for approving the Committee Members. For you to appoint a new Committee, before six months are over, you must rescind the earlier decision. It is up to you. If you do not want to rescind, then Hon. Members--- Hon. Midiwo is explaining to you a very important aspect of this Motion. The Motion he is seconding is not one of approving Members. It is one of rescinding the earlier decision so that you are able then, if you want to appoint a new committee, to do so. You must rescind the earlier decision.

Hon. Midiwo proceed.

**Hon. Midiwo:** Thank you, Hon. Speaker for protecting me. I probably want to apologise for offending Members for using the word “ignorant” but, Hon. Speaker, there are two Motions listed here relating to the same matter. The one that we are debating, which we must do if we want to deal with this issue before six months, is that we must rescind.

**An hon. Member:** We will.

**Hon. Midiwo:** That is the only thing we are debating. The other one will be open for another debate.

**Hon. Speaker:** Hon Midiwo, proceed so that Members can make a decision one way or the other.

*(Loud consultations)*

**Hon. Midiwo:** Hon. Speaker, the consultations are too loud. Hon. Speaker, I will be very brief.

**An hon. Member:** Watch your language.

**Hon. Midiwo:** I will watch my language. Do not worry. I have apologised.

**Hon. Speaker:** Proceed.

**Hon. Midiwo:** I have said that the Budget Policy Statement (BPS) cured a lot of things. You all see what we are faced with as a House. But the BPS cured most of our issues. The only other issue why Members must join us in finding a solution is this: The Budget and Appropriations Committee had issues going on, particularly the issue of socio-economic audit. We agree that it must go on, but with a Committee charged to do so even if it is composed of different Members.

That is the issue.

**Hon. Speaker:** Are you through?

**Hon. Midiwo:** Let me conclude by saying that there is one issue which we asked you to sort out for us during the meeting; the issue of the mandate of the Departmental Committee on Finance, Planning and Trade *vis-a-vis* the mandate of the Budget and Appropriations Committee. If that is sorted out, a lot of anger that is directed towards the Committee will reduce.

Generally, many Members are making noise because they never read the BPS.  
So, I second.

*(Loud consultations)*

**Hon. Speaker:** Order, Members! Fortunately, on these matters, you are aware of Article 121. I do not have to make any decision myself. I have no vote.

*(Question proposed)*

**Hon. Momanyi:** On a point of order, Hon. Speaker.

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

**Hon. Momanyi:** Hon. Speaker, I had a point of order when Hon. Midiwo was speaking, but he has since apologised. Therefore, I have no other issue.

**Hon. Speaker:** Hon. Rachael Shebesh.

**Hon. (Ms.) Shebesh:** Thank you, Hon. Speaker. We have always been able to read the mood in this House. The mood in this House is to have this issue thrashed out. I am asking whether it is in order for us to request you to allow us to go to a *Kamukunji* and discuss this issue first, before we bring issues to the Floor of this House which are detrimental to the perception created about this House outside this Parliament. Could we have a *Kamkunji* on this issue before we discuss it on the Floor?

**Hon. Speaker:** Hon. Shebesh, you know if you wanted that, all you need to do is move an adjournment of debate. If you people want to--- Let us get hon. Olago Aluoch. Let us hear him.

*(Hon. A.B. Duale consulted loudly)*

**Hon. Aluoch:** Thank you Hon. Speaker. The Leader of the Majority Party is disorderly.

**Hon. Speaker:** Hon. Duale, there is disorder there.

**Hon. Aluoch:** Hon. Speaker, I want to support this Motion, but I want to be listened to. We do not seem to have a problem with the first Motion. The second Motion is the one with a problem.

I have a lot of respect for Hon. Jakoyo. He started very well, but for some reason on two occasions, he spoils the mood of the House by telling Members that they are ignorant and saying that Members did not read. That is why Members got mad. Surely, if you want to persuade, you do not persuade by insulting people.

I support this Motion.

Thank you.

**Hon. Speaker:** Hon. Kajuju, what do you want to say?

**Hon. (Ms.) Kajuju:** Thank you, Hon. Speaker. I beg to be listened to as well. I stand to support this Motion.

I want Hon. Members to understand why we are seeking to rescind the decision that was made by this House.

*(Loud consultations)*

**Hon. Speaker:** Order, Members!

**Hon. (Ms.) Kajuju:** I would like to explain what we mean by rescinding of the decision.

**Hon. Onyonka:** Sit down!

**Hon. Speaker:** Hon. Onyonka, Hon. Olago Aluoch stood and said he supported the Motion. You did not tell him to sit down. It is absolutely unfair for you to shout at the gracious lady to sit down. Hon. Onyonka, you know that it is unfair for you when you have not even pressed your button to intervene. So, please, allow the gracious lady to be heard.

**Hon. (Ms.) Kajuju:** Hon. Speaker, I want to alert Members that we must not agree to Motion No.9 which constitutes the membership of the Committee. But what we are saying is this: Even for us to bring in new Members, if need be, what we must do is to revoke the initial decision that was made by this House.

Hon. Speaker, we all agree that mistakes have been made. We all agree that mistakes have been made by the Budget and Appropriations Committee. We know that there has been no involvement of Members of this House, especially in public participation that is carried out by the Budget and Appropriations Committee. But those mistakes can always be rectified. So, my request to the membership and the Chamber is that we rescind the decision and move to the next Motion. They can then oppose the membership or seek for the entire Committee to be reconstituted.

Those are my points. I beg to support.

**Hon. Speaker:** Having told somebody not to speak, let me give Hon. Mwadeghu a chance.

**Hon. Mwadeghu:** Mhe. Spika, nakushukuru kwa muda ambao umenipatia niwasiliane na wenzangu katika Ukumbi huu.

*(Hon. A.B. Duale interjected)*

Kama Mhe. Duale haelewi Kiswahili, basi niko radhi nimpatie masomo ya bure wala sitamlipisha chochote.

**Hon. Speaker:** Hon. Duale is out of order to shout at you from where he is.

**Hon. Mwadeghu:** Naomba radhi, Mhe. Spika. Waheshimiwa Wabunge, naomba tuelewane ili tujue nini tunatakiwa tufanye. Sio eti hamuelewi. Najua mnaelewa lakini, naomba tuelewane. Tukishaelewana, tutajua upande tutakaoenda.

Kitu cha kwanza, kuna Hoja iliyoletwa hapa. Hoja ilipoletwa, tuliikataa. Hoja ililetwa ili kuona kama tutawakubali hawa wenzetu ambao wameteuliwa kushughulikia mambo ya makadirio ya fedha. Mliwakataa. Sasa ni lipi tutakalofanya? Nikiangalia vile hisia zenu zilivyo, inabainika waziwazi kuwa hata wakiletwa hivi sasa, mtawakataa tena.

*(Loud consultations)*

Naomba tuelewane. Mhe. Spika, tumekubaliana mara nyingi kuwa ni muhimu tuangalie hisia za wengi. Hisia zao zinaonyesha waziwazi kuwa hawangependelea hao waheshimiwa warudishwe. Wanatupatia muda tulete kamati nyingine. Kwa hisani yenu, nawaomba tuelewane. Bila shaka, itabidi Waheshimiwa waamue kama wanaunga Hoja hii mkono au la. Kama hawaungi mkono, basi tujue tutafanya nini. Naomba hili jambo nilirudishe mikononi mwako ili

maamuzi yafanywe. Lakini la busara ni kukuomba tunitishe majadiliano. Tusimamishe majadiliano haya ili tupate muda wa kuwasiliana na kuzungumziana. Tusiendelee na mjadala huu leo. Naomba ukubali ombi langu kama kinara wa Bunge. Tusiendeleo na mjadala huu.

Mhe. Spika, narudisha kwako.

**Hon. Speaker:** I take it that Hon. Mwadeghu is making his request under Standing Order 96. Is that so? The Leader of the Majority Party was not listening. Hon. Mwadeghu has applied that--- Do you want to withdraw?

**Hon. A.B. Duale:** Hon. Speaker, I knew that Hon. Jakoyo would go into turbulence because he preached water and decided to drink wine. I told him last night that things are not very good.

Hon. Speaker, with your permission, I stand under Standing Order 51 and withdraw both Motions that are listed as Order Nos. 8 and 9. We want to consult and preach using the Bible and the Quran. We will preach water and because I do not take wine, I will drink water.

Because I am the Mover, I want to withdraw both Motions and when the time comes, which is within the six months period, we will have done consensus. In the meantime, as the leader of Government business, I stand by your directions that the Liaison Committee must continue with the Budget-making process. They cannot run away from their responsibilities. They must adhere to the timelines of the Constitution and once we are through, we will come back.

Hon. Speaker, I ask you to give me permission to withdraw the Motions. The members of the Speaker's Panel are here. Even Hon. Cheboi is a Temporary Deputy Chairman. If the Deputy Speaker is tired, Hon. Cheboi can help her. From where I sit, I think the crime committed must be very serious. I served in the last Parliament and I am serving in this Parliament. I think the matter being discussed is very grave. I have never seen Members behaving this way. So, we need to go and do a postmortem the way we dealt with the Parliamentary Service Commission.

I also see the Chair of the Departmental Committee on Defence and Foreign Relations. I thank him. He has survived. Under Standing Order No. 51, I withdraw both Motions and thank the members of the Departmental Committee on Defence and Foreign Relations. Hon. Gethenji is a happy man. He has also survived and I hope he will learn the lessons that he has been told today.

Thank you, Hon. Speaker.

**Hon. Nyamweya:** On a point of order, Hon. Speaker.

**Hon. Speaker:** I am the one speaking. You cannot be on a point of order, Hon. Nyamweya. You said you are doing a second term. I am the one addressing you.

Hon. Members, it is fair that I make this clear. It looks like the mood in the House is one that agrees with the Leader of the Majority Party, but not if he moves under Standing Order No. 51. That Motion listed as Order No. 8 has already been moved and seconded. It is now the property of the House. So, if he wants to withdraw it in the manner he has proposed, he can only move under Standing Order No. 58, which requires leave of the House. Is it the mood of the House to allow him to withdraw that Motion?

**Hon. Members:** Yes.

**Hon. Speaker:** I am looking at the mood of the House and your faces. Some of those faces look quite unhappy. Is it the mood of the House that this Motion be withdrawn by the Leader of the Majority Party under Standing Order No. 58 - with your leave?

**Hon. Members:** Yes.

**Hon. Speaker:** The House should give leave for the Motion to be withdrawn. Hon. Members, some of you do not even want to take time to understand. It is a different thing to adjourn debate of a Motion. It is a completely different thing to withdraw the Motion. The better thing for now is for the House to give leave to the Leader of the Majority Party to withdraw this Motion on rescission, so that you, as I can see from many of you and as requested by Hon. Shebesh, can have an opportunity to think through these proposals. If the Motion is withdrawn, it can still be re-introduced. Again, you are the people to make the decision. Am I clear now?

**Hon. Members:** Yes!

**Hon. Speaker:** Hon. Members, therefore, the House grants leave to the Leader of the Majority Party to withdraw from today's Order Paper the Motions appearing as Order No.8 and Order No.9.

**Hon. Members:** Yes!

**Hon. Speaker:** Can I put the Question, that the Leader of the Majority Party is hereby granted leave by the House to withdraw the Motions appearing under Order Nos. 8 and 9 in today's Order Paper?

**Hon. Members:** Yes!

*(Question put and agreed to)*

*(Order Nos. 8 and 9 withdrawn by leave of the House)*

**Hon. Speaker:** Hon. Members, the two businesses having been withdrawn with your leave, we will proceed with the next Order. But before we do so, allow me to recognise the students present in the House today from various schools. They are students attending the Pupils Reward Scheme, Office of the First Lady, State House. Seated in the Speaker's Gallery are students from Migwani Boys Secondary School, Mwingi West Constituency, Kitui County; Nakuru High School, Nakuru County, and Ichachiri Secondary School, Gatundu South Constituency, Kiambu County.

They are all welcome to observe the proceedings of the National Assembly.

*(Applause)*

Next Order!

## MOTION

### ADOPTION OF REPORT ON MEDIATED VERSION OF THE MINING BILL, 2014

**Hon. (Ms.) Abdalla:** Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No. 150, this House adopts the Report of the Mediation Committee on the Mining Bill, 2014 laid on the Table of the House on Tuesday, 8<sup>th</sup> March 2016, and approves the mediated version of the Mining Bill (National Assembly Bill No. 9 of 2014).

*(Loud consultations)*

**Hon. Speaker:** Order, Members! Those of you who are withdrawing from the Chamber, must do so without disrupting business. The hon. Member for Tetu and the hon. Member for Chuka/Igambang'ombe, your Standing Orders say that no Member shall stand between the Speaker and the Member contributing. You must always look around and see who is contributing *vis-a-vis* where the Speaker sits.

Proceed, Hon. Amina.

**Hon. (Ms.) Abdalla:** Hon. Speaker, the Mining Bill was passed by this House and sent to the Senate, which passed it on 28<sup>th</sup> October 2015. Therein, as a House, we looked at it and approved it with some rejections of the Senate version of the Bill. Subsequently, we had three meetings, as Mediation Committee, to look at several clauses of the Bill that were problematic. The following are the resolutions of the Mediation Committee on the disputed clauses.

This House rejected the Senate amendment on the definition of “community” because their definition left out communities which would be displaced by an intended exploration of mining operation. The mediated version therefore agrees with the definition of community that was in the National Assembly’s version of the Bill.

The Mediation Committee further agrees with the fact that the definition of “strategic minerals” under Clause 16 was sufficient. A definition was, therefore, not required under the definition clause.

On Clause 7, we agreed with the Senate’s recommendation that the Cabinet Secretary (CS) should only gazette upon advice from the Mineral Rights Board. Clause 16 was also asking that the Mineral Rights Board advises the CS when dealing with strategic minerals. Clause 30 was also a disputed component. One was on the nomination of the member of the Council of Governors to sit in the Mineral Rights Board. The mediated version of the Bill agrees with an amendment whose effect is that the person proposed by the Council of Governors should have professional experience on matters relating to mining.

We also had a disagreement on who would serve as the Secretary to the Mineral Rights Board. We ended up agreeing that the Director of Mines would be the Secretary. Previously, we had thought it should be the Principal Secretary. Clause 33 was with regard to what happens when the CS rejects an application. As a House, we wanted a process where they could go back to the CS. However, the agreement in the mediated version says that once the CS rejects an application, we automatically go to court and remove the version where you could request for an intervention from the CS.

Clause 34 was over a deletion that was undertaken by the Senate. The mediation version of the Bill agrees with the National Assembly. We said that there is no way you can remove prospecting. Basically, the need to have a community giving consent to somebody doing prospecting on their land had been deleted by the Senate. We have now reinstated the same.

On Clause 37, it seems like the Senate was confusing the issue of prospecting with reconnaissance. For the benefit of the House, reconnaissance is when somebody decides to walk around an area, but does not do anything intrusive. It can even be a geophysical survey. However, when it is prospecting, it can go to an intrusive activity like drilling a well on your land. The Senate had thought that they should not require consent. Prospecting is very intrusive and it requires consent as opposed to reconnaissance. This is something that Members should

note. Players in the sector confuse, in their lobbying, that requiring people to have consent for reconnaissance and prospecting would chase away investors. The truth of the matter is that there is nowhere in the world that you can do prospecting on anyone's land without some form of consent. So, when lobbyists tell you that you are chasing away investors, you should know that it is not true. You can only do that if you have made those conditions necessary for reconnaissance survey, which is a non-intrusive process.

Hon. Speaker, we also agreed on Clause 40, which refers to the fact that the Senate had over-legislated by stating specific clauses regarding compulsory acquisition. We agreed that we revert to the National Assembly version that was referring generally to clauses relating to compulsory acquisition. This is because, it can be in different Acts and they can change in name and clauses. Therefore, referring to a specific clause would be too narrow.

We also agreed on Clause 49 with the Senate. We, as a House, had thought that you need four years for an internationally owned company to take their shares to the stock exchange so that local content in form of local ownership can be achieved through the stock exchange. The Senate was of the view that four years was long. So, we agreed with their recommendation of three years.

On Clause 51, we agreed that for the Cabinet Secretary (CS) to revert back on a decision to a signed mortgage or trade a mineral right he only needs 30 days. We agreed that there was no need to have regulation on eligibility for mineral rights to be mortgaged because they must be the same as those of getting a licence. There is no way somebody who does not qualify to hold a licence can qualify to buy a license. So, we believe that Clause 11 would serve the purpose that the Senate wanted to deal with. Hon. Members, this is a very important issue that we need to deal with, because the Senate keeps on bringing these kinds of amendments that have constitutional implications. I want Members to note that if it happens in other Bills, they will revert back to it.

Under Clause 149, the National Assembly's version of the Bill had stated that all immovable assets of the holders of a mining licence be vested in the Republic. The Senate wanted it to be vested in the county. That is not possible even if you are sympathetic to the counties. Article 62(1)(f) and (3) of the Constitution classifies minerals as public land which are vested in the national Government.

Hon. Speaker, secondly, the national Government, through the Mining Act, has decided to form a national cooperation which would be participating in mining and would need these equipment. So, the first right of refusal should be given to the national Government. This is very important because we tend to be faced with these recommendations from the Senate about giving things to counties and yet the Constitution is very clear on ownership. So, those are the mediated versions. I would like to take this opportunity to thank your office and colleagues in the Senate who seem to always come up with amicable ways forward on mediated versions of all the Bills.

I request the Parliamentary secretariat to look at some of the things that have been put in this Bill. This is because some of them need to be adopted under the Petroleum (Exploration, Development and Production) Bill which in my opinion may not have received as much technical input from the technical people who had come to work with us both the Commission for the Implementation of the Constitution (CIC) and other civil society organisations. To get players from the sector to give you information without more balanced views will not benefit. So, I urge the secretariat that is working with the Departmental Committee on Energy, Communication and Information to look at some of the things that will eventually come up in this Mining Bill because both of them are in the extractive sector.

With those many remarks, I beg to move and request Hon. Marcus Muluvi to second.

**Hon. Speaker:** Let us have Hon. Marcus Muluvi.

**Hon. Muluvi:** Thank you, Hon. Speaker. I second the Motion as proposed by my Chair. In our first meeting, the Senate had issues coming to terms with what our position was as the National Assembly. In the second meeting they started agreeing and basic things like definition of a community had taken too long for them to take a position on but finally we agreed. They had other issues on strategic minerals. Immediately they agreed we went to Clause 7 and it was agreed that the CS must get advice from the board before gazettment is done. That was agreed on in principle. The Senate wanted the Council of Governors (CoG) to be represented on this board but it was eventually agreed that the person to be nominated must have adequate knowledge of mining.

There were other issues on areas of prospecting. An example is what is happening with mining in Kitui. When a company has gone to prospect, it is important for the local community to be informed well in advance so that, at least, they can give room for them to roam around people's land. Otherwise, something like geo-survey which does not require direct contact with the people had no issue. As a result, it was resolved that the community needs to be consulted during prospecting but not during geo-survey.

It is very important for any investor to go to the Nairobi Stock Exchange (NSE). This is because it is very important to allow Kenyans to have access to the shares. They can only do that if they have gone to the stock market. It was agreed between the Senate and the National Assembly Committees that three years is adequate. Initially, as the National Assembly, we had thought of four years but we agreed on three years as a result of which I second.

*(Question proposed)*

**Hon. Speaker:** Hon. Gikaria, do you want to contribute to this? Sorry. I know there are some Members who have logged in because they want to go to the other business. Can I get an indication? The next is Hon. Aden Duale and he does not want to contribute to that one. Let us have Hon. Makali Mulu

**Hon. Mulu:** Thank you, Hon. Speaker. I thank Hon. Amina Mohamed and the other Members of the Mediation Committee for agreeing on these many amendments which had been proposed by the Senate. That working relationship is good. It should take this Parliament far in terms of ensuring that we get the right legislation for this country. I have three amendments which are very important and I want to highlight just as the Chair of the Committee has said.

The amendment to Clause 16 is very important. When the original Bill was presented to this House, majority of us were concerned with the powers which were given to the Cabinet Secretary (CS). The whole idea of the CS making decisions in consultation with the Mineral Rights Board is very important to this country. So, I support this amendment. This is going to help this country ensure that we get the right decisions made in the mining sector.

The other amendment which I really want to support is Clause 20 that deals with the issue of compensation. As a result of the decisions which the Director for Mines will make, people are likely to be affected in terms of losing their land or being displaced. It is very important to Kenyans in general and particularly in Kitui where we have a lot of minerals that those who will be displaced as a result of a mining activity are properly compensated. This issue of compensation is very controversial. This is an area where the Chair of the Committee can really



help us. I like this amendment because it is going to make sure our people are not unfairly treated by the Ministry or by the miners. If we go that way, then Kenyans will be very happy with what we are doing as legislators.

My final comment is on Clause 149. This clause has been well explained by the Chair of the Committee. The Fourth Schedule to the Constitution is very clear on the responsibilities of the national Government and functions of the county governments. It is very unfortunate that we would like to move a national responsibility to the county government level. The idea of any mining asset which will remain being handed over to the national Government is very important. This is because all the minerals found in our country should benefit Kenyans irrespective of where they live. The idea of handing over these assets to the national Government is to make sure that those assets benefit Kenyans irrespective of where they live. For example, take Kitui County where we have a lot of coal. If at the end of the day those assets are handed over to the Kitui County Government, while coal is seen as a national resource, it means those assets will benefit only the Kitui County Government and not the rest of Kenyans. So, this amendment is important. I am happy that the Senate saw the sense in agreeing that these assets are handed over to the national Government.

With those remarks, I support the Report of the Mediation Committee. Thank you.

**Hon. Speaker:** The Member for Mwatate, you have the Floor.

**Hon. Mwadime:** Thank you, Hon. Speaker, for this opportunity. As one of the members of the Mediation Committee, for sure the mediation process was good. The team worked very hard.

On the prospecting rights, in the original Bill, somebody could just do prospecting on a land without getting consent from the land owner. But after the mediation process, the team agreed that whoever is going to prospect for minerals on somebody else's land must get consent from the land owner, which is a win-win situation for both the land owner and the prospector.

On the rejection of a licence, it was the sole decision by the CS under the original Bill. After mediation, the team came up with a resolution that the Mining Board should also be involved. If the CS were to decline, the matter would go to the High Court. Involving the Mining Board in the decision making is good. We also agreed that this Board should have people with knowledge in minerals.

On strategic minerals, in the original Bill the decision on what mineral is strategic was to be made solely by the CS. But after the mediation, we agreed that we should also engage the Mining Board.

Therefore, I stand to support the resolutions made by this Committee chaired by Hon. Amina Abdalla.

Thank you, Hon. Speaker.

**Hon. Speaker:** Can I get an indication whether the Member for Ol Jorok wants to contribute to this Motion or the next one? What about Hon. Ferdinand Wanyonyi, the Member for Kwanza?

There being no other Member wishing to contribute to this Report, I will defer putting the Question for the convenience of the House.

*(The Speaker consulted with the Clerks-at-the-Table)*

I am told the Mover wants to reply.

**Hon. (Ms.) Abdalla:** Hon. Speaker, I can only reply with your permission.

**Hon. Speaker:** Yes, reply.

**Hon. (Ms.) Abdalla:** Hon. Speaker, I had already thanked your office and everybody involved in this process. However, I want to put it on record that a lot of time people downplay when this House sends Members for benchmarking, but in the case of the Mining Bill, the benchmarking to the University of Western Australia enabled the Members who attended to improve the quality of the Bill. We were able to balance out what the lobbyists were giving us for the purposes of assisting their businesses and what the case should be. So, I want to note that when well planned, benchmarking missions can really be---

**Hon. Speaker:** That does not sound like a reply, Hon. Amina. A reply should be to what has been said by others.

**Hon. (Ms.) Abdalla:** Hon. Speaker, I just wanted to reply to myself because I had said that you helped us in the process. I also want it recorded that the benchmarking trip helped the process this Bill has gone through. I would like to thank the few Members who have commented on this Report. We have put a firm foundation for a prosperous mining sector in this country.

**Hon. Speaker:** The Question will be put on Tuesday for the convenience of the House.

*(Putting of the Question deferred)*

Next Order!

## BILL

### *Second Reading*

#### THE LAND LAWS (AMENDMENT) BILL

*(Hon. A. B. Duale on 9.3.2016)*

*(Resumption of Debate interrupted on 9.3.2016)*

**Hon. Speaker:** About three Members had contributed. The person who was on the Floor, Hon. Alice Wahome, the Member for Kandara Constituency, has a balance of two minutes. If she is present, she can make use of those two minutes. It appears like the Member is absent. So, she forfeits her chance. I now move to the Members who have made requests.

Let us start with Hon. Abdikadir Omar.

**Hon. Aden:** Thank you, Hon. Speaker, for the opportunity to speak to this Bill. At the outset, as this House implements its constitutional mandate of making laws, it is very important that we do so bearing in mind the goodwill of the many Kenyans who the laws we make in this House affect.

I do not support this Bill. It should not be supported on the Floor of this House for various reasons. Number one, I do not understand why and how, through miscellaneous amendments, very many legislation particularly with regard to land, have been touched on substantively. I feel that there are other intentions in this Bill. Among other things this piece of legislation was drafted at the height of a stand-off or conflict between the NLC and the Ministry

of Land, Housing and Urban Development. For that reason this piece of legislation is intended to cripple and probably make irrelevant the NLC. Kenyans transitioned from previous constitutions into our current Constitution, 2010. Kenyans for their good reasons decided to entrust the NLC with very important roles with regard to the management of land in this country. This is in the Constitution under Article 67. This piece of legislation goes way beyond in terms of ensuring that the NLC is made irrelevant.

There are a few things which I do not agree with and I want to point them out to Members. For example, when it comes to the National Lands Registry, it intends to amend certain sections. Section 7 is amended by introducing the CS and removing the role of NLC and Public Service Commission (PSC) in terms of appointment of registrars. This is not good at all, how can we give all these functions to the CS to decide on the appointment of the land registrars and go even further to place them in the counties?

Under the Constitution, Schedule Four, Part 2(8)(b) and (c) clearly gives certain mandate to the county governments. What this piece of legislation intends to do is cunningly amend the Constitution by taking powers away from the counties and giving them to somebody seated in the Ministry Headquarters. This is not in good faith and should not be done. More so, it even says in Section 10(4) that the registrars shall not be held personally liable for unlawful Acts discharged by the Registrar under this Act.

**Hon. Speaker:** Hon. Abdikadir, I will add you an extra minute. You are making very useful points that certain things which are in the Constitution are being removed. I have always said that there needs to be somebody taking notes of the Members' contributions. The Mover and the Chairman of the Committee are not in the House. They will come to reply but they will not have the benefit of those very important points you are making. Proceed.

**Hon. Aden:** Thank you, Hon. Speaker. Indeed, these are very important issues which as you rightfully guided deserve to be taken notes on. This particular section gives powers to the Registrar, who in the first place, is unlawfully given mandates which are not his under the Constitution. It even says that he should not be held personally liable for any mistakes made. I think it is a deliberate attempt to create and shield this office at the same time.

The Department of Survey is given exclusive rights to determine boundary issues. This is very interesting because it even says in some parts that it will not even require to listen to the parties affected by the dispute of those boundaries, but will make its absolute decisions by itself. This is not good at all and we should not accept this but retain the laws as they are. That piece which is being amended should be retained.

With regard to the NLC, there are a number of issues and this being a very large Bill and we might cover all of it, there is a deliberate attempt to mutilate it. Section 16 of this piece of legislation is about the process of registration of land. The previous Act had provided that if a man and a wife owns a piece of land together and one person wishes to change that ownership, the other spouse has a right to be informed. This particular legislation takes away that right and it should not be regarded. I find it very draconian and not acceptable at all. It is one of the issues that we had made good progress on in terms of ensuring that spouses are also involved in the management of land within the family.

On the NLC, some of the issues that are given here sometimes are very surprising because if you look at Section 44 of this Bill which amends Section 15 of the NLC, it typically, wants to take away or delete Section 15 of the NLC Act. This is very interesting because Section 15 of NLC Act is one that mandates the NLC to investigate and research on historical land

injustices and make good recommendations on the same. Deleting that means somebody somewhere wants those historical land injustices not to be touched at all, investigated or resolved. For that reason and many others that I have mentioned, this particular piece of legislation deserves not to be passed.

I believe it was made at the height of the conflict between NLC and the CS Land, Housing and Urban Development and it is manifested here clearly that power is being shifted away from NLC to the CS. What is interesting is that there are a number of issues here that touch on community land. We just debated the Second Reading of the Community Land Bill. We gave a lot of power to communities to manage ownership of their own lands. This legislation now comes through the back door and takes away those powers from the community and gives them to the CS. These are conflicting pieces of legislation. I believe in passing this particular law we will, indeed, negate very many gains which Kenyans have made or were happy they had been put in place with regard to the implementation of land management in this country.

The Law that has been mutilated in this regard is that of the Land Registration Act, because this Bill goes ahead to amend a number of pieces of legislations but in particular to note is the mutilation on the Land Registration Act. The fact is that the intentions are not right in my view. I know we have the next stage of this Bill, which is the Committee of the whole House where hopefully, we will bring up these issues. Before we get there, this is the kind of Bill that I urge this House to withdraw for further consultations. Indeed, it negates a number of very important gains that were implemented in 2012 or pieces that were passed in the past and are in a very draconian way being removed and mutilated.

I strongly object to this particular Bill and I do not support it. Thank you, Hon. Speaker.

**Hon. Speaker:** Except, of course, the power of the NLC contained under Article 67(2)(e) to investigate on its own motion or on a complaint, into present and past historical land injustices, this can never be taken away through legislation. It is immaterial that this proposal may hope that it is going to remove that. The power in the Constitution remains with the NLC. It is also important to give comfort. There is need for somebody from the Committee or the person moving the Bill to be present and take notes so that when replying, he or she speaks about the issues that Members have raised. If Hon. Abdikadir wants to make a proposal to amend or delete certain clauses, those that own the Bill or are in the Committee will understand where he is coming from. Unfortunately, we view replying to a Motion as such a casual thing.

Let us have Hon. Rasso.

**Hon. Dido:** Thank you very much, Hon. Speaker for this opportunity.

I was of the same view as Hon. Abdikadir. The amendments as provided in this Bill completely change the Land Bill, 2012. Almost each Article has been amended. Before tabling this Bill in the House, it would have been better for the Departmental Committee on Lands to give us a report. If we go through this Bill as it is, we will be legislating in vain. This Bill gives effect to Article 68(c)(1) of the Constitution that says:-

“to prescribe minimum and maximum land holding acreages in respect of private land.”

It also addresses Article 67(2)(e) of the Constitution which states that the function of the National Land Commission (NLC) is:-

“to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.”

If you go through this Bill, clause by clause, you will realise that it fundamentally transgresses beyond the two Articles which have been described at the beginning of this Bill such as the appointment of the land registrars and many other things.

Finally, this Bill challenges two fundamental functions within the Ministry of Land, Housing and Urban Development or Land as it were and the NLC whose functions are clearly stipulated under Article 67. It also goes on to address matters such as community land laws that took us quite a bit of time to discuss. The community land laws are under Article 63 of the Constitution.

Therefore, without much advice or input from the Departmental Committee on Lands, we may be legislating this important Bill in vain. There is no adequate input by the concerned Committee to point out to us why there is fundamental mutilation of the land law of 2012. Without input from that Committee, this House will be legislating on this important Bill in vain.

I rest my case.

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

**Hon. Wetangula:** Thank you, Hon. Speaker for giving me a chance to add my voice to this Bill.

From the outset, as has been said by the previous speakers, this is a bad Bill. If we pass it, it is going to give us a very bad image. It is going to negate the gains made in our previous landmark legislation. This Bill is premised upon the advisory opinion by the Supreme Court in the matter of the National Land Commission, 2014, Advisory Opinion Reference No.2 of 2014, wherein the NLC sought clarity on various issues from the Supreme Court. Some of the issues that the NLC went to court to clarify were on land administration and management functions, land taxation and revenues and human resource. With regard to human resource, that was about how the officers who were in the previous regime would be managed, either by the Ministry before the creation of the NLC or by the Cabinet Secretary. Those are some of the issues that the NLC sought clarity on in the Supreme Court.

Another issue was whether land registration was a function of the NLC or the Ministry. Who was responsible for the land registrars? The Supreme Court made a very clear opinion on this matter. If the advisory opinion of the Supreme Court was properly adopted, the drafters of this Bill should have looked at it when they were coming up with these amendments so that they clarify certain issues in the National Land Commission Act.

Let me quote verbatim what the Supreme Court said:-

“One of the things that the NLC had sought an advisory on was on the words “recommend, advise, research, investigative, encourage, assess, monitor and oversight”, which are all actions that provide a facilitative role and not a primary one. The context in which these words are used presumes that there is another body or organ whom such a recommendation, advice, research, investigations, encouragement and assessment shall be sent to, received by and relation to which the proposal shall be implemented. There is, therefore, a clear separation of roles between a body providing oversight and a body upon which the oversight is to be conducted”.

This is the clear distinction between the roles performed by the Ministry and the NLC.

Hon. Speaker, Clause 16 of the Bill provides for removal of spousal interest and consent without any justification. Families have agonised over property that is mortgaged or sold without spousal knowledge. Further, trust plays a vital role in the management of assets for beneficiaries.

This amendment is in bad taste, callous and it will usurp citizens' power and grant it as a discretionary power unto the Registrar to continue with the abuse witnessed in the prior adoption of the current Constitution.

Under Clause 17(a) of the Bill, while the land law presumes that all land transactions must be registered, it will be retrogressive to only demand that an interest shall only arise based on the existing entry in the register in a manner proposed by the current amendment.

On Clause 37(4) of the Bill, it is unquestionable to obligate a spouse so wronged and robbed of a matrimonial interest to file a suit in court to enjoy interest. Consent in matrimonial property should remain as it is and not in the manner prescribed in the current Bill. This Bill takes away citizens' rights and we must reject that.

Clause 38 of the Bill lacks judicious explanations why such simple matters which can be resolved by the Registrar or through Alternative Dispute Resolution (ADR) mechanisms have to be adjudicated by the courts.

Hon Speaker, this House must be slow to change some of the good legislations that have been passed before. We do not know the objective to be achieved by these amendments in the Bill.

Clause 46 of the Bill charges the Public Service Commission (PSC) with the mandate of appointing commissioners to an independent entity like the National Land Commission (NLC). The current provision should remain and not the way it is proposed in this Bill.

Clause 53 of the Bill states that control of land includes riparian and beach fronts which shall be better protected by the Commission for posterity. Land has been grabbed in some of these areas and Government agencies have given approval for development in some of these riparian areas. People have interfered with beach land.

Under Clause 53(6)(a) of the Bill, the entity charged with security should not be used to limit personal economic rights since this is subjective. However, constitutional entities like the military and State corporations should suffice. Under Sub-Clause (7), the Commission is best charged with the responsibility of developing regulations since it bears the duty of researching, advising and mitigating disputes. The CS is too subjective to participate in the formulation of regulations.

As I conclude because my time is running out, Clause 54 of the Bill states that the Commission should communicate to the lessee the interest of the national or county governments on local population. The CS is charged with registration of land hence regulation on lease renewable is the province of the Commission. The proposed amendment on Clause 54(c) of the Bill should be dropped or defeated because it is a bad precedent for Government to compensate a lessee for its own land as it is proposed under Clause 54(d)(4).

If this Bill is carefully---

**Hon. Speaker:** Member for Budalangi, you have the Floor.

**Hon. Ababu:** Thank you, Hon. Speaker. The reason why Kenyans spent too much energy, effort, sweat, blood and limb to give themselves a new constitutional dispensation was to deal with the vexatious troubled issue of land. Right at the heart of both the clamour for a new Constitution and in the process of piecing this new Constitution, I had the privilege to co-Chair the Committee of this House that presided over the political deal for this Constitution. Land was right at the heart of those negotiations.

It is important that when this House is handling the enabling legislation to actualise and bring alive the spirit and letter of the Constitution that we reflect the desire that informed

Kenyan's aspirations and dreams for a new framework of law on land. Therefore, I feel quite disappointed when I look around this Chamber that a piece of legislation as significant as this one will be debated in a Chamber that is virtually empty. It is even worse that we are debating it in the absence of the Departmental Committee on Lands.

Allow me with humility and utmost respect to ask that a position be taken on this matter. Last week, I stood at this spot to contribute to the debate on the Community Land Bill and the situation was virtually the same because we were just about four Members when we debated it. It is disturbing and a disappointment that while debating such serious pieces of legislation, we are not giving them due recognition.

I am worried that pieces of legislation that we enacted soon after we passed the Constitution including the Land Act of 2012--- For the record, soon after the enactment of the Constitution in 2010, the 10<sup>th</sup> Parliament gave primacy and priority to enactment of the various pieces of legislation especially on matters of land. I would like to commend the then Minister for Lands, the Senator for Siaya, Hon. James Orendo for the fantastic work he did in leading the whole process of preparing various pieces of legislation and pushing them through the 10<sup>th</sup> Parliament, which did a fantastic job. My worry is that the 11<sup>th</sup> Parliament is attempting, through amendment Bills, such as this one, to undo a lot of good work that we did in the 10<sup>th</sup> Parliament which witnessed a very high level of fidelity to the Constitution both in letter and spirit which I do not see reflected in the 11<sup>th</sup> Parliament. Because I do not want to be repetitive, my colleagues have made some fantastic submissions and contributions on this Bill. I particularly want to commend the Member for Balambala, the Organising Secretary of our big party ODM, Hon. Aden, for the fantastic dissection of this Bill and contribution on various issues.

My major concern and addition to that contribution is on the role of the NLC. I am afraid and, indeed, petrified by the very deliberate attempt to emasculate the NLC and basically to edge it from the centre or the prime position of influencing the new arena, the new administration or framework of handling land. I just want to remind this House that if you look at Article 67 of our Constitution where the NLC is established and you look at the functions that the drafters of the Constitution in their wisdom bestowed upon the NLC, you will find that there are wide ranging responsibilities. They range from management of public land on behalf of both the national and county governments, recommendations on policy, advising national Government, conducting research and initiating investigations. All those issues that are listed under Article 67(2)(a) up to (h)--- Fundamentally, Sub-clause(3) says that the NLC may perform any other functions prescribed by national legislation which means that in their wisdom, the drafters of this Constitution envisaged a situation where this House would be considering additional responsibilities to the NLC and not making effort to take away those functions or any functions envisaged by this Constitution in favour of the NLC. That is the essence of Article 67(3) that calls upon this House to prescribe any other functions that we may see fit for the NLC.

Therefore, when I see a piece of legislation such as this one which right from the beginning, for instance, from Section 3--- Section 6 of the Land Registration Act is amended in sub-section 1 by deleting the words "commission in consultation with the national and county governments" and substituting therefor the words "Cabinet Secretary". This is the trend I saw in the Community Land Bill where deliberate effort was being made to substitute the terms. There is absolutely nowhere in the Constitution where the mother law of this land gives any primacy or any superior responsibilities to the CS to replace or subjugate responsibilities that squarely belong to the NLC. This is incredible.

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

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Shebesh) took the Chair]*

Hon. Temporary Deputy Speaker, in fact, I notice the Chair has changed gender now that there is a different gender on the Chair. Let us call this spade what it is; a spade and not a big spoon. This Bill is attempting to rewrite the Constitution through the backdoor. The drafters of this Bill, aware of the difficulty of amending the Constitution, are attempting to alter the supreme law of this land through an ordinary piece of legislation. I want to warn this House that if this Bill is enacted by this House, then we legislate in vain. This is a Bill that will not pass the test of even the most basic constitutional challenge. I want to say, speaking on behalf of my party, ODM that, if indeed, this House behaves recalcitrant and obtuse and proceeds to enact this law in its current form, then we shall certainly challenge the constitutionality of this Bill.

It is unconstitutional; it is untenable and it is unreasonable. It makes absolutely no legislative or constitutional change. I want to challenge the Departmental Committee on Lands of this House and the drafters of this Bill that I do not know whether this Bill has been drafted by the State Law Office because, again, it is very confusing nowadays to know the source of the various pieces of legislation. Please withdraw this Bill today and not tomorrow. Redraft this Bill in a manner that is reflective of the letter and spirit of the Constitution.

I oppose this Bill.

**Hon. (Ms.) Korere:** Hon. Temporary Deputy Speaker, I wish to draw the attention of my colleagues, whom I appreciate their contributions to this Bill, to some clarification. As a Member of the Departmental Committee on Lands I would like to note that prior to the legislation of the Land (Amendment) Bill, 2015, there was consultation with many stakeholders. I would like to remind my good friend, whom I do not know for what reasons he is not yet the party leader of ODM, that while we were making this Bill, there was a lot of contribution even from the very knowledgeable Members of the ODM movement or religion. I do not know whichever comes first.

Again, I would like to say that this Bill, as purported by Members, does not intend to take any powers from the NLC. The NLC is run by Kenyans who need to have checks and balances. That is why if you look at this Bill clearly, you will find that it is trying to solve the mystery that was witnessed in the first two years of the NLC and the Ministry of Land, Housing and Urban Development. If you remember, for a very long time, there were protracted battles between the NLC and the Ministry of Land, Housing and Urban Development over who does what or who is charged with what responsibilities. So, what this Bill is trying to address is what should be done by the NLC, what should be done by the Ministry of Land, Housing and Urban Development and what should be done by the counties. This is because we realised that land is a very emotive issue.

**Hon. Shimbwa:** On a point of information, Hon. Temporary Deputy Speaker.

**Hon. (Ms.) Korere:** I do not want to be informed, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): You want to inform the Speaker?

**Hon. Shimbwa:** I want to inform the Hon. Member.



**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): She has to accept first. Do you want the information, Hon. (Ms.) Korere?

**Hon. (Ms.) Korere:** No, thank you. The Member looks very tired. I do not want his information.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): She has rejected your information.

**Hon. Shimbwa:** Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Go ahead, Hon. (Ms.) Korere.

**Hon. (Ms.) Korere:** Hon. Temporary Deputy Speaker, I was trying to say that land issues in this country are emotive and many problems that bring loss of lives revolve around land.

What this Bill intends to do is to make sure that there is a process in which if the NLC initiates a process, the Ministry takes over and somebody else finishes it. This is so, so that at the end of the day, there is no one with monopoly over the others. I would like to remind Members of this House that not long ago Members of this House threw out the defunct Electoral Commission under the pretext that it was responsible for the bungled elections. Today, the same House, same Members and especially my friends led by Hon. Ababu and Hon. Aden there, are again demanding the removal of the IEBC over allegations that it is not an effective Commission. I want to remind them that even the NLC is run by Kenyans. I want to be on record on the Floor of this House as saying that even the current NLC as constituted has committed many wrongs. When Kenyans were making the new Constitution, they were not giving the NLC powers to be an activist Commission. They were giving them powers to try and solve land issues. When I speak about land issues, I hold this debate so close to my heart because I come from an area where land issue has been a problem since Independence. Much as I appreciate my colleagues who make contributions to this Bill, I accept that there are some areas that need some changes. There are areas that need some enrichment. Currently, the Bill is 90 per cent good. I urge and plead with my colleagues to address the 10 per cent that is not good, which could be as a result of human error. I plead with my colleagues to pass this Bill and see the reforms that we have really yearned for in the land sector. Let us support this Bill and make the minimal changes that might be required.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Andrew Mwadime.

**Hon. Mwadime:** Thank you, Temporary Deputy Speaker, for this opportunity. Land issues are very sensitive to Kenyans. If you talk about land, you are talking to the hearts of Kenyans. The amendments to land laws are reverting back powers which were given to the NLC by the Constitution to the CS. This is against the Constitution. This Bill deletes the County Land Boards. Therefore, dispute resolution mechanisms created through the NLC seem to be deleted and this contravenes the Constitution. All crucial functions, including adjudication, consolidation, registration and record-keeping will be reverted back to the CS, and yet in the Constitution, they were functions of the NLC.

According to these amendments, it seems that the NLC is reduced to a mere body formed by the Public Service Commission (PSC). Therefore, issues like historical injustices are trashed. Instead, they have put simple provisions in this Bill. As we debate this Bill, I remind my colleagues to know that today I might be holding this office but tomorrow it will be somebody

else. Therefore, let us be objective rather than being subjective. I support my colleagues who rejected this Bill. Therefore, I do not support these amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Omar Shimbwa of Changamwe.

**Hon. Shimbwa:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I rise here as a Member of Parliament from Coast Region. This is the worst affected region because all land was deemed to be Government land. Pieces of land were given to anybody who was in the Government at that time. We have suffered a lot of injustices. We have witnessed families that have lived on land for generations being evicted at odd hours of the night only for that land to be allocated to somebody else who has maneuvered his way to get a title deed. We have seen people living along the beach being evicted from those areas because they have been found to be economically viable. Foreign people own this land and not the local people who have been there for over 1,000 years.

The NLC was actually mooted to address these anomalies. If I may quote a few examples, we have the National Land Information System. This has been with the Ministry of Lands, Housing and Urban Development for ages. To date, nothing has been effective. Although billions of shillings have been spent, nothing has improved. Today, people are still losing money through fraudulent officers who work in those departments. Fraudsters defraud innocent civilians because the National Land Information System has not been effective. If we revert back this very important service to the CS for Land, Housing and Urban Development, we will be telling the world that we still want people to be conned. That is one reason why this Bill should be withdrawn with immediate effect and thrown at the Kibarani dump site in Mombasa.

We have the County Land Management Boards, which are actually the devolved units of the Commission. Since the inception of these County Land Management Boards, there has been peace in our regions because whoever finds himself or herself uncomfortable, he or she will go to this place to seek remedy. These boards have been doing a very good job to ensure that people enjoy their rightful share. They have managed to make affected people remain patient while these matters are being addressed by the respective officers who visit these areas on a given time.

The other aspect that should be taken care of is the fact that this Bill envisages to have the PSC appoint or vet the Commissioners of the NLC. Since when has another commission been responsible for the appointment of officers of another commission? This is very ridiculous and something that cannot be accepted. The NLC should remain an independent body and should be given all the powers that it requires to address the anomalies and the historical injustices that Kenyans have suffered for a very long period of time.

I do not see anything wrong with the way the NLC has been operating. It is also very disappointing to note that the budget of this very important Commission, which all Kenyans have their hopes on has been slashed from Kshs1.3 billion to Kshs300 million.

Hon. Temporary Deputy Speaker, I want to reiterate to the House that this is a deliberate scheme to ensure that the NLC is no more. All Kenyans of sane mind will oppose this Bill. The Ministry of Land, Housing and Urban Development together with the Cabinet Secretary should simply be responsible for policies and nothing else. Trying to kill the Commission by amendments to the law and denying it funds is a sure way of looking for a recipe for another chaotic situation as witnessed in 2007/2008. So, I beg the Members of this respected House to reason beyond party lines and use all their wisdom to make sure that this very important House,

in which all Kenyans place their hopes, is not used as a rubber stamp to please the powers that be.

I will give an example. Recently, the Government appointed an inter-ministerial committee to see whether the Kenya Petroleum Refineries should be revived and continue to operate as a processing plant or storage. The committee was appointed to come up with resolutions and was given all the facts. The committee came up with the resolution that KPR Limited should continue operating as a processor of crude oil, but not as a storage facility. Because our beloved country has become a country which does not respect laws and wise counsel, people are forcing that committee to drop that recommendation and to adopt the one for storage. As people from the Coast region, we are very much aware that this is another ploy to deny our people employment and to sell the land, which was valued at about Kshs11.5 billion.

The same things are being applied in the NLC. We should follow and respect laws. We should never allow our country to become lawless because it will never prosper or develop. I realise that the law was not respected in Malindi and everybody was brandishing a gun. Eventually, everybody was allowed to take charge of the situation because we are not a law abiding country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. Your time is up.

*(Hon. Shimbwa spoke off the microphone)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, you are not on the microphone. I now give the Floor to Hon. Annah Nyokabi, Member for Kiambu.

**Hon. (Ms.) Gathecha:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. The Land Laws (Amendment) Bill has been brought to the House to amend the Land Registration Act, the NLC Act and the Land Act. The Acts were enacted for the implementation of the Constitution in order to clarify the roles and mandates of the Ministry of Land, Housing and Urban Development. The Acts rectify inconsistencies and overlap of mandates in the land laws that have resulted in difficulties in the implementation of the Land Registration Act.

We have seen the hullabaloo, the madness and roadside shows that have taken place because there has been inconsistency in the definition of who is responsible for what. It has created a situation of lawlessness. People are being evicted from their land. It has also given opportunity for cartels to thrive. The issue of land is very emotive.

As early as yesterday, we have seen land issues, especially in Naivasha become a matter of life and death. Five members of a family have been slashed with machetes and are currently in hospital. Many of these people are from my county. They had purchased land to settle their families. Because of interference by some Government officials who have withdrawn security, they were invaded by some members of the Maasai community in Naivasha and their land was taken over. We have several funerals lined up this week and these deaths have been caused by land issues. This particular topic is emotive and close to my heart.

As the representative of the people, it is important to have some sort of sanity. There should be justice for those people who have settled on their land. They should farm and receive protection. In the Constitution of Kenya 2010, Kenyans decided that anybody is entitled to settle anywhere in this country. People will stop using the excuse that other communities have taken their land. They will stop the injustices that they use when they sell their land and turn around

against the people to whom they sold the land. They attack them to try and evict them from the land. Every Kenyan is entitled to protection and to settle anywhere in this country. Land is a means of economic production. It is not supposed to be an issue where communities rise up against each other. We have one country.

This Bill proposes to amend the Land Registration Act to clarify the mandate of the NLC and the Ministry of Land, Housing and Urban Development. That is very clear. If we do not pass this particular amendment and make every person responsible and understand his mandate, we will continue to see these kinds of injustices and deaths of many Kenyans. This Bill provides key definitions and offices of the Deputy Chief Land Registrar and the County Land Registrar. It also describes their qualifications. Clause 9(13A)(1) says that:-

“a person shall not qualify for appointment as Deputy Chief Land

Registrar unless such a person is an advocate of the High Court.”

It means that they must have understanding of the law. They must know what they are doing. We cannot have people who are put into commissions for whatever selfish reason or for whatever political interests, who do not understand the law and what they are supposed to do. When their term is over after four years, they move on and leave chaos reigning. It is time we started seeing sanity being brought in.

The other qualification that was put in for the County Land Registrar is that they should have not less than five years standing as an advocate of the High Court with five years' experience in land administration. A person shall not qualify for appointment unless he is an Advocate of the High Court. This will help when it comes to making decisions in the area of land adjudication. We will have somebody who understands the law. We should not just have somebody making a decision so that they can either grab land whose lease has expired or make decisions that are in their own interest. They should be able to understand the community and the laws and the injustices that are taking place.

**Hon. Shimbwa:** On point of order.

**Hon. Ms. Gathecha:** I do not want to be informed. First of all, I am reading from the Land Registration (Amendment) Act.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I do not see your intervention on the screen. Is your card not working? Are you raising a point of order? What is your point of order?

**Hon. Shimbwa:** Hon. Temporary Deputy Speaker, is the Member in order to refer to members of the NLC as lay people and people who do not know the rule of law?

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, you have heard the concerns. Please, clarify as you speak.

**Hon. (Ms.) Gathecha:** Hon. Temporary Deputy Speaker, unless he does not understand what I was talking about, I was talking about the qualifications of the Chief Land Registrar and what he is supposed to do. It does not state anywhere that anybody appointed to the Commission has to meet the requirements set out in the Bill. That is the definition in terms of what each area is responsible for and what they are supposed to do.

Let me repeat it in case he does not understand. These were the qualifications for the Deputy Chief Land Registrar and for the County Land Registrar. They need to be advocates of the High Court and people who understand the law and with, at least, five years' experience in land administration. I do not see if that is a requirement in the NLC, but I may stand to be corrected.

The NLC Act proposes to eliminate duplication of institutions at the county level and to provide a manner in which the Commission shall undertake investigations in historical land injustices, complaints pursuant to Article 67(2) of the Constitution and to harmonise the mandate of the Commission with that of the Ministry of Land, Housing and Urban Development. Land is an emotive issue. This is one issue that we must get right. If any Parliament will ensure that historical land injustices are addressed and we have a clause that deals with that, it will be better. This Parliament will address these issues and bring sanity to that area once and for all by the introduction of this Bill. This Bill also proposes to amend the Act in order to harmonise it with the Constitution, eliminate overlaps and clarify the mandate of the NLC and that of the Ministry. We definitely need that. We cannot have two national organisations purporting to do the same kind of work.

As a country and as representatives of the people, we should make laws that make life a lot easier for many Kenyans who look for services from us. The Bill proposes to look at the minimum and maximum private land holding. The issue of eviction of those who occupy Government land, if we want to see justice, needs to be dealt with. We have that in this Act. It is important that Members read and understand what we are debating as opposed to looking at previous issues in terms of historical references that do not make any sense these days and one that we, as Members, can address.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Shakila from Lamu County. Please use the microphone at the Dispatch Box.

**Hon. (Ms.) Shakila Mohamed:** Asante Mhe. Naibu Spika wa Muda, kwa kunipatia nafasi hii kuchangia Mswada huu muhimu kuhusu swala la ardhi. Swala la ardhi ni nyeti sana. Ningetaka nichukue nafasi hii kuipongeza Kamati ya Ardhi kwa kazi nzuri waliyoifanya kuleta Mswada huu kuona kwamba tutasonga mbele kutokana na mashaka ya ardhi tuliyo nayo. Ardhi ni swala nyeti sana na lina changamoto nyingi sana.

Hivi sasa, kuna sehemu nyingi hususan upande wa Pwani ambako kumekumbwa na dhuluma nyingi sana za mashamba ambazo tunaamini huu Mswada ndio utaleta suluhisho kwa shida kama hizo. Kuna umuhimu Mswada huu, uangaliwe kwa makini na upigwe msasa zile sehemu ambazo zinafaa ili ukiwa utatekelezwa kwa wananchi, basi uwe ni Mswada unaoweza kunufaisha Mkenya popote pale alipo na sio Mkenya kutoka sehemu fulani awe atazidi kuumia.

Madhumuni na malengo ya Mswada huu ni kumaliza zile shida ambazo zimetukabili katika mambo ya ardhi, hasa zile sehemu ambazo kufikia sasa kuanzia tupate Uhuru nchini Kenya, bado zinakumbwa na changamoto. Mswada huu uko hapa kulingana na Katiba yetu ambayo tuliipigia kura tukitarajia kwamba Mswada huu ndio kitu ambacho kitakuja kutumalizia shida zetu za ardhi.

Kifungu 44(15) kinataka kuondoa mamlaka ya Tume ya Kitaifa ya Maswala ya Ardhi (NLC), ambayo imetengenezwa na Katiba na imepewa uwezo kuangalia tuhuma za mashamba ambazo zinaendelea katika nchi hii. Tunasikitika ikiwa NLC itapokonywa uwezo na nguvu ya kutekeleza majukumu yake kulingana na katiba. Basi bila shaka, kama nchi tutakuwa tunarudi nyuma badala ya kusonga mbele--- Hatutaki tena kujikuta tuko nyuma kutokana na ile shida ambayo ilikuwa inatukabili. Wananchi wako kwenye ardhi zao wakijua huku ni kwao. Wengine huku juu wameshikilia vyeti vya mashamba wakisema kwamba hizo ardhi ni zao. Tunataka vile wananchi walivyotoa mapendekezo yao kwamba kuwe na NLC, iwe itaangalia shida kama hizo.

Mapendekezo ya wananchi ni kwamba ugawaji wa ardhi utoke mashinani kwenda juu na si kutoka juu kwenda chini kama ilivyokuwa zamani.

Vile Mswada huu unavyoelekea, unaturegesha nyuma kule tulipotoka. Mswada huu unataka kupokonya nguvu NLC na kuzipatia kwa Wizara ya Ardhi ambayo ilikuwa na majukumu haya na dhambi nyingi zilitokea kulingana na haya majukumu ambayo walikuwa nayo wakati huo. Hatutaki tena kuona zile dhambi zikiendelea. Tunataka kuumaliza ule msururu wa dhambi. Tunataka kuona kila mmoja amepata haki yake ya kikatiba na kila mmoja amepata usawa kama wengine. Hatutaki kuona dhuluma wala mambo ya misururu ya kunyanyasana ikiendelea kwa upande wa ardhi. Tunataka kuona maendeleo. Tunasikitika kuwa Serikali tulionayo inataka kuturudisha nyuma kwa kupitisha Mswada ambao unapokonya NLC mamlaka ambayo imepewa na Katiba kupitia kwa kura za wananchi na kuregesha haya mamlaka kwa Wizara ya Ardhi ambayo ilisababisha dhambi na shida ambazo zinatukabidhi kama wananchi wa Kenya. Kwa hivyo, tunataka huu Mswada, kabla haujapitishwa, upigiwe msasa na uwe ni Mswada ambao utaweza kuwahudumia Wakenya wote. Unafaa kupeana muongozo na mwelekeo kwa kila Mkenya bali si kwa baadhi ya Wakenya.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Onyonka.

**Hon. Onyonka:** Hon. Temporary Deputy Speaker, my colleagues have been debating this matter. The land question is an important matter to all Kenyans and has been a very emotive issue. We have to be very careful what to do with this Bill. The truth and the reality is that this Bill has very interesting proposals. It proposes to amend the NLC Act. The amendment is meant to eliminate duplication of the institution at the county level and to provide the manner in which NLC shall undertake investigations into historical land injustice complaints pursuant to Article 67 of the Constitution. The Bill also seeks to limit the mandate of NLC to the management of public land on behalf of the national and county governments, limit the policy-making powers of NLC and limit the powers of the Commission regarding allocation of public land. The Bill also proposes to establish a board of trustees to manage the settlement scheme funds. It also proposes the mode of prescribing minimum and maximum private land holding acreages.

The truth is that this Bill is trying to emasculate the capacity and capability of the NLC, so that it just becomes another office. There is going to be a board appointed by the Public Service Commission (PSC). You know who appoints members of the PSC. If the PSC is going to be the one appointing members of a board which is supposed to be a constitutional commission, which should be vetted by this Parliament, then that is wrong. This is going to be a very hot issue for us. We are not going back to the bad old days where recommendations about land were made by the Head of State. In that case, it is the Cabinet Secretary who is going to make a recommendation on who gets land or does not. The Land Registrar will have executive powers and will override the decisions of the NLC. The critical reason why the drafters of the Constitution brought up the NLC was because we need an independent and neutral body to sort out the outstanding land issues. If we do not do this, we will never sort out land issues in Kenya.

Documentation of land in Kenya has been a problem. Why? This is because there are certain vested interests in individuals or brokers who own large tracts of land. These people take land from individuals who have owned it historically or after purchasing the land. Most pieces of the land in Kisii County, for example, have two to three title deeds. Land brokers take somebody's land with impunity. These people have learnt to rush to court where the court will rule that the status quo be maintained. When somebody has rushed to court saying that you, the

owner of a piece of land, do not have a title deed, and they have a fake title deed, they will be given the right to own that land. There is nothing a vulnerable poor Kenyan can do.

I feel that the NLC should not be emasculated. We should enhance the powers of the Commission, so that it can make decisions without undue influence from anybody and make sure that the land question in Kenya is addressed to finality. Unless we solve the issue of land in Kenya, even private investors are going to find it very difficult to invest in this country. We must have a clear policy of dealing with land disputes. The NLC should have the teeth and legal and constitutional mandate to resolve outstanding issues.

We need to make amendments, yes, but we need to look back and correct the mistakes which are in this Bill. I do not support this Bill. Even if it passes in this House, I want to caution my brothers and sisters in this House, a court of law is going to interpret the constitutionality of this Bill and will throw it out. We will go back to where we started.

With those very many remarks, thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. George Ogalo of Rangwe.

**Hon. Ogalo:** Thank you very much, Hon. Temporary Deputy Speaker. I have to state at the outset that I sit on the Departmental Committee on Lands. A lot of discussions have gone on regarding this Bill that seeks to amend three Acts and provide for the legislation required under the Constitution to deal with historical land injustices, evictions and the minimum and maximum land holding acreage in Kenya.

Without the proposed amendments that have been discussed, the Bill will not be palatable to many Members. Indeed, it was not palatable to us as well in the Committee. A lot of discussions have gone on between the NLC, the Ministry of Land, Housing and Urban Development, the defunct Commission for the Implementation of the Constitution (CIC), the Institution of Surveyors of Kenya and the Law Society of Kenya. There are several actors in the land sector. I can mention a few of them, namely, the Kenya National Commission on Human Rights (KNCHR), the Council of County Governors, the Ministry of Agriculture, Livestock and Fisheries, the Ministry of Land, Housing and Urban Development and the Land Development and Governance Institute.

All these discussions have taken a lot of time and we have heard views from many people, but there are clear constitutional provisions that also guide us. I will give examples. First, the Land Act, as it were, put the duty of management of land registries in the hands of the NLC. The Constitution is very clear in Article 67 that the NLC shall oversee and advise the national Government on the process of land registration across the country. You cannot be advising me on what you are doing yourself. That is a contradiction. The Constitution provides that the NLC shall oversee land-use planning in Kenya. Now, in the Land Act, the Commission was given this duty to perform by themselves. There are instances where the NLC ended up with roles that involve even private and community lands while the Constitution is very clear that the NLC is the manager and administrator of public land owned by the national Government and county governments. Those constitutional provisions are very clear. In a hurry to beat deadlines, the 10<sup>th</sup> Parliament, in enacting those three laws, made those mistakes.

There is an opinion from the Supreme Court on how the two entities, the NLC and the Ministry, are supposed to share functions. All those informed what we now propose to the National Assembly as amendments to this Bill and as a justification to some of the amendments we have proposed to this Bill. None of the Members of the Departmental Committee on Lands is

interested in making the NLC dysfunctional. Indeed, we have fought very hard in that Committee to ensure that the NLC gets a Budget to execute its functions and to protect it from an aggressive Ministry of Land, Housing and Urban Development.

The amendments the Committee will be proposing will interest every Member and we will convince the Members that, indeed, it is for the proper functioning of the land sector in this country. This Bill, with the amendments that we propose, will achieve sanity and ensure that there is no constant conflict between the Ministry and NLC. Nobody has interfered with the NLC's powers to regulate, manage and administer public land. Public land is defined very clearly in the Constitution and nobody has made any attempt in these amendments to curtail the power of NLC. In fact, there was an attempt to curtail the power of the NLC as it were.

The creation of the County Land Management Boards was stifling the capacity of the NLC to operate freely in administering land at the county level. We are now proposing their removal and that is for the good of NLC. Today, I was talking to the Chief Executive Officer (CEO) of NLC. He was complaining that this Bill has arrived here without proper consultations. He even agrees that, indeed, creating a County Land Management Board at the county level that has members nominated and approved by county assemblies is curtailing their independence as an independent constitutional commission.

Nobody should come to this House and say that there is a plan to curtail the NLC. We have decided to remove the County Land Management Boards. It just does not work. We expect NLC to appoint officers at the county level, their own secretary and a secretariat, to work under instructions from NLC and not curtailed by county assemblies and Governors. These amendments will streamline the functions of NLC. I want to assure the House that if there is anything in this Bill that would have attempted by even an inch to curtail the constitutional powers granted under Article 67 of the Constitution of the NLC, I will be the first one to oppose vehemently.

This Bill also gives opportunity to deal with the constitutional requirement that this House enacts law on evictions. We have introduced sections in this Bill to cover that and I have held several discussions with all the people that I have mentioned. We have elaborately proposed a way of dealing with the requirement to prescribe maximum and minimum land holdings. That provision has taken our Committee over four retreats to come up with an agreement. We called the NLC, the Ministry of Land, Housing and Urban Development and the Cabinet Secretary one more time for proper understanding of prescribing minimum and maximum land holdings.

What we have now proposed to this House is the best compromise that could be obtained within that constitutional provision. There is the issue of historical injustices. We have also taken time and what is in the Bill is less than a quarter of what we proposed. There are clear provisions proposed in our amendments that will attempt, at best, to deal with the issues of historical land injustices. They include most of the proposals by the NLC who had done a very extensive study and consultations to come up with the Bill. Most of it was not included in what is presented before the House. We have included and streamlined them to be in tandem with what was proposed in the Bill.

I want to end by saying that when we come to the Committee of the whole House, I would like to invite as many Members as possible to participate. These amendments will, in my opinion, streamline the practice and administration of the land sector in this country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Athman Ali, Lamu East Constituency.



**Hon. S.A. Ali:** Asante sana, Mhe. Naibu Spika wa Muda. Ningependa kuchukua fursa hii nikiwa mmoja wa wanakamati wa Kamati ya Ardhi, kuzungumza kuhusu Mswada huu wa swala nzima la ardhi ambalo limeletwa hapa Bungeni.

Ningependa kuipongeza Kamati kwa juhudi zake na yale ambayo wameweza kufanya mpaka kufikisha huu Mswada hapa. Utakubaliana nami ya kwamba swala la ardhi nchini ni nyeti na halihitaji kujadiliwa kiufupi ama kwa namna isio sawa. Hivi sasa Wakenya wengi wana hamu kubwa kujua swala hili limekuwa na mwelekeo upi katika nchi yetu ya Kenya.

Tukiangazia pakubwa, Wakenya walipigia Katiba kura na wakaweka Tume ya Ardhi ili kutatua na kusawazisha swala la ardhi. Swala hili limeonekana kuwa ligumu na nyeti kwa siku nyingi sana kuanzia nchi hii ilipopata Uhuru. Haitakuwa sawa kwa Bunge kujadili mambo haya ambayo yana undani sana kwa namna ambao si sawa. Kwa kweli, Mswada huu umechanganya mambo mengi sana haswa yale ya dhuluma za kihistoria. Wengi walipatwa na maovu haya na dhuluma hizi za kuhusiana na mswala ya ardhi. Vile vile, Mswada huu umechanganya mwongozo ambao utapatikana kuhusu hili swala na majukumu ya Wizara na tume.

Kwa kweli, ningependelea pakubwa swala nzima hili, kuanzia maovu ambayo yalifanyika kuhusu ardhi hapa nchini, liangaliwe. Hili ni swala ambalo in gumu sana na hivi sasa lina utata mkubwa. Wakenya wengi katika kila pembe ya nchi hii, haswa wa Pwani, wamedhulumika pakubwa na swala hili. Matatizo mengi ambayo tunayaona kuhusiana na ghasia na mengineo ni kutokona na tatizo la ardhi. Watu wengi wamedhulumiwa na hawajapata haki zao kuhusiana na mswala ya ardhi. Walipokonywa ardhi na mababe kwa sababu ya uzoovu ama hali ya kiuchumi. Utapata mtu ana ardhi yake lakini kwa sababu hana uwezo wa kufuatilia stakabathi, mwenye uwezo anapata hizo stakabathi.

Ningependelea pakubwa kama swala hili la watu walio dhulumiwa katika mswala ya ardhi litajadiliwa. Lisichanganywe na mswala mengine. Hivi sasa, watu wengi wamepatwa na janga hili na tukiangalia dhuluma ambazo zimefanyika, haswa nikizungumzia Pwani, ni asilimia themanini. Tutawezaje kujadili swala hili pamoja na mswala mengineo katika mwongozo mzima wa ardhi? Sioni sababu ya sisi kupitisha Mswada huu wakati kuna mengi yamechanganywa.

Hivi sasa, Wakenya walikuwa na imani kubwa sana na Tume la Ardhi kutatua swala hili. Inaonekana kama tume hii inapokonywa mamlaka yake na kupelekwa kwa Wizara, kinyume na mapendekezo ya Wakenya. Mara kwa mara nikiwa katika Kamati ya Ardhi, kuna malalamiko kutoka kwa tume hii. Wanakuja kwa Kamati na kulalamika kuwa hawapewi uhuru wa kufanya kazi yao na Wizara. Pia, wanalamika kuwa kuna baadhi ya stakabadhi ambazo wanahitaji ili kutatua matatizo haya ya ardhi kupitia kwa Wizara ambazo wananyimwa. Pia, kuna maelezo ambayo yatawasaidia kuendesha kazi zao.

Katita hali hii, inaonekana wazi kwamba swala nzima la ardhi, Wakenya walipendekeza lielekee mwelekeo huu, lakini Serikali, Wizara na Tume ya Ardhi hawajakuwa na mwongozo kikamilifu kumsaidia Mkenya wa kawaida. Nimelishuhudia tatizo hili mara nyingi baina ya Wizara na Tume la Ardhi. Ni vipi Mkenya wa kawaida atasaidika na ilhali kule kuna matatizo? Mwongozo ambao tuko nao hapa Bungeni kuhusiana na swala la ardhi, ningeomba Wabunge wenzangu wahakikishe kwamba tumelijadili inavyotakikana, tulishambue kila jambo na kuliweka mahali pake. Hofu yangu ni kwamba Mswada umechanganya mambo mengi. Katika Bunge hili, kile ambacho nimeona ni kwamba ni Waheshimiwa wachache ambao hupitia Mswada kama huu ili kujua umesema nini au una mwongozo gani. Lakini kama Mwanakamati wa Kamati ya Ardhi, Mswada huu una matatizo mengi. Wakenya wana imani kubwa kwamba

Bunge linapopitisha masuala kama haya, linatatua matatizo ambayo yapo. Matatizo haya yapo na hayajatatuliwa hususan tukizungumzia Pwani.

Mbali na hayo, walikuwa na imani kubwa katika Tume ya Kitaifa ya Ardhi. Mpaka wakati huu, Tume hii bado haijatatua matatizo kwa kisingizio kuwa Wizara ya Ardhi haijawapa mamlaka kamili au inawanyima haki yao ya kufanya kazi. Ikiwa kisingizio hicho kitaendelea kwa namna hii, ina maana kuwa yale malengo ya Wakenya kuipigia Katiba kura yatakuwa hayajapatikana. Tukizingatia muda ambao umepita tangu Wakenya waipigie Katiba kura mpaka leo ambapo Mswada huu umefika Bungeni ili tujadili jinsi tutawasaidia Wakenya kama viongozi na wawakilishi wa kila sehemu, tunahitaji kuhakikisha kuwa Mswada huu utakapopita hapa Bungeni, utapita na mwongozo na matakwa ya kisawasawa ili kutitimiza ndoto za Wakenya.

Ningependa kukoma kwa kusisitiza kwamba ni muhimu Mswada huu ushambuliwe na ikiwezekana ugawanywe katika sehemu tatu ili ujadiliwe kikamilifu. Namna ulivyochanganywa, nina imani kuu kwamba itawafanya wengi wasifahamu kinachoendelea. Hii itasababisha Mswada huu kupitishwa ilhali tunarejesha ile ile Kenya ya zamani ambapo mtu wa kawaida hapati haki yake.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I did not want to interrupt you, but I could see a point of order. What is your point of order, Hon. ole Kenta?

**Hon. ole Kenta:** Thank you, Hon. Temporary Deputy Speaker. This is a very important Bill. I would like to move that this debate be adjourned to next week. It is a very important debate and we need to have as many Members as possible participating. I move to adjourn the debate to sometime next week at the earliest. I would like to request Hon. Birdi to second.

**Hon. (Ms.) Sunjeev:** Hon. Temporary Deputy Speaker, I beg to second on the same basis.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): The Member has asked that this debate listed as Order No.11 on today's Order Paper be adjourned.

*(Question, that the Debate be now adjourned,  
put and agreed to)*

*(Debate adjourned)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): We have adjourned that debate, so that we can allow for more interactions on it. Therefore, we move to the next Order.

## BILLS

### *Second Reading*

#### THE PUBLIC FINANCE MANAGEMENT AMENDMENT) BILL

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I wish to ask that this particular Order be deferred to next week because we were not ready with it. We can then move on to the next Order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, the Deputy Leader of the Majority Party has asked that we defer debate on the Public Finance Management (Amendment) Bill to next week.

It is so granted. Next Order.

*(Bill deferred)*

*Second Reading*

#### THE WAREHOUSE RECEIPTS SYSTEM BILL

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I beg to move that the Warehouse Receipts System Bill, 2015 be now read a Second Time.

The proposed Warehouse Receipts System Bill provides a legal framework for the development and regulation of a warehouse receipts system for agricultural commodities, establishment of the Warehouse Receipts Systems Council and addresses marketing challenges associated with cereals and grain sub-sectors in Kenya.

The Ministry of Agriculture, Livestock and Fisheries together with the National Treasury have developed this Bill in a measure to commercialise production and storage of agricultural products in Kenya. The Bill seeks to enhance food security within the country by taking stock of the reserves. Pursuant to the recommendations of the Task Force on Warehouse Receipts System in Kenya formed in 2012, the proposed Bill intends to provide a framework for the monitoring and trading with agricultural products in Kenya.

The Bill has addressed the foregoing objectives and essentially has six main parts which are divided into:-

- (1) The provisions establishing the Warehouse Receipts Systems Council
- (2) Licensing and inspection of warehouses receipts.
- (3) Obligation and rights of warehouse operators upon their receipts.
- (4) Negotiation and transfer of receipts.
- (5) The penal provisions.
- (6) The miscellaneous provisions.

The salient features of these parts are as follows:-

Part I relates to preliminary provisions of the Bill. Clause 1 provides for the interpretation of various terms used in the Act. Clause 2 defines the Cabinet Secretary responsible for this Bill as that in charge of matters relating to agriculture.

Part II provides for the Warehouse Receipts Systems Council. Clause 3 establishes the Warehouse Receipts System Council as a corporate body. The composition of the Council includes a non-executive chairperson, the Principal Secretaries for Agriculture, Livestock and Fisheries and the National Treasury and five other persons with the requisite skills relevant for the work of the Council. The term of office of the members of the Council shall be for a period of three years.

Clause 4 of the Bill provides for the functions of the council to, *inter alia*, include the establishment, maintenance and development of the warehouse receipts system for agricultural commodities.

Clauses 8 and 9 respectively provide for the appointment, through a competitive process, of the chief executive officer and the corporation secretary.

Clause 12 provides for the source of funds for the Council from the funds allocated by the National Treasury as approved by Parliament, money borrowed by the Council and fees collected as revenue for the services rendered by the Council. Clauses 15 and 16 provide for the auditing of accounts and reporting the operations of the Council to the Cabinet Secretary in the required manner.

Part III provides for licensing and inspection of warehouses and in particular Clause 17 empowers the Council to grant licences to warehouse operators to engage in the business of warehouse within the warehouse receipt system. Clause 18 empowers the Council to revoke or suspend a licence issued to a warehouse operator when he transfers all or part of his control over the licence, commences the process of dissolution or is dissolved, becomes incompetent or incapable of conducting the warehouse business or violates or fails to comply with this Act.

Clause 20 establishes the Warehouse Receipts Appeals Committee whose functions are to, *inter alia*, hear appeals relating to the refusal to grant a licence, the imposition of any conditions over licence, the revocation, suspension or variation of a licence, decision of a warehouse inspector and any other decision the council made under this Bill. Clause 22 empowers the chief executive officer or an authorised officer to inspect any agricultural commodities stored in a licensed warehouse.

Clause 24 authorises the chief executive officer or an authorised officer to examine the books and records of the licensed warehouses and their operators. This is in line with what is happening. People who run warehouses have not been allowing people to access those warehouses to see what they keep in those areas. This Bill is coming in just at the right time, so that this habit of people engaging in illegal business and keeping contraband goods can be dealt with.

Clause 26 empowers warehouse operator to issue a warehouse receipt for the agricultural commodities deposited in their warehouse, which receipts shall be a document of title to the goods therein.

Clause 27 of the Bill establishes a central registry which shall be operated by the council and shall be responsible for registering any transactions relating to warehouse receipts. It also provides that the registrar of the central registry shall be the CEO.

Part V relates to the obligations and rights of the warehouse operators and Clause 30 imposes upon the warehouse operator the duty to deliver the goods referred to in the warehouse receipt to the holder of the receipt or the depositor of the goods upon its presentation. Clause 31 provides that the warehouse operator is liable for any loss incurred when he delivers goods to a person who is not lawfully entitled to their possession.

Clause 33 of the Bill restricts the warehouse operator from delivering any goods in his warehouse to the owner where they have been attached by a garnishment order or another form of execution levied upon them and their owner is not enjoined in the negotiated receipts. Clause 34 creates the warehouse operator's lien on the proceeds of the goods in his warehouse when the depositor or owner defaults in remitting the lawful charges due. Further, the clause entitles the warehouse operator to all remedies available by operation of law when the depositor defaults in remitting the lawful charges.

Part VI relates to the negotiation and transfer of warehouse receipts. Clause 35 empowers the depositor of goods to the warehouse to negotiate the warehouse receipt issued to another specified person by endorsement and delivery.

Part VII of the Bill relates to the penal provisions. Clause 40 creates the offence of issuing fraudulent warehouse receipts upon which if convicted, the person is liable to be sentenced to a maximum term of five years in prison or a fine not exceeding Kshs1 million. This is the same in the offence of knowingly issuing warehouse receipts based on false information and would also attract a maximum term of five years or a fine not exceeding Kshs1 million.

Clause 42 of the Bill creates the offence of knowingly issuing duplicate warehouse receipts without cancelling former receipts. On conviction, the person is liable to be sentenced for a maximum of five years or a fine not exceeding Kshs1 million.

Part VIII of the Bill deals with miscellaneous provisions and it empowers the Cabinet Secretary to formulate regulations for the better carrying out of the provisions of the Bill. The Schedule of this Bill provides for the procedure of the meetings for the Council.

The Bill also provides for the quorum which shall be two-thirds of the members of the Council. They can meet quarterly and, at least, four times in every financial year. Paragraph (4) of the Schedule of the Bill provides that the decisions of the Council shall be by majority vote which shall include the vote of the chairperson. We have had major problems and this Bill has come at a time when we need to have a law in place to govern what happens in the warehouses.

With those few remarks, I take this opportunity to move and ask Hon. Jared Opiyo, Member for Awendo to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Jared.

**Hon. Opiyo:** Thank you, Hon. Temporary Deputy Speaker. I beg to second.

I would like to thank the Deputy Leader of the Majority Party for moving this Bill at this particular time. We have had challenges in dealing with contraband goods. We lack a proper framework upon which our security agencies and other bodies that are charged with the mandate of ensuring our safety can conduct searches in our warehouses. Not long ago, we had issues within the sugar sector and a lot of sugar was brought into the country and kept in warehouses. The police and the Kenya Sugar Board (KSB) could not even access them because there is no law that allows them to do so. With this Bill, Kenyans can now hope that when it comes to the law, those issues will be things of the past.

If you look at the penal provisions under Part VII of the Bill, there are provisions that talk about how warehouses that lie about their receipts will be dealt with. This is important, so that whoever owns a warehouse must be truthful in the way he declares the items kept in his warehouse. This will make us sure that whatever has been declared is really what is there. We have had cases where people keep harmful equipment, but lie that what is inside is either rice or maize. We now have an opportunity to deal with such dishonest warehouse owners.

The Warehouse Receipt Council will be capable of providing accurate information on food security in the country since it will be in possession of information of all foodstuffs in grain form stored in various warehouses across the country.

This law will also ensure that no warehouse stores contraband items that I have just stated. We are aware that our borders with Tanzania, Uganda and Somalia are porous and that is why we have not contained terrorism in our country. With regard to the grains and other agricultural products that maybe imported or smuggled into country, we can now make sure that what is in our warehouses is legal, so that we can monitor food security situation.

Under this law, owners of goods kept in warehouses are cushioned against any losses. There is a provision which provides for their compensation that states:-

“any person, whose goods are not delivered appropriately from a warehouse, shall be compensated appropriately by the warehouse.”

This provision will make sure that, at least, people who use warehouses to store their goods are protected from losses emanating from careless handling of their items.

With those very many remarks, I want to thank the Deputy Leader of the Majority Party. I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I can see an intervention from Hon. Nyokabi. Give her the microphone, please. Are you not able to find her microphone?

**Hon. (Ms.) Gathecha:** Hon. Temporary Deputy Speaker, I rise on Standing Order No. 96 that the debate be now adjourned to be discussed at a later date.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, the Member for Kiambu has moved that we adjourn this debate to allow for more ventilation from Members.

*(Question, that the Debate be now adjourned,  
put and agreed to)*

*(Debate adjourned)*

Debate is adjourned until the next time it is on the Order Paper. Hon. Birdi, I hope you will be able to contribute when it comes back in the Order Paper.

Next Order.

### *Second Reading*

#### THE MISCELLANEOUS FEES AND LEVIES BILL

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I stand to request that we defer Order No.14 on the Miscellaneous Fees and Levies Bill, National Assembly Bill No.30 of 2015, to next week.

**The Temporary Deputy Speaker** (Hon. Shebesh): Okay, the Hon. Deputy Leader of the Majority Party has requested to defer this, so that they are ready to present it next week. It is so granted. We go to the next Order.

*(Bill deferred)*

### *Second Reading*

#### THE KENYA DEFENCE FORCES (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms) Shebesh): Hon. Deputy Leader of the Majority Party.

**Hon. (Ms.) Dr. Shaban:** Hon. Temporary Deputy Speaker, I stand again to ask for deferment of Order No.15, the Kenya Defence Forces (Amendment) Bill, National Assembly Bill No.41 of 2015, so that we can prepare for it next week.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Again, Hon. Deputy Leader of the Majority Leader has asked for deferment of the Kenya Defence Forces (Amendment) Bill, National Assembly Bill No. 41 of 2015 to prepare better and come ready to move the Second Reading. I so grant that wish.

*(Bill deferred)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon Members, there being no other business in the House and the time being 5.53 p.m. this House stands adjourned until Tuesday 15<sup>th</sup> March 2016 at 2.30 p.m.

The House rose at 5.53 p.m.