

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 16th May, 2007

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Deputy Speaker, I wish to lay two Papers in this House, that is, the Audited Report of the Kenya Utalii College and the Audited Report of the New Kenya Co-operative Creameries (KCC) Limited.

Hon. Members: For which year?

Mr. Deputy Speaker: Mr. Mwenje, you are not clear! You have not specified the year. Where are the Papers?

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Deputy Speaker, Sir, they are not here, but they are for the year 2006/2007.

(Laughter)

Mr. Deputy Speaker, Sir, I beg your pardon! They are for the year 2005/2006!

Mr. Deputy Speaker: Order, Mr. Mwenje! It is a fact that you are not very sure. However, where are the Papers?

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Deputy Speaker, Sir, the Papers are already in this House. I only omitted one of them last time when I laid the other one. The other one is already upstairs. We have already laid it.

(Loud consultations)

Mr. Deputy Speaker: Order, Mr. Mwenje! Hon. Members, it is not just for you to stand up and say that you are laying something on the Table and yet there is nothing you are laying or to say that it is upstairs and yet it is not on the Table of the House. So, we disregard any laying of Papers that Mr. Mwenje has done because they are not there. We ask him to come and lay the Papers today in the afternoon or tomorrow. So, for the record, Mr. Mwenje has laid nothing. Mr. Mwenje, please, come in the afternoon and lay the Papers.

Next Order!

NOTICES OF MOTIONS

ADOPTION OF REPORT ON STUDY TOUR BY
WHIPS TO UK/ IRELAND PARLIAMENTS

Mr. N. Nyagah: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the study tour of the Whips to the Parliaments of the United Kingdom (UK) and Ireland between 16th and 20th October, 2006, laid on the Table of the House on Thursday, 7th December, 2006.

Mr. Deputy Speaker: Very well!

Next Order!

Prof. Mango: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is it, Prof. Mango?

Prof. Mango: Mr. Deputy Speaker, Sir, I want to give notice of Motion and then you---

Mr. Deputy Speaker: What are you saying?

Prof. Mango: Mr. Deputy Speaker, Sir, I had stood up to give Notice of a Motion---

Mr. Deputy Speaker: I am sorry if you stood up. I did not see you. I did not intend to overlook you, madam. It is just because I did not see you. I do not know why I did not see you and yet you are tall enough! Probably, I thought that you were just moving around. Nevertheless, I oblige and ask you now to give the Notice of Motion. We will go back to the previous Order.

INTRODUCTION OF ORPHANED VULNERABLE CHILDREN FUND BILL

Prof. Mango: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:- THAT, in view of the steady rise in the number of children orphaned as a result of the HIV/AIDS scourge; aware that such children are subjected to untold suffering owing to lack of family support with most of them dropping out of school thus increasing their vulnerability and exposure to early pregnancies, child labour and further HIV/AIDS infections; bearing in mind that the children lack shelter, food, clothing, medical facilities and the much needed psycho-social support; this House grants leave for the introduction of a Bill entitled "The Orphaned and the Vulnerable Children Fund Bill" to provide for educational and psycho-social support, shelter, food and clothing for the affected children so as to tap their enormous potential of becoming resourceful and responsible citizens and for the matters incidental thereto and connected therewith.

Mr. Deputy Speaker: Thank you, Prof. Mango.

Next Order now!

QUESTIONS BY PRIVATE NOTICE

Mr. Deputy Speaker: Hon. Members, we have four Questions by Private Notice. We will move straight to the first one by the Member for Mandera Central, Mr. Billow Kerrow!

ISSUANCE OF ID CARDS TO MANDERA RESIDENTS

(Mr. Billow) to ask the Minister of State for Immigration and Registration of Persons:-

(a) Is the Minister aware that over 6,000 persons applied for identity cards in Mandera Central in April, 2006 but are yet to receive the cards to date?

(b) When will these people receive their identity cards to enable them to register as voters?

Mr. Deputy Speaker: Mr. Billow is not here. The weather is very good today! So, the

Question is dropped!

(Question dropped)

CAUSES OF CRASH OF FLIGHT
KQ507 IN CAMEROON

Mr. Odoyo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Transport the following Question by Private Notice.

(a) What circumstances led to the crash of Kenya Airways Flight KQ507 upon departure from Douala International Airport, Cameroon in the early hours of Saturday, 5th May, 2007?

(b) Could the Minister give an undertaking that the accident report will be tabled in the House as soon as it is finalized and not shelved like it happened after a similar accident involving the national carrier in Abidjan, Ivory Coast, in 2000?

The Assistant Minister for Transport (Ms. Mbarire): Mr. Deputy Speaker, Sir, I wish to inform the House that the Ministry has not received this Question. However, more importantly, we have an hon. Member who requested for a Ministerial Statement on the same issue. It is the feeling of the Ministry that the Question will be better addressed by the Ministerial Statement.

Mr. Odoyo: Mr. Deputy Speaker, Sir, it is the tradition of this House that we avoid Ministerial Statements where Questions could be the better preferred. A Ministerial Statement cannot be interrogated, neither can it be ventilated nor assessed appropriately.

Mr. Deputy Speaker, Sir, the ruling from the Chair has frequently been that hon. Members ask Questions rather than request for an avalanche of Ministerial Statements. I, therefore, appeal to you that you make a ruling that the Assistant Minister answers this Question instead of her bringing a Ministerial Statement here so that we can address the very specific issues the public and their representatives here want to know.

Mr. Deputy Speaker: The hon. Member has a point there. I do appreciate that it was urgent but the Ministry has not received the Question, therefore, it cannot be answered now. Therefore, there is need for time. Nevertheless, you will also recall that when I was giving a Communication from the Chair, I indicated that the Minister would be giving a Ministerial Statement on this matter. I think it is an important Question. It is a matter that is in the minds of Kenyans but the House also appreciates the intricacies of this matter. A lot of investigations are required on this matter.

I do not wish to speak on behalf of the Assistant Minister but we want to give her time to speak about it either through a Ministerial Statement or a response to the Question. I think the interest of the House and the nation is to get information from the Ministry. So, whether it will come through a Question or a Ministerial Statement, the public interest would be served. Having said that, I would like to give the Assistant Minister more time to, perhaps come, in whichever way, with the answer or a Ministerial Statement. I think the House will oblige. Mr. Odoyo will also be happy because, I am sure, that he is serving the interest of the public.

If public interest can be addressed through a Ministerial Statement, I do not think the House or the hon. Member would mind. What we want is information. I think I have said enough and the Assistant Minister should now tell us when the answer or the Ministerial Statement is coming.

Mr. Odoyo: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Let me hear from the Assistant Minister! I have already asked the Assistant Minister to talk.

The Assistant Minister for Transport (Ms. Mbarire): Mr. Deputy Speaker, Sir, the Ministerial Statement will be read on Tuesday afternoon because we are still receiving more

information from the site.

Mr. Odoyo: Mr. Deputy Speaker, Sir, this particular Question not only deals with the flight that crashed one minute after take-off but it also deals with another similar KQ flight that crashed in 2000. The Ministerial Statement being offered by the Minister refers to flight KQ507. But, my Question also brings to the notice of the House that, indeed, we had another similar crash in 2000 for which this House, up to date, has not received adequate response from the Minister despite that Ministry having been held by substantive Ministers like Mr. Michuki, Mr. Mwakwere, Dr. Murungaru---

Mr. Deputy Speaker: Mr. Odoyo, you are now debating. Those very eloquent statements you are making could be reserved for that time. Therefore, I do not wish to push the Assistant Minister to answer a matter that I know is being investigated. But the Question is deferred to Tuesday. The Question is still there. It has only been deferred and not dropped.

(Question deferred)

CLOSURE OF SCHOOLS IN MT. ELGON DISTRICT

Mr. Ojaamong: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Administration and National Security, the following Question by Private Notice.

(a) Is the Minister aware that 30 primary and five secondary schools in Kopsiro Division of Mt. Elgon District have not re-opened for learning due to insecurity?

(b) Is he further aware that despite the amnesty given by the Minister, no gun has been surrendered?

(c) What is the Minister doing to ensure that security is guaranteed to facilitate re-opening of the affected schools?

(d) What further steps is the Minister taking to ensure that all suspected criminals are apprehended and all guns surrendered?

Mr. Deputy Speaker: Is the Minister of State, Office of the President not here? There are many Ministers of State, Office of the President.

Leader of Government Business!

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, I got information that they are still seeking more information on this matter. I seek your indulgence that the Question be answered on Tuesday afternoon. I appreciate the fact that it is a Question by Private Notice but more information is required. It will serve better when we give full information.

Mr. Bifwoli: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: This is a Question from Mr. Ojaamong. I have to ask him to respond.

Mr. Ojaamong: Mr. Deputy Speaker, Sir, I presented this Question last week and that was sufficient time for this Government to respond to it because over 15,000 children are out of school and are not learning. I prefer that this Question be deferred to tomorrow.

Mr. Deputy Speaker: Yes, I agree with you, Mr. Ojaamong. It is a matter that came up last week and it is urgent so I will---

Mr. Bifwoli: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Bifwoli, do you want me to stop talking and you talk? Would you sit down! Let me finish then you stand up. Two people cannot run the House at the same time. I am guiding you and then you are still--- When you stand up on a point of order when the Chair is speaking then you are challenging the Chair. I think that should be borne in mind. What I have said

is that this Question is important and the Office of the President with all the machinery that they have, should be able to get an answer tomorrow. So, Vice-President, this Question comes tomorrow afternoon. That should be taken as an order from the Chair.

Mr. Bifwoli, what is your point of order?

Mr. Bifwoli: On a point of order, Mr. Deputy Speaker, Sir. Mt. Elgon is running out of this Government's hands. They know that a District Officer (DO) and a District Commissioner (DC) have run away and the Vice-President is telling us that he has no answer. You have done very well to give him the order to answer this Question tomorrow. That is what I wanted to say but you have already said it.

Mr. Deputy Speaker: So, you see hon. Members, the hon. Member has agreed with me. If he had waited for me to finish, the point of order would not have arisen. But I thank you, Mr. Bifwoli, for commending my order.

(Question deferred)

KILLING OF MS. EMMY JEMUTAI

Mr. Sambu: Mr. Deputy Speaker, Sir, I beg to ask the Attorney-General the following Question by Private Notice.

(a) Is the Attorney-General aware that on 23rd March, 2007 at Ndulele Village, Kabiyeet Location, Nandi North District, Mr. Paul Kibet Kosgei is suspected to have killed Ms. Emy Jemutai?

(b) Is he further aware that the victim was killed in a very atrocious manner with all body joints broken?

(c) Is he further aware that on the morning of 24th March, 2007, the suspect personally delivered the remains of the victim to Kapsabet Hospital Mortuary and reported that she was a victim of a road accident?

(d) Why has the suspect been charged with manslaughter as contained in File No.7713/335/07?

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, we received this Question only the other day and I have called for the file from Kapsabet but I am yet to receive it. So, I would wish this Question to be deferred. But in so doing, I have already notified Parliament that I will be going out of the country until early June. What I can assure the person who has asked this Question is that when the file is received---

Mr. Deputy Speaker: The hon. Member and not the person!

The Attorney-General (Mr. Wako): The hon. Member of Parliament, a former Minister for Environment and a friend *et cetera*. I can assure him that the file is coming with a runner and the Director of Public Prosecutions (DPP) will peruse the file and if it is found to be justified that a murder charge be preferred, it will be done immediately and they do not have to await my return. So, I ask that this Question be deferred to some future time.

Mr. Sambu: Mr. Deputy Speaker, Sir, I have no alternative because I do not prosecute. The Constitution gives him the powers to prosecute. But there is already a file with a charge of manslaughter which is file No.7713/335/07. The State Counsel in Eldoret, or wherever, recommended a charge of manslaughter and yet the facts---

Mr. Deputy Speaker: Mr. Sambu---

Mr. Sambu: Mr. Deputy Speaker, Sir, I just want to request that the manslaughter case should not go on because it will cause mayhem and more murders in the village because of bitter feelings.

Mr. Deputy Speaker: Order, Mr. Sambu! I think you are now over-stepping by saying that a case should not go on. As legislators we must know certain parameters. When you tell the Attorney-General that a case should not go on, I think you are over-stepping. The reason why I asked you to stand is to respond to the Attorney-General's request for the Question to be deferred and the assurances he gave you, so that the Chair should be comfortable that the Question has been deferred with your concurrence. I also want to get an indication as to when I should defer this Question to in view of the fact that the Attorney-General says that he will be out of the country or whether he could delegate the Question to be answered by someone else when he is out of the country. I think he thinks not. So, Attorney-General, when do you want us to defer this Question to?

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, what I can assure this House is that even if it is another case, say of manslaughter, the Attorney-General has the power to terminate it if he gets the file and finds that a murder charge should have been preferred. The Attorney-General has the power to terminate and re-charge with murder. That is what I wanted to assure you. But I would also like you to understand that I have to be away until early June, attending a meeting of International Law Commission, to which I was elected by the General Assembly of the United Nations in November, last year. So, even before I come back, most likely action will have been taken on your file; may be even before you go home this weekend.

Mr. Deputy Speaker: With that particular insight, we can now defer the Question. We will defer it generally without fixing a date and when the Attorney-General comes, the Clerk of the National Assembly will facilitate the Question to be brought back to the Order Paper. Is that okay, Mr. Sambu?

Mr. Sambu: Mr. Deputy Speaker, Sir, it is okay, for as long as the manslaughter case does not go on.

Mr. Deputy Speaker: Well, Mr. Sambu, thank you very much for your concurrence.

(Question deferred)

Next Question by the Member for Yatta.

ORAL ANSWERS TO QUESTIONS

MONOPOLIZATION OF REGIONAL AIR TRAVEL BY KENYA AIRWAYS

Question No.219

Mr. C. Kilonzo asked the Minister for Transport:-

(a) whether he is aware that Kenya Airways has monopolised local and regional air travel, as a result of which airfares are unreasonably high;

(b) whether he is also aware that this has greatly increased the cost of doing business in the country and regionally; and,

(c) whether he could consider licensing more airlines to operate locally in order to allow competition which would lead to reduction in the cost of local air travel.

The Assistant Minister for Transport (Ms. Mbarire): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Kenya Airways does not monopolise the local and regional air transport market. The

Government has fully liberalised domestic air transport and licensed 60 operators, some of which have started operating. Among them we have Flight 540, Jetlink Express, East Africa Safari Express and Kenya Airways that operate scheduled flights. Kenya Airways operates scheduled flights to Mombasa, Malindi, Lamu and Kisumu only. Others fly these routes and in addition operate to Lokichoggio, Maasai Mara, Juba and other destinations on scheduled and chartered flights. East Africa Safari Express has a large local market share and competes with other operators in this route. During the month of April, 2007 alone, Flight 540, a local carrier, ferried 10,000 passengers on the four routes to Kisumu, Lamu, Mombasa and Malindi. It is, therefore, clear that there are no monopolies locally and regionally in the air transport sector. Further, Kenya is a signatory to regional conventions such as COMESA Legal Notice No.2 of 1999 and the Yamoussoukouro Decision (YD) of 1999, which provides for liberalisation of air transport between COMESA States and members of African Economic Community respectively.

(b) There is a regularised air transport environment in Kenya that has led to the licensing of 60 operators, reaping considerable competition. The prevailing cost of doing business is as a result of many other factors, but not due to monopoly by Kenya Airways.

(c) I am aware that more airlines have been licensed. Some have already started operating while others have not. The Kenya Civil Aviation Authority will continue to license more operators which meet the licensing requirements.

Mr. Deputy Speaker: Mr. C. Kilonzo, do you have anything to ask from that comprehensive answer?

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, the answer is not comprehensive. What the hon. Assistant Minister is referring to as airlines are very weak airlines. Some of them are licensed and they have not been able to operate. Could the Ministry consider licensing major airlines to fly from Nairobi to Kisumu or Nairobi to Mombasa or Nairobi to Eldoret?

Ms. Mbarire: Mr. Deputy Speaker, Sir, if those major airlines apply, their applications will be considered. So far, they have not applied.

Capt. Nakitare: Mr. Deputy Speaker, Sir, when you look at the airspace, particularly the air transport within the local enterprise of Kenya, it is Kenya Airways that has taken the larger share. It has also prevented the Kenya Wildlife Service, whose transportation is even used by Ministers here. Could the Assistant Minister consider also licensing KWS as a passenger carrier, so that they can also use the airspace for tourism?

Ms. Mbarire: Mr. Deputy Speaker, Sir, if the KWS applies, we shall consider the application.

Eng. Nyamunga: Mr. Deputy Speaker, Sir, one of the reasons why some airlines do not apply to cover some of the regional cities is because of the size of the runways. When will the Assistant Minister expand the length of the runway in Kisumu so that major airlines can also go there?

Ms. Mbarire: Mr. Deputy Speaker, Sir, we are on an airport expansion programme that started two months ago. Obviously, Kisumu Airport will be one of them. We are spending Kshs2 billion on Kisumu Airport for the expansion, and then we will go to other domestic airports.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, Kenya Airways has taken advantage, and that is why a ticket from Nairobi to Khartoum will cost about Kshs70,000, while a ticket from Nairobi to China will cost you about Kshs60,000. Could the airline consider reducing this fare, having in mind that the Government owns a stake in the airline?

Ms. Mbarire: Mr. Deputy Speaker, Sir, as I indicated earlier, the cost of a flight may be expensive due to other factors, not because of the monopoly of Kenya Airways. Obviously, we are considering any application by any airline to fly these routes. Therefore, we hope that in due course, we will get more applications and the flight cost will be reduced substantially.

NUMBER/LOCATION OF KTDA
FACTORIES UNDER
CONSTRUCTION COUNTRYWIDE

Question No.095

Mr. Bett asked the Minister for Agriculture:-

(a) how many new Kenya Tea Development Agency (KTDA) factories are under construction in the country and where are they located;

(b) how many more new factories are planned for future construction and in which areas; and,

(c) whether he is aware that the farmer contribution in the building of a new factory has been revised from 30 per cent to 50 per cent of the total construction cost.

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

(a) There are six new KTDA factories currently under construction in the country. Two factories are being constructed in Bureti District and one factory in each of these districts, Thika, Kericho, Nandi South and Meru North.

(b) Three new factories have been planned for construction next year. Two of these factories will be constructed in Kisii Central and Bureti Districts.

(c) I am aware that farmers' contribution in the building of a new factory has been revised from 30 per cent to 50 per cent of the total cost.

Mr. Bett: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for that answer. Farmers in this country, particularly those in the east and west of the Rift Valley have taken tea farming seriously. The management of that crop and the factories must be taken care of completely by the Government. When these factories are constructed, they are annexed to an existing factory because they may not be able to vote when the KTDA meets. I want to ask the Assistant Minister why these new factories are not standing on their own so that they have got voting rights like the other factories.

Mr. Muiruri: Mr. Deputy Speaker, Sir, when these six factories are completed, they will be totally on their own. Each factory must have a sponsoring factory for the purpose of offering guarantees to the KTDA. Three more factories will be constructed and they will be complete by 2010. These will be Thenyamwanu in Kisii Central, Marami in Kisii Central and Roreti in Bureti District.

Mr. Keter: Mr. Deputy Speaker, Sir, since the farmers' contribution has been increased from 30 per cent to 50 per cent and the other 50 per cent is funded through the loans, could the Assistant Minister consider funding the 50 per cent so that it can assist the farmers?

Mr. Muiruri: Mr. Deputy Speaker, Sir, I have said that is already in place.

Mr. Sambu: Mr. Deputy Speaker, Sir, we amended the Act so that the KTDA would no longer be an authority, but an agency. Therefore, the tea factories are actually owned by the farmers. In this case where farmers are contributing 50 per cent, why does the KTDA have to come in? Could the Government facilitate the farmers to get loans at lower interest rates so that they can put up their own factories without the KTDA involvement?

Mr. Muiruri: Mr. Deputy Speaker, Sir, we have the KTDA task force going round the whole country. The hon. Member's request will be considered.

Mr. Bett: Mr. Deputy Speaker, Sir, I have noted the Assistant Minister is saying there is a

task force going round the country. I am aware that, that task force finished its work. Could the Assistant Minister tell us when that report will be made public because it is in connection with the streamlining of management of the KTDA factories?

Mr. Muiruri: That is a very good question, Mr. Deputy Speaker, Sir. The task force report will be out as quickly as possible. It is almost complete and everybody will know what it contains.

Mr. Deputy Speaker: Next Question.

An hon. Member: But she is not in!

Question No.215

INCREASE IN NUMBER OF
KENYAN STUDENTS IN
UGANDAN UNIVERSITIES

Mr. Deputy Speaker: Prof. Oniang'o is absent. The Question is dropped.

(Question dropped)

Question No.225

IRREGULAR BUSINESS PERMIT CHARGE
ON NAKURU MARKET VENDORS

Mr. Mirugi asked the Minister for Local Government:-

(a) why the Municipal Council of Nakuru charges vendors the monthly single business permit fees by the 10th of each month while other small-scale traders across the town have until 30th of each month to pay; and,

(b) whether he could allow the market vendors until the end of each month to pay the single business permit fees each in line with the duration given to others dealing in the same business.

The Assistant Minister for Local Government (Mr. Shaaban): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Nakuru Municipal Council charges market vendors a market fee and not a monthly single business permit.

Arising from the answer in "a" part "b" of the Question does not arise.

Mr. Mirugi: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the written answer. I know that he is my friend but I am not satisfied with the answer. The Ministry has decided to play a game of semantics with this Question by refusing to appreciate the facts I have stated in this Question. It is a very sad day for the market vendors in Nakuru Town if the Ministry is going to continue to play a game of semantics with this Question. I have asked very clearly here why these market vendors are charged the fees by the 10th of each month while other market vendors across the town are given up to the end of the month to pay Kshs300 every month. Why are they not given the same duration like the other vendors across the town to earn the same amount of money and pay by the end of each month? This is a very clear question of discrimination against these market vendors. Could the Chair order the Assistant Minister to answer my Question because it is very important?

Mr. Deputy Speaker: Mr. Assistant Minister, this is a very simple Question. The hon. Member simply wants the vendors to pay at the same time as the other vendors across the town, who pay on 30th of each month. The Assistant Minister says he is not aware, while the hon. Member says it is the case. Mr. Assistant Minister, what is the case?

Mr. Shaaban: Mr. Deputy Speaker, Sir, the market vendors---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! I want order there! Eng. Toro, you are out of order. Hon. Members, the Chair does not want to police hon. Members, but the rules are very clear. Do not walk around! If you want to stand up just do that and start going out. Consult in low tones.

Mr. Shaaban: Mr. Deputy Speaker, Sir, single business permit is paid by vendors who have permanent and semi-permanent buildings, stalls and kiosks. Small market vendors usually pay a market fee or cess of Kshs20 daily. If they wish to pay this market cess on a monthly basis, the Nakuru Municipal Council has no problem with facilitating that; based on the number of days they operate in the market.

Capt. Nakitare: Mr. Deputy Speaker, Sir, the Assistant Minister seems to be unaware of what happens with the vendors in the streets of Nairobi and other towns. We are talking about people who sell vegetables whose income cannot rise above Kshs50. How do they account for the money that is collected every day when we know that the municipal *askaris*---

(Loud consultations)

Mr. Deputy Speaker: Order! There are some loud consultations on my right-hand side at the Front Bench, the second Bench and particularly with the gracious ladies at the corner there! Hon. Members, we must have order in the House! If you feel that there is a matter you want to discuss seriously with your friends, please could you go out of the Chamber where there is a very nice room? Here, we want to conduct business of the House. Please, let us be in order.

Capt. Nakitare: Mr. Deputy Speaker, Sir, collection of revenue is a very important function of the Government. To avoid corruption, why can this Assistant Minister not order municipalities a uniform collection of revenue every month instead of collecting the cess on a daily basis and yet most of these vendors cannot earn more than Kshs50 a day?

Mr. Shaaban: Mr. Deputy Speaker, Sir, market vendors cannot be charged uniform fees throughout the country. The amount will vary from one municipality to another depending on the by-laws. When we talk of market vendors, we are referring to small-scale traders. These are traders who are there sometimes and other times they are not there. They are normally charged the Kshs20 on the days they operate in the market. For this reason, it is not necessary to charge them on a monthly or annual basis.

Mr. Mirugi: Mr. Deputy Speaker, Sir, the Assistant Minister has stated that market vendors are expected to pay Kshs20 daily. The Municipal Council of Nakuru decided that, instead of the vendors paying a daily fee, they pay a flat fee of Kshs300 every month. The council decided that if the vendors failed to pay that fee by 10th of each month, they would pay double the amount as a penalty.

Mr. Deputy Speaker, Sir, why did the municipal council decide to charge the market vendors, especially those who are within the central business district, Kshs300 to be paid by the 10th of each month while other vendors, who operate outside the central business district have until the end of the month to pay? Those are poor people. They would like to pay their fees at the same time with those who operate outside the central business district because they run the same businesses. Could the Assistant Minister answer that?

Mr. Shaaban: Mr. Deputy Speaker, Sir, we have no problem. We will instruct the municipal council to allow the market vendors to pay their fees at the end of the month. It is all the same. They can pay by 10th or at the end of the month. If the vendors want to pay their market fees

at the end of every month, we shall comply and instruct the municipality to allow them to do so.

Mr. Deputy Speaker: Next Question, Mr. Syongo!

Question No.253

ESTABLISHMENT OF MARINE POLICE UNIT

Mr. Odoyo, on behalf of **Mr. Syongo**, asked the Minister of State for Administration and National Security when he will establish a Marine Police Unit to patrol and control crime on Lake Victoria and its islands.

Mr. Deputy Speaker: Is the Minister here? There is something wrong today! I have not seen any Minister from the Office of the President.

Mr. Awori, could you address the matter?

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, I regret to say that on this particular Question, I have no information at all. May I plead that we put it on the Order Paper tomorrow? I will ensure that the Minister is here, or I have the answer to give.

Mr. Deputy Speaker: Mr. Odoyo, you have nothing to say because Mr. Syongo is not here. So, this Question is deferred until tomorrow.

Mr. Odoyo: That is in order, Mr. Deputy Speaker, Sir.

(Question deferred)

Mr. Raila: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is it?

Mr. Raila: Mr. Deputy Speaker, Sir, it is very unfortunate that the Minister is not here. The Leader of Government Business has said that he has no information on the Question. We have come here to get information from the Government side. Is it not time that the Chair actually took a definite decision on how to treat Ministers who take this House for granted? The Leader of Government Business should be made to take personal responsibility for the failure of his Ministers!

(Applause)

Mr. Deputy Speaker: Leader of Government Business, what do you have to say about that?

The Vice-President and Minister for Home Affairs (Mr. Awori): Very little, Mr. Deputy Speaker, Sir! I have no time to engage in quarrels with the hon. Member from that side. This is his second time in two days to bring up this issue. In the first place, even the Questioner was not here. We have no proof that he had given permission to Mr. Odoyo to ask the Question!

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

Mr. Deputy Speaker: Order, hon. Members! Please, sit down! I will not allow this matter to go on. Obviously, I had already deferred the Question until tomorrow. It is ordered, therefore, that the Question will be on the Order Paper tomorrow. The Leader of Government Business will ensure that the Minister of State, Office of the President will be available to answer the Question.

Next Question by Mr. Mukiri!

Mr. Mukiri, I can see you! I am calling you and you cannot stand to ask your Question! Is something wrong?

Proceed and ask your Question!

Question No.274

PURCHASE OF LAND FOR
SETTLEMENT OF SQUATTERS

Mr. Mukiri asked the Minister for Lands:-

(a) whether he could explain which land has been purchased by the Government and what areas within the country will benefit from the Kshs400 million set aside in the Financial Year 2006/2007 to settle squatters and the landless; and,

(b) what plans he has to settle tribal clash victims and the landless in Molo Constituency.

The Assistant Minister for Lands (Mr. Kamama): Mr. Deputy Speaker, Sir, I wish to ask for more time because the Question requires a very comprehensive statement. I seek the indulgence of the House to answer this Question on Wednesday, next week. I have spoken with the hon. Member and he is in agreement.

Mr. Deputy Speaker: Mr. Mukiri, what do you have to say?

Mr. Mukiri: Mr. Deputy Speaker, Sir, that is the correct position. However, this Question does not ask for too much information. The information should be stored in the computers in the Ministry. We can allow them up to Tuesday, next week.

Mr. Deputy Speaker: Very well! In any case, this Question was not brought recently. It has been with the Ministry for over 14 days. Therefore, since the hon. Member has agreed, we will defer it until next week on Wednesday morning. The Assistant Minister should know that this Question has been with them for a long time. We would like to have it answered.

Hon. Members, either from the Government side or the Opposition, should know that Questions that are deferred really create a huge backlog of Questions. Nevertheless, we will defer the Question as requested by the Assistant Minister and concurred by the hon. Member.

(Question deferred)

Question No.282

IMPLEMENTATION OF REP
IN URIRI CONSTITUENCY

Mr. Ahenda, on behalf of **Mr. Omamba**, asked the Minister for Energy:-

(a) what plans he has to supply electricity to institutions and markets surrounding Gogo Falls on River Kuja where power is generated; and,

(b) how much money has been set aside for rural electrification in Uriri Constituency.

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, first of all, I would like to apologise because we received this Question in good time. But I would also like to seek the indulgence of the House to answer this Question next week. That is because I do not agree

with the information that I have received, especially on the production of power from Gogo Falls on River Kuja. As a Ministry, we would like to give answers that are not questioned in future.

Mr. Deputy Speaker: Mr. Ahenda, what do you have to say?

Mr. Ahenda: Mr. Deputy Speaker, Sir, this is the same trend by Ministers of not answering Questions because of some frivolous reasons!

Mr. Deputy Speaker: It is a dangerous trend!

Mr. Ahenda: Mr. Deputy Speaker, Sir, what is the directive from the Chair on the matter? Could the Head of the Government come and assist? He is the Leader of Government Business and the Government is not doing any business!

*(Messrs. Shakombo and
Awori consulted)*

Mr. Deputy Speaker: Order, Mr. Shakombo! I want to draw the attention of the Leader of Government Business that this is the third Question to be deferred in a row. Question No.253 and Question No.274 have been deferred at the request of the Government. There was a request to defer Question No.282. Those are three Questions in a row. That does not give a good impression. Therefore, I am asking the Leader of Government Business to crack the whip and ensure that Ministers are, not only available, but bring responses to Questions in good time. But having said that, the Minister for Energy has been very good in answering Questions. I tend to think that there must be a very good reason why they have not come up with an answer. Nevertheless, I will defer the Question. But, again, it is not good to defer so many Questions every day.

Mr. Odoyo: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Yes Mr. Odoyo!

Mr. Odoyo: Mr. Deputy Speaker, Sir, on several occasions, when hon. Members of the Back Bench are not here to ask their Questions, we are severely reprimanded and our Questions dropped!. Is it enough for you to just request the Government to work *pole pole*, instead of you taking severe action? Would I be in order to request you to severely reprimand the Front Bench?

Mr. Deputy Speaker: Well, Mr. Odoyo, you have just put words in my mouth. I never said the Government should work *pole pole*. I do not remember saying that. I asked the Leader of Government Business to do something about this matter. The Leader of Government Business has heard what the Chair has said.

Last Question, Mr. Ndambuki!

Mr. Ahenda: On a point of order, Mr. Deputy Speaker, Sir. I am not aware when the answer to the Question will be given.

Mr. Deputy Speaker: Mr. Ahenda, your Question will be deferred until Tuesday, next week!

(Question deferred)

Next Question, Mr. Ndambuki!

Question No.171

AREAS COVERED BY ROADS
2000 PROGRAMME

Mr. Ndambuki asked the Minister for Roads and Public Works:-

(a) which areas to be covered under Roads 2000 programme are and when the programme will commence; and,

(b) whether he could table a list of the roads to be rehabilitated under the programme.

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

(a) The Roads 2000 Programme will cover a total of 44 districts in the country. I beg to table the list of the districts to be covered by the programme and the date of commencement.

(b) Arising out of the answer to "a" above, I beg to table a full list of roads, spread in various parts of the country, to be rehabilitated under the Roads 2000 Programme.

*(Eng. Toro laid the documents
on the Table)*

Mr. Ndambuki: I would like to thank the Assistant Minister for tabling the list of the districts to be covered under Roads 2000 Programme. However, if you look at the list, it indicates that in some of the districts, the programme, started this year. In others, it started in 2004. If he checks with hon. Members, they say the programme has never taken off as indicated in the list. Could he tell this House what is happening? The list says the roads in Makueni District should have been done in 2006, yet we are in 2007 and nothing has happened on the ground. Why does he has to give us such an answer to this House?

Eng. Toro: Mr. Deputy Speaker, Sir, specifically on the issue of DANIDA in Makueni District, according to the list the programme is indicated to have started in 2006. That is when the programme started. It has already started in Kwale, Kilifi, Malindi, Taita-Taveta and Kitui districts. However, the programme will start in July this year in Makueni and Mwingi districts. So, the date given is when the study of the programme started. Since this programme covers so many districts, work has started in some districts and it will also start in other districts. However, all the districts cannot be covered at the same time.

Mr. Biwott: Mr. Deputy Speaker, Sir, could the Assistant Minister explain what Roads 2000 Programme entails? In my district, we have not seen any evidence of good work being done on our roads. There has only been patching up of some roads. It is a shoddy job being done our roads. Could he confirm to this House that the African Development Bank (ADB), funding the roads in Keiyo District, is not serious and that, the Ministry is not supervising the work?

Eng. Toro: Mr. Deputy Speaker, Sir, the concept of Roads 2000 Programme is labour intensive. Contrary to what some people think, it does not cover full gravelling of roads. It improves roads to make them all-weather. So, we only find the prioritised roads covered under this programme. Some maintenance work has been going on and some sections have been improved. Therefore, the programme targets the other sections of the road that have not been improved. It is not a full-gravel contract with the contractors. It is spot-improvement to make the roads all-weather.

Mr. Lesrima: Mr. Deputy Speaker, Sir, my understanding of the Roads 2000 Programme is that it targets high agricultural potential districts. I have seen the list and Samburu District is excluded. Is there any reason for this because this is an area where wheat, maize and potatoes are grown?

Eng. Toro: Mr. Deputy Speaker, Sir, there is no reason Samburu District is not covered. When development partners come, they indicate the districts they want to fund for the programme. Maybe, eventually they will come to Samburu District. However, it is them who give their priority areas which they want to cover.

Mr. Mukiri: Mr. Deputy Speaker, Sir, Roads 2000 Programme is in my district. However, they are so slow. The main problem is tendering and procurement. What is the Ministry doing to ensure that procurement does not take about six months?

Eng. Toro: Mr. Deputy Speaker, Sir, in some cases, the procurement takes long because of the conditionalities by the development partners. In almost all cases, it involves local consultants joining those from funding countries. The procurement then follows the Government procurement procedures which is a bit lengthy. However, time is also taken to identify and prioritise the roads that will be constructed in every district.

Mr. Deputy Speaker: Last question, Mr. Ndambuki!

Mr. Ndambuki: Mr. Deputy Speaker, Sir, Roads 2000 Programme has been running for about ten years. However, most of the roads that have been constructed under this programme are not motorable. When donors delay in funding the programme, could the Assistant Minister consider doing some work to make them passable? At the moment, we cannot pass through these roads. Citizens are suffering because of the delay in funding by donors.

Eng. Toro: Mr. Deputy Speaker, Sir, the reason we involve development partners in Roads 2000 Programme is that the Government does not have the capacity to repair all the roads in the country. However, once the programme is completed, it will be easier for the District Roads Committees (DRCs) to maintain the roads. We could spend as little as Kshs100,000 per year to maintain a road that has been constructed under the programme as opposed to the current situation where the DRCs cannot even afford to inject Kshs2 million or Kshs3 million into a particular road.

Mr. Deputy Speaker: Hon. Members, that is the end of Question Time! I want to thank you because we have taken exactly one hour.

Next Order!

Mr. Raila: On a point of order, Mr. Deputy Speaker, Sir. Wednesday morning is the only time we can discuss Private Members' Motions. There are Private Members' or Party Motions. I can see on the Order Paper two Party Motions follow each other; one is by Mr. Cheboi and another by Mr. Jimmy Angwenyi. Most of the time we discuss Government business in the House. It is only on Wednesday morning that we can have the opportunity to discuss business from this other side of the House.

To my knowledge, FORD(P) is part of the so-called Government of National Unity. So, I want a ruling here. Is an hon. Member who is part of the Government, whose business we have been discussing here all the time, entitled to, again, bring a party Motion, a Motion that can be brought by the ruling party itself as Government business?

Mr. Deputy Speaker: My understanding is that even if an hon. Member is in the ruling party, as long as he is a Backbencher, has the right to bring a Private Members' Motion to the House. As to the issue of whether one is on the Government side or not, so long as the Motion has been endorsed by the Party Whip, whether the party is the ruling party or not, the Motion is given priority because it carries the weight of a party.

I understand that hon. Members have been apprehensive about hon. Members on the Government side bringing in Private Members' Motions. I have actually asked for some research work to be carried out. We are guided by our Standing Orders, which do not bar hon. Members from the Government side from bringing Private Members' Motions. A Motion should be given priority if the party in question says that it is sponsoring that Motion. Therefore, to answer Mr. Raila, so long as the Motion has been approved by the party, it becomes a party Motion.

The House Business Committee goes by party Motions in that manner. If you wish that in future we change that rule, currently, we are overhauling our Standing Orders. I want to inform hon. Members that the Committee, which is chaired by Mr. Speaker, will be presenting its draft to hon. Members for review, and you will have an opportunity, if you wish, to make some proposals

to amend those Standing Orders. However, as of today, there is nothing which bars an Backbencher from the ruling party from bringing to the House a Private Member's Motion, and for such Motion to be given priority by his party. So, that is the position.

Next Order!

MOTIONS

RATIFICATION OF AMENDMENTS TO EAC TREATY BY PARLIAMENT

Mr. Cheboi: Mr. Deputy Speaker, Sir, I beg to move:-

THAT, aware that the East African Community Treaty was ratified by the Parliaments of the three partner States before it came into force; cognizant that Article 150 of the Treaty provides that any amendments to the Treaty be ratified by all the partner States; further cognizant that Parliament is the sole legislative arm of the Government of Kenya; this House resolves that any amendments to the existing Treaty be submitted to the National Assembly for ratification.

Mr. Deputy Speaker, Sir, this is a Motion I consider very important. The History of the East African Community dates back to the immediate post-Independence state in the three countries. More recently, the East African Community Treaty was signed on 30th November, 1999, after nearly three years of intense negotiation and consultation. The Treaty was ratified on 7th July, 2000, thereby entering into force. Partly, the reason as to why the original East African Federation collapsed in 1977 was because of lack of proper involvement---

Mr. Deputy Speaker: Order, Mr. Cheboi! Let me correct you that we have never had an East African Federation. You said that the original East African Federation collapsed. Was it a federation?

Mr. Cheboi: Thank you for the correction, Mr. Deputy Speaker, Sir. I meant the original East African Community.

Mr. Deputy Speaker: Very well.

Mr. Cheboi: Mr. Deputy Speaker, Sir, perhaps, the reason as to why the initial East African Community collapsed in 1977 was lack of proper involvement of the citizenry in its deliberations. There was also the issue of mistrust and disagreement among the Heads of State. As a result, the gains that we could have accrued were sacrificed. I always refer to France and Napoleon when it comes to issues of history. If we go to history, the genius Napoleon Bonaparte of France did so much for the French Republic. He even created the French Empire. Part of the reason as to why it collapsed was because all the time, the emperor referred to his immediate friends and relatives, and failed to consult the citizens. He could, at one point, go into a treaty with the Pope and other countries. The empire could not last because there was no consultation.

Specifically, Article 50 of the Treaty provides that any amendment to the Treaty may be done at any time upon agreement by all the partner States. It further provides that once such amendments are deliberated upon, it is only the Summit which will discuss them and the matter will come into force. It also provides that the only condition is that the citizens must be consulted and that, that will be done by them being given a chance to look into them within 120 days before the changes are effected. However, the Treaty is silent on the institution or persons to be consulted in the partner States. That gives the Executive a lot of leeway in amendment of the Treaty, without recourse to the people's representatives, which is Parliament.

Mr. Deputy Speaker, Sir, the rationale of involving Parliament before any change to the

Treaty is effected is to ensure that the Executive is not allowed to commit the country to any undertakings that have long-term national implications without involving a significant proportion of the nation. Given the central and prominent role that the Parliament of each country plays in governance, and Parliament being an institution of democratically elected representatives of the people, the citizens should be allowed to have a say in effecting such changes to the Treaty by having those changes brought to the National Assembly for ratification.

It is an accepted practice internationally that the National Assembly, being the representative body of each country's people, should be given a chance to approve treaties, protocols or even agreements of any country. For instance, before effecting the proposed amendment to the Treaty that we saw in the last few days to create a higher court within the East African Community, the citizens and the National Assembly should have been involved. Sometimes when we do things without due consideration, it becomes extremely difficult for us to trust the East African Community (EAC).

Mr. Deputy Speaker, Sir, I will be very brief because I know that many hon. Members want to contribute to this Motion. Considering that Article 8 of the EAC, that is, the EAC organs, institutions and laws, takes precedence over similar national ones, on matters pertaining to implementation of the Treaty--- Indeed, if that is the case, we must allow Parliament to ratify any amendments that are made to the Treaty.

Mr. Deputy Speaker, Sir, I beg to move and request hon. Muite to second the Motion.

Mr. Muite: Thank you, Mr. Deputy Speaker, Sir. First, I would like to raise a few issues of legality. I would like to draw the hon. Members' attention to Article 152 of the Treaty, which appears on page 319 of the Treaty. It says:-

"The Treaty shall come into force when ratified by all member States."

The Treaty requires ratification by all member States. So, the issue is beyond any argument, namely, that for the Treaty to become operational, it must be ratified by each member State; Otherwise, it cannot become operational. Mr. Deputy Speaker, Sir, Article 150(6) says:-

"Any amendment to this Treaty must be ratified by the member States."

So, the question is: How does a State ratify a treaty or an amendment? The original Treaty itself could not legally have come into force without being ratified by the member States. Equally, no amendment can become legally-binding, until that amendment is ratified by the member States.

Mr. Deputy Speaker, Sir, now, the Government of the Republic of Kenya brought the Treaty for East African Co-operation to this House for ratification. It is this House which ratified the Treaty for East African Co-operation. Therefore, it must follow, by parity and force of reasoning, that if the Treaty itself requires to be ratified by the National Assembly of the Republic of Kenya, and it also requires an amendment to be ratified, surely, the same body that ratified the Treaty must be the body to ratify the amendment. That body is the National Assembly of the Republic of Kenya. That is the body which is legally empowered and mandated to ratify the original Treaty and any amendments to it. In fact, when you look at the Act of Parliament, to which the Treaty was annexed, it is an Act of Parliament for giving effect to certain provisions of the Treaty for the establishment of the East African Community and for connected purposes.

(Loud consultations)

Mr. Lesrima: On a point of order, Mr. Deputy Speaker, Sir. The conversations are so loud that we cannot hear the valuable contribution by the hon. Member!

Mr. Deputy Speaker: Mr. Lesrima, Mr. Weya was just speaking in front of you, which is completely out of order! Order, hon. Members!

Continue, Mr. Muite!

Mr. Muite: This is an important matter, Mr. Deputy Speaker, Sir.

When you look at the Act of Parliament which we passed, as the National Assembly of Kenya, in 2000, you will find that, that is the Act of Parliament that ratified the Treaty for the East African Community. Section 1 of that Act says:-

"This Act may be cited as the Treaty for the establishment of the East African Community Act, 2000."

The definition of the Treaty under Section 2 of the Act, at page 225, says:-

"The Treaty means the Treaty for the establishment of the East African Community, entered into by the governments of Tanzania, Uganda and Kenya."

Mr. Deputy Speaker, Sir, I submit that there is no shadow of doubt, whatsoever, that the original Treaty was ratified by this Parliament. Because the Treaty itself requires any amendments to be ratified, it must follow that the ratification can only be undertaken by the body, organ and institution which ratified the original Treaty, which is, the National Assembly of the Republic of Kenya.

Therefore, I urge that the Attorney-General and the Government of Republic of Kenya table before this House, the proposed amendments to the Treaty, so that hon. Members can have the opportunity to ratify them, with or without further amendments. We are binding the State of the Republic of Kenya, which is represented in this House by the elected hon. Members of Parliament, who are elected by the people of Kenya. So, it is only this House that can have the legal mandate to bind the State of Kenya, and not any other organ. Tanzania tabled the amendments which were proposed by Kenya before their National Assembly for ratification. How is it, therefore, that Kenya is shy to bring to this House the proposed amendments, so that hon. Members, as the representatives of the people, can make a decision as to whether those proposed amendments are in the interest of the Republic of Kenya or not? If they are not in the interest of the Republic of Kenya, we will not ratify them. Maybe this is why the Attorney-General or Government is a little shy to bring those amendments. We know what those amendments are seeking to do.

Mr. Deputy Speaker, Sir, when Kenya entered into this Treaty for the East African Co-operation--- When Kenya proposed and had two judges appointed to the East African Court, she knew about their conduct, character and experience. If for four years, we, as a country and Government, did not raise any question marks about the character or conduct of those judges--- For four years, we were happy to allow those judges to continue discharging the duties of their offices, as judges of the East African Court. How is it, then, that the day after a ruling, which may have been unpalatable to the Government, is given, we rush to seek amendments to that Treaty in order to make it possible for those judges to be removed? Is that what we should do? Should we, as a House, ratify amendments whose objective is narrow and partisan; to remove judges who have given a ruling that the Government does not like? This country is a leader, not just in the region, but also in the continent and the whole world. Kenya is looked upon to provide leadership. But, Kenya is not providing that leadership! On the contrary, we are setting a very bad example, by trying to undermine the independence, authority and integrity of a court that we have established.

If you are unhappy with the ruling of the court, then the other way of showing your displeasure is not by trying to unilaterally amend the Treaty in order to remove the judges. We are becoming an embarrassment as a State. Kenya is becoming an embarrassment to the Community! I ask that those proposed amendments be brought here. Let no one attempt to do a shortcut to the ratification of the amendment. We live in Kenya and we are aware that there is a school of thought in the Government; not in the entire Government, but a few individuals within the Government, who think that the Cabinet alone can ratify amendments to the Treaty. How is it that the Cabinet did not ratify the original Treaty? Why was the original Treaty brought to this House for ratification?

If the original Treaty was not ratified by the Cabinet alone, it must follow by force of reason that the amendment cannot be ratified by the Cabinet alone. Those purporting to suggest that the Cabinet ratified this amendment and to pretend that those are proper amendments to be deposited with the Secretary-General are inviting another court case which is going to be decided against us as a country! Do we want to continue subjecting ourselves to this embarrassment? If the Government wants to make these amendments, let them be laid on the Table of this House and let them convince us with reason! Let them lobby so that those amendments can be ratified. If they fail to get ratification on the Floor of this House, so be it, because, indeed, those proposed amendments are not in the interest of Kenya!

Mr. Deputy Speaker, Sir, I urge that there is a serious re-seeking by the Government; we have already suffered the embarrassment of the debacle of trying to change appointee members to the East African Legislative Assembly (EALA). That is an embarrassment! Why do we want, so soon thereafter, to invite another embarrassment by trying to amend a Treaty unconstitutionally and illegally, and inviting a possible suit, which I can guarantee you as a senior counsel; I am not even charging for this free advice that, that case will be decided against us!

Hon. Members: Shame!

Mr. Muite: Remember, Mr. Deputy Speaker, Sir, that you have to file that case also in the East African Court of Justice for them to decide whether the amendments have been done in accordance with the terms of the Treaty or whether they have been done in violation of the Treaty. I mean, it is quite clear; as clear as daylight, that any court will decide that those amendments, because they have not been ratified by the National Assembly, have been proposed illegally.

With those few remarks, I beg to second.

(Mr. Deputy Speaker stood up in his place to propose the Question)

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, hon. Members! Hon. Members are not supposed to be standing when the Chair is standing! I will have now to repeat proposing the Question because of the interruption that has occurred!

(Question proposed)

Mr. Raila: Asante sana, Bw. Naibu Spika, kwa kunipa fursa kuchangia Hoja hii ambayo ni muhimu sana kwetu, kama wananchi wa Afrika Mashariki.

Bw. Naibu Spika, madhumuni ya kutengeza Shirikisho la Afrika Mashariki ni kama rika ya uhuru wa mataifa haya matatu ya Kenya, Uganda na Tanzania. Nakumbuka sana kuwa nilipokuwa kijana, viongozi walikuwa wakizungumza na kusema kwamba wakipata uhuru, wataunganisha nchi hizi zote tatu ziwe kitu kimoja.

Bw. Naibu Spika, ile *community* ambayo iliundwa huko mwanzoni ilikuja ikasambaratika kwa sababu ya tofauti iliyokuwa baina ya viongozi wa wakati huo. Ilikuwa ni kwa sababu ile *community* iliundwa kutoka juu ikaletwa chini. Baada ya miaka mingi ambapo nchi zote zilikuwa na shida za kibiashara na mawasiliano, baadaye iliamuliwa kwamba tuanze tena upya na ikasemekana kuwa mara hii, tutaanza chini tukielekea juu; yaani kumaanisha kwamba tutajumuika kama wananchi kushauriana ili shirikisho hili likiundwa, litakuwa lenye msingi wa kudumu. Hii ndiyo sababu Katiba hii mpya ilipoandikwa, iliwekwa kuwa ni lazima ipitishwe na bunge za nchi

hizi zote. Sisi katika Bunge hili, nakumbuka kwamba tulijadiliana sana kuhusu katiba hii mpya na tukaipitisha yote bila kupingwa. Ndiyo baadaye ikapelekwa, ikawekwa sahihi na ikawa sheria.

Bw. Naibu Spika, kama kulikuwa na shida, mimi nataka kusema kwamba Fungu la 150 linasema kwamba lazima kuna mabadiliko, yaidhinishwe na nchi hizi zote tatu. Serikali yetu hii ina viungo vitatu: Kuna Bunge, Serikali kuu na Mahakama. Bunge ndio limepewa wadhifa wa kipekee katika sheria ya nchi hii kupitisha Katiba kama hii ya Afrika Mashariki; sio *Cabinet* au Baraza la Mawaziri. Kwa hivyo, mimi naweza kusema kwamba ni ukiukaji mkubwa wa sheria kwa Mkuu wa Sheria kwenda kupotosha Baraza la Mawaziri kwa kuwaambia kwamba wanaweza kuidhinisha, kuweka sahihi na kupeleka Arusha. Halafu ukienda Arusha, inawekwa kule kwamba Kenya tayari imeshabadilisha hiyo sheria, na sahihi iliyoko kule ni ya Bw. Tuju! Bw. Tuju ni Mjumbe wa Bunge hili, na yeye ana haki ya kuja hapa na kujadiliana na Wajumbe hapa.

Bw. Naibu Spika, hili Baraza la Mawaziri na Serikali hii ni Serikali ambayo ina ulafi mkubwa, maanake shida ni juu ya Wabunge wa Bunge la Afrika Mashariki, ambayo inatakikana iwe kule. Ni wao wenyewe ambao wanataka kuchukua nafasi hizi peke yao! Shida sana ni juu ya wawakilishi wa chama cha National Rainbow Coalition (NARC). Hiyo ndiyo shida hapa!

Bw. Naibu Spika, tulienda kuwinda wanyama pamoja. Tulipomuua huyu mnyama, wenzetu upande ule wakawa sasa wachoyo na walafi. Wanataka kuchukua miguu, mikono, shingo, kichwa, hata matumbo yote ndani, na hata ngozi! Wanachukua yote peke yao!

(Applause)

Hii ndio sababu Afrika Mashariki inakuwa na shida, juu ya ulafi wa hawa ndugu zetu. Hakuna shida nyingine! Maanake, ukichukua huu mseto wetu wa NARC, tulipokwenda kule, ndugu mkubwa alikuwa ni Liberal Democratic Party (LDP). Kati ya Wabunge 126 ambao NARC ilipata, 62 ilikuwa kutoka upande wa LDP. Democratic Party (DP) ilipata viti 38, FORD(K) ikapata viti 20 na National Alliance Party of Kenya (NAK) ikapata viti Sita. Kwa hivyo, yule ndugu mkubwa katika mseto wa NARC ni LDP!

Walipokwenda kule kuteua Baraza la Mawaziri, DP ilipata Mawaziri tisa na LDP ikapewa Mawaziri saba. Baadaye, wanasema kuwa NARC imekufa kwa sababu wao ni kama fisi; wanakula peke yao.

Bw. Naibu Spika, sisi tunasema kuwa tunataka tugawe sawa. Hii ndio imefanya kazi yote ya Afrika Mashariki kusimama. Uganda na Tanzania hawana shida. Ni Wakenya ndio wana shida. Walipokwenda kule na kusema kuwa wanataka sheria ibadilishwe, Watanzania wakawa wangwana na wakapeleka katika Bunge lao na ikapitishwa. Hao wamekataa kuleta katika Bunge hili maanake wanajua wakileta hapa watashindwa. Ndio kwa sababu wanataka kuchukua ile njia nyingine.

Tunajua ya kwamba chui hawezi kubadilisha madoadoa yake. Lakini nataka kuwaambia ndugu zetu ya kwamba wakati utawadia. Leo ni wewe na kesho itakuwa ni mimi! Tuelewane sawa sawa. Tuilete hiyo sheria hapa ibadilishwe. Lakini jambo la muhimu zaidi ni tukubadiliane tuwachague wale Wabunge wa Afrika Mashariki tukikubaliana. Wachukue na pia watuachie sisi vile vile kama LDP. Nafasi ni tano lakini tunasema wachukue nafasi tatu, ingawaje sisi ni wengi zaidi, watuachie nafasi mbili peke yake. Nafasi mbili peke yake! Najua tutashikana tena miereka na wao hata kama watajaribu kuiba kama ambavyo wameiba kule Magarini, shauri yao. Sisi tuna hakika kuwa wakati utafika na ukweli utajulikana. Waswahili wanasema ukweli ukidhihiri, uongo hujitenga. Kwa hivyo, nasema katika Hoja hii tukubaliane bila pingamizi yoyote eti ni jukumu na haki ya Bunge hili, kisheria na Kikatiba, kubadilisha hio sheria ili tupitishwe hii Hoja kwa kauli moja.

Bw. Naibu Spika, vile vile tuendeleo na tukubaliane maanake KANU haina shida. Wameteua bila shida! FORD(P) pia hawana shida. Wameteua bila shida yoyote! Shida ipo katika

mseto wetu wa NARC. Waziri ambaye anahusika na mambo ya Afrika Mashariki, kwa bahati nzuri, ni wa KANU; ingawaje sasa anakula upande mwingine.

(Applause)

Amevuna ambapo hakupanda! Lakini sisi tulienda kama LDP, pamoja. Wewe umewacha chama chako upande huu.

Mr. Deputy Speaker: Order, Mr. Raila! Please, address the Chair!

Mr. Raila: Bw. Naibu Spika, namwambia ya kwamba yeye ameenda kula peke yake; hajali maisha ya wenzake---

The Minister for East African Community (Mr. J.K. Koech): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Raila, the Minister has a point of information. Do you want it?

Mr. Raila: Mr. Deputy Speaker, Sir, I do not want it! I do not need information. He will have a chance to speak!

Atakuwa na fursa ya kuongea na atasema yote anayopenda kusema. Ninayosema ni kwamba mambo ya uhusiano baina ya Afrika Mashariki ni muhimu zaidi. Ukienda Rwanda ndio utajua umuhimu wa uhusiano huu. Watu wa Rwanda wanalia kuwa wanataka kuingia kwa dhati hapo ndani. Burundi vile vile! Tutatengeneza soko kubwa zaidi. Wakati huu ndio mazungumzo ambayo yanaendelea. Bw. Waziri amenialika niende kwa Kenya Broadcasting Corporation (KBC) nizungumze na Wakenya juu ya umuhimu wa huu uhusiano. Kwa hivyo, tunatengeneza! Tutatengeneza shirikisho kubwa ambalo litaheshimika ulimwengu mzima. Hii ni kwa sababu litakuwa soko kubwa la zaidi ya watu milioni 100. Tunataka tushirikiane na tutembe pamoja bila pingamizi lolote kama ndugu na kama tumeelewana. Tuonyeshe, kama Kenya, kuwa sisi tuko mstari wa mbele, ili ndugu zetu watakuja pamoja na sisi. Tusiwe tunapigana hapa Kenya juu ya mambo yasiyokuwa na msingi. Ningependa kumsihi Bw. Waziri apige moyo wake konde mara tatu. Kwanza, yeye ni mtu wa Afrika Mashariki. Pili, yeye ni mzalendo wa Afrika Mashariki. Tatu, anataka kuona kama wananchi wote wa Afrika Mashariki wameungana pamoja. Ikiwa yeye na mimi ndio tukiungana pamoja, najua yeye hatakuwa na jibu lingine ijapokuwa kuunga mkono, kwa kauli moja Hoja hii ili tutembe pamoja. Aachane na wale walafi wachache. Yeye hajui siasa ya ndani na NARC kwa sababu yeye si mwanachama wa NARC. Awaache watu wa NARC wapigane wenyewe. Yeye kama mwanachama wa KANU yafaa akae kama mwanachama wa KANU na aunge mkono haya mambo ili tuweze kupitisha kwa kauli moja Hoja hii, ili Serikali ya Afrika Mashariki iweze kufanya kazi.

Bw. Naibu Spika, kwa hayo machache, naunga mkono.

(Applause)

Prof. Maathai: Thank you very much, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to this Motion. I want to thank Mr. Cheboi for bringing this Motion because I think it is a very important Motion. One of the reasons I am very proud to be a member of NARC was that it was a culmination of many years of a struggle in this country to improve governance; to bring into our country a governance that would respect the rights of others and that would work for the benefit and the good of the people of this country. When the members of NARC came together, one feeling that I really felt was very dominant was a willingness to sacrifice all ambitions for the benefit of this country. Eventually, we succeeded!

(Applause)

In many ways, what we need to practise now in East Africa, is good governance. Good governance must be characterised by our willingness to respect the rule of law. If we do not respect the rule of law because we want to benefit, it will demonstrate that we really do not believe in good governance; that we just mention those words. That, those words are not important in our hearts. They are just words we say because we can hoodwink people when we say:- "We are practising good governance. We are respecting the rule of law. We are working for the common good of the people" but we do not mean it. We just talk because people get hoodwinked. However, it is when we are challenged--- At a time like this when we are challenged, that is when we must really demonstrate that we believe in good governance and the rule of the law. I think that as Africans, we are not only working towards a united East Africa but we are also working towards a united Africa. If we are going to succeed, the biggest challenge will be: Can we respect the rule of law? If we, in East Africa, will not respect a constitution that is agreed on by the Africans and we decide that as East Africans, we do not want to respect that rule because it does not benefit us, then there is no reason why the South, West or North Africans should respect the rule when it does not benefit them. So, I really think that it is extremely important that as we build East Africa, which is going to be a block for a united Africa, from the beginning, we need to entrench a culture of respecting the rule of law.

Mr. Deputy Speaker, Sir, unity cannot come if we feel that we are being taken for granted, we are not respected and if we feel that our opinion is not respected. I want to appeal that even though the dream of NARC is not the complete dream that we had when we formed it, that at this time, we respect that what is the rule of law is that the Government in place is the Government of NARC; and that, that Government is the one that must send--- As a party, it is the one that must identify the members of the East African Legislative Assembly and that we have a right, as a Parliament, to play our role as we are expected. If we do not do this, we shall be perceived as people who are not honest. We shall be perceived as people who are selfish. I think that will be a very bad beginning for a strong East African Community (EAC), and eventually, may be an East African Political Federation.

Mr. Deputy Speaker, Sir, I think it is extremely important for our neighbours; Uganda and Tanzania and any other neighbouring countries who want to join the EAC, to know, from the very beginning, that Kenyans are people who respect the rule of law, that Kenyans are people who believe in good governance and their leaders are responsible and accountable to Kenyans. In other words, the Kenyan leaders. We, in this Parliament, are the voice and the face of Kenyans. We will be ashamed if Kenyans were to be perceived as people who do not respect the rule of law, people who do not do what they say they will do and people who do not respect the opinion of other people. This is because, as we speak in this House, we speak on behalf of the 30 million or so Kenyans.

It is very important to note that when I speak here, I speak on behalf of many Kenyans. If I am perceived, as a leader, to be dishonest, then people will perceive Kenyans as being dishonest when, in fact, it is only one or two people who may not be honest. So, it is very important for us to demonstrate, as the Kenyan Parliament or leaders, that we are people who are honest, responsible and accountable to our people because that is what will eventually make Kenyans, in general, be respected by the rest of the East Africans and, indeed, the rest of Africa and the World. It is very important for us to entrench this culture.

Mr. Deputy Speaker, Sir, I stand here to commend this desire to say what is, probably, obvious; that is, whatever this Parliament is supposed to do on behalf of Kenyans, it should be allowed to do it. As the Minister for East African Community goes about his business, he does so on behalf of Kenyans, this Parliament and our Government. I would, therefore, want to strongly

support that any amendment to any laws that are made for the EAC - indeed, I am sure it will happen shortly, or in the course of time for Africa - that this Parliament will become the face and voice of Kenyans and East Africans and that we shall never be put in an embarrassing situation by others. I want to walk in East Africa proudly and be able to say; I come from Kenya and we respect the rule of law.

Mr. Deputy Speaker, Sir, with those remarks, I beg to support.

Mr. Ochilo-Ayacko: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to give my remarks on this very important Motion.

Mr. Deputy Speaker, Sir, any person with a little knowledge of jurisprudence will not rise to oppose this Motion. The legislative authority of this country is conferred unequivocally upon this House. We know that any treaty that affects the rights and responsibilities of citizens of this country is by extension legislation. Any attempt at legislating outside this House is in itself a joke. I am sure that any properly constituted court even made by people who are trying to practice law or who do not understand law, will throw out that attempted amendment.

Mr. Deputy Speaker, Sir, we have had a fiasco in this country and that has been orchestrated by our Government. We are now a laughing stock in this part of the world and yet we are expected to be in the leadership of formation of legislation and the economy of this region. In my other political life as a Minister, I had occasion to attend functions spearheaded by the President and I saw the excitement that the Heads of States of the respective East African Governments had towards the formation of the East African Co-operation. I am aware that there are certain Heads of States who are looking forward to the creation of a political federation like yesterday. So, when a country that is expected to be offering leadership is the one pussy-footing between one concept and the other, it is a shame to this country.

Mr. Deputy Speaker, Sir, however, I would like to tell you that I also had occasion to discuss with legislators from Tanzania. When they listened to the argumentations that were being preferred by learned counsel from Kenya, they were taken aback. In fact, they were thinking that Kenya, in its usual cacophony or arguments, would derail the co-operation. I totally, as a person with legal knowledge and, at the risk of bragging, a person who is properly schooled, do not understand why a decent Government is opposing this kind of Motion.

We know very well that Article 150, particularly in terms of bringing together hon. Members of the East African Assembly is the one that has created this mischief. It has been correctly captured that political intrigue is the one that is creating the situation that we currently have. Instead of trying to further this intrigue and mischief by purporting to give a body like the Cabinet authority to bind and affect the lives of Kenyans without actually recouring to the people's representatives, we must, as a House, not cede an inch to that kind of manoeuvre. It is this House that is properly mandated under the Constitution. It is this House that is properly mandated under any known jurisprudence, even in the communist world, to legislate on behalf of the people of this country. So, any attempt to amend a treaty that is going to affect how the people of this country relate with other people, or how other people relate with the people of this country must be spearheaded by this House or, at least, ratified by this House upon persuasion by other organs of Government.

Mr. Deputy Speaker, Sir, I want to thank my friend, hon. Moses Cheboi, who I hold very dearly because we were in college together the same year, for thinking of how to rescue this country from the mess that some people are trying to put this country in. This mess can be quickly sorted out by adopting the principle that is the hallmark of multi-party democracy, which is negotiations and compromise. It cannot be solved in any other way by trying to use might as right or numbers to bludgeon those who are few in numbers.

In the past, this House, before the return of multi-partyism, had been bludgeoned by the Executive. If you can remember, in the First Parliament, we ceded a lot of authority to certain institutions, including the then ruling party. They could actually remove a Member of Parliament by constituting some quasi and amorphous or kangaroo courts called disciplinary committees. The trend that is being adopted, in terms of this treaty, is to return this country to the dark ages. I believe that any right thinking hon. Member of this House must stand firm and protect and guard the sovereignty of this House in terms of legislation. If any person is in doubt of this, then I am sure that somewhere down the road, this matter will end up before the Judiciary and we will end up arguing. Remember that the little argument that took place in Arusha that, actually, annoyed Tanzanians, Rwandese and Burundians was done at the expense of the Exchequer. There were some lawyers who were paid over Kshs100 million, for pretending to be arguing things on behalf of this country. In fact, that was one way of fraudulently using money that is supposed to be used for the benefit of those people. That argument should not have caused the public over Kshs100 million, paid to lawyers who are in the right books of the Government. In order to avoid future expenditures of this nature, we should, as a House in our magnanimity and patriotism, accept that this is the best Motion that has been brought in the interest of the East African Co-operation and support Mr. Cheboi who is trying to reinstate the authority and sovereignty of this House on legislative matters. The Cabinet which is normally advisory to the President and by extension, a tool for the President cannot purport to ratify or legislate for the people of this country. That would be terrible. It would be reversing concepts that are known in law. We must all stand up and resist it.

With those very few remarks, I beg to support.

Mr. Deputy Speaker: Mr. Minister, I think it is better to listen to the views of hon. Members. I will definitely give you a chance to reply, but it is good to benefit from the contributions of hon. Members. Can I now ask the hon. Member for Saboti to speak and then Dr. Kituyi because I know he was one of those who were dropped from the Treaty?

Capt. Nakitare: Bw. Naibu Spika, ningependa kuchangia Hoja hii ya Muungano wa Afrika Mashariki. Ni muhimu kuelewa chanzo cha muungano huu. Bunge hili lina uwezo kama bunge zingine tatu kubadili mwongozo wa nchi tatu za Afrika Mashariki. Kifungu 150 katika Katiba ya muungano wa Afrika Mashariki ni kipengele ambacho kinaongoza vichwa vya watu wote. Sasa ni miaka minne tangu Rais watatu wa nchi za Afrika Mashariki wakae pamoja ili kuangazia mambo yanayohusika katika kuanzisha muungano wa Afrika Mashariki. Nikiwa mmoja wa wale watu ambao walifanya kazi chini ya muungano wa Afrika Mashariki iliyoanzishwa na Bw. Nyerere, Bw. Obote na Bw. Kenyatta, ilikuwa mshangao mkubwa kwetu wakati maangamio yalitokea na huu ushirikiano ukafupishwa kwa sababu ya mzozo wa kikatiba na fedha. Mzozo ambao unatokea, chanzo chake ni hapa. Ikiwa Mawaziri wana uwezo wa kupindua sheria za nchi tatu kwa niaba ya watu wa Kenya, na ilhali Bunge halina fahamu kwamba kuna mikutano ya Mawaziri ambao una lengo la kubadili mwendo wa ushujaa wa nchi yetu, inatatanisha.

Bw. Naibu Spika, swali langu ni hili: Iwapo hili Bunge lina uwezo wa kujielekeza na mambo yake kibinafsi, Mawaziri wangelikuwa na uwezo wa kubadilisha mambo ya Bunge? Ikiwa Mawaziri wangelikuwa wanachaguliwa nje ya Bunge kama nchi zingine ambapo si lazima Waziri awe Mbunge. Bunge lina uwezo. Ni kifungu cha sheria.

Kulikuwa na mikataba mingi katika Afrika Mashariki ambayo ilikuwa inaangazia masuala ya Shirika la Reli, bandari, East African Airways, masomo na kadhalika. Haya mambo yote yalikuwa na lengo la kuambatanisha watu wa Afrika Mashariki. Itakuwa vigumu sana kwa sisi wenyewe kama hatupewi uwezo katika hili Bunge kujadiliana na kurekebisha matatizo ya mikataba kama hiyo, tuwe tunawaachia waliochaguliwa kama Mawaziri nchini mwetu. Tutakuwa kama tunaongozwa na vipofu. Kwa sababu Waziri wa Afrika Mashariki angelikuwa anaishi Arusha, kwa sababu yeye ni Waziri wa Afrika Mashariki. Yeye na msaidizi wake wanatakikana

kukaa Arusha na sio kwamba wanakaa hapa Kenya na wanafanya kazi Arusha. Wale Wabunge walioteuliwa na ambao wanatakikana kukaa Arusha hawana hata nafasi katika Bunge hili ili kuangazia mambo ambayo yanaendelea katika nchi yao. Hivi sasa, hata hao Wabunge wenyewe hawajui tunazungumza juu ya Muungano wa Afrika Mashariki. Labda lengo lao lilikuwa kutuletea mawaidha ama shida ambazo wanapata Arusha. Msawahili alisema: "Usipokuwepo na lako halipo." Hao watu ambao hawapo, ndio waliochaguliwa kwenda katika kikao cha Bunge la Afrika Mashariki. Wanatakikana kuwa wanatengeneza sheria za nchi hizo zote. Kuna upungufu hapa, ambapo ni lazima tuangazie. Bunge pekee ndilo lina uwezo wa kubadilisha sheria, kwa sababu ni hilo Bunge ambalo linatunga hizo sheria. Mawaziri hawana uwezo wa kurekebisha sheria. Ni lazima tuangazie hayo mambo.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. Poghisisio) took the Chair]*

Bw. Muite alituarifu kwamba kipengee 152 kina tatizo kwa sababu hakifuatwi. Mtu amewacha njia ambayo ni pana na inatuelekeza katika Afrika Mashariki ili tulate watu wetu katikati na tuwe tunazungumzia mambo haya. Tumepotea kwa sababu tunajaribu kuwachia watu ambao hawafai kubadilisha mwendo wa sheria ili kutuongoza.

Bw. Naibu Spika wa Muda, uwezo wa Bunge ni nini? Kama hiki kipengee kingalikuwa kimetengenezwa na watu wa Bunge wenyewe, wangeshauriana na Wabunge wenzao kutoka nchi hizi zingine. Nimekuwa na mazungumzo na hao Wabunge wa Afrika Mashariki na wana ugumu. Hata wale ambao walichaguliwa hapa, hawana uwezo wa kutembelea Ikulu ya Kenya tangu wachaguliwa. Ni Waziri pekee ndiye ana uwezo wa kuzungumza na Rais wa Kenya. Je, hao watu walipelekwa huko kama senema? Je, hili Bunge linajua kwamba hao Wabunge wana shida kama hiyo? Mishahara yao inajadiliwa na nani? Tungalikuwa na kipengee ambacho kinaweza kurekebisha mambo hayo yote. Shughuli za *Secretariat* zimekwama kwa sababu hatusikizani. Ijapokuwa wanasema *Customs Treaty* ambayo itakuwa ndiyo njia pekee ya kupata pesa ya kugawia hizo nchi nne, je kama nchi moja itakosa kutoa pesa ili waletwe katika kile kikao, itakuwaje? Huo Muungano wa Afrika Mashariki utaanguka kama ule wa kwanza. Je, na kama Nchi moja itakosa kutoa pesa ili ziwekwe katika kile kikapu, itakuaje? Si hii Jumuiya ya Afrika Mashariki itaanguka vile ile ya kwanza ilivyoanguka? Ya kwanza ilianguka kwa sababu ya kutosikizana na kuchangiana. Nchi moja ikisema haina pesa, nchi mbili zinasema kama nchi hii imekataa kutoa pesa, basi hakuna mishahara kwa watu. Sisi hatungependa kuona kwamba Afrika Mashariki inaongozwa na watu wachache.

Isitoshe, hii nyumba ilijengwa kutoka juu. Sasa itakuwa ngumu kufundisha wananchi kuelewa ujamaa wa Afrika Mashariki ni nini. Mipaka hii ambayo tuliwekewa na Wakoloni inaleta vikwazo. Kuna vita kati ya makabila kutoka nchi jirani. Tutawapataniha hawa watu namna gani, kama sisi wenyewe hatuwezi kusimamia hizi sheria, na kusema tumepanga kama Wabunge wa Kenya sheria iidhinishwe na Tanzania, Uganda, Rwanda na Burundi? Hayo mambo ndiyo yataweza kuwa ya maana kuliko kusema kwamba kilichofanywa na *Cabinet* ndicho uamuzi wa mwisho.

Kwa hayo machache, ninaunga mkono Hoja hii.

The Minister for Trade and Industry (Dr. Kituyi): Thank you, Mr. Temporary Deputy Speaker, Sir. I intend to speak for only two minutes or so.

I think the hon. Member who brought this matter before the House has some legitimate concern about some things being done the right way. But things being done the right way is not

pretending that Parliament is the ratifying authority for any amendments to treaties that Kenya is party to. This House is seized of knowledge that in Kenya Parliament can be notified, but the ratifying authority of treaties is the Cabinet.

Be that as it may, the operative law on the matter being discussed here is something different. In the Laws of Kenya, we enacted in the year 2000, an Act No. 2 of the year 2000, which is the Treaty for the Establishment of the East African Community Act, an Act of this Parliament for giving effect to certain provisions of the Treaty for the Establishment of the East African Community and for connected purposes. In that Act, enacted by this Parliament, there is Article 9, which is the provision on how the Treaty for the East African Community can be amended. It is a very brief section, and I wish to read it before the House. It reads:

"Amendment of Treaty: If the Treaty is amended or modified, the Attorney-General shall cause a notice of the amendment or modification and of the date when the amendment or modification comes or is deemed to have come into operation, to be published in the Gazette, and a copy of the notice to be laid without delay before the National Assembly, and such amendment or modification shall, for the purposes of this Act, come or be deemed to have come into operation on such a date".

If there is an anomaly, it can only be that the Attorney-General has not, in a speedy way, tabled, or given notice to Parliament of, the gazetting of the amendment. But there is no provision that there should be ratification or that ratification should be done by this House.

Mr. Temporary Deputy Speaker, Sir, I rest my case.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I also intend to be very brief. I want to thank Dr. Kituyi for bringing out that very clear provision of the law. It is good that we can explain some of these things. That section reads, "If the Treaty is amended, the Attorney-General shall cause that amendment to be published and be laid on the Table of this House". The reason, in terms of our own Standing Orders, and in terms of the Interpretation and General Provisions Act, Cap.2 of the Laws of Kenya, why the Attorney-General, or any Minister or other person, is required to lay before the House any amendments to any laws is because it is accepted the world over that it is Parliament which has the legislative authority. Indeed, that Article 9, which the hon. Dr. Kituyi has just read out says that if within the period that the amendment is laid before the House lapses, the amendment is deemed to have come into operation.

Therefore, if within that time, in terms of our own Standing Orders, this House decides to disagree with those amendments, then it is within the power of this House to reject those proposed amendments and then, they shall not be deemed to have come into force in their proposed manner. Therefore, I think, in a sense I agree with Dr. Kituyi that the Attorney-General has a responsibility and duty to this House to come here and notify the House of any proposed amendments. It should not be--- In terms of Article 150(6), again, it is clear that even if the Summit were to meet and agree on any amendments, they still must be taken back to the individual Partner State Parliaments, because those are the legislative authorities of the respective Partner States.

The Temporary Deputy Speaker (Mr. Poghio): Is it your understanding that a Partner State is the same as Partner State Parliament?

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, the reason why in Article 150(6) even the Summit itself is not the one that is deemed to have brought the proposed amendments into force without their Partner States' concurrence, is because the Partner States' Parliaments are the ones that make the laws, and not the Summit itself. Indeed, I, therefore, think that all that we are dealing with here is a question of procedure. Has the Attorney-General acted as he should in terms of the law? I think that is the question that we need to answer now, and resolve, as a House, to compel the Attorney-General--- This is not one of those cases under the Constitution that he is not compellable. He is compellable under the law to come before this House, table those proposed

amendments so that the process is owned by this House.

I, therefore, beg to support.

The Temporary Deputy Speaker (Mr. Poghio): I would like to see Members who are seeking to point us in the direction of the Motion as it is read now.

The Member for Emuhaya!

The Minister for Trade and Industry (Dr. Kituyi): On a point of order, Mr. Temporary Deputy Speaker, Sir. With respect, I seek guidance from the Chair. The submissions by the hon. Muturi, the Whip of the Opposition, and myself are suggesting that the Motion is wrongly before the House. This Motion is making an urging which is illegal. Parliament does not ratify amendments to the Treaty of the East African Community, and we have read the operative, law which says that the Attorney-General should notify Parliament of amendments. Therefore, you cannot ask Parliament to pass a law which asks the Government to do things it is not supposed to do in law. So, I wanted the guidance of the Chair on your reading of the provisions of the law and the pleadings of this Motion.

The Temporary Deputy Speaker (Mr. Poghio): Well, you know there is one person we have not heard from, and that is the Minister for East African Community. As I sit here, I struggle with the same issues, whether this is properly before the House or not. But I would like to hear the arguments.

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Our Standing Orders and the practice of this House say that once a Motion is approved by Mr. Speaker, and it goes to the House Business Committee and it is allocated time, it is too late for any Member to argue that it is improperly before this House.

Mr. Khamasi: That is right!

Mr. Muite: The Speaker has approved the Motion. It has been allocated time for debate and we are in the middle of debating it. We must not try to look for ways of derailing a Motion which is properly before the House.

The Temporary Deputy Speaker (Mr. Poghio): Mr. Muite, I think you are right to some extent. I do not think that is the same sense I get that Dr. Kituyi was trying to raise. The idea is that there is a term that should be amended. We cannot go back. The Motion has been moved, seconded and proposed. It is properly before the House in that sense. Dr. Kituyi is arguing as to what the Motion is asking this House to do.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, Dr. Kituyi is wrong in his interpretation of the law. We should look at the Treaty and not the Vienna Convention or the Constitution of Kenya. When a country enters into a Treaty, it should liken the East African Community to the constitution of the member states. It is the content, provisions, articles of the Treaty that we should look at in seeking to interpret the issue that Dr. Kituyi is interpreting here. Even if Section 9 was to be interpreted in the manner in which Dr. Kituyi is seeking to interpret, that article would be in head on collision with article 150(6) and Article 152. That is what will prevail and not Section 9. I do not give Section 9 the interpretation that the Minister is giving it. The Treaty requires ratification. Why did the Government bring the original Treaty to this House for ratification.

The Temporary Deputy Speaker (Mr. Poghio): Actually, I had already given this opportunity to the hon. Member for Emuhaya when Dr. Kituyi stood up on a point of order.

Proceed, Mr. Marende.

Mr. Marende: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Motion. Beginning from the point where we are in respect to the matters raised by Dr. Kituyi, I beg to disagree. That interpretation, in my view, is wrong. Article 9 says that if there be any amendment then it will come into effect upon the Attorney-General gazetting that amendment.

As the prevailing position is now, there is no amendment that is known to this House. That is merely speculative. Indeed, Mr. Muturi in supporting the position taken by Dr. Kituyi said that those are proposed amendments. If amendments are proposed then they are not yet amendments. We cannot be bound by what is proposed. The Motion is legitimate and it says that if any amendments to the existing Treaty are to be proposed, then they should be submitted to the National Assembly for ratification. We are dealing with today and the future. We are not seeking to have retrospective application of this Motion. To that extent, this Motion is perfectly legitimate.

Mr. Temporary Deputy Speaker, Sir, one of the greatest things that have happened to this region is the---

The Temporary Deputy Speaker (Mr. Poghio): Order, hon. Members. I need to assure hon. Members that the Motion will be completed according to our Standing Orders. There is no need to ask questions. For example, did the Treaty come here initially for ratification? Was it ratified by this House?

The Minister for Trade and Industry (Dr. Kituyi): Mr. Temporary Deputy Speaker, Sir, I had the privilege to be in this Parliament and be one hon. Member who seconded it. There was an Act of Parliament. If you read that Act 2 of 2000, apart from the preamble and procedures of dealing with the Treaty, it contained the body of the Treaty as published. That Treaty was not brought here for ratification. We had to enact a law because we were transferring some of our authority to an external authority. We were allowing that decisions in Arusha to have the effect of law in Kenya. That way, this Treaty was not ratified by Parliament. Cabinet ratified the Treaty but an Act of Parliament which embraced the body of the Treaty was enacted as a law in this country.

The Temporary Deputy Speaker (Mr. Poghio): That was one of my questions. I think apart from Dr. Kituyi, anybody could answer that. I am sure the Minister will answer that. I am just saying that one of the other questions which need to be asked as we discuss this Motion is the term "ratification" and the way it is applied elsewhere. We need to be thinking about those terms as we proceed with the debate. Whose function is it?

Mr. Marende: Mr. Temporary Deputy Speaker, Sir, in my interpretation, the function of ratification is exclusively that of Parliament. Under Article 152 it is provided expressly that the Treaty shall be ratified by the partner state. A State as constituted in law comprises of the Executive, Legislature and the Judiciary. The organ that is representative of the views of Kenyans in this context would be Parliament. It is Parliament which incorporates and captures the views of Kenyans and therefore, the State of Kenya speaks through Parliament. Indeed we have a precedent. In Tanzania, ratification had to be debated and deliberated by the Tanzanian Parliament. Why should we be an exception?

Mr. Temporary Deputy Speaker, Sir, as we speak today, although we profess to be promoters of the integration of the East African States, we are in fact holding back the integration of the East African Community by our actions.

Mr. Temporary Deputy Speaker, Sir, the Legislative Assembly of the East African States ought to have convened and been meeting since February this year. It has not been able to do so because Kenya has not put its act together. Kenya has not been able to nominate its representative to the Assembly as it is duty bound. We are not living by what we profess to be. It is a sad spectacle that this country should hold institutions of the East African Community from proceeding with their functions. At this point I have in mind the East African Court. That court is now being obstructed by the actions of Kenya because we are unable to respect a valid and legitimate judgement of a court. All the circus that we are now witnessing is an attempt by the Kenyan Government to circumvent the judgement of the East African Court (EAC). It is legislating and making provisions that will circumvent that judgement. It is my submission that, that manner of doing things is parochial, selfish and, obviously, does not promote the interests of the East African

Confederation. To target the removal of two judges who, coincidentally, originate from Kenya is a very unfortunate development. It should not be a principle that governs any state that is self-respecting and that proposes to uphold and subscribe to the rule of law.

Mr. Temporary Deputy Speaker, Sir, finally, it is unfortunate that, as development stands now, we have been unable to respect the provisions of the treaty as they are today, notwithstanding whatever amendments we may be proposing now.

Mr. Temporary Deputy Speaker, Sir, Article 150 of the Treaty, as it stands today, says that we ought to generate membership of the East African Legislative Assembly (EALA) through an electoral process. Indeed, we claim to be the most democratic country. How else do you uphold democracy if you are unable to respect the process of elections?

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Poghisio): I would like to ask the Official Government Responder to make his remarks now.

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I want to make quite a good number of things clear. In accordance with our Constitution, Parliament has no role in ratification of all the international treaties. That function is performed by the Executive and the Government. The Minister concerned will provide instruments of the treaty to the Cabinet for ratification. Thereafter, His Excellency the President assents and it becomes binding internationally---

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to mislead the House that, according to the Kenya Constitution, that responsibility is vested in the Executive! He is not telling the House the section of the Constitution he is referring to?

The Temporary Deputy Speaker (Mr. Poghisio): Mr. J.K. Koech, that is important!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, if the hon. Member can allow me to speak, I will quote all the information that I have. What is generally accepted is the precedent. I know that all the treaties that have been ratified in this country have been done by the Cabinet. It is not only the EAC Treaty or the amendment of the Treaty which has gone through the Cabinet. There has never been any issue which has come to this Parliament for ratification, as far as international treaties are concerned. Now,---

Dr. Rutto: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghisio): Yes, Dr. Rutto!

Dr. Rutto: Mr. Temporary Deputy Speaker, Sir, the Minister is misleading the House! He has not quoted any relevant article in the Constitution to support his argument. He is quoting tradition. Tradition is not a constitution!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I want to ask my hon. colleagues to show me any part of the Constitution that says that Parliament is allowed to ratify treaties. There is nothing!

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Minister! I cannot allow that to happen. Everything comes through the Chair. Mr. Minister, when you started by saying: "The Constitution of Kenya says," then you leave yourself open to the other questions by hon. Members: "What part of the Constitution says that?"

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, if I can be allowed to speak, I will elaborate. We need to make the issue here very clear. There is no part of our Constitution which says that the treaty must be ratified by Parliament. So, through practice, and that is also the tradition performed by part of our Constitution---

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Minister! It is either the

Constitution says it or it is part of our tradition!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, it is part of our tradition!

The Temporary Deputy Speaker (Mr. Poghisio): So, do not use the Constitution! If it is not provided for in the Constitution, go ahead and say it is our tradition!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, it is silent. There is an issue that I was coming to, if the hon. Members could be patient---

Mr. Maore: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghisio): Yes, Mr. Maore!

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, the Minister is out of order because the Motion intends to intercept that bad tradition and practice and seize the role of ratifying those treaties from going to Parliament. Is the Minister in order to prevent Parliament for seizing that role?

The Temporary Deputy Speaker (Mr. Poghisio): Well, let us hear the Minister!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I want to remind hon. Members that I was involved in the Bomas Constitution talks. On the request to change the Constitution, one thing that came out very well was the ratification of international treaties should be done by Parliament. That was the recommendation by the Bomas talks. That shows very clearly that we have been going by our traditions---

Capt. Nakitare: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghisio): Order, Capt. Nakitare! The Minister is responding to another point of order! Will you be patient?

Proceed, Mr. J.K. Koech!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, that shows very clearly that what has been happening was through tradition. If there is need and nations agree that international treaties have to be ratified by Parliament, we should change the Constitution and say: "Any international treaties must be ratified by Parliament." Some countries have made that very clear in their constitutions. They have given their parliaments the power to ratify international treaties. So, we should not be in a hurry and change the Constitution through a Motion. I do not think it is right. We cannot change the Constitution of this country through a Motion! We have to go through the right channels.

An hon. Member: On a point of order, Mr. Temporary Deputy Speaker, Sir.

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

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! Just keep your cool! Mr. Minister, you have just said that, that is not from the Constitution, and that it is a tradition. Nobody is trying to amend the Constitution. I do not see any hon. Member wanting to amend the Constitution. Just proceed with your arguments. I do not think you should dwell on that!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I was saying that, according to our practice - that is the Executive, once the Cabinet has ratified international treaties, they become binding. That is the position even with this treaty.

According to the Vienna Convention, a treaty is considered ratified or amended when the Head of State or the Minister for Foreign Affairs of a country has signed the instruments and

deposited the same with the relevant bodies such as the EAC. What has been done so far is legal. Let us be very clear. Let us not cause confusion. Let us give Kenyans the right information. If there are some things which hon. Members want to do, they can take them up with the relevant authorities in this country.

Mr. Temporary Deputy Speaker, Sir, Paragraph six of Article 150 on Amendment of the Treaty says:-

"Any amendment of this Treaty shall be adopted by the Summit and shall enter into force when ratified by all the partners States."

So, as far as the amendment of the Treaty of the EAC is concerned, it has gone through the right channels. It went to the Cabinet and it was ratified. The Minister for Foreign Affairs has deposited the instruments of ratification with the Secretary-General. That is the way all the treaties have been done. That is the right procedure. So, there is no role that this Parliament plays. We should not continue cheating the nation that we did the ratification wrongly.

The Attorney-General is required, by an Act of Parliament, to give notice of ratification. That was done. All the gazette notices normally come to Parliament. Everything has been done according to the procedures which are respected in this country. Let me appeal to hon. Members not to bring a lot of wrong sentiments into this issue. Let us not give Kenyans wrong information. We all know, for example, the nomination of members to the East Africa Legislative Assembly (EALA) was done according to the procedures adopted by this Parliament.

Mr. Odoyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead this House that election of Members to EALA was done according to the laid down procedures, yet they were nullified by the Court of East Africa.

The Temporary Deputy Speaker (Mr. Poghisio): What has he said?

Mr. Odoyo: Mr. Temporary Deputy Speaker, Sir, he says the election of members to EALA was done correctly when it was incorrect!

The Temporary Deputy Speaker (Mr. Poghisio): That is a point of argument!

Mr. Odoyo: He is misleading the House, Mr. Temporary Deputy Speaker, Sir!

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! What is up with you gentlemen? Hon. Members, what is happening?

Mr. Minister, I think the idea is for you to put your facts on the table and convince everybody. Anyway, we will put this issue to a vote. So, let us just listen and then decide.

Hon. Members, allow the Minister to finish his contribution! He is being interrupted too much.

Mr. Minister, please, proceed!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I want to appeal to hon. Members to be honest to Kenyans---

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

The Temporary Deputy Speaker (Mr. Poghisio): What is it, Mr. Muite?

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, it is a little issue, but very vital point. You heard the Minister say that the Gazette Notice was brought to Parliament. He is referring to Section 9 which specifically says:

"Copy of the Gazette Notice shall, without delay, be laid before the National Assembly."

Could he tell us when the Attorney-General laid that Gazette Notice on the table of this House?

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, the Gazette Notice was given by the Attorney-General. Naturally, it has to come to Parliament.

Hon. Members: When? When?

The Minister for East African Community (Mr. J.K. Koech): All gazette notices are laid before this House. I definitely believe that this was laid before the House. Once this is done, everything is finalised.

Hon. Members, let us not argue to make political mileage. Let us be honest.

Mr. Kajwang: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghismo): Order! When will the Minister finish with all these points of order?

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I have not finished. Could you, please, protect me from Mr. Kajwang?

The Temporary Deputy Speaker (Mr. Poghismo): Hon. Members, I do not even think the Minister has gone anywhere with his presentation. Could we, please, listen to him?

Mr. Minister, please, proceed!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir---

Mr. Kajwang: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister says that he honestly believes that the Attorney-General gave a notification and it came to the House. The law is that it should have been laid before the House. Could he tell us whether it was laid or not? If not, he should withdraw his belief. We do not want to rely on his belief.

The Temporary Deputy Speaker (Mr. Poghismo): Hon. Members, let me now protect the Minister. Let him get somewhere with his speech!

Mr. Minister, please, proceed!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I want to request hon. Members to be honest when giving information to the public. What I had said earlier is obvious. I want to---

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

The Temporary Deputy Speaker (Mr. Poghismo): Hon. Members, please, allow the Minister to continue!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, they are eating into my time. I have not even spoken. I have said the truth and it is bitter. That is why they are standing on their feet!

The Temporary Deputy Speaker (Mr. Poghismo): Order, hon. Members! Do you not want to hear the Minister?

Mr. Minister, please, finish without provoking anybody!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I want to urge hon. Members to say the truth always, so that Kenyans can believe in us.

An hon. Member: Do it yourself!

The Minister for East African Community (Mr. J.K. Koech): I am a very honest man. I do not lie at all.

Mr. Temporary Deputy Speaker, Sir, I have read the treaty. I believe it is very clear. When we talk about partner States, it means the government of the country. I have talked with hon. Members of Parliament from Uganda and Tanzania. They talk about ratification by Parliament because their parliaments have to ratify all international treaties. That is their tradition. We cannot argue about that because it is the way they do it.

When dealing with these amendments, it took a little bit longer for partner States because it had to go to their Parliaments. When I talked to my colleagues, they said according to their constitutions, their Parliaments must ratify all international treaties. I want to make it very clear that, in our traditions which have not been changed, all treaties once ratified by the Cabinet, the Minister for Foreign Affairs signs the instruments of ratification and deposits them with particular international organisation. In this case, the Minister for Foreign Affairs; Mr. Tuju, signed the instrument of ratification and I saw it. I had to send my officers to Arusha to table the same with the Secretary General of the East African Community. That was done and it was clear. It was done according to the laws of Kenya. As far as it is concerned, there was nothing wrong. Everything has been done, including ratification and amendments. It is final.

Mr. Temporary Deputy Speaker, Sir, I am happy with this Parliament---

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Minister, the Motion is seeking a new thing. You need to address what the hon. Member is asking. He is asking that this House resolves that any amendments to come be brought to this House for ratification. You should address that!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, this particular amendment has already been done. However, if it is the feeling of the House that in future ratification be done by Parliament, it is okay. This is a constitutional matter. I pointed out that in the Bomas Draft, this came out very well. It was recommended that all international treaties be ratified by Parliament. We are still continuing on the issue of the Constitution. If it is to be done, it must be included in the New Constitution. I want to urge hon. Members to speed up the comprehensive constitutional change. I believe that when we go that far, we will not be talking the way we are doing today. However, for today, it is not easy for this Motion to change the Constitution of this country. It cannot! I do not think we can change the Constitution of a country by---

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Minister! Again, you are going back to the issue of the Constitution! We left that. If it is a constitutional matter, you are being challenged what part of the Constitution are you referring to!

Hon. Members, I just want to bring this to your attention: The Attorney-General tabled Legal Notice No.38 of 20th, March, 2007. I am coming to the aid of the Minister to tell you that the Attorney-General tabled the notice.

Mr. Minister, please, proceed!

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, I thank you for that clarification. I am sure that was done. This thing must be done according to the law. So, you can see that we have done it according to the law. I think I have explained my point very clearly, that this Motion can wait until there is change in the Constitution.

An hon. Member: Why?

The Minister for East African Community (Mr. J.K. Koech): Mr. Temporary Deputy Speaker, Sir, that is because the Motion is *ultra vires*. Even the Act that was read out by Dr. Kituyi today, does not show that Parliament has powers to do this. So, Parliament cannot usurp powers it does not have. That bit is very clear. Even in the East African Community Treaty, it is very clear.

Mr. Temporary Deputy Speaker, Sir, I now want to correct something which has been blown out of proportion. The East African Court of Justice has passed its judgement, and we are not challenging that judgement. The judgement was that there was no election in the Kenyan Parliament. The reason as to why there was no election in Parliament is that the procedure that was adopted by this House in 2001 was wrong. That is why we were challenged by the East African Court of Justice. The court said: "We cannot allow Kenya to continue making mistakes. They made mistakes in 2001 by following a procedure which does not show election in the Chamber". That is

why the court ruled that an election must be done here. We have got to bring the names here and vote for them. Once the names have been voted for, we will be deemed to have had an election.

Mr. Temporary Deputy Speaker, Sir, the procedure that we adopted in 2001 was adopted selfishly to serve the interests of the proponents of those who challenged us in Arusha. They are the people who brought that procedure to Parliament in 2001. They brought that procedure for selfish motives. We need to tell Kenyans the reason as to why they brought that procedure. During that time, the Government had more KANU Members of Parliament. Their argument then was that if the matter was brought to the Floor of this House, KANU would send more Members to the East African Legislative Assembly in Arusha. So, it was agreed, in accordance with the procedure that was adopted here, that once the Sessional Committee approved the proposed names, the list should be tabled in the House. That is what we did in accordance with the procedure that was adopted by this House.

Mr. Temporary Deputy Speaker, Sir, the late hon. Anyona tried desperately to change that procedure, but Parliament rejected his amendment to the Motion. So, they allowed for the list of the proposed names only to be tabled in Parliament, which was the procedure. So, do not accuse the Government. We are using the procedure that was adopted in 2001 for election of Members to the East African Legislative Assembly. So, the nation should know very clear that it was not the Government side which is wrong, but rather the selfish motives of those who went to Arusha to challenge the Government.

With those remarks, I beg to oppose.

The Temporary Deputy Speaker (Mr. Poghio): Mr. Maore, you have only a few minutes.

Mr. Maore: Thank you, Mr. Temporary Deputy Speaker, Sir. The issue we are raising today is very important. If it was in England, it would be easier, with the definition of what is a state and what is a government. There is a mix-up between the two definitions in the presentation of the Minister. The three arms of the Government of Kenya are the Legislature, the Judiciary and the Executive. The Executive is the confluence of the three arms of the Government. When the Executive takes a decision, it is supposed, somehow, to usurp the role of the Legislature to some extent, and that of the Judiciary to some extent. Through this Motion, Parliament is seeking to help and participate in the ratification of treaties.

Mr. Temporary Deputy Speaker, Sir, if you remember the last time we had the East African Community, 1977, because of the bad manners of the late Idi Amin--- I want to remind the Minister something we hear about Idi Amin, what he did at one time when he had a problem with money. When his Minister for Finance went to report to him that there was no money, he told him to go and print it. It is the same bad manners that those in the Government are picking. When they are inconvenienced by a ruling, or by the Members of the constitutional---

The Minister for East African Community (Mr. J.K. Koech): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is imputing improper motive on the Government. We follow the Constitution. We do did not have anything done improperly. That is all.

The Temporary Deputy Speaker (Mr. Poghio): Order! Order! I do not think we have anything like that in our Standing Orders.

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, the issue I am raising is that when Idd Amin was inconvenienced by lack of money, he told the Minister for Finance to go and print it. The inflation that followed was worse. Today, we have a similar problem in terms of decision-making. We have the summit of the three Heads of State passing a resolution that is supposed to address an inconvenience they have found in court. Instead of abiding by the court ruling and

respecting the court, they go ahead and amend the Treaty. That is the amendment we are saying that Parliament needs to have a say in effecting.

Mr. Temporary Deputy Speaker, Sir, Kenya is actually, increasingly on the way to destroying the East African Community. I say so because, if we have a community that we want to nurture and be senior members of, we should not do the kind of things that Kenya is trying to do. It is a big privilege for us to have two judges out of the judges of the East African Court of Justice. When they go and make a ruling, you do not tell the whole world that at the time they were making that ruling, they had something pending in Kenya. We should have done these things between 2003 and 2006. Why do them in 2007? So, it is because of this kind of behaviour that one cannot trust the entity called "Government". The State is all of us, but the Government is these people.

So, in the separation of the two, when we have something laid on the Table of the House, the House can seize what has been laid on the Table and take some action on it. It is wrong for somebody to mistake Parliament for a cemetery, where you go and lay a dead body there, and it is supposed to remain there for eternity or until the day of resurrection. Parliament is different. That is why Mr. Cheboi, in moving this Motion, says that the sole legislative arm of the Government of Kenya is to participate in this matter.

Mr. Temporary Deputy Speaker, Sir, I agree with the Minister totally that there is nothing constitutional in this matter. It has been by tradition and convention. The Vienna Convention and the East African Community Treaty are different. The East African Community Treaty is a creation of the three member States of East Africa, and we should be able to participate in amending the Treaty, as the three arms of the Governments. Talking about the Bomas Draft, everyone knows---

The Minister for East African Co-operation (Mr. J.K. Koech): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is misleading the House. Negotiations for the East African Community Treaty were not done by Parliaments. They were done by the member States.

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, we expect those things that are being, today, negotiated and debated in County Hall not to become binding laws of this country. They will have to come to Parliament for them to become law. So, when the three Heads of State, or Governments, go and negotiate these treaties, they do not go and announce them to be law under a tree, like the *Njuri Ncheke* elders. They have to acquire a legal force. When they have legal force that is what we are saying. When you go and make a treaty, it should not be some amorphous creature which is only at the convenience of the Heads of State or Governments. It should be for the common good of the people of East Africa.

Mr. Temporary Deputy Speaker, Sir, the Minister is still promoting the idea of Kenyans accepting and understanding what the East African Community is all about. He would want Kenyans and everybody to support the East African Community. We are not going to support an amorphous monster, which is going to help---

The Assistant Minister, Office of the President (Mr. Munya): On a point of order, Mr. Temporary Deputy Speaker, Sir. This Motion is unconstitutional, because it seeks to take away the responsibility of the Executive to negotiate treaties in international law on behalf of the Kenyan State, and bring it to the Legislative arm. Requiring all treaties to be brought here, is taking away that responsibility, which is already given to the Executive by the concept of separation of powers in the Constitution.

The Temporary Deputy Speaker (Mr. Poghio): No! No! No!

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Speaker, Sir, that can be done. I am not saying that it cannot be done.

The Temporary Deputy Speaker (Mr. Poghio): Mr. Munya, you will have your chance to speak. You will bring up all those issues when you have an opportunity to speak.

Proceed, Mr. Maore!

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, the House resolved that any amendment-- In the opening preamble, this Parliament ratified the Treaty. The Treaty, as amended, was brought to this House. So, the argument is that before we make any further amendments, we need to bring them to the House and let it accept them, on behalf of the people of this country. Now, if we are having a problem with that, what else can we not have a problem with? If it has not been submitted and there is an attempt to bring it, this is the law making body. Let us make these laws and let them be followed.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Poghio): Yes, Mr. Munya! You have four minutes!

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Speaker, Sir, I was arguing that this particular Motion goes against the spirit of the Constitution, that separates the responsibilities and mandate of the Legislative and Executive arms of Government. Negotiation and ratification of treaties is the mandate of the Executive arm of the Government.

The Temporary Deputy Speaker (Mr. Poghio): Are you reading that from somewhere?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Speaker, Sir, I am not reading. This is because the separation of powers is not provided by a specific provision of the Constitution. It is the way our Constitution is designed that provides for separation of powers. We have specific sections of the Constitution which give mandate to the Legislative, Executive and Judicial arms of the Government. This is what we call separation of powers.

Mr. Temporary Deputy Speaker, Sir, as I said, negotiation and ratification of treaties is a mandate of the Executive arm of the Government. So, when we bring an ordinary Motion here to change that, through an ordinary resolution, that becomes automatically unconstitutional. This is because we are not bringing a provision of the Constitution in order to change that constitutional set-up.

Mr. Temporary Deputy Speaker, Sir, so, in my understanding of the law, this Motion is unconstitutional, because it is trying to transfer the mandate of the Executive to the Legislative arm of Government.

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House? What we are debating are the provisions of the East African Treaty, which can only be ratified in Parliament. Now, when he says that it is unconstitutional, does he not mean that the Treaty itself is *ultra vires* and unconstitutional and, therefore, it should not be here in the first place? Why did we then go into it?

The Temporary Deputy Speaker (Mr. Poghio): Order! Hon. Members, if you really want to stand on a point of order, let it be a point of order! Now, when you begin to argue, then you are actually deviating from the point of order!

Proceed, Mr. Assistant Minister!

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Speaker, Sir, the hon. Members are confusing ratification with domestication. When a treaty is brought to the Cabinet and the Executive puts a signature on it, that is already ratification. So, there is no requirement that a treaty must be brought to the House for it to be ratified. So, hon. Members are confusing two issues. The Treaty was already ratified the moment we followed the required procedure.

The Temporary Deputy Speaker (Mr. Poghio): Order! Your time is up! It is now time for me to call upon the Mover to reply.

Mr. Cheboi: Mr. Temporary Deputy Speaker, Sir, I thank all the hon. Members for contributing vigorously to this very good Motion.

I would understand the Assistant Minister's concerns, because it is very difficult to give what---

Mr. Temporary Deputy Speaker, Sir, generally, I beg to move.

(Applause)

(Question put and agreed to)

(Several hon. Members stood up in their places)

Hon. Members: Division! Division!

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! You can now sit down!

I have seen all of you, and you are not 20! The Standing Order relating to Division says: "If on a question other than a question of procedure, 20 or more further members rise in their places to support the members claiming the Division---"

(Applause)

Order, hon. Members! Just for record purposes, there were 16 hon. Members who stood up on their feet. Therefore, they were short of the 20 that is required.

(Mr. Katuku stood up in this place)

Mr. Katuku, do you have something that you have to say?

The Minister for Water and Irrigation (Mr. Katuku): Mr. Temporary Deputy Speaker, Sir, I have no problem with the issue that you have ruled on. But I just want to express my view that although we have passed the Motion, it has been overtaken by events. I think the Chair needs to advise the hon. Member to bring a Motion to amend the Act---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Minister! I think that is really out of order! When a Motion has been dealt with, it becomes completely out of order to try and revisit it!

An hon. Member: Throw him out!

The Temporary Deputy Speaker (Mr. Poghisio): I will not do that now, but he needs to know that!

Next Order!

(Applause)

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:- THAT, in view of the Government's prime goal and policy to spur the economy to an accelerated growth to catch up with the Asian economic tigers; conscious that agriculture is the engine of the country's economic development; noting with appreciation that the tea sub-sector has sustained itself as well as the economy through a very long recessionary period without any direct Government investment; cognizant that small tea production has by far surpassed the existing tea factories' processing capacity with resultant enormous loss and wastage of green leaf; bearing in mind that the cost of factory construction is sky high and beyond the ability of small scale farmers; and commending the Government's demonstrated commitment to revamp, boost, rehabilitate, revive and/or expand various important sectors of the economy, this House grants leave to introduce a Bill for an Act of Parliament to amend the KTDA Act to provide for urgent Government investment in the rehabilitation---

The Temporary Deputy Speaker (Mr. Poghisio): Order! You skipped something there! Can you read that part again?

Mr. Angwenyi: It reads as follows:-

This House grants leave to introduce a Bill for an Act of Parliament to amend the KTDA Act to provide for urgent direct Government investment in the rehabilitation, expansion, or construction of tea factories to adequately process tea produced by small scale farmers throughout the country.

Mr. Temporary Deputy Speaker, Sir, we do know that when this Government took over, the economy was in shambles. Take, for example, our sugar sub-sector was in shambles; our dairy industry was in shambles; our fishing industry was in shambles; the meat industry was in shambles and our public banking industry had almost collapsed. The agencies supporting the economy had collapsed, leading to a negative growth rate of two per cent. But this Government came in with a policy to rehabilitate all these sub-sectors of the economy such that we could realize a positive growth rate. Indeed, the Government has moved with despatch to write off debts owed by the coffee industry to the tune of Kshs5.8 billion. It moved with despatch to invest Kshs1.1 billion to rehabilitate the Kenya Co-operative Creameries (KCC) and the dairy industry. It moved with despatch to spend Kshs1.6 billion to rehabilitate the Kenya Meat Commission (KMC).

Mr. Temporary Deputy Speaker, Sir, this Government has demonstrated that it is interested in revamping all the sectors of the economy. The ones I have mentioned--- There are additional ones, for example, it moved to rehabilitate the Agricultural Finance Corporation (AFC), the agency that finances agricultural production in this country by Kshs2.1 billion. It moved on to rehabilitate our Telkom Kenya by writing off debts amounting to Kshs17 billion. It moved to the Kenya Railways Corporation recently and spent Kshs8 billion in that industry. It has moved to the cotton industry, which had collapsed completely from the face of this country, and it has pumped in Kshs491 million to bring up the industry. But it has not spent a single penny in grants or even in guarantee of a loan to the tea industry.

Mr. Temporary Deputy Speaker, Sir, as we all know, the tea industry has been one of the few industries in this country that has been earning foreign exchange for this country and has sustained itself over the years. When the other industries or sub-sectors were collapsing, the small scale farmers stood up and put efforts to maintain that sub-sector to the extent that their production has increased two-fold, from the year 2000, from about 500 million kilogrammes per year to 1.08 kilogrammes per year. But have the processing industries expansion been commensurate to that expansion in production? The answer is "no". Right now we have a crushing capacity of 795

million kilogrammes per year against the production, as I said earlier, of 1.080 billion kilogrammes per year. So, we have got a shortfall of close to 300 million kilogrammes of green leaf that goes to waste and, therefore, resulting in a loss to the small scale farmers.

Mr. Temporary Deputy Speaker, Sir, who are these small scale farmers? These are the farmers who maintain and feed 12 million Kenyans directly. If I distribute the numbers, about two million households in Kisii region; two million in Kipsigis region, about close to half a million in Nandi; about four million in Central Province, another two million in Eastern Province and I have not included some of the periphery production areas which have come into the stream. These 12 million families have been able to maintain themselves without looking for handouts or relief, paying their taxes and that brings in to this country in terms of foreign exchange earnings an average of Kshs50 billion a year. There is no industry in this country which brings in as much money except the tourism industry, which has been revamped and, in recent years, has surpassed the tea industry. But this industry that supports 12 million Kenyans; this industry that earns Kshs50 billion for this country; this industry that pays in excess of Kshs20 billion in taxes has not been assisted in any way, shape or form by this Government; a Government that has said it is a priority to assist sub-sectors of the economy so that it can develop faster and give wealth to Kenyans.

Mr. Temporary Deputy Speaker, Sir, I am really surprised why the Ministry of Agriculture has not looked into this issue. In the process, when production has been increased, the cost of constructing a factory today has risen from about Kshs130 million per factory to Kshs400 million or Kshs500 million per factory. It has increased three-fold while the prices have stayed stationary. Therefore, when this Parliament, in its own wisdom, enacted the KTDA Act, the KTDA, as a liberalised agency, increased the contribution of farmers to put up tea factories from 30 per cent to 50 per cent. So, imagine, those farmers in Kapenguria who have tried to get into the tea-growing industry, how long is it going to take them to construct a factory when they are required to raise a minimum of Kshs250 million before they can access a loan facility for the balance to construct a factory.

Mr. Temporary Deputy Speaker, Sir, it is an arduous and difficult experience. I am speaking as a representative of the people of Kitutu Chache, who have been, for the last five years, trying to construct a factory at Sombogo in Marani. The factory was initially estimated to cost Kshs180 million but today, we are told that it is going to cost Kshs491 million. A factory to process our 15 million killogrammes of green leaf produced in a year. Since we are unable to raise that amount and because we have not been able to get any assistance from the Government, our tea which we now deliver at Tombe Tea Factory, half of it goes to waste. Half of the tea produced in Tombe which is over 20 million killogrammes goes to waste because the crushing capacity of Tombe Tea Factory can only be, at the highest, at 16 million killogrammes against a production of 35 million killogrammes.

So, we can see what benefit and advantage this country would have if the Government moves in with despatch to construct the required tea factories. This will ensure that the tea which goes to waste can be sold or processed. In fact, we are moving to an area where we value-add and achieve higher prices in the world market so that this country earns foreign exchange. This will ensure that this country earns money for the wealth creation of our people and earn money through taxation from earnings from tea.

Mr. Temporary Deputy Speaker, Sir, the Government has not moved in to salvage that one industry. It is as if they want to punish that industry for having sustained itself and expanded in production. Our people are now resorting to *mangirito* sales. This is where you auction your tea leaves to international private companies, like James Finlay, for example, or Sasini Tea and Coffee, Brooke Bond or what they call Unilever today. So, our farmers are selling their green leaves for peanuts to these multinationals with resultant losses. In fact, they do not even recoup their cost of

input and picking the tea leaves. They are, therefore, being impoverished. Mind you, these small scale tea farmers own between one and ten acres of land. When they devote that land to tea production and yet they cannot sell that tea because it cannot be processed, we know what poverty we are inflicting on them.

This House, because it is a representative of the people of Kenya, should take care of the welfare of all Kenyans. This House, which taxes Kenyans and knows where the taxation, which maintains all other sectors of this country's economy comes from, should rise up and implore the Government to invest in factory expansion, rehabilitation and construction so that we can assist those farmers as they increase their production.

Mr. Temporary Deputy Speaker, Sir, the farmers have increased their production, not only because they have expanded the area of production, but they have also increased the per acre production of tea leaves in the country. They have also increased the quality of their production. By the way, I need to inform this House that I serve the Steering Committee of the Inter-Parliamentary Union (IPU) on the World Trade Organisation (WTO), in Geneva. I represent five countries in Eastern Africa: Kenya, Tanzania, Uganda, Rwanda and Malawi. We are currently discussing how we can get the farmers in this region - farmers who produce tea, coffee and other crops - to get value for their production. Our tea is used for blending poor quality teas from Sri Lanka, India, China and other countries in Africa. Our tea is used to blend to bring up the quality of those poor quality teas from those other countries. However, we do not get adequate value for our tea. This is why this Government, country and Parliament--- I will bring a Motion to this House so that we require that our tea is fully processed so that the value-adding process is done in this country. This will ensure that when we sell out, we sell a finished product so that we can fetch higher prices for our production and our people will become wealthier.

If 12 million Kenyans became wealthier by even Kshs10,000 per year, that would be Kshs120 billion. This country would have gone ahead. So, this is the way this country should move. It should move and devote, maybe, Kshs10 billion or even Kshs60 billion. There will be no need to finance secondary school education in the tea producing areas because farmers can afford to pay school fees. It will be a better investment! This will also create jobs so that we can mop up our idle youth in this country; the youth who are now being bought and attracted to crime. By investing in the tea industry and expanding our tea factories, we will be achieving several goals.

First, Mr. Temporary Deputy Speaker, Sir, we will be avoiding waste. Secondly, we will be creating wealth to our 12 million Kenyans. Thirdly, we will be increasing our taxation so that the Government will get more revenue to give to the Constituencies Development Fund (CDF), to construct infrastructure, pay for free education and pay even for free health care. We will earn foreign exchange, which we need to transact business with other nations. We will improve our balance of payment if we invest in this industry. We will create jobs and we will be improving our economy substantially. So, this country needs to move into this with despatch. They should not be bound by the liberalisation measures they have taken. If they have taken a liberalisation measure which is detrimental to the economy and the welfare of Kenyans, it is incumbent upon this House to make amendments to any of those measures so that we can invest in these people.

As I wind up my contribution, we now need, in Gusiiland alone, five more tea factories that can process over 51 million killogrammes that go to waste annually. We need one each at Magwagwa, Sombogo, Rianyamwamu, Magenche and Suneka in Gusiiland alone. We need about three or four more in the Kericho region. We need one in Cherangany. We are also going to need one in--- These are appeals for your support. In Kapenguria, that area can produce quality tea because I have seen it. We need about five in the Eastern Province and about six in Central Province. We need two in Nakuru region. We need all these factories! The more tea we produce, the more sugar will be bought. Therefore, Mr. Sungu will also be happy. We will also have created

jobs in the sugar industry.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to move.

The Temporary Deputy Speaker (Mr. Poghio): Who is seconding?

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, the seconder is Mr. Bett.

Mr. Bett: Mr. Temporary Deputy Speaker, Sir, I rise to second this Motion. I want, at the outset, to indicate that I am a tea farmer. I know the pain that these farmers are going through at the hands of the Kenya Tea Development Agency (KTDA) factories. Those factories are built by the farmers themselves. Farmers are now required to contribute, as you heard this morning, 50 per cent of the total cost of the factory. One single line of a factory is Kshs120 million. Now, 50 per cent of that is supposed to be contributed by the poor farmer who is also supposed to look after many other things in his life.

Mr. Temporary Deputy Speaker, Sir, after that allocation has been done, the remaining 50 per cent is a loan, which, again, should be paid back by the farmer. In all these, the Government is nowhere on site except to be an agent in assisting the farmer and taxing these poor farmers. The Government needs to really come in and contribute to the construction of these factories. You have heard that there is a lot of increase in the production of tea leaves not necessarily out of increased acreage, but because of good husbandry in the production of tea. Our farmers are now becoming hi-tech. They are being more intelligent in terms of minding their tea bushes. As a result, a lot of tea leaves is now being delivered to the current factories. There is need, at the moment, to increase the number of lines so that where there are three lines, we have four lines. That will cost Kshs120 million in each of those factories across the country.

Mr. Temporary Deputy Speaker, Sir, the Act is such that it does not allow Mr. Angwenyi to build a factory to support what the farmers have done. Therefore, there is also an urgency to encourage private sector involvement in tea production so that farmers are lifted out of the problems that they are facing today. That is why you hear of farmers selling tea to companies such as Unilever and James Finlay. The same farmers can contribute money and build their own factories, but the law does not allow them to do so.

Mr. Temporary Deputy Speaker, Sir, Kenya Tea Development Agency (KTDA) is now a huge animal. It looks after 57 tea factories. Going by what we were told in the morning, other tea factories are in the pipeline. That gives us a total of 63 tea factories. Sooner or later, there will be 70 tea factories in the country. All these factories are putting a lot of pressure at the headquarters here in Nairobi. The headquarters is, therefore, forced to charge a higher commission in order to attend to these factories. That is taking away money from farmers.

There is also the issue of directors who manage all these factories. They take money away from farmers by way of giving themselves allowances. That is, again, money from farmers.

Mr. Temporary Deputy Speaker, Sir, there is also the issue of transport and bad roads. Transport, in itself, is creating a lot of losses. Tea leaves do not reach the factories on time and that means reduction or a negative impact on the quality of that tea. When the quality of tea is reduced, it means that it will fetch a lower price in the world market. That means that what will end up in the farmer's hands is, again, reduced by that poor quality of tea which is occasioned by the poor roads in this country.

Mr. Temporary Deputy Speaker, Sir, as we continue to have all these, it is the farmer who is bearing the cost. That is where the Government needs to come in and help farmers, by either constructing roads or building factories. That will alleviate the burden on the farmer. Mechanical costs on vehicles are borne by the farmers. The workers who man the vehicles have to be paid overtime and that is still another cost on the farmer.

Mr. Temporary Deputy Speaker, Sir, the farmer has suffered a great deal and the Government must come in to help and to save the farmer from going into abject poverty. We also

need the Government to assist those farmers, after they have been to the factory, they need mini-hydro power generation from the rivers in the neighbourhood. That will save our forests and reduce on cost of fuel which affects foreign exchange. It will also reduce pollution on our roads if we use generated power from the rivers within the vicinity. But we continue to have such problems and yet we know that James Finlay and Unilever, for example, are generating their own power. Why can we not use the God given power from the water in those rivers to generate power so that the farmers' problems are saved?

Mr. Temporary Deputy Speaker, Sir, bureaucracy at the Kenya Tea Development Agency is costing the farmers a lot of money. The bureaucracy is taking money from the farmer. I would like to say that the Government has already set a precedence. It has assisted the sugar farmers by giving them Kshs7 billion. Coffee farmers were also given Kshs7 billion. The National Bank of Kenya (NBK) was also given Kshs16 billion. It has also given cotton and pyrethrum boards have also been assisted. What is wrong with assisting the tea farmers? I want to urge the Government that the tea farmers need to be assisted by the Government by removing those expenses on them. They should construct a factory in every area that it is required. Mr. Angwenyi, listed the areas and there are many more. It should be done like that so that the farmers can reap from their sweat. Otherwise, they are sweating while others are enjoying elsewhere. The farmers are suffering! With those few remarks, I beg to second.

(Question proposed)

Mr. Kimeto: Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to support this Motion. This Motion is long overdue. Mr. Angwenyi should have brought this Motion in 1998 the moment he came to Parliament. Fortunately, we are not far from the truth. This is a good Motion. We want to assist our farmers. Tea is a foreign exchange earner but the policy makers of this country have never thought about putting this industry in every part of this country where tea can be grown. Tea should be grown in parts of Kericho District but should also be grown in Narok, Kisii District and also in Central Province. Unfortunately, we have not been able to transform this country by putting industries where they are supposed to be.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Order! Time is up. Mr. Kimeto, you will continue for nine minutes next time. Hon. Members, it is time for the interruption of business of the House. This House is, therefore, adjourned until this afternoon at 2.30 p.m.

The House adjourned at 12.30 p.m.