

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 4th October, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following papers were laid on the Table:-

Annual Report and accounts of the National Housing Corporation for the year ended 30th June, 2006 and the certificate thereon by the Controller and Auditor-General.

*(By the Vice-President and Minister for
Home Affairs on behalf of the
Minister for Housing)*

Annual Report and Accounts of the National Social Security Fund (NSSF) for the year ended 30th June, 2005 and the certificate thereon by the Controller and Auditor-General.

*(By the Vice-President and Minister for
Home Affairs on behalf of the
Minister for Labour and Human
Resource Development)*

Annual Report and Accounts of Safaricom Limited for the year ended 31st March, 2007 and the certificate thereon by the Controller and Auditor-General.

*(By the Vice-President and Minister
for Home Affairs on behalf of
Minister for Information
and Communications)*

ORAL ANSWERS TO QUESTIONS

Question No.051

ESTABLISHMENT OF DROUGHT
CONTINGENCY FUND

Mr. Lesrima asked the Minister of State for Special Programmes when he

will establish a Drought Contingency Fund to finance early warning systems and drought mitigation programmes.

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, this Question is directed to hon. Munyes' Ministry. However, we will communicate with them.

The Vice-President and Minister for Home Affairs (Mr. Moody): Mr. Speaker, Sir, on behalf of the Minister of State for Special Programmes, I beg to reply.

My Ministry is in the process of establishing a Drought Contingency Fund. Meanwhile, the Government has already set aside Kshs500 million as its contribution to the Fund. It is expected that other possible donors will be encouraged to contribute towards this worthy cause.

Thank you.

Mr. Lesrima: Mr. Speaker, Sir, I thank the Vice-President and Minister for Home Affairs for that answer. However, I would like him to tell us what programmes are likely to be implemented through this Drought Contingency Fund.

Mr. Awori: Mr. Speaker, Sir, our major problems are usually drought and flooding. Part of the money will be utilised for rehabilitation of the environment. The Fund will be used in building dams in drought affected areas and damming the major rivers in the country. It will also be used to take water to areas where there is always a problem.

Mr. Muite: Mr. Speaker, Sir, although the hon. Member for Samburu West is asking about Samburu West, could I, through you request the Minister to look, in fact, at the entire country including Karai Location of Kikuyu Constituency, where every year, we have to give people famine relief so that it is included in the programme for rehabilitation and ensure that water is taken there and whatever other measures that are being put in place to ensure that the area is not left behind?

Mr. Awori: Mr. Speaker, Sir, indeed, the money that has to be used by the Ministry of State for Special Programmes has to cover the whole country and not only Samburu. That is why I mentioned, for instance, that the money will be used to assist flood hit areas and, of course, Karai Location in Kikuyu Constituency. Any measures that can help to bring safety in the area will be part of this, including reducing the number of monkeys that bother the ladies in the hon. Member's constituency!

(Laughter)

Mr. Owino: Mr. Speaker, Sir, some of these catastrophes happen at a given time in the course of a year. What plans does the Government have to come up with a permanent solution, especially in areas where floods occur frequently and happen at a particular time? Drought also occurs at a particular time. What arrangements does the Government have to ensure that these areas are protected from these catastrophes?

Mr. Awori: Mr. Speaker, Sir, most of the flooding in Kano and Budalangi areas occur, because of the overflow of rivers from Cherangani and other areas. The long-term plans are to dam these rivers. When we dam these rivers, we will be able to control them and also provide surplus water to the areas through which the rivers pass so that residents can use it for irrigation. That is the permanent solution.

Mr. Rotino: Mr. Speaker, Sir, if you heard the British Broadcasting Corporation (BBC) news yesterday morning, it announced that there will be *La Nina* next year. This means that there will be a prolonged drought next year. What contingencies is the Ministry putting in place? This early warning has been given. What measures is the Ministry putting in place to prepare for this, so that next time, we do not say that we will have some additional funds in the Budget to cater for this. This is something that has been foreseen. What plans does the Ministry have to prepare for the *La Nina*?

Mr. Awori: Mr. Speaker, Sir, every year during the Budget, we put aside money for emergencies and disasters such as what is expected, according to the BBC, next year. That means that we must be prepared to have food security. That is all we can do.

Mr. Lesrima: Mr. Speaker, Sir, the lead agency for supplying food during times of famine is the World Food Programme (WFP). The WFP does not supply food to pastoralists who live within a radius of 20 kilometres from urban centres. Could the Vice-President and Minister for Home Affairs consider reviewing this policy by the WFP? Many pastoralists who live around urban areas, some of whom are refugees, are denied famine relief food in times of hardships.

Mr. Awori: Mr. Speaker, Sir, when pastoralists live around urban areas, they cease to be pastoralists. They become part of the urban population. The WFP supplies food strictly to those areas where naturally, pastoralists live.

Mr. Lesrima: Mr. Speaker, Sir, I think the Vice-President and Minister for Home Affairs did not understand my question clearly. For example, Maralal Location has six sub-locations and only one of them, namely, Biashara Ward, is in town. The other sub-locations are basically pastoral. That is the issue I was raising. The residents of these sub-locations are pastoralists and not farmers.

Mr. Awori: Mr. Speaker, Sir, I am willing to pass this information to the Minister and see if he can discuss the issue with the WFP, so that those areas, particularly around Maralal, can be included as beneficiaries of the WFP.

Question No.487

RELOCATION OF MODING POLICE
PATROL BASE

Mr. Ojaamong asked the Minister of State for Administration and National Security:-

(a) whether he is aware that Moding Police Patrol Base is located within the compound of Moding Primary School; and,

(b) what urgent steps he is taking to relocate the patrol base to pave way for smooth learning in the school.

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Moding Police Patrol Base is located within the compound of Moding Primary School.

(b) The Government has already identified and acquired a piece of land measuring approximately three acres for the construction and relocation of the police patrol base. The new site is about 500 metres away from the school.

Mr. Ojaamong: Mr. Speaker, Sir, I asked this Question because the police activities within the compound of the school interfere with the learning and the psychological well-being of the pupils there. That school has been ranked almost last in Teso District because of the police activities.

How much has the Government earmarked for the construction of this new police patrol base? We want to have these policemen out of the school compound very urgently.

Mr. Munya: Mr. Speaker, Sir, this patrol base was established as an emergency measure because of insecurity along the Kenya/Uganda border. This was an agreement between the community and the Busia District Security Intelligence Committee. I agree that there is a problem when you establish a police base within a school.

Mr. Speaker, Sir, land has already been acquired at Kshs200,000 and the Government is

sourcing for funds to put up the structures immediately. So, already, there are plans to start building a police patrol base on the acquired land.

We have not yet been able to determine how much money will be required, but we are already looking at what money may be available to start constructing the police patrol base. The land has already been paid for.

Mr. Ojaamong: Mr. Speaker, Sir, just adjacent to the school, we have a shopping centre with empty shops. As a temporary measure, why can the Government not house the police officers in the shops instead of displacing the pupils from their classrooms and the teachers from their houses?

Mr. Munya: Mr. Speaker, Sir, the information I have is that it is only the office of the Officer Commanding Station (OCS) and the reporting office that are in the compound. The police officers have rented houses at the shopping centre.

The construction of the police patrol base is going to start immediately. If these people have been patient since 1995, I am sure they will have the patience to wait for a few more months.

Question No.479

NON-PAYMENT OF CASUAL LABOURERS BY
KANG'ETHE CONTRACTORS

Mr. Rai asked the Minister for Labour and Human Resource Development:-

(a) whether he is aware that over 40 people hired on casual basis by a sub-contractor (Kang'ethe Contractors) at Nyari Sisal Estate, Taru, between 2005 and 2006, have not been paid their dues; and,

(b) what steps he is taking to ensure that the workers are paid their dues.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, I beg to seek your indulgence that this Question be answered next week. For some reason, we did not see it on the Order Paper that was sent this week to the Ministry.

Mr. Speaker: What is your reaction, Mr. Rai?

Mr. Rai: Mr. Speaker, Sir, I am holding an answer from the Minister. I am wondering why he is saying that he did not see the Question on the Order Paper, yet I have an answer which is signed by him here.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, I beg the ordinary Member---

(Laughter)

Sorry! I would like to request the hon. Member to allow us to answer this Question next week.

Mr. Speaker: I will use my discretion and defer the Question to Tuesday next week!

(Question deferred)

Question No.483

NON-PAYMENT OF TEA BONUS TO FARMERS

Mr. Bett asked the Minister for Agriculture:-

(a) whether he is aware that Kshs44 million and Kshs64 million meant for

bonus payment to Kapkatet and Tegat tea factories respectively, was not released to the farmers in 2003; and,

(b) when the farmers will get their dues.

The Assistant Minister for Agriculture (Mr. Muiruri): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Kshs107,984,011.65 and Kshs211,138,931 for bonus payment to Kapkatet and Tegat tea factories respectively was released to the farmers in 2003.

A total of Kshs44 million for Kapkatet Tea Factory, which had erroneously been credited to Kiru Tea Factory in 2000, was paid back in 2003. In the meantime, Kshs34 million which had been paid to Munuru Tea Factory farmers by the Tegat Tea Factory as a result of 1,974,552 kilograms of green leaf tea which was diverted to the latter, was reimbursed in January, 2004.

(b) In view of the answers above, part "b" does not arise.

Mr. Bett: Mr. Speaker, Sir, not long ago, this House was told that tea worth Kshs650 million was sold without letters of credit. Now we are being told that a sum of Kshs107 million was erroneously credited to another factory without due care.

I read a lot of financial mischief on the part of the Kenya Tea Development Agency (KTDA) Headquarters in respect to tea factories. After how long was this error detected? How long did it take the organisation to notice that a sum of Kshs107 million had been given to another factory?

Mr. Muiruri: Mr. Speaker, Sir, the error was detected after three years.

Mr. Bett: Mr. Speaker, Sir, was the money that had been diverted to other factories paid back to the rightful factories? At what interest rate was that money paid back to the farmers?

Mr. Muiruri: Mr. Speaker, Sir, when the error was discovered, the money was paid back with an interest of Kshs14,914,998. This was a very good interest rate of 30 per cent.

Question No.484

PAYMENT OF HARDSHIP ALLOWANCE TO
PUBLIC OFFICERS IN SUBA DISTRICT

Mr. Syong'o asked the Minister of State for Public Service when payment of hardship allowance for public officers serving in Suba District will commence.

Mr. Speaker: Mr. Syong'o, the Minister of State for Public Service called my office and requested that we defer this Question to Tuesday.

Mr. Syong'o: Mr. Speaker, Sir, that is fine with me.

Mr. Speaker: Thank you. The Question is deferred to Tuesday!

(Question deferred)

Question No.485

MONTHLY SALARY/ALLOWANCE PAYABLE
TO CBK GOVERNOR

Mr. Speaker: Mr. J.M. Mutiso! He is absent! The Question is dropped!

(Question dropped)

Question No.486

TARMACKING OF OL'KALOU-

DUNDORI ROAD

Eng. Muriuki asked the Minister for Roads and Public Works:-

- (a) whether he is aware that Road C69 is completely impassable between Ol'Kalou and Dundori;
- (b) what urgent measures he is taking to make the important road motorable; and,
- (c) when tarmacking of the road will commence as promised by the Government last year.

The Assistant Minister for Roads and Public Works (Eng. Toro): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that some sections of the Ol'Kalou to Dundori Road were impassable during the last rainy season in the months of July, August and parts of September.

(b) The contractor has been instructed to ensure that the whole road is maintained ahead of works.

(c) The upgrading of the road between Njabini and Dundori, through Ol'Kalou, to bitumen standard commenced on 15th March, 2007. Since then, 20 kilometres of bush clearing, eight kilometres of earthworks and ten closed concrete culverts have been completed. In addition, 28,000 tonnes of chipping of concrete and road surfacing and 1,600 tonnes of bitumen have been delivered to the site for use in the works.

Eng. Muriuki: Mr. Speaker, Sir, in part "b" of the answer given by the Assistant Minister, he says that the contractor has been instructed to maintain that road. Could he tell the House what work has been done between Ol Kalou and Dundori? In fact, nothing has been done at all on the ground. The road is totally impassable. Has the contractor ignored the Assistant Minister's instructions?

Eng. Toro: Mr. Speaker, Sir, I accept the observation of the hon. Member that no work has been done between Dundori and Ol Kalou. However, there are some other sections where work has been done. This road is about 100 kilometres. It has been divided into three sections to ease construction work. Section one, is between Ol Kalou and Dundori. Section Two, is between Ol Kalou and Mawingo which is 39.5 kilometres. The third section is between Mawingo and Njabini. Currently, the contractor is on sections Two and Three. He has not embarked on section one which he will do in the first quarter of next year.

Mr. Karaba: Mr. Speaker, Sir, the Assistant Minister who is also an engineer often travels between Nairobi and Thika. We have so many potholes on that road. Is he convinced that, that road should continue being in that state until a programme which is set for a year is over? Does he have emergency funds for such repairs?

Eng. Toro: Mr. Speaker, Sir, I agree that some sections between Nairobi and Thika are full of potholes. The contractor has been advised to repair those sections of the road ahead of works where he is not working. He said he will do so. He had some problems with acquisition of materials, but now I think that has been overcome.

Mr. Waitthaka: Mr. Speaker, Sir, this road C69 as the Assistant Minister has rightly said, is under construction, especially the section between Kinangop and Kipipiri constituencies. The area which is not being constructed is impassable. However, the Ministry has not earmarked money for maintaining this road. It may take two to three years to complete construction. What measures is he taking to ensure that even the area which is not under construction is maintained until the contractor comes to improve it to bitumen standards?

Eng. Toro: Mr. Speaker, Sir, as I said, the contractor is being advised as per the requirements of the contract to repair the road ahead of works. He will move to section one of the

road between Ol Kalou and Dundori, so that he can make that road passable. The hon. Member must understand that 100 kilometres is a very long stretch of road. The contractor is doing his best at the moment.

Eng. Muriuki: Mr. Speaker, Sir, this stretch of road is over 100 kilometres and a 24-month contract. The contractor has done only eight kilometres. This means he will take about eight years just to do the earthwork. Is the Government serious concerning this road?

Eng. Toro: Mr. Speaker, Sir, Eng. Muriuki knows how road construction is done. He is also aware that the contractor will do his work within 24 months.

Mr. Speaker: Very well. That is the end of Question Time.
Next Order.

POINTS OF ORDER

DELAY IN RELEASE OF CDF MONEY BY MINISTRY OF FINANCE

Mr. Ojaamong: Mr. Speaker, Sir, last week on Thursday I sought a Ministerial Statement from the Ministry of Finance. His Excellency the Vice-President and Minister for Home Affairs promised to have the Statement issued on Tuesday. I sought a Statement with regard to failure by the Government to release CDF funds. Today, I have not received that Statement.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I did pass the information to the Minister for Finance, that he should prepare his Ministerial Statement to be read to this House. This afternoon before I came to this House I was in a meeting. I came straight here and did not have the time to check up with the Minister for Finance regarding the Ministerial Statement. Let me give an undertaking that the Ministerial Statement on availability of the CDF funds will be read on Tuesday next week.

Thank you.

ADVERSE REMARKS ON MR. MOI DURING DEBATE ON 15TH PIC REPORT

Mr. Moi: Mr. Speaker, Sir, last week during the debate on the 15th PIC Report, I was mentioned adversely without a Substantive Motion being brought to the Floor of the House. I urge that the remarks which were made be expunged from the HANSARD records since there was no merit to them.

Mr. Muturi: Mr. Speaker, Sir, indeed, the remarks were unfortunate and I have no objection to them being expunged from the records.

CONSIDERED RULING

ADVERSE REMARKS ON MR. MOI WITHOUT SUBSTANTIVE MOTION TO BE EXPUNGED FROM THE HOUSE RECORDS

Mr. Speaker: Hon. Members, I was not in the Chair at that time, but I think I followed what transpired in the House from elsewhere. I was also briefed by the hon. Member who was in the Chair, Mr. Maore, on what actually transpired. The remarks made on the Floor of the House are not in the report. I wish to caution hon. Members not to play around with the reputations of either hon. Members or members of the public.

It was the same day that I had to intervene on behalf of Kenyans who were not here and ordered the Chairman of that Committee, Mr. Muturi, to expunge from the record the names of Kenyans who were ordered not to hold public offices when, indeed, they were never availed the opportunity to be heard. This House should never be used to cannibalise the names of others, hon. Members and other Kenyans, included. We must be very careful. We should retain the dignity of this House.

Hon. Members, you must follow the law. If you must adversely mention another hon. Member, please, do so, within the law. If you must adversely mention your colleague, you must bring a substantive Motion. I agree with Mr. Muturi. I will order that those remarks be expunged, but with a rider: "Be careful next time".

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I rise to seek your clarification. When an hon. Member stands and makes a categorical statement--- I am not contesting your ruling. Indeed, what you have said is correct; that hon. Members must have a Substantive Motion in order to mention the names of other hon. Members adversely. If an hon. Member stands and makes a categorical statement about another hon. Member on a matter that could amount to an infringement of the working of the House, is it a matter that ought to be referred to the Committee of Powers and Privileges? How can we deal with a matter like that so that tomorrow an hon. Member does not stand and make a categorical assertion which then we believe - because I must say I was in the House - and then withdraw after dropping the bombshell?

Mr. Speaker: Indeed, what worries you worries me. I think it also worries hon. Members of this House who would like to keep the debate of this House honourable and in dignity. I am convinced it also worries Kenyans generally who have had their reputations tarnished in this House, unreasonably and without foundation or basis. The framers of our Standing Orders and Rules did not anticipate a House that was not dignified. In fact, every fabric of our Standing Orders, procedures and practice anticipates that hon. Members are, indeed, honourable.

Unfortunately, we have seen of late, particularly in this Parliament, a departure from what is expected of hon. Members. I hope the hon. Members now present will, for the balance of their stay here, return to honour. I also hope that Kenyans, in electing their representatives will look at their integrity in the past and elect men and women of honour to the House. I am afraid I have to say this; I have been forced to say it. I have to say it with a straight face.

If this persists, obviously, we will have to re-look at our Standing Orders because the framers anticipated - and this is what happens the world over - that a breach of rules is dealt with on the Floor of the House if they arise there, and they do not go beyond it because there is no Committee that is superior than the Speaker. I think the Speaker is sufficiently strong and wise to deal with all matters.

Let us hope that you will give the Speaker strength and pray for his wisdom to continue ensuring that we all abide by the rules of the House. I pray, let us not do it again.

Thank you.

Mr. Sungu: Mr. Speaker, Sir, this matter arose when Mr. Wamunyinyi made a statement saying that an hon. Member said something to another.

Mr. Speaker: I have dealt with it!

Mr. Sungu: Mr. Speaker, Sir, and I challenged him and then he went on. Is it not proper for him to be the one to withdraw?

Mr. Speaker: Order! If you merely want me to spill the beans, I will. Do you want me to tell you what has been happening?

Hon. Members: Yes!

Mr. Speaker: Sometimes, there has been a co-ordinated conspiracy between hon. Members to slander others. So, you will get an hon. Member standing up there, make a strange

statement and somebody from another Bench stands to ask him to substantiate. Meanwhile, this conspiracy gets even wider because sometimes it gets reported in the Press. I am puzzled, but that is a fact! I hope you are not in that conspiracy!

Mr. Sungu: Mr. Speaker, Sir, allow me to say that I was not part of the conspiracy. I was not a Member of that Committee. I was concerned about the reputation of hon. Members of this House because it was said "an anonymous hon. Member" and I insisted that he must be named.

Mr. Speaker: Order, hon. Members! I think I have done the best I could under the circumstances. Mark you, the Speaker is alive and the Speaker knows a lot more than you people think I do. I hope these little conspiracies will end and will not mar the image of this House. I know a lot more than hon. Members think I do.

Thank you.

POINT OF ORDER

OPERATIONALIZATION OF ACTS OF PARLIAMENT

Dr. Oburu: On a point of order, Mr. Speaker, Sir. I would like to raise an issue which was raised by the Minister for Finance, Mr. Kimunya, yesterday, after a court ruling on the Privatisation Act.

It is not in order that a matter which is before a Committee of this House is raised outside the House. The Minister tended to besmirch the image of the House by imputing that the House has refused to approve names of appointees to the Privatisation Commission, and thus he is unable to implement the Privatisation Act. That is misrepresenting facts because the Minister only brought the names to this House two days ago.

The Committee sat today to consider the names and action is already being taken. This is completely out of order and I wanted your guidance on whether the Minister is right to have done that.

Mr. Speaker, Sir, secondly, I wanted your guidance, as to the ruling yesterday, that a Government Minister can defy an Act of Parliament, which has been passed and assented to by the President and keep it for two years, and still acts legally without operationalising that law. Parliament is, therefore, left helpless, because it can only enact law and leave it in the hands of the Executive; to decide when and whether to implement it as passed by this House.

Mr. Speaker, Sir, this is an area which leaves us "naked", and we would like to have guidance as to whether we really make laws for a certain purpose, which should be implemented within a given time, or whether it is up to the Executive to implement those laws, as and when they like.

Mr. Speaker: Order, hon. Members! I will deal with the last question first. I am afraid, I will not sit on appeal on a matter that has been dealt with by the High Court. We must all accept the decisions of the courts until an appeal lodged has succeeded. The position will be that the law is as set out by the judgement. This House must respect the judgements of the courts the same way we expect other bodies to respect this House.

To come to the second issue, I think I have dealt, in depth and at length, with the issue of non-opera---

Hon. Members: Operationalization!

CONSIDERED RULING

THE CHAIR WILL PRESERVE INTEGRITY
AND HONOUR OF PARLIAMENT

Mr. Speaker: I do not know how to say it! But I am referring to the inability of the Minister to make the Act operational. I have dealt with that in the past. I think it is on record that I abhor that behaviour, and you know I took dramatic action against the Minister. I ordered, last time, that until the Minister complied with the order I had given, no business by him would be transacted by this House. The Minister came later to the House, apologised and stated from the Floor of this House that he intended to make that Act operational from 1st November, 2007. The process of making it operational included the hiring of an Executive Officer and appointment - to come to your position - of members of the Board.

I agree with you, Dr. Oburu. I received that letter from the Minister on 24th September, 2007, and I instructed the Clerk of the National Assembly to bring it to the attention of the Committee as soon as possible. I know it was brought to your attention yesterday. That is a fact! I know the Committee met today. That, again, is a fact! I also know that you presented your report on that issue to the Clerk of the National Assembly today. In effect, it means that the Committee never slept even for one day with that list!

(Applause)

In fact, the Committee acted with utmost diligence. What amazes and puzzles me is why the Minister should go out of the House, even after being reprimanded by me here, to lambast the House for his own inefficiency!

Hon. Members: Shame!

Mr. Speaker: I really cannot understand how this Minister thinks! I think this House must be respected. For a whole two weeks, again, we had also some officials, created by an Act of this Parliament, forever lambasting this House as well. Who do they think they are?

(Applause)

If they think they can insult this House--- Can I say this? I am sorry about this, but it is my business to put my foot down and preserve the integrity and honour of this institution. Let me also tell you that I am ready to deal with all comers, whether inside or outside the House. If you insult this House, this House has the right to pass any law! Once passed, you must obey it because that is the law, unless you have an idea that you have become a parliament unto yourself. I hope that will never come to pass, because it will be the beginning of anarchy. So, I hope everybody will play their part right.

I have instructed the Clerk of the National Assembly to prepare the report of the Committee, which it gave this afternoon, and bring it to the House. In fact, it is only for lack of time, because if we had sufficient time between the Clerk of the National Assembly receiving the report and the Sitting of the House, that report would have been laid on the Table today. It will be laid on the Table on Tuesday next week.

But let this House not be used as an excuse for what you fail to do. You must respect this House! I hope the Minister for Justice and Constitutional Affairs will help me in this regard. I do not want people to assault this Parliament, particularly people who are created by this Parliament or who need it to transact their business!

Thank you!

(Applause)

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

[The Temporary Deputy Chairman

(Mr. Maore) took the Chair]

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! We are dealing with the first item on the Statute Law (Miscellaneous Amendments) Bill; it is the President's Memorandum pursuant to Section 46(4) of the Constitution. We are on the Anti-Corruption and Economic Crimes Act, 2003.

The Anti-Corruption and Economic Crimes Act, 2003

Section 7

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the proviso to Section 7 which was inserted by the National Assembly be deleted.

The proviso read:-

"Provided that the powers of the Commission under this Act shall only relate to offences taking place after the commencement of the Act".

His Excellency, the President, in recommending that it should be deleted, took cognisance of the fact that there were many cases currently under investigation by the Kenya Anti-Corruption Commission (KACC) which were begun prior to May, 2003. Currently, I want to inform this House that there are 312 such cases under investigation.

(Loud consultations)

Mr. Sungu: On a point order, Mr. Temporary Deputy Chairman, Sir. This is a very, very important matter and there are loud consultations. It regards a Memorandum by his Excellency the President! We must be able to follow---

The Temporary Deputy Chairman (Mr. Maore): Point taken!

Order, hon. Members on my left! We need silence and attention over this serious Memorandum by the President. The Attorney-General is about to explain that!

Continue, Mr. Attorney-General!

The Attorney-General (Mr. Wako): Thank you, Mr. Temporary Deputy Chairman, Sir. Currently, there are 312 such cases under investigation by KACC on matters prior to May, 2003. The President also recommended that because there are many cases which are already in court-- - Currently, there are 38 such cases. For example, a total of 13 cases relate to the collapse of Euro Bank. There are many cases which relate to abuse of office involving Permanent Secretaries, Chief Executives of State corporations and heads of departments, and also cases relating directly to Anglo Leasing.

The President also recommended that, that section be deleted because, in effect, it was giving blanket amnesty. The issue of giving blanket amnesty to past offences cannot be dealt with under the Statute Law (Miscellaneous Amendments) Bill. It would require a comprehensive legislation which, I hope, whatever Government is elected after general elections, will address it conclusively and finally.

With those few remarks, I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Maore): Hon. Muite, if you do not have objections, please, just comment briefly.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, the Departmental Committee on the Administration of Justice and Legal Affairs, at a sitting, agreed to support the recommendation by His Excellency the President on this particular proviso. So, we are supporting that the House agrees that the proviso be deleted.

Mr. Temporary Deputy Chairman, Sir, I want to point out that the reason why the Committee had recommended the proviso, in the first place, was because of Section 77(4) of the Constitution of Kenya. It reads:-

"No person shall be held to be guilty of a criminal offence on account of an act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed".

Therefore, we were merely, sort of being over-careful or over-cautious. In fact, Section 77(4) makes it clear that one cannot be punished for an act that is not an offence.

Mr. Temporary Deputy Chairman, Sir, the Attorney-General is aware---

The Temporary Deputy Chairman (Mr. Maore): Order, Mr. Muite! If you are not objecting to the Memorandum by the President, you had an opportunity to add that during the debate! So, if you are not objecting or raising serious issues, I think you do not have much---

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, we are supporting this amendment! I am merely saying that some aspersions have been cast---

The Temporary Deputy Chairman (Mr. Maore): No! No! No! You are delving into extraneous issues that we do not need here! Please!

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, we are supporting this amendment.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I just want to support and say that the court had gone over the debate on whether that offends Section 77, and it found out that it did not!

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

(Section 7 deleted)

Section 23(4)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Subsection 23(4) which was deleted by the National Assembly be re-inserted and amended as follows-

(4) The provisions of the Criminal Procedure Code, the Evidence Act, the Police Act and any other law conferring on the police the powers, privileges and immunities necessary or expedient for the detection, prevention and investigation of offences shall, so far as they are not inconsistent with the provisions of this Act, apply to the Director and an investigator as if reference in those provisions to a police station, police office or a police officer included reference to the Commission's premises and the Director or an investigator.

Mr. Temporary Deputy Chairman, Sir, in effect, this is, more or less, the same clause that was deleted. But what the President has done is to remove that, so that KACC could also be vested with prosecutorial powers. I think the President was right in so recommending the removal of prosecutorial powers, which are vested, of course, in the Attorney-General of the Republic of Kenya!

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Maore): At this juncture, I have hon. Marende from the Departmental Committee on Justice and Legal Affairs proposing an amendment to that.

Mr. Sungu: On a point order, Mr. Temporary Deputy Chairman, Sir. You will note that, as the Attorney-General was moving that amendment as recommended by His Excellency the President, he forgot to give us the proviso appearing on page 631, which goes further than what he has amended. Now, I want to be sure that the amendment you are proposing includes that section of the proviso, which reads:-

"Provided that where in any written law, an act is required to be performed by a police officer of a specified rank, the Director or an investigator shall be deemed to be a police officer of that rank".

(Loud consultations)

The Temporary Deputy Chairman (Mr. Maore): Order! Order, Mr. Sungu! Proceed, Mr. Attorney-General!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I wish to record my utmost appreciation to the hon. Member for drawing my attention to the proviso which, of course, appears on the next page. I believe I skipped that part because, you will see that on page 630, there is plenty of paper left, where the proviso would have fitted. Since I did not see anything there, I assumed that there was no proviso. But I am moving also that the proviso--- If you want me to read, I can read it again.

The Temporary Deputy Chairman (Mr. Maore): Just continue!

The Attorney-General (Mr. Wako): It reads:-

"Provided that where in any written law, an act is required to be performed by a

police office of a specified rank, the Director or an investigator shall be deemed to be a police officer of that rank".

Thank you!

The Temporary Deputy Chairman (Mr. Maore): Hon. Marende, you have some amendments to this proposal by the President. I hope you will be brief and as clear as we can follow, bearing in mind that you contributed during the debate.

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, on behalf of the Committee on Administration of Justice and Legal Affairs, I beg to move:-

THAT, the amendments proposed in relation to Section 23(4) of the Anti-Corruption and Economic Crimes Act be amended by-

(a) deleting the words "or expedient" immediately after the words "immunities necessary";

(b) inserting the words "relating to corruption and economic crime" immediately after the words "investigation of offences;"

(c) inserting the words "or any other law" immediately after the words "provisions of this Act";

(d) deleting the words "a police station, police office or" immediately after the words "reference in those provisions to";

(e) deleting the words "the Commission's premises and the" immediately after the words "included reference to";

(f) deleting the proviso.

Mr. Temporary Deputy Chairman, Sir, first, under "a", we want to delete the word "expedient" immediately after the words "immunities necessary" because the word "expedient" is too loose and may be vulnerable to misuse and abuse by the person on whom those immunities, privileges and powers may be vested. So, we are restricting the privileges, immunities and powers to situations where it is necessary. "Expedient" is actually not a technically legal word.

Mr. Temporary Deputy Chairman, Sir, we have also proposed amendment "b" to insert the words "relating to corruption and economic crime" immediately after the words "investigation of offences"; to---

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Marende! I think if you say "as per the Order Paper," the hon. Members can help you by expediting your issue.

Mr. Marende: Yes, indeed, Mr. Temporary Deputy Chairman, Sir. But the essence of that amendment is so as to keep the provisions of the subsection within the spirit of the Act.

We also have "d" where we propose to amend the subsection by deleting the words "a police station, police office or" which will have had the effect of turning the Kenya Anti-Corruption Commission (KACC) offices into a police station or police office. Once again, those will be vulnerable to abuse and misuse. The KACC has access to police stations and if necessary can keep their suspects in various police stations as are available.

Mr. Temporary Deputy Chairman, Sir, with regard to the proviso, we have proposed that the proviso be deleted altogether. This is because there is a danger that, if that proviso were allowed to apply, then we may end up with a situation where we are establishing a parallel police force that does not have the necessary infrastructure, command and discipline as we have in the police force. There is also a danger that the Director of the KACC may, in fact, usurp the powers of the Commissioner of Police because the proviso says that if he acts as a policeman then he will be deemed to be of that rank. We have the case of the Artur Brothers coming into mind---

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Marende! I think you have done your bit!

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, I am just rationalising!

The Temporary Deputy Chairman (Mr. Maore): I will now propose the Question of the further amendment! What does the Attorney-General have to say?

(Question of the further amendment proposed)

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, before the Attorney-General says anything, the Chairman---

The Temporary Deputy Chairman (Mr. Maore): I think you might overdo it in the sense that you have already said what you wanted to say!

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, I want the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs to second my amendment. That is procedural!

Mr. Temporary Deputy Chairman (Mr. Maore): Okay!

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, if you look at Section 108 of the current Constitution, it provides for the appointment of members of the Kenya Police Force and has got very elaborate provisions about the discipline; who is holding what rank and how they can be disciplined and so on. I would like to urge the hon. Members that it would be dangerous now to allow individuals, who are not even trained as police officers, to enjoy ranks of senior police officers. That, really, is not the right way to go. The police force is anchored in Section 108 of the Constitution of Kenya. Let us not create a parallel police force.

As of police stations, in fact, next to the headquarters of the KACC is the former Criminal Investigations Department (CID) headquarters, which has got cells. We also have Kilimani and Nairobi Area police stations. We are not saying that they should not have police powers. They already have powers of police officers in the Act. Now, the Director of KACC even wants to acquire the status of the Commissioner of Police. This will bring confusion as hon. Marende was mentioning. We have seen the danger of attempting to run a parallel police force. That is what led to the appointment of the Artur Brothers as senior police commissioners. So, we are enhancing the provisions that His Excellency the President has recommended because he accepted the concerns of the Committee. That is why he has amended the section to take into account the concerns of this House. So, what we are doing is actually enhancing the spirit of what His Excellency the President has proposed in his amendment. We are tidying it up to ensure that there will be no conflict between the KACC and the police force.

I beg to second.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I strongly oppose this amendment.

We are not creating a parallel police force. All we are saying is that, in matters relating to the investigation, detection and prevention of economic crimes and corruption, the KACC should have the same powers as those enjoyed by the police, who also carry out a similar function in relation to criminal activities now because of this Act outside the economic crimes and corruption cases. So, it is not a parallel force. It is a force with a confined and limited mandate to investigate economic crimes.

Mr. Temporary Deputy Chairman, Sir, the other reason why I am opposing this amendment is that we should not really fear about police posts and things like those. It is like saying that we are appointing a judge and we do not give him a court. It is like appointing---

Mr. Muite: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for the Attorney-General of the Republic of Kenya to tell us that we should not fear police posts? Has he ever slept inside one?

The Temporary Deputy Chairman (Mr. Maore): I think that is more of a matter of contention and not necessarily a point of order! Continue, Mr. Attorney-General!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, as far as police stations and detention areas are concerned, there may be nobody in this House who has gone all over the world visiting those places and, therefore, who knows their conditions, not just in Kenya but throughout the world.

Mr. Temporary Deputy Chairman, Sir, as I was saying, I am also opposed to amendment "b" which is inserting the words "relating to corruption and economic crime" immediately after the words "investigation of offences." The Criminal Procedure Code, the Evidence Act and the Police Act do not in themselves confer investigation and powers into economic and corruption offences since the passage of this Act. These are really statutes of general application. If we now have that phraseology there, we are actually defeating the very purpose of the clause which is to confer police powers to the Kenya Anti-Corruption Commission (KACC). It is to defeat---

(Ms. Ndung'u stood up in her place)

The Temporary Deputy Chairman (Mr. Maore): Ms. Ndung'u, are you standing on a point of order or you want to contribute?

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, is it in order for the Attorney-General to state that this amendment is supposed to restrain the KACC's police powers on economic crimes? Is he in order to suggest that the KACC should then investigate domestic violence, robbery and other crimes?

(Applause)

The Temporary Deputy Chairman (Mr. Maore): I think we need to make it very clear here. We are not re-introducing any new issues into the Act. We are dealing with the President's Memorandum. We are limited to it. There are rules on how it should be done. Therefore, if anybody has any issue, I think you had better hold it for another day!

Mr. Wako, have you finished?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, we are saying that the powers, privileges and immunities enjoyed by the police in investigating other criminal cases should be enjoyed by the KACC in investigating corruption and economic crimes cases. That is what we are saying. We are not saying, by any stretch of imagination, that just because they are enjoying similar powers, the KACC is, therefore, going to investigate murder cases and other types of criminal activities. We are just saying that the powers that are enjoyed by the police should also be enjoyed by the KACC. When we introduce this phraseology there, then we are actually defeating the very purpose of the entire section that we are putting into place.

So, for all these reasons, I beg to oppose this amendment.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment by the Committee. I am saying that we should give time and consideration to the proposals by the President. Let us not go back and forth. The reason this Act was difficult to assent to is, it was taking away the powers of KACC to fight corruption.

Mr. Temporary Deputy Chairman, Sir, when the words, "or expedient" are removed as suggested, it means something may not be necessary, but it could be expedient. It may shorten the time within which the investigations are concluded. It may save extent and money. If we play around with the language, we are serving to weaken the Anti-Corruption and Economic Crimes Law.

Mr. Temporary Deputy Chairman, Sir, I would say the same in restricting the investigations or the powers that we are trying to confer on them to offences relating to corruption and economic crimes. The Attorney-General has made that reference. The Act is new, it is not in the previous law. Just the same way it has now been deleted, is the way a lawyer will argue. That, because the reference is not there, they cannot assume those powers. I am saying that let us give consideration and support the recommendations by the President.

Mr. Temporary Deputy Chairman, Sir, when it comes to part "c", why then are we saying that the KACC offices should be deemed to be a police station or police office? For purposes of recording a statement, they do not have to take you from their offices to the police station. They should do their work. When we created the KACC as a specialised investigation agency, this House knew it was creating a parallel body, but only to investigate offences related to economic crimes and corruption. I do not know why we are developing cold feet. I do not know why we want a reversal. It is a specialised body doing investigation just like the police. That is why there is need to give them that latitude, so that they are able to do their statements and work properly. This does not mean that we are encouraging them to even build cells to detain people. However, they need equal powers to do the things they are supposed to do.

Mr. Temporary Deputy Chairman, Sir, I want to remind the House that, even in the case of City Council or local authority, police officers, labour officers and a host of others, including the Kenya Revenue Authority (KRA) officers, we give them police powers to enable them do their work. This is not something that is strange. The resistance to this clause is simply aimed at weakening the KACC. This was the same move that saw the deletion of the sections.

Mr. Temporary Deputy Chairman, Sir, as to the allegation that the President agreed with the Committee, it is only on prosecutorial powers, but not on weakening of the KACC.

I beg to oppose the amendment by the Committee and support the proposals by the President.

The Temporary Deputy Chairman (Mr. Maore): I think I am going to allow only two more hon. Members! I will start with Mr. Sungu.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, today the Attorney-General is speaking with a forked tongue. When it comes to prosecution, he does not want to hear anybody touching on his territory. However, when it comes to police powers, he wants a parallel force.

Mr. Temporary Deputy Chairman, Sir, let us go to the original Bill. What was the intention of Parliament when it created the office of the KACC? It was to create a commission that would deal with corruption and economic crimes, not a parallel police force.

I beg to agree with the Committee and urge the Attorney-General to be with the House, so that we can proceed!

The Temporary Deputy Chairman (Mr. Maore): I hope, Mr. Kajwang will follow Mr. Sungu's footsteps in doing this!

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I have listened to the Minister for Justice and Constitutional Affairs. The only reason that she supports the turning of the offices of the KACC into a police station is for taking statements. However, we know that statements can even be taken in the suspect's office. They are currently being taken in that same office at Integrity Centre. So, we do not have to create and gazette a police station at the Commission, so that people can record statements.

Mr. Temporary Deputy Chairman, Sir, we do not want the Commission to turn into a police force or police station. These are two different agencies which help each other. If we take some police officers and second them to the KACC, they are on secondment and they do their jobs with the powers that they have. But, really, to make this KACC into a police force, is to turn the Director of the KACC to a Commissioner of Police.

That is my contribution and I beg to oppose.

The Temporary Deputy Chairman (Mr. Maore): I was about to tell you that you are getting out of limit!

I think the best thing is to dispose of this amendment. The issue is that we are not rejecting or voting on the President's Memorandum; we are amending it. When amending, it requires simple majority! If you intend to negate or throw it away altogether, you need to do it with a calculator. To override a Presidential veto, you have to raise two-thirds majority. Now that we are in the amendment, I will put the Question.

*(Question of the further amendment,
that the words to be left out be
left out, put and negated)*

*(Several hon. Members stood up
in their places)*

Hon. Members: Division! Division!

The Temporary Deputy Speaker (Mr. Maore): Hon. Members, if you want to call for a Division, you must raise the requisite number! Hon. Members, I can see you have the requisite numbers for a Division. So, I order that the Division Bell be rung.

(The Division Bell was rung)

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! Please, take your seats!

The Assistant Minister, Office of the President (Mr. Munya): On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Maore): Order, Mr. Munya! You have to wait until we dispose of the Division first, before you can raise any issue!

Could the Tellers present the results of the Division?

DIVISION

(Question put and the House divided)

(Question carried by 45 votes to 36)

AYES: Ms. Abdalla, Mr. Ahenda, Dr. Awiti, Messrs. Bahari, Cheboi, Chepkitony, Gitau, Kajwang, Keter, Kilonzo, C.; Kimeto, Koech, S.C.; Kones, Ligale, Prof. Mango, Messrs. Marende, Midiwo, Moi, Moroto, Muite, Mutiso, J.M.; Muturi, Mwanzia, Mrs. Mwendwa, Ms. Ndung'u, Maj-Gen. Nkaisserry, Rev. Nyagudi, Eng. Nyamunga, Dr. Oburu, Messrs. Ogur, Ojaamong, Ojode, Okemo, Prof. Olweny, Messrs. Omamba, Omingo, Omondi, Archbishop Ondiek, Messrs. Osundwa, Owino, Rotino, Dr. Shaban, Messrs. Sirma, Sungeni and Syongo.

Tellers of the Ayes: Messrs. Keter and Karaba.

NOES: Messrs. Abdirahman, Githae, Kamama, Kanyingi, Karaba, Ms. Karua, Prof. Kibwana, Mrs. Kihara, Messrs. Kimathi, Kimunya, Kiunjuri, Koech, J.K.; Dr. Kulundu, Dr. Mchache, Messrs. Maore, Masanya, Miriti, Mohamed, A.C.; Muchiri, Mrs. Mugo, Messrs. Muiruri, Munya, Mwakwere, Mwenje, Dr. Mwiria, Messrs. Nyagah, N.; Obwocha, Opore, Serut,

Sasura, H.; Maj. Sugow, Eng. Toro, Messrs. Waithaka, Wamwere and Yattani.

Tellers of the Noes: Messrs. Rotino and Wambora.

The Assistant Minister, Office of the President (Mr. Munya): On a point of order, Mr. Temporary Deputy Chairman, Sir. Even though the Division has been done, it is important for us to raise one major constitutional concern.

Standing Order No.48(2) says:-

"No amendment shall be permitted if, in the opinion of Mr. Speaker, it represents a direct negative of the question proposed."

In this particular issue, the question proposed is to give the Kenya Anti-Corruption Commission (KACC) police powers. The amendment that we have just passed completely negates that. Therefore, it is null and void because it negates that particular object of giving the KACC police powers. So, we have flouted our rules in passing this particular amendment.

Hon. Members: No! No!

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! Just take your seats! The issue before us is an amendment to the Memorandum by His Excellency the President. The procedure that an amendment of this nature takes is that, first of all, it is approved by the Speaker. The Speaker's decision does not negate His Excellency the President's Memorandum. The issue that is being raised by the hon. Member is pertinent. But given the Speaker's approval, the route to address whether it is negative or not is the Speaker and the Attorney-General. We had better proceed!

(Applause)

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Temporary Deputy Chairman, Sir. I want to add to Mr. Munya's point of order that, actually, it is not just a negation of the Standing Orders! It is also flouting the express provisions of the Constitution. Section 46(b) clearly says that when the House refuses to accept the recommendations and approve the Bill in the original form, it requires 65 per cent---

Hon. Members: No! No!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, let hon. Members be tolerant enough to listen!

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! You will have your chance!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, because the proposal by His Excellency the President was to give the KACC powers, so that we can give their premises a police station, and that they have police powers--- The National Assembly has refused or rejected those proposals. An amendment cannot be a complete opposite! It totally negates!

Finally, I want to say this: Even when the Speaker has approved a Motion, we, as hon. Members, can point out to the Speaker where we feel that the amendment is a negation of the question proposed. The Speaker has, on many occasions, overruled Motions that he had approved. So, could the matter be referred to Mr. Speaker?

The Temporary Deputy Chairman (Mr. Maore): Okay! Ms. Karua, could you take your seat? Hold on!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, may I, therefore, request that progress be reported, so that the Speaker could make a ruling on this very pertinent issue.

Hon. Members: No! No!

*(Question, that the Committee reports
progress, put and agreed to)*

Hon. Members: Division! Division!

(The House resumed)

[Mr. Speaker in the Chair]

PROGRESS REPORTED

RECONSIDERATION OF THE PRESIDENT'S MEMORANDUM - SECTION 23(4)

Mr. Speaker: Order, Members! Order! Order, hon. Members! There is really no cause to be excited! I have been following all these proceedings. It is, indeed, my duty to guide the House on procedure. It is, in fact, my full responsibility! I cannot understand why hon. Members think that when the Speaker has to give a ruling in this House--- I hear Mr. Cheboi got so agitated about it! I think you had better relax! The Chair is there to give guidance to the House. I will do that to the best of my ability, in the best interest of this House and to the best interest of my country, which I love very much. I hope all of you will join me in loving Kenya. Can we now proceed?

Mr. Maore: Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered Section 7 and after the Division on Section 23(4), there were some issues raised that require Mr. Speaker to give guidance.

(Loud consultations)

Mr. Speaker: Order, Members! I think it is important for this House to conduct business properly. What I understand to be the bone of contention from the Government side is whether or not the proposed amendment preferred by hon. Marende is lawful or unlawful. Before we go any further, and because I have heard part of the Constitution and some Standing Orders being cited, I think I will deal with that procedural issue so that this House is clear, not only in respect of that amendment, but in respect of all other amendments. I had addressed this issue before it came to this House. So, I would like to hear what hon. Members have said. I heard some hon. Members say that the Speaker has approved this as being correct and others have said that may be the Speaker erred. I want to hear why you think I erred. If, in the end, you convince me, I will tell you so. If you do not convince me, I will also tell you because I have the law here. For the benefit of this House, I have directed my mind completely to the issues before this House, particularly in respect of the President's Memorandum. You will recollect that, yesterday, I deferred this matter because, in my view, we had not had adequate time to look at those amendments. I, subsequently, looked at them and they are on the Order Paper. Let me hear the objections! Who is objecting?

An hon. Member: Hon. Munya!

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, our objection is on the basis that the purpose of the President's Memorandum is to give the Kenya Anti-Corruption Commission (KACC) police powers to be able to carry out its duties. Mr. Marende's amendment is intended to negate that because it is seeking to remove those---

Mr. Speaker: What section were you dealing with? What paragraph of the President's Memorandum are you dealing with? We are not going to deal with matters hanging in the air! It must be in respect of something!

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, it is Section 23(4).

Mr. Speaker: Well, let us have a look at it. I want to look at the President's Memorandum and the proposed amendment. You must also do the same. Look at---

Mr. Muite: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Muite! Will you sit down, first, so that I can finish what I am saying?

Mr. Muite: Mr. Speaker, Sir, it is a very important point!

Mr. Speaker: Order, Mr. Muite! The rule is that when the Speaker is on his feet, everybody keeps quiet! You will assume that I am on my feet when I am speaking. So, let me finish my speaking. I am on my feet when I am speaking. So, let me finish!

I was telling Mr. Munya that he will have to address me on the President's Memorandum, the intended amendment, Standing Order No.40 and the relevant constitutional provision, that is, Section 46. I will then hear any other hon. Member who has an opposite view.

Mr. Muite, what do you want to say?

Mr. Muite: Thank you, Mr. Speaker, Sir. I rise on a point of order to seek your guidance here. This is because with regard to this particular Section 23(4), the Question was proposed to the amendments by the Attorney-General and hon. Marende. Hon. Members also contributed to this matter and we voted. In fact, a Division was called and its results have been submitted. At what point in time should these issues be raised? Is it after the House has already gone into Division and the results have been submitted?

(Applause)

Mr. Speaker: Mr. Muite, I think it is in your interest, and that of the whole House and, indeed, of posterity, if we can clear any legal lacuna. We are not debating matters here on a minute-by-minute basis. We have a record! We have a procedure and a practice to follow. I think it is in the interest of this House that we know, not only in relation to Section 23(4), but also other sections that this issue might be raised in the next section! I will address myself, finally, on your question as to what happens after you have had a Division. So, please, let us all be sober on this matter!

The question of returning Bills to Parliament by the President is a very fundamental constitutional issue. It is an issue that we need to look at with soberness of mind. The Constitution gives the House the right to look at the President's Memorandum and do one or two things: Agree with it without amendment or agree with it with amendment; or refuse to agree with it in totality. Now, I want to hear the problem!

Mr. Munya, I want to hear you!

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, the President's Memorandum relates to Section 23(4), which had been deleted by the National Assembly and which the President required to be re-inserted. It reads as follows:

"The provisions of the Criminal Procedure Code, the Evidence Act, the Police Act and any other law conferring on the police the powers, privileges and immunities necessary or expedient for the detection, prevention and investigation of offences shall, so far as they are not inconsistent with the provisions of this Act, apply to the Director and an investigator as if reference in those provisions to a police station, police office or a police officer included reference to the Commission's premises

and the Director or an investigator."

Mr. Speaker, Sir, so the Memorandum is intended to confer to the Commission those powers that are usually given to the police, so that they can carry out their duties. If you look at hon. Marende's proposed amendments on pages 635 and 636, Section 23(4), they read:-

"(d) deleting the words "a police station, police office or" immediately after the words "reference in those provisions to".

(e) deleting the words "the Commission's premises and the" immediately after the words "included reference to".

Mr. Speaker, Sir, the amendment is basically intended to make sure that the KACC is not given the powers that the President's Memorandum intended. Therefore, it amounts to a negation of the President's intention. Therefore, it requires a two-thirds majority for it to pass!

Mr. Speaker: Mr. Munya, before you sit down, what hon. Marende wants removed are the words "a police station" and "police office". Is that not so? Mr. Munya, those are among the recommendations by the President? Those are just some of the recommendations by the President!

However, among other recommendations is:

"The provisions of the Criminal Procedure Code, the evidence Act, the Police Act and any other law conferring on the police the powers, privileges and immunities necessary or expedient for the detection, prevention and investigation of offences shall,

so far as they are not inconsistent with the provisions of this Act, apply to the Director and an investigator as if reference in those provisions to a police station---

Before you come to that bit, there are a lot of other powers being given to the Commission and the Committee, or the hon. Member, have not interfered with them!

(Applause)

What the hon. Member has done, and legitimately so, in my view, is to prefer an amendment as he is entitled to under Section 46. This House has the power to amend the President's Memorandum with a simple majority. What you need a two-thirds majority---

(Applause)

Hon. Members, I think I need to read the Constitution itself! Let me read it!

Hon. Members: Yes, read it!

Mr. Speaker: Hon. Members, I am not in a hurry and I think you all had better relax because I think we owe it to this country to get these things right! We must do it, since it is our duty. I will allow all of you the opportunity to say so.

Section 46 of the Constitution says-

"(1) Subject to this Constitution, the legislative power of Parliament shall be exercisable by Bills passed by the National Assembly.

(4) Where the President refuses to assent to a Bill he shall, within fourteen days of the refusal, submit a Memorandum to the Speaker indicating the specific provisions of the Bill which, in his opinion, should be reconsidered by the National Assembly including his recommendations for amendments.

(5) The National Assembly shall reconsider a Bill referred to it by the President taking into account the comments of the President and shall either-

(a) Approve the recommendations proposed by the President with or without

amendment and resubmit the Bill to the President for assent; or
(b) Refuse to accept the recommendations and approve the Bill in its original form by a resolution in that behalf supported by votes of not less than sixty-five per cent of all the Members of the National Assembly (excluding *ex-officio* Members) in which case the President shall assent to the Bill within fourteen days of the passing of that resolution."

The key things I think hon. Members must address themselves to are that this House, under Section 46(5)(a), has the right to agree, partially, with the President. The House is not compelled to agree fully with the President. Section 46(5)(a) says that the House can approve the Memorandum with or without amendment. You will then require a whole vote of 65 per cent if you totally want to override the President. Now, this amendment, in my view, and I considered this before I allowed it, and I put a lot of my mind to it, is an amendment envisioned by Section 46(4) of the Constitution. In my view, it is also within the purview and provisions of Standing Order No.40.

(Applause)

That is my view. However, Madam Minister, you can convince me, otherwise! Look at Section 46(4) and convince me that I am, indeed, wrong!

Yes, Madam Minister!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I do think the issue being raised here is about Section 46(4). We are all in agreement that this House is entitled to amend and that is the law. What is in contention is what is proposed by the Committee--
- If you allow me to call it the Muite Committee---

(Loud consultations)

Mr. Speaker: Order!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I was referring to the Chairman because it is under his name that the amendments were brought before this House. But if you like, may I say that the amendment proposed by hon. Marende---

Mr. Cheboi: Mr. Speaker, Sir---

Mr. Speaker: Order! Order! Mr. Cheboi, you will sit down! By the way, for the record, I have no amendments by the Committee! For the record, there is no amendment by the Committee because it is legally impossible for a Committee to move an amendment! We have a Member under whose name an amendment stands. That Member's name is hon. Kenneth Marende.

So, can we proceed on that basis?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, the Chairman of the Committee had explained the reasoning by the Committee, but I stand corrected. What is in contention is whether what was proposed by Mr. Marende is actually an amendment. Our Standing Order No.48(2) clearly states that any proposal that negates the original question is not an amendment.

Mr. Speaker, Sir, we are aware that you had approved the amendment. But I have been in this House and I have seen Mr. Speaker revisit even a Motion that has been approved, when a Member has raised it! So, we are raising it so that the Chair could give his guidance. So, the contention here is that what the House deliberated on is, indeed, not an amendment, but a negation of the proposal by the President!

If we may now revisit the Memorandum, if you look at--- It starts on page four of the copy that I have. It reads:- "The recommendations--- Section 23(4), the following---

Mr. Speaker: Could I follow you?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Okay!

Mr. Speaker: Where are you referring to?

The Minister for Justice and Constitutional Affairs (Ms. Karua): I am referring to page 4!

Mr. Speaker: Could I urge all hon. Members to have the Order Paper in front of you, so that you can know what we are talking about before you either vote or intervene? It is good for everybody's intellectual help.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I am on page four - Section 23(4). The following Section which sought to confer the powers, privileges and immunities of police officers on the Director and investigators of Kenya Anti-Corruption Commission (KACC) in the performance of their functions, was deleted. So, clearly, the President's intention is to bring back the Section that seeks to confer powers, privileges and immunities of police officers on the Director and investigators of KACC. He now proposes:-

"The provisions of the Criminal Procedure Code, the Evidence Act, the Police Act and any other law conferring on the police the powers, privileges and immunities necessary or expedient for the detection, prevention and investigation of offences shall, so far as they are not inconsistent with the provisions of this Act, apply to the Director and an investigator as if in reference to those provisions to a police station, police office or a police officer included reference to the Commission's premises and Director or an investigator".

So, what is the total sum of this? It is conferring on them powers as if they are police officers and their premises are police stations. It is not making them a police station. It is conferring them the same powers. So, what are the amendments by hon. Marende? If you look at (d), it wants us to delete the words "a police station" or "police office". When you do that--- If you look at the provisions of the Police Act, what powers are we conferring? That is, in my view, a negation of the original intention clearly spelt out in the Memorandum by the President that I have just read.

If you also look at (e), the amendment is seeking to delete the words "the Commission's premises". Then, you also look at the words "delete the proviso". Let us look at the proviso.

"Provided that where in any written law an act is required to be performed by a police office of a specified rank, the Director or an investigator shall be deemed to be a police officer of that rank".

That is like arresting and recording statements. I need not go into it. The total sum of this, Mr. Speaker, Sir,--- I do honestly believe that this is a negation of what the President proposed! What then happens when Parliament negates what the President proposed? That is now why we went to Section 46, Subsection (6), of the Constitution. It says that where you negate what the President has proposed, a two-thirds majority is required.

Mr. Speaker, Sir, I want to thank you for according the opportunity for this to be on the HANSARD, among other things. We seek your guidance!

Mr. Speaker: Very well! Could I dispose of this proposal? I want to dispose of this proposal. Yes, Professor! Okay! Since we went to the same law school and same class, I want to hear what you have to say!

The Minister for Lands (Prof. Kibwana): Mr. Speaker, Sir, I am very much privileged for you to mention that we went to a very good school together.

Mr. Speaker, Sir, I just want to buttress what Ms. Karua has stated. I think when one looks at the proposed amendment by the hon. Member, its purpose is actually to negate the Presidential recommendation on this particular aspect. But clothe that in the name of an amendment, so that Section 46 (5)(b) does not apply. That is because if that applies, one must mobilise two-thirds of

the entire National Assembly. Therefore, I think you have to examine the proposed amendment *vis-a-vis* the Presidential recommendation to satisfy yourself whether, in the name of the amendment, the very essence of the Presidential recommendation is not being removed entirely. That is one thing.

Two, if we treated this as a legitimate amendment which, therefore, could be defeated by a vote against it, then one must also ask, according to Section 45(5)(a), the National Assembly shall reconsider a Bill referred to it by the President, taking into account the comments by the President and shall either approve the recommendations proposed by the President with or without amendment and resubmit the Bill to the President for assent. Does it also mean that if the President thinks that the substance of his recommendation has been defeated, he can refuse to assent again? Then we go back again to Section 46 (2) which says:-

"When a Bill has been passed by the National Assembly, it shall be presented to the President for his assent?"

Then, the President can again, refuse to assent. What I am drawing your attention to, therefore, Mr. Speaker, Sir, is that, if you put the President in a precarious situation where he knows that the substance of his recommendation has been defeated via a proposed amendment, which is really not an amendment, but a rejection thereto, then he may have a recourse. He may say: "Let me make another recommendation!" It will be a merry-go-round! Both the President and the National Assembly are going to be put into disrepute! Therefore, this is really a weighty matter because, basically, what the President's recommendation was trying to achieve was to buttress the investigatory powers of the Commission, knowing very well that they do not prosecute.

Mr. Speaker: Could I have a word before you move on?

The Minister for Lands (Prof. Kibwana): Thank you very much, Mr. Speaker, Sir.

Mr. Speaker: First, hon. Members, I think there are certain things we must realise from the outset. We must realise two things at the outset. First, Parliament is the sole legislative authority on the land. Number two, Parliament is divided into two, under the Constitution. The definition of Parliament is the National Assembly plus the President. Without one, you cannot have the other. Without the President, you cannot have a Parliament. Without the National Assembly, you cannot have a Parliament. Without the President, you cannot have the National Assembly. So, the two of them must be symbiotic. The two of them are fused. They are fused for a good reason. The good reason is that the President represents the interest of the country and so does the National Assembly. So, the President acts in public good as should the National Assembly. When the two are combined, they make the Parliament. Therefore, the National Assembly, together with the President, are mandated and are expected to work for the national good.

Having cleared that, because I do not think we ever want to bring confusion between the National Assembly and the President, all of us must be together. The President and the National Assembly were created for a good cause; for the two to operate together in tandem.

Having dealt with that, I want to deal with Standing Order No.40. The Minister for Justice and Constitutional Affairs concedes, and I think, rightly, that this National Assembly has the power to amend the President's recommendations because the Constitution says so in itself, in black and white; in Section 46(4)(a). I think we are now clear on that. This National Assembly has power to amend the President's Memorandum. I think we can put that to rest. Is that agreed to?

Hon. Members: Yes!

Mr. Speaker: If that is agreed to, let us move to the next one. I believe that the best way of sorting out issues is to be systematic in your thinking and in solving the problem. The second one is whether or not this amendment negates - if I may use the words of the Standing Orders---

Can I have my glasses? My glasses are here!

(Laughter)

Sorry, I am a little handicapped without my glasses! I am just human!

I want to read to the House Standing Order No.48, which says as follows-

"(1) Every amendment shall be relevant to the question which it seeks to amend and shall not raise any question which, in the opinion of Mr. Speaker should be raised by a substantive Motion after a notice is given.

(2) No amendment shall be permitted if, in the opinion of Mr. Speaker, it represents a direct negative of the question proposed." If, hon. Members, I may give you a little of the inkling of what transpired as these provisions were being prepared--- I was very firm to the hon. Members who were preparing this amendment so that they would not do anything that negates the Memorandum and that they would not be allowed, by me, to prefer any amendment that negates or defeats the paragraph contained in the President's Memorandum. I, indeed, refused some, and I let through what I thought was right.

Why do I think that I am right? Why do I think that Mr. Munya, Ms. Karua and Prof. Kibwana are wrong? Paragraph 23 of the President's Memorandum has two parts. If you look at it rationally and diagnose what is in that Memorandum, you will see that it contains two basic and separate issues. The first, which is contained in the initial body of the paragraph, confers certain powers to the Director of the KACC and his officers and to make certain Acts of Parliament applicable in their work to what applies to police investigations. That is the main body of the President's memorandum. In fact, the thrust is to give KACC powers to investigate. That is the thrust of paragraph 23.

The second bit is to turn the offices of KACC into a police station. If KACC offices are not police stations, would those powers that are given by Parliament through the President's Memorandum evaporate?

My immediate reaction is the following: That the main thrust, which is to give power to the investigators, has not been challenged. What is being challenged is to turn KACC offices into police stations!

(Applause)

If an hon. Member thinks otherwise, it will be a legitimate game to amend it. What the Minister and Mr. Munya have been saying has weight; you allow them to make their offices police stations as well. However, that is not a technical problem. That lies upon your ability to convince your colleagues to agree with you and vote for you. So, I, honestly rule that, and I truly have given a lot of thought into this, I am convinced that this does not distract or negate the President's recommendations. It does, indeed, take away part of it.

(Applause)

It takes away part of it but not all of it. However, the Constitution recognised and gave the authority to this House to take a part away from what the President recommends. I think the only recourse is a vote, which I understand you have already done. So, that is my ruling.

So, revert to the Committee!

(Loud consultations)

Mr. Speaker: Order! Order! I think I have finished with that matter! Order! The Committee will resume!

IN THE COMMITTEE

*[Mr. Speaker left the Chair]
[The Temporary Deputy Chairman
(Mr. Maore) took the Chair]*

*(Resumption of Consideration of Statute
Law (Miscellaneous Amendments) Bill*

The Temporary Deputy Chairman (Mr. Maore): Order! Order! Order, hon. Members! Please, take your seats! Hon. Omingo, please, take your seat and the other hon. Members near you!

Ms. Ndung'u: On a point of order, Mr. Temporary Deputy Chairman, Sir. I wanted to bring to the attention of the Speaker this issue. There is an unsigned document circulating in Parliament. The document is entitled: "Comments on Proposed Amendments to the Anti-Corruption and Economic Crimes Act." It has purported to lift hon. Marende's amendment into this document.

The Temporary Deputy Chairman (Mr. Maore): Order!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, please, let me just finish! There are instructions in this document about which amendments are proposed and should be objected to even "strenuously". That is the word that has been used. Does this not amount to intimidation of hon. Members?

The Temporary Deputy Chairman (Mr. Maore): Order! We are dealing with the Order Paper!

The Temporary Deputy Chairman (Mr. Maore): Order, Ms. Ndung'u! We are dealing with the Order Paper. If it is a question of privilege, you can refer it to Mr. Speaker at the appropriate time. As of now, we will proceed.

Mr. Wako, please, be as brief of you can. Hon. Members are in possession of the Memorandum and if there are objections they will vote either way.

Section 26

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 26 which was deleted by the National Assembly be re-inserted and be amended as follows -

s.(26(1) Delete the opening statement and substitute therefor the following:-

(1) If, in the course of the investigation into any offence under this Act, the Director is satisfied that it could assist or expedite such investigation, he may in writing, require a person reasonably suspected of corruption or economic crime to furnish, within a reasonable time specified in the notice, a written statement-

(Question of the amendment proposed)

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, I beg to move-
THAT, the amendment proposed in relation to Section 26 of the Anti-Corruption

and Economic Crimes Act be amended by-

(a) deleting the words "under this Act"

(b) deleting the words "he may in writing require a person" and substituting therefor the words "the Director may, by notice in writing, require a person who, for reasons to be stated in such notice, is"

(c) inserting the words "in relation to any property specified by the Director and with regard to such specified property" immediately after the words "a written statement".

The amendments are set out in paragraphs (a), (b) and (c). Essentially, or in a nutshell, those amendments are intended to check against arbitrariness and possible misuse or abuse of power and to safeguard proprietary rights of suspected persons against whom complaints are filed. So, it is a requirement by this amendment that where the Commission requires certain information, then it must specify with respect to what properties in the notice that it serves on the suspect.

(Applause)

(Question of the further amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, on this one, I accept.

(Applause)

The Minister for Justice and Constitutional Affairs (Ms. Karua): No! No! An objection!

The Temporary Deputy Chairman (Mr. Maore): I can see a Government in conflict!

Yes, Madam Minister!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I just wanted to state this, the suggested amendments are going to water down the investigation powers of the Commission. Sometimes when an investigator is investigating, if you ask them to state the reasons why they suspect, then you are warning the suspect in advance. When it relates to economic crimes, you are actually giving a signal, so that even the property of money may be spirited away. It is like asking the investigator to share raw information which they have not processed with the suspect. I would want to persuade Mr. Marende to withdraw this amendment, because it is not in the interest of strengthening the Kenya Anti-Corruption Commission (KACC). I believe that these intended amendments are further watering down the powers of the KACC.

Mr. Temporary Deputy Chairman, Sir, I also want to say that, you say that we insert the words "in relation to any property specified by the Director and with regard to such specified property", but when investigators ask a suspect to list down their properties, they must list down everything, even that which is not known by the KACC. So, we are now providing that a suspect can only list what is already known. It actually waters down the investigative powers of the KACC.

With those few remarks, I beg to oppose.

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

(Question, that the words to be

*inserted in place thereof be inserted,
put and agreed to)*

(Section 26 as amended agreed to)

Clause 27

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 27 which was deleted by the National Assembly be re-inserted and be amended as follows:-

s.27(1) delete and substitute therefor the following -

(1) The Commission may apply *ex parte* to the court for an order requiring an associate of a suspected person to provide, within a reasonable time specified in notice, a written statement of the associate's property at the time specified in the notice.

(Question of the amendment proposed)

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the amendment proposed in relation to Section 27 of the Anti-Corruption and Economic Crimes Act be amended by -

(a) deleting the words "in notice" and substitute therefor the words "the order"

(b) by deleting the words "of the associates property at the time specified in the notice" and inserting the words "stating, in relation to any property specified by the Director, whether the property was acquired by purchase, gift, inheritance or in some other manner, and what consideration, if any, was given for the property".

The reasons for those amendments are similar to the reasons that I have given for amending Section 26 and Ms. Ndung'u will second.

The Temporary Deputy Chairman (Mr. Maore): No! I think seconding is not necessary.

*(Question of the further
amendment proposed)*

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

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

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Temporary Deputy Chairman, Sir. You proposed but you did not give us a chance to ventilate. We have voted at the stage where we should have been talking. I am asking you to reconsider what has happened.

Hon. Members: No!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary

Deputy Chairman, Sir, it has been done before in Committee Stage; we voted before we ventilated. It relates to an associate's properties, and looters never register properties in their names. They only register them in the names of associates.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! Mr. Sungu!

Mr. Sungu: On a point of order, Mr. Temporary Deputy Chairman, Sir. I would like to plead with the Chair to, at least, give this House a chance to ventilate on some of these issues. Because this will go on record, it is important that we also talk about it.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! I want to yield to the request by the Minister for Justice and Constitutional Affairs that she ventilates on this and then we take a vote.

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Maore): There is nothing unfair about that!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, one of the cardinal rules of Parliament is that the majority have their way and the minority their say.

By deleting the words "of the associates property at the time specified in the notice", we are actually destroying the ability of the KACC to trace looted property. It is very well known that looters hardly register properties in their names. They register in the names of companies, whose shares are held by other companies, or in the names of their children, associates and business friends. What we are saying is that we no longer want to follow looted property. I think we stated this earlier when this Section was being deleted. This is, once again, negating the purpose of the Memorandum. It is unfortunate that corruption cartels are winning the day.

With those few remarks, I beg to oppose.

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Mwenyekiti wa Muda, ninasimama kuunga mkono na kupinga mapendekezo haya.

An hon. Member: Kama nani?

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Mwenyekiti wa Muda, ninayapinga kama Mbunge wa Subukia na Kiongozi wa Chama cha Mwananchi, ambacho kinapinga ufisadi kwa dhati.

The Temporary Deputy Chairman (Mr. Maore): Mr. Wamwere, address the Chair.

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Mwenyekiti wa Muda, nataka kukariri yaliosema, kwamba wafisadi hawaonyeshi wazi wanakoweka mali yao. Kila wakati, wafisadi huficha mali yao pahali popote wanapoweza kuyaficha. Kama huwezi kufichua kule kulikofichwa mali na wafisadi, usijidanganye kwamba unapigana na ufisadi. Katika nchi hii, tunajua ya kwamba mali yaliyoibiwa kifisadi yamefichwa katika benki za nchi za nje. Watu wameweka mali yao katika majina ya ndugu zao, marafiki zao, wake zao na watu wengine. Kwa hivyo, kupendekeza hapa kwamba mtu asifuatwe hadi kule alipoficha mali ya wizi ni kama kusema kwamba Bunge hili limeamua kuunga mkono ufisadi na wafisadi. Siku moja, Bunge hili litakuja kulaaniwa kwa jambo hili linalolifanya leo!

Mr. Odoyo: Thank you, Mr. Temporary Deputy Chairman, Sir. I wish to appeal to our colleagues that the sentiments expressed by the Assistant Minister should be considered. For

example, the Kroll Report shows the associates of certain corrupt individuals. Perhaps, Mr. Temporary Deputy Chairman, Sir, on this occasion, I want to beg my colleagues to really consider that the spirit of this particular paragraph be retained.

The Temporary Deputy Chairman (Mr. Maore): Please, hon. Members, this is the Presidential Memorandum. The most important item is just to vote "yes" or "no".

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

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

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Mr. Maore): I order that the Division Bell be rung.

(The Division Bell was rung)

DIVISION

(Question put and the House divided)

(Question carried by 38 votes to 31)

AYES: Ms. Abdalla, Mr. Ahenda, Dr. Awiti, Messrs. Bett, Cheboi, Chepkitony, Gumo, Kajwang, Keter, Kilonzo, C.; Koech, S.C.; Kones, Kosgey, Ligale, Prof. Mango, Messrs. Marende, Midiwo, Moi, Mutiso, J.M.; Muturi, Ms. Ndung'u, Rev. Nyagudi, Dr. Oburu, Messrs. Odoyo, Ogur, Ojaamong, Ojode, Okemo, Prof. Olweny, Messrs. Omamba, Omingo, Omondi, Osundwa, Owino, Rotino, Dr. Shaban, Messrs. Sirma and Syongo.

Tellers of the Ayes: Messrs. Keter and Karaba.

NOES: Messrs. Githae, Kanyingi, Karaba, Ms. Karua, Mr. Kenneth, Dr. Kibunguchy, Messrs. Kimunya, Kiunjuri, Kombo, Kombe, Dr. Kulundu, Dr. Machage, Messrs. Masanya, Mohamed, M.A.; Muchiri, Mrs. Mugo, Messrs. Muiruri, Munya, Ms. Mwau, Mr. Mwenje, Dr. Mwiria, Messrs. Ndile, Nyachae, Nyagah, N.; Obwocha, Opoire, Sasura, H.T.; Tarus, Wambora, Wamwere and Yattani.

Tellers of the Noes: Messrs. Cheboi and Kanyingi.

Abstentions: Mrs. Kihara and Mr. Sungu.

Section 28

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, section 28 which was deleted by the National Assembly be re-inserted and be amended as follows -

s.28(1) Delete the opening statement and substitute therefor the following-

(2) The Commission may apply *ex parte* to the court for an order to-

(Question of the amendment proposed)

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the amendment proposed in relation to section 28 of the Anti-Corruption and Economic Crimes Act be amended by deleting the words "*ex parte*" and substituting therefor the words "with notice to affected parties".

Mr. Temporary Deputy Chairman, Sir, we considered the amendment as proposed by His Excellency the President. We really appreciate that he recognised the need to ensure that there are safeguards to Section 28 which previously did not recognise the need for an application to be made to court. We have in effect improved the amendment by His Excellency the President by deleting the words "*ex parte*" which the President intended that it be and inserting therein the words "with notice to the affected parties".

Mr. Temporary Deputy Chairman, Sir, the effect of this is that the principle of natural justice, which is cardinal in law, recognises that every party to any given situation, including suspicion of an offence, must be heard. Essentially, that is what we are capturing, so that suspects are not condemned unheard.

(Applause)

*(Question of the further
amendment proposed)*

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. This is for reasons that were stated when we were opposing Section 27. But also the fact that the initial application is *ex parte*. This is for a purpose. If you remove the *ex parte* position and substitute therefor it will give the parties notice. In these days, whatever records are there, can disappear within an hour. So, it is *ex parte*, so that, at least, the court can make an order of preservation. However, it does not stop the person against whom that *ex parte* is given from challenging that particular order, if, indeed, he has reasonable ground to challenge it.

I am opposed to the amendment.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, just to illustrate what the Attorney-General is saying; the Director of the KACC may go to court very late in the evening and persuade a magistrate or High Court Judge on duty that Mr. Kajwang's property in which he lives is a proceed of some stolen money. It is, in fact, perceived or suspected. He then gets an order that he can now move into my property and appoint a receiver. I will be evicted the next day. A receiver will be appointed on my property. I will live in darkness or rain without being heard. You can try to be heard for five years as you stay outside your house and the receiver collects rent.

(Applause)

What we are saying is---

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Chairman, Sir.

Mr. Kajwang: Just one more sentence, Mr. Attorney-General!

The Temporary Deputy Chairman (Mr. Maore): Mr. Wako, let him finish, I will give you a chance!

Mr. Kajwang: This is just an explanation!

Mr. Temporary Deputy Chairman, Sir, we are seeking that, at least you be told that, "we are going to court tomorrow or one hour to say that your property is the proceeds of some money which has been stolen". Then I can come to court and say, "but I got my loan from the National

Assembly and bought my property". That is all we are saying, unless there is some malice to destroy some people in this country.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I think I have already answered what the hon. Member is saying. But as soon as he brought in arguments relating to official receiver, that is not covered under Section 28. It will come later under Section 56.

The Temporary Deputy Chairman (Mr. Maore): Let us hear from Mr. Odoyo then I will put the Question!

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, I support the amendment by Mr. Marende. First of all, the notion that you are innocent until proven guilty is being challenged by the Attorney-General. You may be a very important man in the society and someone can destroy your reputation by going--- Like Mr. Chunga used to do. He used to get his orders and arrest these people who are now in Government. They have forgotten that.

Mr. Temporary Deputy Chairman, Sir, I support the amendment by Mr. Marende.

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

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

(Section 28 as amendment agreed to)

Section 30

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, section 30 of the Act be deleted and substituted with the following new section:-

Admissibility of
things produced
or found.

30. Where the notice is directed at a person under investigation or a person who has been charged with an offence of corruption or an economic crime, any statement, record or information given pursuant to such notice, shall not be given in evidence against such person in any criminal proceedings except where such person is charged with knowingly or recklessly giving false information, but may be used in any civil proceedings, including forfeiture and asset recovery.

(Question of the amendment proposed)

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the amendment proposed in relation to section 30 of the Anti-Corruption and Economic Crimes Act be amended by deleting all the words after the words "giving false information".

Mr. Temporary Deputy Chairman, Sir, in this amendment I am supported by the Committee on Administration of Justice and Legal Affairs. We commend His Excellency the President for recognising that there is need to safeguard the interest of the suspect against whom investigations are being carried out and protect them from evidence that has been obtained out of notice that may

have been served on them or proceedings against them by the KACC from that evidence being adduced in subsequent criminal proceedings.

Mr. Temporary Deputy Chairman, Sir, as a matter of fact, this provision is meant to borrow from other jurisdictions that have similar statutes such as South Africa and Ireland. Except that in those jurisdictions, the rider which provides that, that evidence may be adduced in civil cases does not exist. So this amendment is meant to delete that proviso that requires that this evidence be adduced in civil litigation although it is stopped from being used in criminal cases.

Mr. Temporary Deputy Chairman, Sir, this amendment is well-intended. The estoppel should apply generally.

*(Question of the further
amendment proposed)*

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose the amendment by Mr. Marende. I think he will be the first to recognise and accept that the authorities that he is relying on, are authorities which confine themselves to criminal proceedings. I am aware of the cases in the Criminal Justice Act of the United Kingdom (UK), which had similar positions and which was challenged before the European Courts under Article 8 of the European Convention on Human Rights. It was upheld and consequently the Criminal Justice Act was amended to accommodate that. This amendment is to accommodate that. But as far as that goes, it is to accommodate that as far as criminal proceedings are concerned.

Mr. Temporary Deputy Chairman, Sir, even the authorities in South Africa or UK do not preclude the evidence from the civil proceedings, including forfeiture and asset recovery and this is really for a good reason. It is because under civil proceedings, everybody is afforded the opportunity in all those proceedings to challenge what is going on. If I may say so, under criminal proceedings, why it was being challenged is that, whereas, that recommendation was not admissible during the criminal trial, it would have been obtained prior to the trials and it would be unfair to the accused person.

The information obtained prior to the trial under those circumstances should now be introduced against him in a criminal trial. But under the civil process, the procedure is different because under the civil process, everybody is accorded the opportunity. Even if you look, for example, at the Anti-Corruption and Economic Crimes Act that we have, Section 55 of the Act which relates to forfeiture of the unexplained assets and so on, you will find a very elaborate procedure there which accords the opportunity of the person affected to challenge it. For example, Section 55, Subsection 3, provides that:-

"Proceedings under this Section, the person whose assets are in question, shall be afforded the opportunity to cross-examine any witness called and to challenge any evidence adduced by the Commission---"

So, really, that principle does not apply to the civil process. Therefore, to bring that principle to apply to a civil process is to defeat and dilute the powers of the Commission on issues of assets recovery and forfeiture.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I would like to oppose the amendment by Mr. Marende and say this: One of the principal functions of the Kenya Anti-Corruption Commission (KACC) under Section 7, is tracing and recovery of looted money and assets. The reason as to why this proviso is there, that evidence cannot be used for criminal but can be used for civil recovery is to aid this function. So, the proposed amendment completely negates the function of tracing and recovery of assets. It actually weakens that particular function. I would urge hon. Members to oppose that amendment. If

we support it, then we do it consciously knowing that we are saying goodbye to the money that we have been asking to be recovered.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, may I first of all make the point that the concerns which the Committee had expressed on the constitutionality of this Section have actually been accepted by His Excellency the President. We had said that evidence obtained in the manner prescribed in the Anti-Corruption and Economic Crimes Act, negates the constitutional right to silence, the constitutional presumption of innocent until one is proved guilty and the constitutional right not to self-incriminate; providing evidence against yourself. Therefore, what His Excellence is proposing is that he accepts that in the absence of a clause like this one which makes evidence obtained in violation of those constitutional rights, will not be admissible in evidence in any criminal proceedings.

So, to that extent, the President accepted the concerns which had been expressed by the Committee in its report to this House. But what we are saying here is that, if that evidence is inadmissible in criminal proceedings, proceedings for forfeiture of property is also a very serious proceeding. Why should it be a basic in proceedings where the party is going to have his or her property forfeited? We are saying that even there it should be inadmissible. We are saying very well that KACC officials and investigators should get evidence without coercing it from the suspect.

I beg to support the slight amendment moved by Mr. Marende and I plead with hon. Members to support the amendment.

The Temporary Deputy Chairman (Mr. Maore): I think I will only allow one more interjection.

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Chairman, Sir, I am also opposing the amendment. I also wanted to put it on record that what Mr. Muite is saying is not true because the President in his memorandum even stated the position of the court. So, Mr. Muite is misleading the House. I just want to quote what the memorandum says:-

"The representation in support of the deletion were that the Sections were unconstitutional in that they eroded the right to silence, violated the right against self-incrimination and the presumption of innocence. However, the constitutionality of each of the Sections in the course of an investigation was recently upheld by the constitutional court. The court was satisfied that none of the powers conferred upon the Commission under this Section offended the protection in Section 77 of the Constitution."

So, Mr. Muite is misleading the House by trying to raise constitutional issues which had already been dealt with by the courts and they concluded that those powers are constitutional and do not offend the Constitution in any way. The President himself also agrees with the courts.

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

Section 55

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Subsection 55(9) which was deleted by the National Assembly be re-inserted as follows-

"(9) This Section shall apply retroactively."

In the light of the fact that we deleted the proviso to Section 7 which was passed, this also

follows automatically.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Maore): Is there another amendment? Mr. Marende, where is it?

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, Section 30 is in the Order Paper, page 637.

The Temporary Deputy Chairman (Mr. Maore): You have been overtaken by events. We are on Section 55 of that Act.

Mr. Marende: Mr. Temporary Deputy Chairman, Sir, I thought we were on Section 30 of the Act!

The Temporary Deputy Chairman (Mr. Maore): Mr. Marende, you moved your amendment, and it was carried. We are on the same Anti-Corruption and Economic Crimes Act, 2003, but Section 55.

Mr. Marende: Has my amendment to Section 30 been carried?

An hon. Member: Yes! You do not know?

The Temporary Deputy Chairman (Mr. Maore): You were the Mover!

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, we support the President's proposal on this one.

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

(Section 55 as amended agreed to)

New Section 56A

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the proposed new Section 56A, which was deleted by the National Assembly, be re-inserted and amended as follows-

Appointment of
receiver

56A. (1) The Commission may, at any time with leave of the court, appoint a receiver for such property as is suspected by the Commission to have been acquired through corrupt conduct.

(2) The appointment of a receiver under Subsection (1) above shall be in writing, signed by the Director or Assistant Director.

(3) The receiver shall have powers of management, control and possession of the property for which he is appointed.

(4) The Commission or the receiver shall, at the time of the appointment or soon thereafter, serve a notice on the person who has or who appears to have custody or control of the property, and, where the property is required under any written law to be registered, a similar notice shall be served on the respective registrar:

Provided that where the property is situated outside Kenya, the notice shall not be necessary but the Commission shall have the power to liaise with foreign

governments, government departments and international agencies for the confiscation, management, control and repatriation of the property.

(5) A person served with a notice under the foregoing subsection shall not, except by authority of a court order, deal with the property in any manner inconsistent with the instructions of the receiver.

(6) A person who contravenes subsection (5) above shall be guilty of an offence and liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years or to both for a first offence, and to imprisonment for a term not exceeding ten years without the option of a fine for a subsequent offence in respect of the same property.

(7) For avoidance of doubt, a receiver may be appointed under this section in respect of any kind of property whether tangible or intangible, movable or immovable, and including buildings, income, debts, bank deposits, business concerns, stocks and other properties.

(8) The receiver shall keep proper books of account and give quarterly reports to the Commission, and may pay the costs of receivership out of the property for which he has been appointed.

(9) A person aggrieved by the appointment of a receiver under this section may request the Commission in writing to set aside the appointment in return for an offer of deposit of some reasonable security, or he may apply to the High Court for setting aside or variation of the appointment on the ground that-

(a) he has offered to the Commission a reasonable security which has not been accepted by the Commission; or

(b) he has in his possession evidence to show that, on a balance of probabilities, he acquired the property otherwise than through crime or civil wrongs.

(10) An application to the High Court under Subsection (9) above shall be heard *inter-parties*, and the Commission shall be entitled to cross-examine the applicant and to call evidence in rebuttal.

(Question of the amendment proposed)

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I want to support the New Section 56A. The main reason is that in the appointment of a receiver, the Kenya Anti-Corruption Commission (KACC) will have to go to court to get orders. On that score, I would like to support the amendment.

Thank you, Mr. Temporary Deputy Chairman, Sir.

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

(Section 56A as amended agreed to)

*The Public Officer Ethics Act, 2003
New Section 30*

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the proposed new Section 30, which was deleted by the National Assembly, be re-inserted with amendments as follows-

Access to
declarations

30.(1) The contents of a declaration or clarification under this Act shall be accessible to any person upon application to the responsible Commission in the prescribed manner.

(2) No information obtained pursuant to Subsection (1) shall be published or in any way made public except with prior written authority of the responsible Commission.

(3) Any person who-

(a) publishes or in any way makes public any information obtained under the foregoing sections without prior permission of the responsible Commission;

(b) knowingly republishes or otherwise disseminates or discloses to another person information to which this section relates where-

(i) such information was disclosed to himself or to some other person; or

(ii) such information was obtained in contravention of this Act, shall be guilty of an offence and liable on conviction to imprisonment for five years or to a fine not exceeding five hundred thousand shillings, or to both.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Maore): Hon. Members, there is an amendment by Mr. Marende on this recommendation by the President.

Mr. Marende: Thank you, Mr. Temporary Deputy Chairman, Sir. As a matter of fact, I was confusing this amendment with the one to the Anti-Corruption and Economic Crimes Act, 2003. We have an amendment to this Act. It is captured on page 637 of the Order Paper.

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the amendments proposed in relation to Section 30 of the Public Officer Ethics Act, 2003, be amended in the proposed Subsection (1) by inserting after the words "in the prescribed manner" the words "if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of this Act, in such declaration or clarification".

Provided that prior to the responsible Commission making an affirmative decision under this Section, it will grant the opportunity to the affected party to make representations on the matter.

Mr. Temporary Deputy Chairman, Sir, in effect, this amendment is largely innocuous, because we are in agreement with the rationale of His Excellency the President, as recorded on page 15 of the Memorandum, that access to wealth declarations is important in the war against corruption in order to enhance transparency and accountability, and to cater for the public interest. However, I believe that safeguards are necessary to avoid misuse of information so obtained.

In the proposed amendment, I am merely reinforcing the concerns of His Excellency the President, by strengthening that provision to the extent that the person who applies to have access to declarations must, in the application, show to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in the furtherance of the objectives of this Act in such declaration or clarification.

Mr. Temporary Deputy Chairman, Sir, this amendment is meant to uphold the provisions of

the Bill of Rights as it is in Chapter 5 of our Constitution with regard to personal privacy and privacy of property, so that persons who have a legitimate concern can access those declarations, but they must show to the satisfaction of the concerned Commission that, indeed, they have a legitimate interest to access those declarations.

I beg to move.

*(Question of the further
amendment proposed)*

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I would like to support the amendment by Mr. Marende on the presidential recommendation. The main reason is that I personally believe that wealth declaration forms should not be just pieces of paper kept somewhere secretly. People should have access to them. In fact, we should have gone the whole hog to ensure that wealth declarations are made public. If you are going to be a leader, people ought to know you from A-Z; they should know what you own and what you do not own, so that if you acquire anything afterwards, then they will know that you obtained it corruptly.

With those few remarks, I support.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, of course, on this particular Section, we would have preferred our own amendment to stand but we left it open. So, it is okay. We support the amendment.

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

(New Section 30 as amended agreed to)

*The National Assembly and
Presidential Elections Act*

Section 17(6)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Subsection 17(6) be amended to read as follows-

(6) The concurrence referred to in Subsection (5) shall be signified in writing to the President with a copy to the Speaker by the Chairman or any other official designated for the purpose by the political party.

Section 17(7)

THAT, Subsection 17(7) be deleted.

*(Question of the amendment
proposed)*

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I am the one who had moved these two amendments. I want to say that I concur with the President's proposal, and add that in the

Memorandum, the Attorney-General should have advised the President correctly, that Subsection (7) did not contravene Section 40 of the Constitution but went against Section 121(1)(iii) of that Section. That is the one which says that a Member of Parliament will write his resignation to the Speaker.

I beg to support.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I support the President's recommendation on this one but with some reservations. This is because we are referring here to the Chairman, or any other designated official of a political party. I would have rather we referred to the leader of that political party in the National Assembly. What we are actually referring to here is actually the leader of the parliamentary group of that party, and not necessarily the chairman.

As you know, we have had problems with chairmen who are not Members of Parliament, trying to determine what happens in the House from outside. That has brought some conflicts. We have even been taken to court.

The Temporary Deputy Chairman (Mr. Maore): Mr. Kajwang, if you are not bringing any amendment, just say you support.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I am not bringing any amendment. I am just saying that I wish the Attorney-General himself, because he has those powers, could amend this proposal to refer to "the leader of the political party in the National Assembly".

The Temporary Deputy Chairman (Mr. Maore): Mr. Kajwang, it is late! I now want to put the question---

The Attorney-General (Mr. Wako): Sorry, Mr. Temporary Deputy Chairman, Sir. I just want to---

The Temporary Deputy Chairman (Mr. Maore): Do you want to clarify something?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I want it to go on record that His Excellency the President was correctly advised that this violated Section 40 of the Constitution. But if, in addition, it violated another section of

[The Attorney-General]

the Constitution, then His Excellency the President's decision that it should be deleted is doubly supported.

The Temporary Deputy Chairman (Mr. Maore): I think it is good to have another potential Attorney-General!

Yes! The hon. Member for Ndia Constituency!

The Assistant Minister for Transport (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, indeed, today is a happy day for me. I was sad when this amendment came because it was bringing the Judiciary into Parliament by saying that the consent must be given by the Chief Justice. Now that, that has been deleted, I am a very happy man. The Judiciary should not be brought in Parliament!

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

*(Section 17(6) as amended
agreed to)*

The Temporary Deputy Chairman (Mr. Maore): I will now put the question on Section 17(7).

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

(Section 17(7) deleted)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Memorandum by His Excellency the President on the Statute Law (Miscellaneous Amendments) Bill and its approval thereof with amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Speaker in the Chair]

REPORT AND CONSIDERATION OF REPORT

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Mr. Maore: Mr. Speaker, Sir, I beg to report that the Committee of the whole House has considered the Memorandum by His Excellency the President on the Statute Law (Miscellaneous Amendments) Bill and approved the same with amendments.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Justice and Constitutional Affairs (Ms. Karua) seconded.

(Question proposed)

(Question put and agreed to)

PROCEDURAL MOTION

EXTENSION OF HOUSE SITTING

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I beg to move:-

THAT, notwithstanding the provisions of Standing Order No.17(2), this House resolves that the sitting time be extended until after the conclusion of the business appearing under Order No.7(ii).

Hon. Members: No! No!

Mr. Speaker: Where is the copy of the Motion? I want to put the question! Order, hon. Members, you must realise that after we have finished with the Memorandum by His Excellency

the President, we still have business. I recall very well that we did not go on recess because we were not tired! We have a lot of energy! The Chair invites hon. Members to exercise that energy and zest and conclude the business before the House today! I will now, straightaway, put the question!

(Question put and negatived)

Hon. Members: Division! Division!

Mr. Speaker: Order, hon. Members! Order! That vote notwithstanding, you will go to the Committee until the usual time lapses. If the business of the House should be concluded before that time, then so be it!

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman (Mr. Maore)
took the Chair]*

THE FINANCE BILL

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! Please, take your seats! We are dealing with the Finance Bill.

(Clause 2 agreed to)

Clause 3

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended in paragraph (b) by deleting the words "thirty microns or less" appearing at the end of the proposed subsection (2) and substituting therefor the words "less than thirty microns".

That is to reflect the agreement we had with the Departmental Committee on Finance, Planning and Trade.

(Question of the amendment proposed)

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

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

be inserted, put and agreed to)

(Clause 3 as amended agreed to)

Mr. J.M. Mutiso: On a point of order, Mr. Temporary Deputy Chairman, Sir. Please, tell us what the amendments are. We have two sets of instructions. We have the proposals by the Minister---

The Temporary Deputy Chairman (Mr. Maore): Order, Mr. J.M. Mutiso! If you have an amendment for a certain clause, before we conclude, we will make sure that we alert you to move the amendment! I do not think you have any amendment on Clause 3!

Clause 4

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended in the proposed subsection (5A) by adding the words "after consultation with the industry" immediately after the word "prescribed".

That, again, is to reflect the understanding with the Committee. It wanted to include, within the law, "consultation with the industry". I know that the Committee was [**The Minister for Finance**]

also proposing to move an amendment. But I believe that is what we had agreed with the Committee; that the Commissioner will consult with the industry.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Maore): Dr. Oburu, do you have an amendment by the Committee?

An hon. Member: No, we agreed!

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Maore): I can see the Committee has an amendment, but is it in contradiction or it is in addition?

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, the amendment proposed by the Committee was in respect of the arbitrariness of the Commissioner deciding on the---

The Temporary Deputy Chairman (Mr. Maore): You have your amendment, as a Committee, and the Minister has his. I think the amendments are not the same.

An hon. Member: They are not!

The Temporary Deputy Chairman (Mr. Maore): Let the Minister move his amendment. However, if the Minister's proposed amendment is carried and you feel it will negate yours, then you could have some issues to raise.

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, mine is to delete.

The Temporary Deputy Chairman (Mr. Maore): Now, if yours is to delete, then we should start with that one.

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, it is different from the Minister's.

The Temporary Deputy Chairman (Mr. Maore): Dr. Oburu, move your amendment!

Dr. Oburu: Mr. Jakoyo Midiwo will move the amendment.

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 4.

Mr. Temporary Deputy Chairman, Sir, as a Committee, we thought that the Commissioner has sufficient powers under Section 135 of the Customs and Excise Act to deal with the distilleries. We thought that to give him powers to decide either way, had some sinister motives. So, we have proposed to delete Section 4.

The Temporary Deputy Chairman (Mr. Maore): There is no provision for seconding.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, the word "prescribed", at the full discretion of the Commissioner, is putting powers in the hands of the Commissioner, which he can use to act unilaterally without full consultation. I, therefore, believe that where there is no explanation of the word "prescribed", it should be deleted. I, therefore, support the idea that Clause 4 be deleted.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Chairman (Mr. Maore): No, we will not reopen debate on this matter. The Minister has proposed his amendment and we are now dealing with this one. If this one is carried, you lose yours, Mr. Minister!

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, may I appeal that before you put the Question, it is important for the House to understand what we are doing. With regard to Clause 4, what we provided for within the Finance Bill is to open up the method of determining and to accommodate new technologies that are coming. What we agreed with the Committee is that the potential mischief is if the Commissioner does not consult with the industry. What we have done is that we have included a part that states that he will not prescribe until he [**The Minister for Finance**]

has consulted with the industry. That is my understanding of what we agreed with the Committee and we brought this amendment on that understanding. I would rather that the Committee does some consultation - which is happening - in order to support what we had agreed on and, therefore, withdraw what they have proposed.

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, because the Minister's amendment was not fully explained or understood, I withdraw my amendment.

(Mr. Midiwo's Amendment was withdrawn)

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

(Clause 4 as amended agreed to)

Clause 5

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended in the proposed Subsection 166C(5), by adding the words "unless extended by the Court upon application by the Commissioner" immediately after the words "automatically expire".

Mr. Temporary Deputy Chairman, Sir, this is to include the broad consultations that we had to further clarify the provisions of Clause 5.

(Question of the amendment proposed)

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

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

Mr. Sungu: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Maore): Mr. Sungu, there is nothing out of order. Nothing is out of order at the moment.

Clause 7

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended-

(a) by deleting paragraph (b) and substituting therefor the following new paragraphs

-
(b) item (b)(i) of the Second Schedule to this Act;

(bb) item (b)(ii) of the Second Schedule to this Act;

(bbb) item (b)(iii) of the Second Schedule to the Act;

(b) by deleting paragraph (c) and substituting therefor the following new paragraphs -

(c) item c(i) of the Second Schedule to this Act;

(cc) item c(ii) of the Second Schedule to this Act.

Mr. Temporary Deputy Chairman, Sir, this is, again, to further clarify the sequence of events and when the various issues come into effect.

(Question of the amendment proposed)

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

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

(Clause 7 as amended agreed to)

(Clauses 8 and 9 agreed to)

Clause 10

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended in the proposed Section 19B(5) by adding the words "unless extended by the Court upon application by the Commissioner" immediately after the words "automatically expire".

Mr. Temporary Deputy Chairman, Sir, this is, again, to further clarify, and include some--- in terms of the applicability of the clause after consultations.

(Question of the amendment proposed)

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, it is nice to be recognised finally. I wanted to take issue with that particular clause. If you look at Clause 10, new Section 19B(1), it states thus:-

"Where the Commissioner has reasonable cause to believe that a person -

(a) has made taxable supplies on which tax has not been charged; or

(b) has collected tax which has not been accounted for; and

(c) is likely to frustrate the recovery of tax if information on the Commissioner's suspicion under this subsection is disclosed to him,---"

Mr. Temporary Deputy Chairman, Sir, I want to know what reasonable cause the Commissioner would have. This must be clear. When we are making law, we must be clear. We cannot leave it in doubt. I want the Minister to explain to us exactly what he means by that. This particular clause can take people to court and it will not be clear.

*(Question, that the words to be inserted
be inserted, put and agreed to)
(Clause 10 as amended agreed to)*

Clause 11

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, we had very constructive discussions with the Minister.

The Temporary Deputy Chairman (Mr. Maore): Are you withdrawing your amendment?

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, the Minister actually agreed that we delete this Clause 11. I am surprised that it is still here.

The Temporary Deputy Chairman (Mr. Maore): You are the one to move!

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 11.

Mr. Temporary Deputy Chairman, Sir, there is a good reason for us expressing concern with this particular Clause 11. We believe that, as it is today, there are ways and provisions under the existing laws to deal with defaulters of Value Added Tax (VAT), Income Tax and all other taxes. This new addition is meant to be a convenience for the collector. However, I think it could easily be abused to affect taxpayers. A specific case, for example, is if property is left behind---

The Temporary Deputy Chairman (Mr. Maore): No, I think you are reopening the debate.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I was just trying to lay the foundation for the reason for the deletion.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I move to oppose the deletion by the Committee and also to provide the benefit to the entire Committee of the rationale as to why we brought this Clause here. The inclusion of Clause 11 within the Value Added Tax (VAT) Act is to harmonise the recovery process in terms of disposal of land or any charged asset with the provisions of the Customs Act. We have three Acts namely the Income Tax Act, the Customs Act and the VAT Act. Under the Customs Act, there is a very elaborate procedure on how that happens. Under the VAT and Customs Acts, that procedure is not there. We

wanted to harmonise them, so that it is not left to the Commissioner to apply the law indifferently because those provisions exist with the Customs Act. We are trying to harmonise all the three Acts here by including it within the VAT Act. I thought that it is important for the House to know that as they make the decision on whether to delete it or accept it.

Mr. J.M. Mutiso: Mr. Temporary Deputy Chairman, Sir, the premises of giving the Commissioner more powers to be able to deal with immoveable assets and, perhaps to move with speed and maybe liquidate those assets to recover maybe any tax pending, in the wisdom of the Committee after looking at these proposals, we also thought about the due process of the law which also provides for the necessary procedures of all the participants to be given an opportunity to be able to lay their case. Therefore, by giving the Commissioner these powers, we are actually negating the principle of natural justice where people or taxpayers will not be able to get an opportunity to be able to organise themselves in paying the tax. Therefore, I think the fear of the Minister will be addressed by the due court process.

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

(Clause 11 as amended agreed to)

*(Clauses 12, 13, 14, 15, 16,
17 and 18 agreed to)*

Clause 19

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19 of the Bill be amended -

(a) in Subclause (a), by deleting the word "and" appearing at the end of subparagraph (i) of the proviso to the proposed subsection 5(2B) and substituting therefor the word "or";

(b) in Subclause (b)(ii), by adding the following new proviso at the end of the proposed paragraph (f) -

"Provided that for the purposes of this paragraph, "low income employee" means an employee who is not a member of the management staff of the employer."

Mr. Temporary Deputy Chairman, Sir, this again is to clarify further who we mean by a "low income employee". It is a clear definition of what we had already provided for.

(Question of the amendment proposed)

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

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

(Clause 19 as amended agreed to)

*(Clauses 20, 21, 22, 23, 24,
25 and 26 agreed to)*

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report progress and seek leave to sit again.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Speaker in the Chair]

PROGRESS REPORTED

THE FINANCE BILL

Mr. Maore: Mr. Speaker, Sir, I beg to report that the Committee of the whole House is considering the Finance Bill, 2007, and has instructed me to report progress and seek leave to sit again another day.

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

Mr. Speaker: Hon. Members, that concludes our business for today. I wish to commend hon. Members. It is one of the rare occasions when hon. Members have sat before 3.30 p.m., and continuously in good numbers, until 6.30 p.m., in the recent past. Thank you very much.

The House, therefore, stands adjourned until Tuesday, 9th October, 2007, at 2.30 p.m.

The House rose at 6.30 p.m.