

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 20th September, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.453

WHEREABOUTS OF MALARIA DRUGS
DONATED BY CHINESE GOVERNMENT

Mr. Speaker: Is Prof. Oniang'o not here? The Question is dropped.

(Question dropped)

Question No.476

NON-STAFFING OF GOT REGEA POLICE POST

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

(a) whether he is aware that Got Regea Police Post has not been staffed one year after completion through funding by Gem CDF;

(b) whether he is further aware that Got Regea is situated on the border between Nyanza and Western provinces, which is a crime-prone area that needs extra security; and,

(c) when the post will be provided with police officers.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I have just got the information that Mr. Munya, who is supposed to answer this Question, is stuck at Safari Park Hotel in a seminar. So, may I plead that this Question be deferred to Tuesday, next week?

Mr. Speaker: What kind of seminar is that, your Excellency?

The Vice-President and Minister for Home Affairs (Mr. Awori): Unfortunately, there was no information on what the seminar is about.

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

Mr. Midiwo: Mr. Speaker, Sir, the Assistant Minister has just walked in. He is from a NARC-Kenya, Party of National Unity meeting!

Mr. Speaker: Order, Mr. Midiwo. You must know that this is a serious place! Mr. Munya, you can relax a little bit! I will come back to this Question later. I know you have now been

unstuck!

Next Question!

Question No.477

NUMBER OF POLICE DOCTORS
IN THE COUNTRY

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

- (a) how many police doctors there are in the country; and,
- (b) how many of them are in Nairobi.

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

- (a) There are three police doctors in the country currently. However, two of these doctors were recently recruited and are due to graduate on 21st September, 2007, while the other ones graduated from the Kenya Police College, Kiganjo, after completing their six-month Cadet Course.
- (b) Only one police doctor is in Nairobi.

Mr. Bifwoli: Mr. Speaker, Sir, you have heard that there are only three police doctors in this country and only one in Nairobi. Whenever somebody is assaulted in Nairobi, there is no other doctor that can go and testify in court that you were assaulted. Could the Government allow other qualified doctors to do the work of police doctors?

Mr. Munya: Mr. Speaker, Sir, honestly, I do not understand what his question is because as for the services of doctors that police require, we normally get them from other doctors. We would like to have our own doctors, but we cannot retain them in the police force because we are unable to pay them well.

Mr. Bifwoli: On a point of order, Mr. Speaker, Sir. The Assistant Minister says that he does not understand the work of a police doctor. Since he does not understand, could he allow me to explain to him the work of a police doctor in Nairobi? Anybody who is assaulted in this town---

Mr. Speaker: Order! Mr. Assistant Minister, do you understand the work of a police doctor?

Mr. Munya: Mr. Speaker, Sir, I was saying that all medical doctors can do that part of the police work that is required to be done by a police doctor. So, we do not have to employ a medical doctor in every police station. We have three doctors in the police force now. We are not able to have more doctors because the pay outside the police force is more attractive. We do not really need them because even when they are not employed in the police force, they still provide the services.

Prof. Olweny: Mr. Speaker, Sir, the Assistant Minister says that the police force does not need police doctors. What are these three police doctors doing in the police force?

Mr. Speaker: Have you understood what he means? If you do not need them, why employ them?

Mr. Munya: Mr. Speaker, Sir, I did not say that we do not need them. I said that we do not need them in regular employment. When we need their services we can get them even if they are not directly employed by the police force.

Mr. C. Kilonzo: Mr. Speaker, Sir, doctors come in many forms. There are police pathologists who are also doctors. Currently, I think we only have two police pathologists. Could the Ministry consider employing more pathologists to work under the police force?

Mr. Munya: Mr. Speaker, Sir, I have already explained that it is not that we do not want to

employ many police doctors. The salary paid by the police is not as attractive as that paid in private practice or in other institutions. Our salaries do not attract as many doctors as we would like to have. However, when we need the services of a doctor, we sometimes get even those who are not in the regular employ of the police. Right now, we have a pathologist who works at Nairobi, a Dr. Zephaniah Kamau, whose rank is senior assistant commissioner of police. When we need other pathologists we usually get services from those that are employed by the Government, not necessarily by the police force.

Dr. Manduku: Mr. Speaker, Sir, we want to appreciate that the Government wants to give services to the people, particularly those ones who have had accidents and those who have been raped. There is a "*ka-clinic*" in Nairobi where Dr. Kamau is---

Mr. Speaker: Order! What is a "*ka-clinic*".

(Laughter)

Dr. Manduku: Mr. Speaker, Sir, I said a "clinic". There is a clinic which is run by Dr. Kamau. The number of people referred there, are in hundreds. He is not able to see all of them in a day. That is the reason why I called it a "*ka-clinic*", but I want to refer to it as a small clinic without any facilities at all. I do not know whether this is because he is a policeman. As a doctor, I cannot operate in that clinic. Could the Government improve that clinic and, at least, have another one or two doctors to help Dr. Kamau? He cannot serve all those people by himself. These police doctors are always required to go and testify in court regarding the cases they have already examined. Could the Government improve the facilities of this clinic and give Dr. Kamau more staff?

Mr. Munya: Mr. Speaker, Sir, I will take the concerns of Dr. Manduku and those raised by other hon. Members, so that we can look at the remuneration due to police officers in order to attract more doctors in the police force.

Ms. Abdalla: Mr. Speaker, Sir, one of the provisions of the Sexual Offences Act is that people should be examined by medical officers of health, yet this is not happening in Nairobi. Could the Assistant Minister give a directive to the Nairobi area police, so that they allow non-police doctors to fill P3 forms?

Mr. Munya: Mr. Speaker, Sir, there is no requirement that you must be a police doctor to do that work.

Ms. Abdalla: On a point of order, Mr. Speaker, Sir. The reason why Dr. Kamau gets over 1,000 people coming to his clinic every day near Kenyatta National Hospital is that police stations are refusing medical reports that are signed by non-police doctors around Nairobi. Dr. Kamau is not only covering Nairobi, but he is also covering Thika and Kiambu districts. That is where the problem lies. In other districts, you just go to the MOH and he signs for you. If the Assistant Minister is not aware of this, let us get him to know.

Mr. Munya: Mr. Speaker, Sir, we will investigate that situation. If that is the way it is, we will correct it.

Mr. Ndolo: Mr. Speaker, Sir, Dr. Kamau has been working in that clinic for more than 20 years. Up to now, he is still an Assistant Commissioner of Police. He has been doing this for the past 12 years. When will the Government promote him to be a Commissioner of Police because he has done a lot of good for this country?

Mr. Munya: Mr. Speaker, Sir, I have said that Dr. Kamau is a Senior Assistant Commissioner of Police. The Commissioner of Police is appointed by the President. So, it is not my prerogative to appoint him!

Mr. Angwenyi: Mr. Speaker, Sir, could the Assistant Minister consider requesting the Ministry of Health to second doctors to serve in that clinic? He should request the Minister for

Health to second doctors to that clinic to do the pathological work. These doctors are paid from public coffers!

Mr. Munya: Mr. Speaker, Sir, that is a very good suggestion from hon. Angwenyi, which we will consider.

Mr. Bifwoli: Mr. Speaker, Sir, I am surprised to hear that the Government does not know the work of Dr. Kamau. Dr. Kamau is a very strange doctor in this City. He takes ten minutes to dress up, but takes one second to examine a patient. There is a rape case in which he took more than ten minutes to---

Mr. Speaker: Order, hon. Bifwoli! You are going personal on that officer! If you were listening very carefully, your colleague, Mr. Ndolo, was actually proposing him for the post of the Commissioner of Police! How dare you belittle him? In any case, I have ruled, in times without number, that you cannot assault the character and integrity of Kenyans who are not here. So, Please, keep off that line!

Mr. Bifwoli: Mr. Speaker, Sir, I withdraw and apologise that. The Government should allow Government medical doctors to fill P3 forms and testify in court especially in assault cases. There is a case where a lady was raped and treated by another doctor, but the case was dismissed because Dr. Kamau said that the whole thing was okay.

Could the Government, therefore, allow public medical doctors to testify in court?

Mr. Kimeto: On a point of order, Mr. Speaker, Sir. The hon. Member has said that "the whole thing was okay". Would I be in order to ask the hon. Member to tell us what the "whole thing" is?

Mr. Speaker: Order! I deal with Questions! I do not deal with "things."

Mr. Munya: Mr. Speaker, Sir, Mr. Bifwoli was basically repeating what Ms. Abdalla had said. I have stated that I will issue that directive. However, I do not think it is in order for him to question the professional integrity of a medical doctor.

Mr. Speaker: He has apologised! For the second time, hon. Midiwo's Question!

Mr. Midiwo: Mr. Speaker, Sir, now that the Minister is back from wherever, I would like to---

Mr. Speaker: Order! Will you, please, sit down? When I give you the Floor to do a particular thing, you do that! You do not do any other thing.

Mr. Midiwo: Much obliged, Mr. Speaker, Sir.

Question No.476

NON-STAFFING OF GOT REGEA POLICE POST

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

(a) whether he is aware that Got Regea Police Post has not been staffed one year after completion through funding by Gem CDF;

(b) whether he is further aware that Got Regea is situated on the border between Nyanza and Western provinces, which is a crime-prone area that needs extra security; and,

(c) when the post will be provided with police officers.

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

(a) I am not aware of a police post known as Got Regea. However, I am aware that the structures that had been put up by the Gem CDF, presumably for a police post, have not been

staffed.

(b) I am not aware that Got Regea is a crime-prone area. However, I am aware that the area is situated on the border between Nyanza and Western provinces. I am also aware that since January 2007 to August 2007, only two offences have been reported and have been dealt with appropriately by the police.

(c) As stated in parts (a) and (b) above, the Government has no immediate plans of posting police officers to the so-called Got Regea Police Post because the current demand does not warrant any. At the same time, there is inadequate land to put up a police post in the area.

Mr. Midiwo: Mr. Speaker, Sir, I am not surprised. About four years ago, we went to that site with the Nyanza Provincial Commissioner and we sanctioned the construction of a police unit. Whether it is a post or a station, that is up to the Assistant Minister. This is a border post where there is cattle theft day and night.

Last year, I asked a Question in this House about the murder of Dr. Odera in his home, which is next to that post. The facility was not staffed then. The Assistant Minister is saying that there is no immediate need to staff the police post. This is something that the District Commissioner, the Provincial Police Officer (PPO) and everybody else has okayed. It is a nicely built station. All we can tell our people is that the Government does not think it is going to get votes there. The Government is dishing out police posts and district headquarters in other areas and I think the Luhyas and the Luos along that border deserve to be treated like everybody else.

Could the Assistant Minister get serious and tell us why the PC, the DC and everybody else asked us to use CDF money to construct that nicely built structure if they did not have the intention of staffing it? Do we have parallel governments in this country?

Mr. Munya: Mr. Speaker, Sir, I have already explained the reasons why the structure cannot be upgraded to a police station. When it was constructed, the hon. Member never consulted the District Security Intelligence Committee which is required to be consulted to give a go-ahead. He only consulted the PPO, who went and inspected the structures and he saw that the buildings have no ceilings as per the standards that are required by the police. There is no piped water. In fact, there is no source of water. The nearest source of water is one kilometre away!

The ten rooms lack other amenities that are required for police families to live in. There are no kitchens and sitting rooms. There are just rooms. The administration block and the rooms were found to be inadequate. Also, the land on which the structure sits on does not belong to the Government. It belongs to the county council. The land is under a dispute.

Since January this year, only two crimes have been reported and adequately handled by the police. Four kilometres away from this site, there is a police station on the side of Butere. Then about 12 kilometres away, we have another police station. Following the regulations, it is not possible to make this a police post.

Mr. Midiwo: Mr. Speaker, Sir, this is despicable! If a police station is 12 kilometres away-

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Mr. Speaker: Order, Mr. Midiwo! Use acceptable language in the House! I am sure you will be more effective when you are polite and civil.

Mr. Midiwo: Mr. Speaker, Sir, I am sorry. The Assistant Minister has said that the nearest police station to Got Regea is 12 kilometres away. How does he expect our people to report simple crimes? Would he expect them to walk 12 kilometres away to Butere, which is in another province? The nearest police station to that place is in Siaya, which is about 30 kilometres away. That is the reason why we need a police post.

For the information of the Assistant Minister, we were told that the only reason that the post could not be staffed was because there was no running water. We have used CDF money to connect piped water to that institution. The Malanga-Sidindi water pipe goes right through the

middle of that piece of land. The Assistant Minister has also said that the piece of land is inadequate, whereas it is half an acre. It will also benefit us if the Assistant Minister tells this country where police officers live in houses with bedrooms and living rooms. He is really not being respectful to the police fraternity.

Mr. Munya: Mr. Speaker, Sir, I have already explained the reason why we cannot turn these structures into a police station. It is advisable that when you want to put up a police station you consult the relevant authorities, so that you can construct it according to the standards that are required. If Mr. Midiwo fulfils these conditions; resolve the land dispute on the piece of land and provide adequate facilities, then we will consider his request.

In any case, I have said that there is a police patrol base four kilometres away from this site.

Mr. Speaker: Mr. Assistant Minister, can you not make it a patrol base rather than a police post?

Mr. Munya: Mr. Speaker, Sir, it is possible to make it a patrol base of the Yala Police Station because officers from this station have been patrolling the area. It is easier than trying to turn it into a police post.

Mr. Syongo: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House and the Kenyan public? At the Industrial Area Police Station, two officers are living in one small cubicle with no running water and no sitting room. Is he in order to mislead the country and this House to believe that, that is the reason why he cannot staff that particular facility, which is much better than the Industrial Area Police Station?

Mr. Munya: Mr. Speaker, Sir, what the hon. Member has said is very true. That is why the Government is very reluctant to gazette more police stations before providing adequate facilities in the existing ones. Last time, I read a list of all the houses that we are building for police officers. Even in Nairobi alone, it is a big challenge. If we allow structures to be put up everywhere, where there are no facilities and the budget that has been provided is not enough, we will not cope.

Mr. Midiwo: Mr. Speaker, Sir, I would accept if the Assistant Minister is agreeing to make this post a police patrol base. All we need are police officers to guard us. This is at the border between Western and Nyanza provinces and criminals cross over. People from Nyanza cross over and kill people in Mr. Arungah's constituency and vice-versa. Once they kill, you would have to go to Butere, which is not near the border.

Last year, the Minister for Finance told us that we needed to use the CDF money to construct police facilities. That is exactly what we have done. Why are we being condemned?

Mr. Speaker, Sir, could the Assistant Minister, kindly, stop misleading the House and tell me that he is agreeing to my request to, at least, give us some security personnel? I believe that what we have built there is better than most police stations or structures which the Government has built.

Mr. Munya: Mr. Speaker, Sir, I have already agreed that I will recommend to the Police Commissioner to make it a patrol base since it does not have adequate facilities to make it a police post.

Question No.478

DEMARCATON OF COMMON BOUNDARY FOR
NYANDARUA/KAIMBAGA PLOT OWNERS

Mr. Speaker: I am sure Eng. Muriuki is not here. I will defer his Question.

(Question deferred)

That concludes Question Time!

POINT OF ORDER

DEATHS OF KURESOI RESIDENTS FROM MYSTERIOUS DISEASE

Mr. Cheboi: On a point of order, Mr. Speaker, Sir. I had asked for a Ministerial Statement, which was supposed to be given today.

Mr. Speaker: On that strange disease?

Mr. Cheboi: Yes, Mr. Speaker, Sir.

Mr. Speaker: But I thought the Assistant Minister had said that he would issue the Statement on Tuesday! Or are you ready, Dr. Machage?

MINISTERIAL STATEMENT

DEATHS OF KURESOI RESIDENTS FROM MYSTERIOUS DISEASE

The Assistant Minister for Health (Dr. Machage): Mr. Speaker, Sir, this is a Statement in response to Mr. Cheboi's request over the deaths of two citizens in his constituency from a mysterious disease.

The Ministry of Health has received reports of deaths of two women in Kuresoi area of Molo District between 15th and 16th September, 2007. Both had fever, headache and difficult in breathing and they died before they could get medical attention in health facilities. A third lady who presented the same symptoms and conditions was treated for malaria and recovered fully. A medical team sent to the area by the Rift Valley Provincial Medical Health Officer confirmed the deaths of the two adult ladies and obtained details on these cases as follows:-

One of the victims, a 22-year-old lady, fell sick on 15th September, 2000, with headache, fever and chest congestion. She died at home on 16th September, 2007, before seeking medical treatment. The second victim, a 31-year-old lady, had complained of fever and difficulty in breathing that started on 14th September, 2007. She died on 15th September while on her way to a health facility. The third victim, who presented the same symptoms seen in the two deceased women, was a 17-year-old school girl. She had complained of headache and joints pain from 16th September, 2007. She was seen in a private health facility where she was treated for clinical malaria. She responded well to treatment and has since recovered fully.

No other cases have been reported in the area and none of the victims had travelled out of the area in the recent past. Initial analysis of the deaths of the two women undertaken by the technical officers in the Ministry indicate that they are unlikely to have been caused by viral haemorrhagic fevers like *Ebola*. There have also been no reports of livestock deaths in the area thus making the Rift Valley Fever an unlikely cause. Blood samples have, however, been collected and are being tested to determine the causative agent. The results will be announced in three days time from today.

Mr. Speaker, Sir, besides the laboratory analysis of specimen from the deceased women to determine the cause of the deaths, other actions the Ministry is pursuing to contain the disease include the following:-

One, heighten disease surveillance in the Kuresoi area. The medical team present on the

ground has been put on high alert with instructions to promptly report cases that present symptoms similar to those of the deceased women. This is meant to facilitate rapid response.

Two, health facilities in Kuresoi have been stocked with adequate supplies of drugs to manage common diseases in the locality.

Mr. Speaker: Mr. Cheboi, do you have any clarification you would like to seek?

Mr. Cheboi: Mr. Speaker, Sir, first, I would like to sincerely thank the Ministry of Health, and the Assistant Minister in particular, because of the quick response. As at yesterday, there were more than eight personnel within the area trying to take samples and do what they could. However, I would like to request the Ministry to consider sending personnel to Ndoinet Dispensary because there is only one officer there and to gazette Kiptororo Dispensary. The roads are very bad and I am sure---

Mr. Speaker: Order, Mr. Cheboi! Please, sit down! The reason why I gave you the Floor last time is because of the questions you raised about a strange disease, which the Assistant Minister has replied to. I am now asking you to seek clarification from the Assistant Minister in respect of that disease and nothing else!

Mr. Cheboi: Mr. Speaker, Sir, arising from what the Assistant Minister has [**Mr. Cheboi**] said that those particular victims had not travelled outside the constituency for a long time--- This particular part of the constituency is very cold making it unlikely to have cases of malaria unless the victims had travelled outside the constituency. Could the Assistant Minister consider moving very quickly to confirm that this particular disease--- In my own opinion, although I am not a doctor, it is unlikely that we have cases of malaria in that particular area. We have never had such cases because we do not have mosquitoes.

Mr. Sungu: Mr. Speaker, Sir, allow me to congratulate the Assistant Minister for the quick and capable response even on the day the Ministerial Statement was sought. This underlines the reason why we need to have professionals in charge of Ministries. Nevertheless, my concern is that we now have, in the world, a lot of strange diseases like Bird Flu, *Ebola* and so on. I want the Assistant Minister to assure this House and the nation at large that there are adequate measures, particularly at the border entry points, to ensure that these diseases are detected early enough before they reach our people, if at all they were to come in our direction.

Prof. Oniang'o: Mr. Speaker, Sir, I have heard the hon. Member talk about *Ebola*. Tanzania has already raised an alert between it and the Democratic Republic of Congo (DRC) where cases of *Ebola* victims have been reported. I am wondering if the Assistant Minister could tell us whether we, truly, have a strategy to curb an *Ebola* outbreak in this country. This is because it is a disease that kills quickly and it is highly contagious.

The Assistant Minister for Health (Dr. Machage): Mr. Speaker, Sir, the whole of Kenya has malaria. So, whether you come from a very cold area or not, mosquitoes are everywhere in this country. Sometimes the mosquito bites are not from the very area where the disease is noted. A patient could have been bitten by a mosquito, say, 11 days ago. The incubation period for malaria parasites to exhibit themselves as malaria is 14 days. So, you cannot really tell unless you really know that the patient had not visited a lowland area within those two weeks.

Mr. Speaker, Sir, however, we take serious interest in all fevers and, more so, in patients who show signs of haemorrhage at death although it is also known that haemorrhage at death could be a normal phenomenon in some deceased bodies. We know that, as late as July, 2007, Uganda reported cases of Marburgh disease. We know that we have reported cases of *Ebola* in Congo, but we have an adequate system to rule out these diseases with regard to the cases that have been mentioned here. I mentioned it here in the last Statement that I made and allayed anxiety among Kenyans that, really, it was very remote to think of *Ebola*. However, the news media reported otherwise.

Mr. Speaker, Sir, we are aware of constant movement of people from Central Africa, particularly from the Congo Basin, to East Africa. We have put in place strong mechanisms to follow all people coming from the Congo Basin to this country. Those people are checked and asked relevant questions that may tell us whether they are infected or not.

The *Ebola* and Maburg diseases and others in that group, which include the Yellow Fever, Kalaazar Fever and so on are actually diseases with a very short incubation period. Fevers arising from these diseases usually depict in a very short period and so you can sort out these at the point of entry. They do not have a long incubation period like malaria and other diseases that are parasitic in nature. These are viral diseases with a very short incubation period. Of course, we have other differentials that we have to rule out. The Rhino Virus infection, which includes the common cold, could also present itself in the same manner.

POINT OF ORDER

KILLING OF SUSPECTED CRIMINALS FROM KENYA BY TANZANIAN POLICE

Mr. G.G. Kariuki: On a point of order, Mr. Speaker, Sir. Last week, I requested a Ministerial Statement from the Minister for East African Community on the killing of 14 suspected Kenyans in Tanzania.

Mr. Speaker: Is the Minister for East African Community here? Is there any Minister who is ready with it? Your Excellency the Vice-President and Minister for Home Affairs, what can we do about it?

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I thought I saw hon. Dr. Khalwale in the Chamber! I will have to convey the message to the Ministry.

Mr. Speaker: Very well! Thank you!

Hon. Members, that concludes all matters other than business of the House.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE LABOUR INSTITUTIONS BILL

The Temporary Deputy Chairman (Mr. Khamasi): Order, hon. Members! We are in the Committee of the whole House to consider the Labour Institutions Bill.

(Clause 2 agreed to)

Clause 3

The Temporary Deputy Chairman (Mr. Khamasi): We have notice of amendments by the Minister.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, the amendments to Clause 3 are intended to accommodate the hon. Members---

The Temporary Deputy Chairman (Mr. Khamasi): Order! First of all move the amendment then you can proceed to explain!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move---

The Temporary Deputy Chairman (Mr. Khamasi): Then you should proceed to explain your reasons for wanting the amendments. I think we should deal with it bit by bit so that everybody is with us.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, Clause 3 is on page 327. The amendments to Clause 3 are intended to accommodate the hon. Members views on the need for harmonization---

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Minister! Since the clause is in many parts and it ranges from (a), (b), (c) and so on, we should dispose of each part as we go on. So, you will start with Clause 3(a), (b), (c) and (d) in that sequence.

Mr. Muite: On a point of order, Mr. Temporary Deputy Chairman, Sir. I rise to seek your guidance on how we should proceed so that we are quite clear and we are not confused. You notice that Dr. Manduku is also moving amendments to Clause 3. If you look at page 543, for example, the definition of the employer by the Minister there; which is also the definition of the employer in the amendments proposed by Dr. Manduku. So, I am appealing that we be guided so that there is harmonization. I assume that if we have to pass Dr. Manduku's amendments, it may not be necessary to move the amendments by the Minister and vice-versa. We need your guidance!

The Temporary Deputy Chairman (Mr. Khamasi): Yes, Mr. Muite, you are right. You will appreciate my directive that we want to do each section on its own because what you have referred to as the definition of the employer by the Minister comes much later. The Committee's amendment comes in part (b). So, when we get to (b) we will deal with Dr. Manduku's proposed amendment first, then if that makes a difference, we shall deal with it when we come to it. So, we will start with part (a) first then we proceed to part (b) and then we shall ask Dr. Manduku to move his amendment. So, Minister we will start with part (a).

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, in part (a), we have altered the definition of the term "employer" to include---

The Temporary Deputy Chairman (Mr. Khamasi): No! No! It is "collective agreement". If you look at the Order Paper, in part (a) it is talking about "collective agreement".

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, there was no amendment there.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, are you using the Order Paper? It is on page 542 of the Order Paper.

Mr. Sungu: Could I assist the Minister?

The Temporary Deputy Chairman (Mr. Khamasi): No, you cannot!

Mr. Minister, are you using the right Order Paper?

The Minister for Labour and Human Resource Development (Dr. Kulundu): There are so many papers here!

The Temporary Deputy Chairman (Mr. Khamasi): Look at page 542 on the Order Paper.

It is the second page.

*(Dr. Kulundu consulted the
Clerk-at-the-Table)*

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, sorry for that confusion. I think I was using a wrong Order Paper.

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

THAT, Clause 3 be amended-

(a) by deleting the definition of the term "collective agreement" and substituting therefor the following new definition-

"collective agreement" means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employer's organization."

Mr. Temporary Deputy Chairman, Sir, in part (a) we are deleting the definition of the term "collective agreement" and substituting therefor the definition "collective agreement". This means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employer's organizations."

(Question of the amendment proposed)

Mr. Sungu: Mr. Temporary Deputy Chairman, I have the Bill as well as the amendment. The Minister has not given us an explanation as to why he wants to make that change in the definition of "collective agreement". I do not see any difference. It is just a matter of juggling words. What is the reason for changing it?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, the reason for changing the term "collecting agreement" is that, in the past, the definition of "employer" was not very clear, as you can see down there. That is what hon. Muite has also said. The definition of the employer would be clearer. We shall also register those agreements.

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

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

(Clause 3(a) as amended, agreed to)

The Temporary Deputy Chairman (Mr. Khamasi): *Bw.* Minister, we shall move on to Clause 3(b).

Clause 3(b)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, in the definition of the term "contract of service" by deleting the words "to

which Part X1 of the Employment Act applies" and substituting therefor the words "made within Kenya and to be performed in full or in part outside Kenya, and any contract for service with a foreign State, except a contract for service entered into with, by or on behalf of the Government."

(Question of the amendment proposed)

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

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

(Clause 3(b) as amended agreed to)

Clause 3(c)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3(c) of the Bill be amended by deleting the definition of the term "Deputy Principal Judge".

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I rise to support the proposal by the Minister. I can see that his intention is to do away with the clause that deals with persons styled and named as "Deputy Principal Judge", so that we only have a judge.

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

(Clause 3(c) as amended agreed to)

The Temporary Deputy Chairman (Mr. Khamasi): Hon. Members, the issue of the "employer" is in Clause 3(d). On page 562, there is a similar notice of amendment by Dr. Hezron Manduku.

Dr. Manduku, you will start with the "employee". We will dispose of it and then go to Clause 3(d), which is about the "employer".

Clause 3(a)

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

THAT, Clause 3(a) of the Bill be amended by deleting the definition of the term "employee" and substituting therefor the following new definition-

"employee" means a person who has been employed for wages or salary and includes apprentice or indentured learner";

Mr. Temporary Deputy Chairman, Sir, my Committee brought this amendment because in

the Bill, an "employee" means an employee as defined in the Labour Relations Act. We do not have a Labour Relations Act. Therefore, we cannot make reference to an Act which is non-existent. That is why I have brought in a definition of an "employee".

(Question of the amendment proposed)

The Minister for Labour and Human Resource Development (Dr. Kulundu):
Mr. Temporary Deputy Chairman, Sir, I do not oppose.

The Temporary Deputy Chairman (Mr. Khamasi): You are in agreement?

Yes, Mr. Sungu!

Mr. Sungu: Thank you, Mr. Temporary Deputy Chairman, Sir. Whereas I agree with the amendment by the Committee, and I support it wholeheartedly, it is not so clear. The Chairman of the Committee is a medical doctor. What does the word "indentured" mean? Could Dr. Manduku explain what that word means because I know the meaning of the word "apprentice!" We do not want to make laws that we do not understand! Would you kindly clarify it?

The Temporary Deputy Chairman (Mr. Khamasi): Yes! Dr. Manduku, do you want to try that? What do you want to say?

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I want to say that even the people who are seconded there for learning can also be called "employees".

(Question of the amendment proposed)

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

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

(Clause 3(a) as amended agreed to)

Clause 3(b)

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

THAT, Clause 3(b) of the Bill be amended by deleting the definition of the term "employer" and substituting therefor the following new definition-
"employer" means any person, including the Government, who employs or has employed an employee and where appropriate includes-

(a) an heir, successor, assignee or transferor of an employer; or,

(b) an agent, director, manager or employee authorised to represent an employer".

Mr. Temporary Deputy Chairman, Sir, the Bill is making reference to an Act which is non-existent.

(Question of the amendment proposed)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, whereas I do not violently disagree with the Chairman of the Departmental Committee on Health and Labour, the question of "heir" might lead to changes in

terms and conditions of service; "heir", "successor", "assignee" or transferor". So, we must keep in mind that, that might cause some changes in the terms and conditions of service. I, therefore, oppose that proposal on those grounds.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I would like to support the amendment by the Committee, because we know of cases where people employ Kenyans, then they run away and leave the company they had, to other people, and it is said that those other people are not responsible any more. Yet there are employees who have not been paid for a long time. I do not understand why the Minister would oppose such a noble amendment by the Committee.

I beg to support and urge other hon. Members to support this amendment by the Committee.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I think, elsewhere within this law that we are passing for the Minister, this concept of an heir, a successor or an assignee of a contract of employment, or an employer's status, has been captured. I also want to agree and urge the Minister not to oppose this. It is actually a very noble idea by the Committee.

I, therefore, support the Committee's proposal.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I have no quarrel with what is shown in (a), but, in (b), the question is whether a manager can be an employer, unless he is authorised to represent the employer, so that we avoid transferring the responsibility of an employer to employees. I think the way (b) is, it is not very clear that the manager will be authorised. Why not delete and write "or any person authorised to represent an employer". Then it would be clearer that it is any person authorised. May I, with your permission, propose a further amendment to the amendment that we delete the word "manager or

employee" and in its place state "any person authorised to represent an employer for the sake of clarity, so that we do not assign responsibility to other employees?"

The Temporary Deputy Chairman (Mr. Khamasi): Can I take it that you have given notice of an amendment?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I thought that for an amendment to an amendment, I need not give notice.

The Temporary Deputy Chairman (Mr. Khamasi): Oh yes, you need to! I can take it that you have given notice.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Thank you, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Khamasi): This is an amendment to the amendment as proposed by Ms. Karua.

*(Question of the further amendment
proposed)*

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

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

The Temporary Deputy Chairman (Mr. Khamasi): Now we will go to the amendment by Dr. Manduku.

(Dr. Manduku stood up in his place)

Order, Dr. Manduku! You do not need to say much about it! I want to put the Question.

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

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

(Clause 3(b) as amended agreed to)

The Temporary Deputy Chairman (Mr. Khamasi): Then we will go back to page 543, Clause 3(d). We are talking about the same clause, Mr. Minister. Do you want to argue your case on that one or do we take--- It has been overtaken by events! Is that not so? Let us deal with the Minister. Mr. Minister, you will have to withdraw your proposal in (d).

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, both (d) and (e) have been overtaken by events and I, therefore, ---

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

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, only (d) has been overtaken by events and I wish to withdraw the amendment.

(Part (d) of the amendment withdrawn)

Clause 3 (e)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended -

(e) by deleting the definition of the term "employers organization" and substituting therefor the following new definition -

"Employers organization" means any number of employers associated together for the purpose whether by itself or with other purposes, of regulating relations between employers and their employees or the trade unions representing those employees".

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I support because what the Minister has done now is that he has complied with the law, and has defined what an employers organization is. Previously, he was being lazy by making references to a non-existent law.

We, therefore, support!

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

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

(Clause 3(e) as amended agreed to)

Clause 3(f)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended -

(f) in the definition of the term "employment record" -

(i) by deleting the word "the" appearing in the second line and substituting therefor the word "an";

(ii) by deleting the words "under Part IX of the Employment Act";

(Mr. Muturi stood up in his place)

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Minister!

Mr. Muturi: Sorry, Mr. Temporary Deputy Chairman, Sir. It is not to interrupt the Minister; it is just to put things in order. In the Bill, the term "employment agency" is at page 328, and the term "employment record", which the Minister is now proposing to amend, is at page 329. Dr. Manduku's Committee has proposed an amendment to the definition of the term "employment agency", which comes before the term "employment record".

The Temporary Deputy Chairman (Mr. Khamasi): We agreed that we will go in sequence; so, what comes first we deal with it first.

Clause 3(c)(i)

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

THAT, Clause 3 of the Bill be amended -

(c) in the definition of the term "employment agency" -

(i) in paragraph (a) by deleting the words "or supplying a worker to an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker" appearing after the word "worker" in the fourth line".

(Question of the amendment proposed)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, what my friend, Dr. Manduku, is suggesting has not been fully understood by me. I think it would be proper for him to repeat a few things, because what he was saying was not very--- We could not hear it through the public address system very well.

The Temporary Deputy Chairman (Mr. Khamasi): You are asking that he repeats what

he was saying? Dr. Manduku, could you repeat it, and be a little bit more clear? Explain the reasons for your amendment.

Clause 3(c)(ii)

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 3(c) be amended-

(ii) in paragraph (b) by inserting the word "of" immediately after the word "placing" appearing in the second line;

Mr. Temporary Deputy Chairman, Sir, this talks about some people who behave as agents and they deprive either the employer or the employees of benefits which are not directly or indirectly involved in their employment. These are the people we want to get rid of using this amendment.

(Question of the amendment proposed)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you, Mr. Temporary Deputy Chairman for giving me an opportunity to listen to him for the second time. I wish to state that his amendment is acceptable to me.

The Temporary Deputy Chairman (Mr. Khamasi): Very well!

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

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

(Clause 3(c)(i)(ii) as amended agreed to)

Clause 3(f)

The Temporary Deputy Chairman (Mr. Khamasi): We are now on the Minister's amendment on "Employment Record" on page 543 of the Order Paper.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, Clause 3 (f) of the Bill be amended -
in the definition of the term "employment record" -

(i) by deleting the word "the" appearing on the second line and substitute it therefor the word "an";

(ii) by deleting the words "under Part IX of the Employment Act";

(Question of the amendment proposed)

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

(Question, that the word to be inserted)

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

(Clause 3(f) as amended agreed to)

Clause 3(c)(ii)

The Temporary Deputy Chairman (Mr. Khamasi): We will now go back to Dr. Manduku's amendment on page 563 of the Order Paper.

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

THAT, Clause 3(c)(ii) be amended-

in paragraph (b) by inserting the word "of" immediately after the word "placing" appearing in the second line;

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, that is acceptable to me.

The Temporary Deputy Chairman (Mr. Khamasi): First of all, procedurally, I have to propose the Question, and then you can state what you want to say.

(Question of the amendment proposed)

Proceed, Mr. Minister!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, that amendment is acceptable to me.

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

(Clause 3(c)(ii) as amended agreed to)

Clause 3(g)

The Temporary Deputy Chairman (Mr. Khamasi): We will now move to Clause 3(g) of the Labour Act on page 543.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3(g) of the Bill be amended-

by deleting the definition of the term "Labour Act" and substituting therefor the following new definition.

"labour law" means any Act dealing with labour matters;

(Question of the amendment proposed)

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

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

(Clause 3(g) as amended agreed to)

Clause 3(h)

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, you will move on to your amendment in "h."

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you, Mr. Temporary Deputy Chairman, Sir. I beg to move:-

THAT, Clause 3(h) of the Bill be amended -

by deleting the definition of the term "Labour Commissioner" and substituting therefor the following new definition -

"Commissioner for Labour" means the Commissioner for Labour appointed under Section 42";

(Question of the amendment proposed)

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

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

(Clause 3(h) as amended agreed to)

Clause 3(d)

The Temporary Deputy Chairman (Mr. Khamasi): We will now move on to--- Does the amendment on the word "federation" come before the amendment concerning the "Labour Act?"

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

THAT, Clause 3(d) of the Bill be amended-

in the definition of the term "federation."

(i) by inserting the word "registered" immediately after the word "a" appearing in the first line";

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, with your permission, given that we are now dealing with Clause 3(d), I think it would save us time if we dealt with parts (i), (ii) and (iii) so that we dispose of that bit and we do not go over it again because they are the same.

The Temporary Deputy Chairman (Mr. Khamasi): Dr. Manduku, could you deal with parts (i), (ii) and (iii) at a go?

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

THAT, Clause 3(d) of the Bill be amended by in the definition of the term "federation"-

(i) by inserting the word "registered" immediately after the word "a" appearing in the first line;

(ii) by inserting the word "organisation" immediately after the word "employers" appearing in the second line;

(iii) by deleting the words "registered" under the Labour Relations Act" appearing at the end thereof;

(Question of the amendment proposed)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I would like to accept the amendment proposed by Dr. Hezron Manduku. It really does not change the content very much.

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

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

(Clause 3(d) as amended agreed to)

Clause 3(i)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3(i) of the Bill be amended by inserting the following new definition in the proper alphabetical sequence "medical officer" means:-

Cap 253 (a) a medical practitioner who is registered and licensed under the Medical Practitioners and Dentist Act; or

Cap.242 (b) a medical officer of a local authority appointed under the Public Health Act.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, I would suggest that, so that we move first, just propose the amendments as per the Order Paper.

(Question of amendment proposed)

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

(Clause 3(i) as amended agreed to)

Clause 3(j)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3(j) of the Bill be amended by deleting the definition of the term "National Labour Court" and substituting therefor the following new definition:-
"Industrial Court" means the industrial Court established under Section 11.

(Question of amendment proposed)

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

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

be inserted, put and agreed to)

(Clause 3(j) as amended agreed to)

Mr. Muturi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Once again, I think Dr. Manduku maybe in bed. Before the Minister moved the first amendment, in the Bill "Trade Union" comes before the "National Labour Courts". It is good we have dealt with issue of National Labour Courts. I think Dr. Manduku could move the amendment on Trade Unions.

The Temporary Deputy Chairman (Mr. Khamasi): It is on which page, Mr. Muturi? Okay, on page 563 item "e". It comes before?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, it comes before the "National Labour Courts".

The Temporary Deputy Chairman (Mr. Khamasi): Proceed, Dr. Manduku!

Clause 3(e)

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 3(e) of the Bill be amended by deleting the term "trade union" and substituting therefor the following new definition:-
"trade union" means an association of employees whose principal purpose is to regulate relations between employees and employers, including an employers organization.

(Question of amendment proposed)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, that is acceptable to me.

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

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

(Clause 3(e) as amended agreed to)

The Temporary Deputy Chairman (Mr. Khamasi): I think that this comes before the National Labour Courts Mr. Minister, I am sorry you will have to repeat, so that we are in sequence. "Trade Union" comes before the "National Labour Courts".

Mr. Minister, I will, therefore, want you to, again, move your amendment as shown on the Order Paper page 544 for Clause 3(j)!

Clause 3(j)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3(j) of the Bill be amended by deleting the definition of the term "National Labour Court" and substituting therefor the following new definition:-

"Industrial Court" means the Industrial Court established under section 11.

(Question of amendment proposed)

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

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

(Clause 3(j) as amended agreed to)

Clause 3(k)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3(k) of the Bill be amended by deleting the definition of the term "redundancy" and substituting therefor the following new definition:-

"redundancy" means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous as a result of practices commonly known as abolition of office, job or occupation".

The Temporary Deputy Chairman (Mr. Khamasi): I will now put the Question which is that---

Mr. Ligale: On a point of order, Mr. Temporary Deputy Chairman, Sir. I thought you are supposed to propose rather than put the Question!

The Temporary Deputy Chairman (Mr. Khamasi): I was proposing?

Mr. Ligale: No! You were actually saying you are "putting" the Question!

The Temporary Deputy Chairman (Mr. Khamasi): I am sorry! That is why you are there to remind me! Thank you very much for reminding me!

(Laughter)

(Question of amendment proposed)

Mr. Ligale: Mr. Temporary Deputy Chairman, Sir, I notice that in this new definition, the Minister has gone to great trouble to define "redundancy" whereas in the original Bill, it is as defined under the Employment Act. Was there any shortfall? I do not have the advantage of having the Employment Act with me here. Was there a problem in the definition of "redundancy"?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, in the previous Act, actually the word "redundancy" was being misused by employers. They were declaring people redundant without necessarily referring to the Ministry. This new definition means that there has to be a fault on the part of the employee. There has to be termination of employment at the initiative of the employer, where the services of an employee are superfluous, as a result of practices commonly known as abolition of office, job or occupation.

The Temporary Deputy Chairman (Mr. Khamasi): Dr. Kulundu, I think what Mr. Ligale wanted to know is: Why did you define this? What was the necessity for this definition? That is how I understood him!

Mr. Ligale: Mr. Temporary Deputy Chairman, Sir, perhaps, before the Minister deals with it, let me just explain myself a little more. As far as I know, the Employment Act is still in force. The fact that we have had to take trouble and define "redundancy" in this particular clause as opposed to using what is in the Employment Act-- Would that mean that the Minister is going to bring an amendment to the Employment Act as soon as possible? What is the position?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I have had the liberty to debate all the five Bills that the Minister has tabled. This is the first one. Among those Bills, there is one that is going to do away with provisions of the Employment Act, Chapter 226 of the Laws of Kenya. This is more comprehensive!

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, in support of the Minister, because we have to be correct here, the definition of "redundancy", which has been misused by employers, is extensive and inclusive. It will protect Kenyan workers who have been abused and misused for a long time.

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

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Syongo, what is it?

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, much as I respect Mr. Sungu's right to comment, I think the real issue that Mr. Ligale is bringing about is: If this is the definition the Minister wants to adopt here, then it must be harmonised, as soon as possible, with the definition of the said term in the Employment Act. Otherwise, we will have a serious conflict. That is the assurance that we want to have from the Minister.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, the Minister---

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Sungu! Please, you have to stop calling the Chair every time you stand!

Mr. Syongo: Forgive him!

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, with due respect, what I said was in furtherance of what my friend, Mr. Muturi said; that certain sections of the Employment Act are going to be abolished by some of the laws we have debated here. Therefore, I am not actually opposing. I was just trying to expound more on that!

The Temporary Deputy Chairman (Mr. Khamasi): We have understood that!

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

The Temporary Deputy Chairman (Mr. Khamasi): Dr. Manduku, what is it that you want to say? We have got a long way to go in this Bill!

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I want to respond to the question of the Employment Act. As far as we are concerned, we do not have an Employment Act. What we have are the Bills that have come before this House. There are five Bills - the Employment Bill being among them. So, we should make reference to this major Bill - the Labour Institutions Bill. Therefore, we should refer to this one and not those non-existent ones.

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

The Temporary Deputy Chairman (Mr. Khamasi): Order! Please, let us not confuse ourselves! Let us not mix ourselves up! I thought there was an Employment Act in force already!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, that is true! If he wants---

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Muturi, you had better address the House from the microphone!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, for the information of Dr. Manduku, there exists an Employment Act, Chapter 226 of the Laws of Kenya which, only yesterday, Ms.

Ndung'u was moving an amendment to grant women three months maternity leave and men two weeks paternity leave! So, it exists!

The Temporary Deputy Chairman (Mr. Khamasi): Very well! I want you to vote now! I have got to move!

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

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Odoyo! We are not going to debate this issue again! You will either

throw this one out or you agree on it! I want to put the Question!

Mr. Ligale, you seem not to be comfortable!

Mr. Ligale: Mr. Temporary Deputy Chairman, Sir, if the word "redundancy" has been defined in the Employment Act, which is in existence, all I was asking is whether the Minister could give us an assurance that he is going to harmonise the two Bills by bringing an amendment to the Employment Act, which is still in force. That is all!

The Temporary Deputy Chairman (Mr. Khamasi): Dr. Kulundu, could you do that?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, the purpose of the exercise that we are doing - and we have been doing this for two months now - is to overhaul all those labour laws, including the Employment Act. The word "redundancy" as it appears here, will appear in the new Employment Act.

The Temporary Deputy Chairman (Mr. Khamasi): Very well, I will now put the Question! That is enough!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Not yet, Mr. Temporary Deputy Chairman, Sir! There is also one misunderstanding about the word "redundancy", which I want to clear. The word "redundancy" as it appears in the current Employment Act, in our opinion, as a Ministry, is inadequate. It does not protect workers as it should. Therefore, this is one area where we should be applauded!

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

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

(Clause 3(k) as amended agreed to)

Clause 3(l)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended-

(i) in the definition of the term "Registrar of the National Labour Court" by deleting the words "National Labour Court" wherever they appear and substituting therefor the words "Industrial Court";

(Question of the amendment proposed)

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

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

(Clause 3(l) as amended agreed to)

Clause 3(m)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended-

(m) in the definition of the term "Registrar of Trade Unions" by inserting the words "and includes a deputy registrar or an assistant registrar of trade unions";

(Question of the amendment proposed)

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, I am just looking at the wording of this amendment. This amendment says in part: "includes a deputy registrar or an assistant registrar of trade unions." Should it be "an" or---? I need guidance on whether the word "an" should also be in that particular sentence.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, the point that has just been raised by hon. Odoyo is valid. What we should be saying here is: "and includes a deputy registrar and an assistant registrar of the trade unions". That is because under the deputy registrar, there will be officers that are assistants.

The Temporary Deputy Chairman (Mr. Khamasi): Now, look! We want to be procedural in accordance with the rules of the House. What hon. Odoyo is doing is making an amendment to your amendment. Hon. Odoyo should have brought his intentions to do that in writing, which he has not!

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, there are many occasions when typographical errors occur!

The Temporary Deputy Chairman (Mr. Khamasi): This is not a typographical error! Please, do not confuse the Chair! The Chair is not capable of being confused!

(Laughter)

This is not a typographical error! You are making an amendment and the Minister is agreeing with it.

Mr. Odoyo: Yes!

The Temporary Deputy Chairman (Mr. Khamasi): So, if it is the wish of the House, then I will let you make that amendment. I will propose and then I will put the question. I want you now, officially, to do so!

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, I am much obliged to your indulgence. May I, with the authority of the Chair and full concurrence of the House, put the following amendment:-

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

THAT, Clause 3(m) of the Bill be amended by deleting the word "or" and substituting therefor the words "and/or".

(Question of the further amendment proposed)

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, whereas that further amendment to the amendment by the Minister does not make much difference--- It amplifies!. Let us, for once, know that we are making laws. These laws are actually subject to a clean-up when they are actually being written. The meaning is not going to be changed by that addition or subtraction. That is because the definition is:-

"includes a deputy registrar or an assistant registrar of trade unions".

In other words, those two officers will have the capacity to act as the Registrar of Trade Unions. So, there is not much difference you are making here. In the interest of time, I will support the further amendment. But I would like to urge hon. Members to proceed as quickly as we can, because these things have been looked at by competent people.

(Question of the further amendment, that the word to be left out be left out, put and agreed to)

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

The Temporary Deputy Chairman (Mr. Khamasi): I will now go back to the original amendment by the Minister. I will put the Question.

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

(Clause 3(m) as further amended agreed to)

Clause 3(n)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3(n) of the Bill be amended by deleting the definition of the term "subordinate national labour court";

That is because we have deleted the national labour court.

(Question of the amendment proposed)

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

(Clause 3(n) as amended agreed to)

(Clause 3 as amended agreed to)

Clause 4

The Temporary Deputy Chairman (Mr. Khamasi): We have received quite a number of notices for amendments. The first one is by the Minister.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Khamasi): Order! Order, Mr. Minister! If what Dr. Manduku wants to do is carried by the House, it will really end what you want to do! It is on page 563. If you can look at it--- We will start with Dr. Manduku's amendment.

Proceed, Dr. Manduku!

Mr. Manduku: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 4 of the Bill be deleted.

Mr. Temporary Deputy Chairman, Sir, the reason for that is that the institutions involved are also covered by the Constitution of Kenya and, therefore, this clause will be in contravention of the Constitution of Kenya.

The Temporary Deputy Chairman (Mr. Khamasi): How are they contravening the Constitution?

Mr. Manduku: Let me read them!

The Temporary Deputy Chairman (Mr. Khamasi): If you have got the original Bill, it is on page 331. Is that not so?

Mr. Manduku: Clause 4 reads as follows:-

4.(1) this Act shall not apply to-

- (a) the armed forces or the reserve as respectively defined in the Armed Forces Act;
 - (b) the Kenya Police, the Kenya Prisons Service or the Administration Police Force;
- and,
- (c) the National Youth Service, but subject to the foregoing, the Act shall bind the Government.

Because all those are arms of the Government, we do not need to apply them here. That is because the Government does not have to head into trade union business and, therefore, we want to say the whole of this clause be deleted.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Khamasi): Yes, Mr. Odoyo! Have the first shot!

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, I oppose that amendment. Indeed, the Government has a Civil Servants Union. But those are specialised arms of essential services. The exclusion is to particularly address that particular point.

(Applause)

By deleting Clause 4 as the hon. Member is proposing, we shall be leaving a gap that may be abused in future.

I beg to oppose the amendment by Dr. Manduku.

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I just want to elaborate on the point that hon. Odoyo has raised. There are various other service commissions which are not affected, for example, under the Armed Forces Act. They include the Public Service Commission and the Teachers Service Commission. These service commissions allow for trade unions. Therefore, if we

delete this clause, we will be doing a disservice to those who are serving under the other service commissions. So, if the Minister had in mind, specifically, that this does not apply to those employed under the Armed Forces Act, so be it. But we should allow those employed under those other service commissions to be embraced by the provisions of this proposed amendment.

The Temporary Deputy Chairman (Mr. Khamasi): Are you making another amendment?

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I am opposing the proposed amendment.

The Temporary Deputy Chairman (Mr. Khamasi): Very well! Let us hear from the Minister!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I agree with hon. Syongo that, indeed, these other service commissions are governed by their own Acts. Therefore, deleting this clause would not be quite right. So, I propose that Clause 4 be amended as it appears on the Order Paper.

The Temporary Deputy Chairman (Mr. Khamasi): No! We are dealing with the proposal by Dr. Manduku. So, if you oppose it, just do it! If it fails to be carried by the House, then I will give you an opportunity to move your amendment. So, you oppose it?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I oppose the proposed amendment by Dr. Manduku.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, the deletion of the entire Clause 4 would be very dangerous!

The Temporary Deputy Chairman (Mr. Khamasi): So, you are opposing it?

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I am opposing that deletion, and I want to give my reasons. Security is of major importance. We believe that the various arms of the Kenya Armed Forces have their own Acts which guide them as to where their labour issues can be taken. We cannot envisage a situation where there is a trade union in the Kenya Army or the police, because one day of closure of their business means insecurity for us all.

On those grounds, I beg to oppose and hope that Dr. Manduku will understand and withdraw his amendment.

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I would like to withdraw my proposed amendment for the reasons that have been put forward by the hon. Members.

(Applause)

Mr. Temporary Deputy Chairman (Mr. Khamasi): Very well! It is noted that you have withdrawn your amendment.

(Amendment withdrawn)

I will now request the Minister to move his proposed amendment.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended-

(a) in subclause (1) by deleting the words "but subject to the foregoing, the Act shall bind the Government."

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, whereas I have no problems with the

amendment by the Minister in "b", I want to understand from him why he want to delete the part that says "but subject to the foregoing, the Act shall bind the Government." Why would he want the Government not to be bound by the provisions of this Act, yet, we have already said public bodies including the Government---

When we were giving definitions, the Government would be bound by those kind of agreements. Why would the Minister want to exclude that from the provisions of the Act? I would want to plead with him that he reconsiders part "a" of his proposed amendment.

Mr. Temporary Deputy Chairman (Mr. Khamasi): I think we will deal with part "a" of the proposed amendment first and dispose it and then move on to part "b."

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir!

The Temporary Deputy Chairman (Mr. Khamasi): I said the eyes of the Chair look everywhere! It does not need to be called!

Yes, Mr. Minister!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I oppose Clause 4.

The Temporary Deputy Chairman (Mr. Khamasi): No, it is you who is moving it! You cannot move an amendment and oppose it! Let us get the act right, Mr.

[The Temporary Deputy Chairman]

Minister. You moved an amendment to Clause 4 (a) and we will go to part "b" a little later. Now, I proposed the Question of the amendment and Mr. Muturi stood up to say that he does not see the reason for you to make that amendment and he was persuading you to withdraw it. That is what he was doing. So, are you withdrawing it as persuaded by hon. Muturi or not?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I am not persuaded by hon. Muturi!

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, it is very dangerous to have an Act of Parliament which says that the Government shall not be bound by what is passed in the Act. I believe it is proper that under part "a" of the proposed amendment the Government should be bound by an Act of Parliament. What this is, in my view, trying to do is to provide an escape route for the Government on any judgement of any proper issues that may be raised. I believe that the Government must be bound. I am appealing to the Minister to kindly agree that whereas we may agree with part "b" of the amendment, part "a" presents a problem.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, allow me to apologise that I called the Chair. This is mainly because I am a short man and I---

The Temporary Deputy Chairman (Mr. Khamasi): Order! The Chair knows no short men and tall men!

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, we need the Minister to explain why he is proposing this amendment. He simply moved his amendment without explaining whatsoever what he wants to do. What is the purpose of putting this in the original Bill and then now come to delete the fact that the Government has to be bound by the Act? That is, in my own opinion, unacceptable in the most extreme terms. The Minister, if he needs any assistance, can call any of us to help him, but there are Ministers who can help him. He ought to explain in good detail what he wants us to do, as a House, so that we can pass that amendment.

I oppose that amendment!

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I think this Bill was discussed very broadly. I think it was a product of a lot of consultation. This clause was deliberately put in there; that the Government shall be bound. I think it was even not necessary to put it there because all the Bills that we pass, which become laws, are actually Bills originated from the Government. The Government cannot bring Bills here and then say that they will not bind them, because then there is

no need of Parliament. So, a Government should not bring a Bill which we pass it into law, and then it writes in the same law that when it becomes effective, it will not bind it! It is worthless! So, I suppose that it was not even necessary to put it there because it would have been automatic that an Act of Parliament would bind the Government. But now that it had been put by wide consultation, we wonder why the Minister would now want to withdraw it at this late day. I think it should be left the way it was.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, in the debate which we had during the Second Reading, hon. Members observed that the words, "but subject to the foregoing, the Act shall bind the Government", were unnecessary and, therefore, the need for their deletion. This was the unanimous feeling of hon. Members and we cannot go back to what we decided on. The view prevailing now at the Committee Stage, is derived from what was said during the Second Reading. It was, indeed, the feeling of hon. Members that these words be deleted. The words are, therefore, unnecessary.

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

(Clause 4(1) as amended agreed to)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended-

(b) in Subclause (2) by deleting the words "after consultation with" appearing in the first line and substituting therefor the words "on recommendation of".

Mr. Temporary Deputy Chairman, Sir, the Minister is usually advised by the Board and not *vice-versa*. The Board makes recommendation for the Minister's consideration. If we were to adopt it any other way, it would mean that it is the Minister who should give directions to the Board.

The Temporary Deputy Chairman (Mr. Khamasi): Hon. Members, I will now propose the Question which is that Clause 4 (1)(b) be amended--

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

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Odoyo, I am proposing the Question! Is your point of order on the same issue? Do you want to revisit the debate on it?

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, it is on an issue which we have already passed, but I think there is wrong numbering in the Order Paper. So, there is a bit of confusion. There is wrong numbering in the Order Paper. The Bill and the Order Paper do not match.

The Temporary Deputy Chairman (Mr. Khamasi): What is it that you want to correct, Mr. Odoyo, if I may be advised?

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, Clause 4(1)(a). What is being deleted was purely the last line and not the upper bit.

The Temporary Deputy Chairman (Mr. Khamasi): I am sorry. You are right.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, we wanted to clear that because the issue was, "but subject to the foregoing, the Act shall bind the Government". We were not to include the rest. So, if we pass it *in toto*, we will not really be paying service to the appropriate spirit of what we are trying to pass.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Odoyo, I do not mind revisiting that. The debate was about--

Mr. Odoyo: Being bound by the Government!

The Temporary Deputy Chairman (Mr. Khamasi): Yes! And that is why the Minister

said that this was the wish of the House. That is why it was put in the Order Paper. You are, however, saying that, no, the Government must be bound by all its laws. That is why I put the Question.

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

The Temporary Deputy Chairman (Mr. Khamasi): Order! Once you put the Question on any matter in this House and it is passed, that is done! You cannot go back to it. Those are our rules here! If you were confused, that is too bad! The House has already made its decision! I want to proceed on this matter now.

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

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Syongo! I want you to stand on a point of order that is none other than revisiting this issue. If it is about revisiting this issue, I have already stated our procedures here and the culture of this House. So, we cannot revisit that matter.

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, it has nothing to do with revisiting that matter. It is more of seeking clarification from the Chair.

Mr. Temporary Deputy Chairman, Sir, if you look at the notations in the Bill and in the Order Paper, you will realise that there is a mix-up. All we want, now that we are looking at both of them at the same time, is just a clarification. When we talk about Clause 4(1)(b) in the Order Paper, is it really the same clause appearing in the Bill? It is different! That is all we wanted to sort out so that we know what we are doing!

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

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Sungu! As far as I understand, even if you look at where we have been, even in Clause 3, there are no Subclauses (j), (k) and so on. They are not there. This is just to identify what we are dealing with in terms of the proposed amendments which are being made. So, I do not think we shall relate these notations in the Order Paper to the actual numbering in the Bill.

Mr. Sungu: On a point of order, Mr. Temporary Deputy Chairman, Sir. If I may help, this is very clear to me because I have got both the Bill and the Order Paper. What Dr. Kulundu initially wanted to delete is the entire Clause 4, which we negated because he withdrew it. What the Minister was proposing to amend was Clause 4(1)(a), which is actually the last two lines after (c). That is what he wanted us to delete. We debated the matter and you put the Question, which was carried. So, there is no point of going back. Therefore, the other clauses remain intact!

The Temporary Deputy Chairman (Mr. Khamasi): Precisely! That is my understanding!

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I would urge hon. Members to listen carefully when you put the Question so that they can vote properly. I am sure they were with me, but they did not vote with me!

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

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Odoyo! I do not want that to be introduced again. You will now sit down and keep quiet, Mr. Odoyo!

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

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Odoyo! You will sit down and keep quiet, Mr. Odoyo!

Let us proceed!

(Question of the amendment proposed)

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I respect your ruling on this matter regarding the need for hon. Members to submit to you a written amendment, if they want to

propose any.

Mr. Temporary Deputy Chairman, Sir, we are all, however, in a predicament. None of us had the opportunity to look at this Order Paper in the House in advance so as to move any amendment if necessary. So, because of that, I really would like to seek your indulgence. In Clause 2, if I read it clearly, the Minister is proposing that the provisions of this Bill can actually be excluded from application. They can be suspended on the basis of conventions and other international instruments ratified by Kenya. You know of the recent East African Community (EAC) Treaty saga? Parliament is never involved in the ratification of these conventions. It would be very unfortunate to put conventions, which are not ratified by Parliament, in Bills, or laws, passed by this House. So, my request is that I be allowed to propose an amendment that the entire Subclause (2) be deleted altogether.

(Mr. Odoyo stood up in his place)

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Odoyo, who has given you permission?

Mr. Odoyo: I have stood up so that I can catch your eye.

The Temporary Deputy Chairman (Mr. Khamasi): Now, let us first deal with the issue raised by Mr. Syongo. This is an amendment proposed by the Minister, and I take it that you want to amend it. Do you [**The Temporary Deputy Chairman**]

want to delete the whole of it? If it is deletion, you must reject--- I do not know whether if what the Minister wants to amend is enough to do exactly what you want. So, all you need to do is to oppose it, and you will do away with it. So, you do not need to send me a notice in advance.

Let me hear you, Mr. Odoyo.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, I see the wish of the House that a Board appointed by this House, in so far as we are passing the Bill today, should not be seen to be above Parliament. That is exactly what this particular section is trying to do. It says that a Board can overrule what Parliament has passed! I oppose this particular amendment by the Minister, and support the view that the whole section be deleted.

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

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

(Several hon. Members stood up in their places)

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Mr. Khamasi): Could the Clerk-at-the Table count the hon. Members for me?

Sorry, you have not raised the requisite number.

(Clause 4 as amended agreed to)

(Clause 5 agreed to)

Clause 6

The Temporary Deputy Chairman (Mr. Khamasi): There is a notice of an amendment by the Minister on page 545 of the Order Paper.

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

The Temporary Deputy Chairman (Mr. Khamasi): What is your point of order?

Mr. Sungu: On a point of order, Mr. Temporary Deputy Chairman, Sir. There is nothing out of order, but a matter of procedure. I thought we had agreed that, if there was a further amendment by Dr. Manduku, then we could discuss that first. I refer to page 563. I think there is an amendment by Dr. Manduku to Clause 6. There is an amendment by Dr. Manduku and I thought we would start with that.

The Temporary Deputy Chairman (Mr. Khamasi): While you may be right that we agreed on that, the amendment by the Minister comes before the amendment by Dr. Manduku.

Mr. Sungu: I stand corrected!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir. I beg to move:-

THAT, Clause 6 be amended-

(a) in Subclause (1)-

(i) by deleting the words "of good moral and intellectual standing" appearing in the third and fourth lines;

(ii) by inserting the following new paragraph immediately after paragraph (f)-

(g) the Director of Employment;

(h) the Director of Micro and Small Enterprise Development;

(i) the Director of Occupational Safety and Health Services;

(j) the Director of Industrial Training;

(k) the Registrar of the National Labour Court; and

(l) the Registrar of Trade Unions.

The Temporary Deputy Chairman (Mr. Khamasi): What is your justification?

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I hope that the Minister will agree with me that in part (k) we should delete the words "National Labour Court" and replace them with the words "Industrial Court" in keeping with previous amendments. I hope that the Minister appreciates that. We have previously deleted the words "National Labour Court".

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I am deeply grateful to the hon. gentleman for that correction.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, regarding (h), the Director of Micro and Small Enterprise Development, we do have another department in the Ministry of Trade and Industry which also has, I believe, a Director dealing with micro and small enterprises. I would like the Minister to clarify which Director he is referring to. There is one in his Ministry and there is another one in Dr. Kituyi's Ministry. So as not to cause confusion, he should clarify which Director he is referring to.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, much as I do not agree with the amendment in part (ii), I am rather concerned as to why the Minister would want to have the amendment in (a)(i), which seeks to delete the words "of good moral and intellectual standing" which appear in the original Bill. The Minister has not given us a reason as to why he is proposing this amendment. This is preposterous. It should never happen like this. He proposes the

amendment as per the Order Paper, but does not give us an explanation as to why he does not want to have men of good moral and intellectual standing to be members of the Board. Why?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, on the basis of the passion shown by Mr. Sungu, let me start with his question. What he is talking about is not measurable; it is subjective. "Good and moral standing" may mean something very different from what Mr. Sungu and what Ms. Karua understand them to mean. So, we must have tangible and measurable qualities.

(Loud consultations)

Are you of good and moral standing?

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

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Odoyo and Mr. Minister! You will address the Chair and you will not exchange words!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, it is very difficult for any human being to define what is "good" and "moral" about another human being!

The Temporary Deputy Chairman (Mr. Khamasi): You have made your point. Now proceed on the other point!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, the point that has been brought out by Mr. Odoyo, who was a former Assistant Minister for Labour and Human Resource Development--- He should have corrected these things when he was there!

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

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Minister! Let me hear him. What is it, Mr. Odoyo?

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, is it in order--- Having worked my head off for that Ministry, I left all the good work for the Minister simply to deal with typographical errors. If he did not correct them, why is he still blaming me?

The Temporary Deputy Chairman (Mr. Khamasi): It is in order for the Minister to make an observation that, indeed, you were in that Ministry! There is nothing wrong with it. It is fact.

Proceed, Mr. Minister!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, for the comfort of Mr. Odoyo, let me say that micro and small enterprises belong to the Ministry of Labour and Human Resource Development. But macro and large enterprises belong to the Ministry of Trade and Industry.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I just wanted to understand the position. Is it the position now that what I raised, the Minister withdrew the reference to "National Labour Courts" and replaced it? You know we are passing a law and the records should be clear. He merely supported what I said.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, could you confirm that? That has already been done before.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I am deeply sorry to the hon. gentleman. Yes, indeed, we have abolished the National Labour Court. Therefore, any reference to it-- In fact, it is in the text of this-- Where it appears inadvertently, it should mean industrial court.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, the words "micro" and "macro" have been very well brought out by the Minister. That is Item G. But in future, that particular department

may not necessarily be in the Ministry of Labour and Human Resource Development. Perhaps, a wider definition would refer to the Director of the department dealing with micro and small enterprises. That is just in case that department is amalgamated in future with say, industry. So, perhaps, even though he has used the word "macro" and "small enterprises" as opposed to "micro" and "small enterprises"--- Even me, I am confused.

May I, again, appeal to the Minister, even if he does not respond now, to consider an appropriate measure that will not bring confusion in the eyes of the public.

The Temporary Deputy Chairman (Mr. Khamasi): You may want to respond to that because I want to put the Question!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, "micro" businesses or businessmen tend to be poor. They tend to be helpless. They tend to need money from the Government. As a matter of fact, we are encouraging "micro enterprises" by building *Jua Kali* sheds all over the country. So, the word "micro" should actually stand on its own. It is very distinct from the word "macro". That is because their requirements are different.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, before you put the Question, we are passing something that may be a mistake!

The Temporary Deputy Chairman (Mr. Khamasi): Order! Order! How many times do you want to stand, Mr. Odoyo?

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, I was an Assistant in this Ministry. It would be very unfortunate for the House not to take cognisance of my institutional memory and capacity. I am asking for your indulgence to utilise the potential of all your Members of Parliament, so that we are able to contribute. Definitely, I will let the House benefit from my work and capacity.

The Temporary Deputy Chairman (Mr. Khamasi): What is it on?

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, it is on "J", Director of Industrial Training. It was my impression - and I may be wrong - that this post does not exist the way it is. That is because it is becoming a parastatal. This post is moving away from that particular title. So, the post of Director of Industrial Training is not existing as has been defined by the Minister right now. That post is being done away with, according to other subsidiary amendments put in this House.

The Minister for Labour and Human Resource Development (Mr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I want to confirm to hon. Odoyo that, indeed, that post exists. The present holder of this post is Eng. Kidenda. So, in the absence of any papers deleting that office, probably hon. Odoyo just wants to confuse the House.

The Temporary Deputy Chairman (Mr. Khamasi): That is right. You have made your point, Mr. Minister!

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

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

Let us move on to page 563 of the Order Paper. I will now allow Dr. Manduku to move his amendment.

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 6 of the Bill be amended-

- (a) in Subclause (1) by deleting the words "and a deputy chairperson, both of whom have" and substituting therefor the words "who has";
- (b) by deleting Subclause (2)
- (c) by renumbering the existing Subclauses (3) and (4) as Subclauses (2) and (3), respectively.

(Question of the amendment proposed)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, my officers met with Dr. Manduku's Committee, and they had absolutely no problem with that.

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

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

(Clause 6 as amended agreed to)

Clause 7

The Temporary Deputy Chairman (Mr. Khamasi): We have several amendments proposed by the Committee and the Minister.

Yes, Mr. Minister!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended-

(a) in Subclause (1)-

(i) in paragraph (g) by deleting the words "Labour Acts" and substituting thereof the words "labour laws";

(ii) in paragraph (m) by deleting the words "National Labour Court" and substituting therefor the words "Industrial Court";

(iii) in paragraph (n)-

(A) by inserting the words "laws relating to" after the word "the" appearing in second line;

(B) by deleting the word "Act" appearing at the end thereof.

(b) in sub-clause (2) by deleting the word "may" appearing after the word "Board" and substituting therefor the words "Minister may, in consultation with the"

(c) in paragraph (b) by deleting the words "National Labour Court" wherever it appears and substituting therefor the words "Industrial Court".

(d) in Subclause (6) in paragraph (e) by deleting the words "Labour Relations Act" and substituting therefor the words "law relating to labour relations".

(Question of the amendment proposed)

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

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

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

THAT, Clause 7 of the Bill be amended in Subclause (2) -

(a) by deleting the word "may" appearing in the first line and substituting therefor the word "shall";

(b) in paragraph (b) -

(i) by deleting the words "Chief Justice" appearing in the first line and substituting therefor the word "President";

(ii) by deleting the word "assignment" appearing in the first line and substituting therefor the word "appointment".

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I just wanted to understand from Dr. Manduku--- At page 564, there is a proposed amendment to subclause (2) where it says "the Board may advise the Government on the issuing of immigration entry permits and work permits to non-citizens", and (b) "the Board may advise the Chief Justice on the assignment of judges to the Industrial Court and the rules of the---" I do not understand! It looks a bit messy, but they are proposing to delete the words "may advise the Chief Justice" and replacing them with the word "President". Is this with regard to appointment or assignment? What was proposed was the question of assigning judges to do particular disputes. It is not appointment of the judges, where I think you would bring in the President. I need to understand from Dr. Manduku why they want to replace "Chief Justice" with "President" in the area of merely assigning judges to hear disputes.

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I want to agree with Mr. Muturi. It should be the Chief Justice and not President. So, I withdraw that.

The Temporary Deputy Chairman (Mr. Khamasi): So, what are you doing with your amendment? Are you withdrawing it?

Dr. Manduku: Yes, I am withdrawing the amendment, Mr. Temporary Deputy Chairman, Sir.

Mr. Muturi: Just that part!

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I am withdrawing that second part.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, do you want to say something?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I quite agree with Mr. Muturi that the appointment of judges in this country is done by the President and not by the Chief Justice. **The Temporary Deputy**

Chairman (Mr. Khamasi): You are saying it the other way round! Assignment is by the Chief Justice and appointment is by the President?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Khamasi): So, this amendment definitely is wrong. Are you withdrawing it?

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I am withdrawing that part.

The Temporary Deputy Chairman (Mr. Khamasi): The entire paragraph (b) as shown on the Order Paper?

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I am withdrawing (b)(i).

The Temporary Deputy Chairman (Mr. Khamasi): (b)(i) on the Order Paper, which in the Bill is Clause 7(2)(b). So, it remains as it is. Is that what we are in agreement on?

Dr. Manduku: Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Khamasi): Right! So, I will not put the Question with regard to that part. What about (ii)?

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I am withdrawing the same.

The Temporary Deputy Chairman (Mr. Khamasi): So, the entire part (b) is withdrawn. Is that so?

Dr. Manduku: Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Khamasi): What about part (a)?

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, (a) is just changing the word "may" to "shall". So, that remains.

(Part b of the amendment withdrawn)

The Temporary Deputy Chairman (Mr. Khamasi): So, I will put the Question of only part (a) of the amendment. That is the only one I will put the Question on.

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

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

(Clause 7 as amended agreed to)

Clause 8

The Temporary Deputy Chairman (Mr. Khamasi): The Minister has an amendment on page 546 and Dr. Manduku also has one. We will, therefore, start with the Minister.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 of the Bill be amended -

(a) in Subclause (1)(i) -

(i) by deleting the words "Immigration Entry" and substituting therefor the word "Work";

(ii) by renumbering paragraphs (i), (ii), (iii), (v) and (v) as paragraphs (a), (b), (c), (d) and (e) respectively.

(b) in sub-clause (2) by inserting the words "or the Board" immediately after the word "committees" appearing in the fifth line.

I propose deletion of the words "Immigration Entry" since these already exist in the relevant Act of Parliament administered by the Ministry of State for Immigration and Registration of Persons. So, the words "Immigration Entry", which appear in Clause 8 (i), should be deleted.

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, what the Minister proposes by his amendment is to have something that reads as follows. First of all the Bill reads:-

"The Board shall, in consultation with the Minister, establish the following Committees.

(i) Immigration Entry Permit Committee."

By his amendment, the Minister proposes that there will be a Committee known as the "Work Permit Committee." I wonder if that is what he is talking about so as to avoid the issue of it conflicting with the one of the entry permit. Is that what he proposes to do? If that is, indeed, what he proposes to do, then I think it is a good thing and it is procedural.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, that is a very incisive correction, indeed.

The Temporary Deputy Chairman (Mr. Khamasi): If you agree with it, Mr. Minister, why can I not put the question?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir--

The Temporary Deputy Chairman (Mr. Khamasi): If you agree with the amendment, so as to save time, let me put the question and we proceed. Or do you need to give further explanation?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, there is need for me to give further explanation. What we meant by that is that we will not be working on our own, as a Ministry. We will be working in collaboration with the Ministry of State for Immigration and Registration of Persons. I think what I have said comes before the clause that talks about this.

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

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

(Clause 8(a)(i) as amended agreed to)

Clause 8(a)(ii)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 of the Bill be amended-

(a) in Subclause (1)(i) -

(ii) by renumbering paragraphs (i), (ii), (iii), (iv) and (v) as paragraphs (a), (b), (c),

(d) and (e) respectively.

(Question of the amendment proposed)

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

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

(Clause 8(a)(ii) as amended agreed to)

Clause 8(b)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 of the Bill be amended-

(b) in Subclause (2) by inserting the words "or the Board" immediately after the word "committees" appearing in the fifth line.

(Question of the amendment proposed)

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

(Clause 8(b) as amended agreed to)

The Temporary Deputy Chairman (Mr. Khamasi): Let us now move to Dr. Manduku's amendments on page 564.

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, my amendments have been overtaken by events. Therefore, I withdraw them.

(Amendments withdrawn)
(Clause 9 agreed to)

Clause 10

The Temporary Deputy Chairman (Mr. Khamasi): Indeed, we have notice of amendment from the Minister and again by Dr. Manduku. I will allow the Minister to start off with his amendment.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 10 and substituting therefor the following new clause-

10. The Commissioner of Labour-

(a) shall be the secretary to the National Labour Board; and

(c) may appoint such other officers as are necessary to assist the National Labour Board.

(Question of the amendment proposed)

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, the Bill says in part; "the Minister shall---" In his amendment in (a), the Minister talks about "the Commissioner of Labour shall---" I

am trying to understand whether the spirit of the Order Paper is what the Minister has in mind. I thought that the Minister would appoint the Commissioner of Labour to be the Secretary. However, the Order Paper talks about the Commissioner of Labour.

The Temporary Deputy Chairman (Mr. Khamasi): That is why he is amending the Bill. He is, literally, replacing the Minister with the Commissioner of Labour. That is what he is doing. If you are opposed to it, then advance your reasons.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, it is very much in order for the Commissioner of Labour to be the Secretary of this particular Board; the National Labour Board. However, in my view, the Board should have been appointed formally by the Minister, rather than it being a statutory body, as it is the case here.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, we would like to have it as it is. Whereas the Secretary to this Board could naturally be the Commissioner for Labour, we feel that the Commissioner for Labour has far too many responsibilities. It would be a very heavy responsibility for the Commissioner of Labour to act when he is already overburdened with responsibilities. So, I would like to disagree with the hon. Member.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I think the Minister ought to have said that in proposing to delete Clause 10, he is deleting the powers given to him to appoint. He says:-

"The Minister shall appoint a secretary to the Board, who shall be an officer in the Department of Labour with experience in labour administration and who holds a post of, or at least, equivalent to that of the Deputy Commissioner for

Labour and may appoint such other officers as are necessary to assist the Board".

I think the Minister is proposing to make it obvious within the law, that the Commissioner of Labour shall be the secretary to the Board. The Commissioner shall then appoint such other officers from within the Ministry to assist him in the running of the Board. That is the correct position.

Mr. Temporary Deputy Chairman, Sir, it is not that the Commissioner of Labour is so busy that he cannot appoint. It is, you, the Minister we want to remove completely or you propose to remove yourself completely from these functions.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, the Minister did not come up very clearly. I agree that he wants to remove these powers from himself. However, he cannot say that the Commissioner of Labour is so busy and yet he giving him special powers now. He shall also be secretary. Much as I support the idea that the Minister should have so much powers, we must now realise that you are giving the Commissioner of Labour all these powers; including the power to be the secretary of the National Labour Board.

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

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

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I also had an amendment to that clause. However, having looked at the changes the Minister has put, I beg to withdraw my amendment. It has already been covered by the Minister.

*(Amendment withdrawn)
(Clause 10 as amended agreed to)*

Part III

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the title of Part III be amended by deleting the words "National Labour Court" and substituting therefor the words "Industrial Court".

(Question of amendment proposed)

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

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

(Part III as amended agreed to)

Mr. Sungu: On a point of order, Mr. Temporary Deputy Chairman, Sir. Because of the time factor and the fact that the Minister is moving quite slowly, would I be in order to suggest that, procedurally, we deal with clause by clause in entirety unless there are other numerous amendments?

The Temporary Deputy Chairman (Mr. Khamasi): But that is what we are doing! We are going clause by clause.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, we are also going item by item as well.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Sungu, could you come up again, so that I understand you?

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, with due respect, I am suggesting that if amendments relate to the same matter, then we deal with them together as an omniband rather than sub-clause by sub-clause, so that we can move faster.

The Temporary Deputy Chairman (Mr. Khamasi): Very well! I assume that everybody has read. We can proceed along those lines, have no problem!

Clause 11

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 11 and substituting therefor the following new clause.

PART III: THE INDUSTRIAL COURT

Establishment and composition

of Industrial Court

11.(1) There is established and Industrial Court with all powers and rights set out in this Act or any other law, for the furtherance, securing and maintenance of good industrial or labour relations and employment conditions in Kenya.

(2) The Industrial Court shall consist of:-

(a) a Principal Judge;

- (b) as many judges as the President, acting on the advice of the Judicial Service Commission, many consider necessary; and,
- (c) members of the Industrial Court appointed in accordance with Section 15.
- (3) The Industrial Court shall be constituted by a Judge sitting with two members of the Industrial Court.
- (4) A person shall not be eligible to hold office as the principal judge of the Industrial Court unless the person:-
- (a) is an advocate of the High Court of Kenya of not less than ten years standing; and,
- (b) has considered knowledge and experience in the law and practice of industrial relations and employment conditions in Kenya.
- (5) A person shall not be eligible to hold the office of a judge of the Industrial Court unless the person:-
- (a) is an advocate of the High Court of Kenya of not less than seven years standing; and,
- (b) has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Kenya.

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, both in the Bill and the amendment, there is proposed to have judges appointed in the normal manner by the President on the advice of the Judicial Service Commission. However, there is a creation of a judge titled "Principal Judge". If there is a principal judge, one would expect that there should be a deputy. Why is it that the Minister has now deleted the clause that provided for a Deputy Principal Judge? The amendment is good, but I am wondering, is it fair to have a principal who does not have a deputy?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, Mr. Muturi is a lawyer. Maybe, he can advise me whether we have a Deputy Chief Justice.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, actually the title "Principal Judge" does not exist even in our Constitution or even the Judicature Act. Perhaps, we should just go by the titles that exist; Puisne Judge, as opposed to Principal Judge.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Is a puisne judge superior to an ordinary judge?

Mr. Muturi: No.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, this section is meant to have someone in charge at the Industrial Court. Whether you call him chief, principal or whatever, it does not matter.

The Temporary Deputy Chairman (Mr. Khamasi): But what Mr. Muturi is raising is that we have to have titles that are within our laws. He says, "Principal Judge" is not within the laws that appertain to this country in that sector.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, unless this violates the Constitution, the word "principal"---

The Temporary Deputy Chairman (Mr. Khamasi): He was just about to tell you that you are putting in here what is not within the Constitution and the Act.

Mr. Odoyo: Let me assist him, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Odoyo! He has not called for your assistance.

The Minister for Labour and Human Resource Development (Dr. Kulundu): I have not called for your assistance!

Mr. Temporary Deputy Chairman, Sir, if, indeed, it violates the Constitution, that is a matter we are willing to consider. We could maybe substitute the word "principal" with "chief"

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, what may be in the mind of the Ministry could be an administrative office like that of a duty judge in the High Court. Is it proposed that the Principal Judge shall be the highest or the senior-most judge of the Industrial Court, so that other judges will be subordinate to him? If that is the case, and it is okay with them, we can leave it at that.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, that is precisely what we meant, Mr. Muturi. The Principal Judge will be the senior-most among the judges. Apart from doing his judicial work, he will also do administrative work.

The Temporary Deputy Chairman (Mr. Khamasi): Dr. Kulundu, honestly, I do not know what the agreement is!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, the agreement seems to be that the word "Principal" should be retained, according to Mr. Muturi.

The Temporary Deputy Chairman (Mr. Khamasi): Dr. Kulundu, perhaps, you can refer this to your officers from the Ministry!

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, we should simply make it a judge in charge. That is because Part (b) has the Chief Justice. It could very well be that all those judges are in the same rank. But one of them is going to be in charge. They cannot all be in the same grade. We are proposing that the title either be "Judge in charge" or "Senior-most Judge", or whatever term they want to use. But "Principal Judge" is misleading because in the whole of Judicial Service Commission (JSC), we do not have such a title. We have a Principal Magistrate, but we do not have a Principal Judge.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, as the Minister considers what he is going to say, I want him to take note of the fact that, in fact, those judges can actually be transferred from the High Court to the Industrial Court. The question of their titles, recognition, security of tenure and those kind of things applies. We have to be very careful. When Parliament is making law, the intention of Parliament must be clear so that the drafters, when they finally do the clean up, they carry the intention of Parliament. But we do not want to make anything that is vague, unconstitutional, or that will appear to counter what is already existing. So, please, when the Minister replies, he should take note of that.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, this is the senior-most judge among the five judges that we have. In order to distinguish him from the other judges, he needs a title. We cannot just call him a judge. He needs a title. The word "principal", to me, would be a very appropriate one.

Mr. Odoyo: On a point of order, Mr. Temporary Deputy Chairman, Sir. Having acceded that the President shall appoint judges and the Chief Justice shall assign, we should not put it to the President to use a term that is not currently in the scheme of service for judges. In the scheme of service of judges, the way this capital "P" for the Principal Judge has been used, it is equated to a Principal Magistrate. In my mind, whoever was drafting this, was thinking of a Principal Magistrate as an example. Indeed, we do not have such a title. We cannot pass something that is unconstitutional. To get the spirit of what the Minister is saying, and we fully support him that somebody must be in charge, why not say a judge in charge of the Industrial Court?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr.

Temporary Deputy Chairman, Sir, that is true. A judge should be in charge! The point is: We have deliberated on this matter. We strongly feel that the senior-most judge should be known by a distinctive term.

The Temporary Deputy Chairman (Mr. Khamasi): Very well! Let me end this debate. It is not the duty of Parliament to interpret its own laws. It is for the courts to do it! I will, therefore, put the question that Clause 12---

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, it is Clause 11!

The Temporary Deputy Chairman (Mr. Khamasi): Sorry! I beg your pardon!

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, it is Clause 11! The Minister did not explain why he did not want the Deputy Principal Judge. He did not explain that fact.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Odoyo, he explained! In my view, he explained by asking another question. I heard him very clearly!

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

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

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

The Temporary Deputy Chairman (Mr. Khamasi): What is your point of order?

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, we have the Bill and the Order Paper. You are right that we are being confused because the Bill is showing Clause 12, whereas the Order Paper is showing Clause 11(2)!

The Temporary Deputy Chairman (Mr. Khamasi): We were dealing with Clause 11, which we have disposed of!

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, not Clause 11(2)?

The Temporary Deputy Chairman (Mr. Khamasi): Order! We have dealt with the entire Clause 11 and disposed it of!

Mr. Odoyo: But Mr. Temporary Deputy Chairman, Sir, if you look at Clause 12---

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Odoyo! I will now put the question for the entire Clause!

(Clause 11 as amended agreed to)

Clause 12

The Temporary Deputy Chairman (Mr. Khamasi): Hon. Members, you should note that we are dealing with the entire Clause 12.

Proceed, Mr. Minister!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 12 and substituting therefor the following new clause-

12(1) The Industrial Court shall have exclusive jurisdiction to hear, determine and

grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this Act or any other legislation which extends jurisdiction to the Industrial Court, or in respect of any matter which may arise at common law between an employer and employee in the course of employment, between an employee or employer's organization and trade union or between a trade union, organization of employers, a federation and a member thereof.

(2) An application, claim or complaint may be lodged with the Industrial Court by or against an employee, an employer, a trade union, an employer's organization or a federation of a trade unions or employers' organization, the Commissioner of Labour or the Minister.

(3) The Industrial Court may consolidate claims for the purpose of hearing witnesses as appropriate.

(4) In the discharge of its functions under this Act, the Industrial Court shall have the powers to grant injunctive relief, prohibition, declaratory order, award of damages, specific performance or reinstatement of an employee.(5) In deciding a matter, the Industrial Court may make any other order it deems necessary, which will promote the purpose and objects of this Act.

(6) Any decision or order by the Industrial Court shall have the same force and effect as a judgement of the High Court and a certificate signed by the Registrar of the Industrial Court shall be conclusive evidence of the existence of such decision or order.

(7) Any matter of law arising from a decision at a sitting of the Industrial Court and any question as to whether a matter for decision is a matter of law or a matter of fact shall be decided by the presiding judge of the Industrial Court provided that on all other issues, the decision of the majority of the members shall be the decision of the Industrial Court.

(8) The Industrial Court may make an order for payment of costs, according to the requirements of the law and fairness and in so doing, the Industrial Court may take into account the fact that a party acted frivolously, vexatiously or with deliberate delay during conciliation proceedings and in bringing or defending a proceeding.

(9) The Industrial Court may refuse to determine any dispute before the Court, other than an appeal or review if the court is not satisfied that an attempt has been made to resolve the dispute through conciliation.

(10) Unless the parties to a dispute agree to a longer period, a dispute shall, on the expiry of thirty days from the date of appointment of a conciliator, be deemed to be unresolved.

(11) A certificate issued by the conciliator stating that a dispute remains unresolved after conciliation is sufficient proof that an attempt has been made to resolve that dispute through conciliation.

(12) The Industrial Court may review-

(a) the performance or purported performance of any function provided for in any written law or any act or omission of any person or body in terms of any written law on any grounds that are permissible;

(b) any decision taken or any act performed by the state in its capacity as employer on such grounds as are permissible in law; or

(c) deal with all matters necessary or incidental to performing its functions in accordance with this Act or any other law.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Khamasi): Hon. Members, there is a similar amendment by Dr. Manduku!

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I want to say that I agree with those amendments!

Mr. Odoyo: *Waziri*, talk!

(Dr. Kulundu raised a point of order while seated)

The Temporary Deputy Chairman (Mr. Khamasi): *Bw. Waziri*, if you want to raise a point of order, you stand! I have not seen you on your feet! I can hear you sitting down there! What is it?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, is it in order for Mr. Odoyo to continuously tell me to talk, when, in fact, I have been talking from here?

The Temporary Deputy Chairman (Mr. Khamasi): I will address that, *Waziri*! Sit down! Mr. Odoyo, *Waziri* has been talking the whole of this afternoon. What else do you want him to talk?

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, much obliged. I take note of your comments and those of the Minister. But I had requested that such long clauses [**Mr. Odoyo**] warrant a little bit of explanation for those of us who are not informed as he is. We also need to benefit from his knowledge. We have five pages here. He should tell us a word or two as to why he is deleting what was there---

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Odoyo! I rule you out, completely out of order! It is assumed you have already got notices of amendments. If you have got anything to query, as soon as I have proposed the Question, you rise up! The Minister is not here to read for you!

Dr. Manduku, could you withdraw your amendment because it is almost on a similar basis?

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I withdraw my amendment because it is similar to that of the Minister.

(Amendment withdrawn)
(Clause 12 as amended agreed to)

The Minister for Labour and Human Resource Development (Dr. Kulundu): I hope hon. Odoyo is---

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Minister! Order, Mr. Minister!

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

The Temporary Deputy Chairman (Mr. Khamasi): No! You are not raising it! I am in charge of the House! When the Minister is out of order, I will tell him he is out of order! Mr. Minister, you are out of order! I called you to move your amendment! Nothing else!

Clause 13

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 13 and substituting therefor the following new clause -

13.(1) A judge of the Industrial Court shall be appointed by the President on the advice of the Judicial Service Commission.

(2) A judge of the

Industrial Court shall hold office until the judge -

- (a) retires;
- (b) resigns from office;
- (c) is removed from office by operation of the law; or,
- (d) dies.

(Question of the amendment proposed)

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, as I support that amendment by the Minister, I would have been happy if he stated the retirement age of that particular judge. Those are Industrial Court judges.

Mr. Temporary Deputy Chairman, Sir, I am talking with view of knowledge that, even in the High Court of Kenya, there are judges who have gone beyond the age of 74 and are still judging very sensitive cases! Some of them have become senile! So, could the Minister tell us what the retirement age is, before I approve this one?

The Temporary Deputy Chairman (Mr. Khamasi): Order! Order, Mr. Minister! First of all, Mr. Sungu, I believe that is a constitutional matter. I do not think it is fair for you to actually ask the Minister to put it into our legislation! So, Mr. Minister, do not address that issue. It is a constitutional matter.

Mr. Sungu: I am much obliged, Mr. Temporary Deputy Chairman, Sir.

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

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

(Clause 13 as amended agreed to)

Clause 14

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 14 and substituting therefor the following new clause -

Enforcement of court orders 14. An order of the Industrial Court made under court orders this Act -
 (a) directing the payment of money or the delivery of any property shall be enforceable by execution as provided by rules made under this Act; or,
 (b) directing the performance or non-performance of any act shall be enforceable by contempt proceedings in the Industrial Court.

Remedial powers of cases of wrongful 14A. If the Industrial Court finds that that a dismissal is unfair, the Industrial Court dismissal may order the employer to -
 (a) reinstate the employee from any date not earlier than the date of dismissal; or
 (b) re-engage the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or
 (c) pay compensation to the employee to a maximum of twelve months wages.

Divisions of Industrial Court 14B.(1) The Industrial Court shall have and exercise jurisdiction throughout Kenya and for that purpose the principal judge shall establish and gazette divisions of the Industrial Court as he deems necessary.
 (2) The Chief Justice may, after consultation with the Minister and the principal judge by order in the gazette designate any Magistrate Court to hear matters relating to labour laws.

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

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

(Clause 14 as amended agreed to)

Clause 15

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 15 of the Bill be amended -

- (a) by deleting the words 'National Labour Court' wherever they appear and substituting therefore the words 'Industrial Court';
- (b) in Sub-clause (1) by deleting the word "sixteen" appearing in the second line.

Mr. Temporary Deputy Chairman, Sir, if I may just say one little point, this is where I was saying that wherever the phrase 'National Labour Courts' appear, it should be replaced with 'Industrial Court'.

The Temporary Deputy Chairman (Mr. Khamasi): What about the second one?

(Question of the amendment proposed)

Yes, Mr. Odoyo?

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, I would have loved to hear the Minister talk about the figure 'sixteen'. He wants to delete the figure 'sixteen'.

Mr. Temporary Deputy Chairman, Sir, this is a situation where the Minister is giving himself powers to appoint members of the Industrial Court without any limit. That is my impression. He can even appoint the figure '24' or the number of his constituency in the electoral roll, which is 177.

(Laughter)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I wish to propose that the word "sixteen" in Clause 15(b) be deleted. Now, there is no magic about this word 'sixteen'. We have ten judges and every judge is assisted by what you would call two *wazees*. Now, because we had thought that we will increase the number of judges in this financial year, which was rejected, we had to limit the number to 16.

The Temporary Deputy Chairman (Mr. Khamasi): I thought you were deleting. You are not delimiting. You are deleting the word 'sixteen'!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Yeah! Mr. Temporary Deputy Chairman, Sir. We are deleting the word 'sixteen'. It may change. It may go up--

Mr. Sungu: It may go down.

The Minister for Labour and Human Resource Development (Dr. Kulundu): No! Mr. Temporary Deputy Chairman, Sir. It can only go up!

Mr. Sungu: Up to 1,000?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Yeah! With the decentralization of High Court. But as of now, the word 'sixteen' should be deleted because we have only five judges. But the principle or the senior-most judge does not have an assistant.

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

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

(Clause 15 as amended agreed to)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 16 of the Bill be amended in the marginal note by deleting the words "National Labour Court" and substituting therefore the words "Industrial Court."

(Question of the amendment proposed)

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

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

(Clause 16 as amended agreed to)

Clause 17

The Temporary Deputy Chairman (Mr. Khamasi): There are notices of amendments to this clause by the Minister and Dr. Manduku.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 17 of the Bill be amended by deleting the words "National Labour Court" wherever they appear and substituting therefore the words "Industrial Court."

Mr. Temporary Deputy Chairman, Sir, as we have already said time and again, the National Labour Court--

The Temporary Deputy Chairman (Mr. Khamasi): We have already made that correction, Mr. Minister! I will now propose the Question.

(Question of the amendment proposed)

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

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

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

THAT, Clause 17 of the Bill be amended in sub-clause (1) paragraph (a) by deleting the words "of he labour" appearing in the fourth line.

(Question of the amendment proposed)

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

(Clause 17 as amended agreed to)

Clause 18

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 18.

(Question of the amendment proposed)

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

(Clause 18 deleted)

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, now that Clause 18 has been deleted, I would like to withdraw my amendment.

The Temporary Deputy Chairman (Mr. Khamasi): Very well! Thank you!

(Amendment withdrawn)

Clause 19

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19 of the Bill be amended-

(a) in the marginal note by deleting the words "National Labour Court" and substituting therefore the words "Industrial Court;"

(b) by deleting sub-clause (1);

(c) in sub-clause (2)-

(i) by deleting the words "National Labour Court and subordinate National Labour Court" and substituting therefore the words "Industrial Court;"

(ii) by deleting the words "or arbitration" wherever they appear;

(d) by deleting sub-clauses (3), (4) and (5);

(e) in sub-clause (6)-

(i) by deleting the words "National Labour Court" wherever they appear and substituting therefore the words "Industrial Court;"

(ii) by deleting the word "courts" appearing in the sixth line and substituting therefore the words "Industrial Court;" and,

(f) by renumbering sub-clauses (2) and (6) as subclasses (1) and (2) respectively.

(Question of the amendment proposed)

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

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

(Clause 19 as amended agreed to)

Clause 20

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 20 of the Bill be amended-

(a) in the marginal note by deleting the words "National Labour Court and subordinate labour court" and substituting therefore the words "Industrial Court;"

(b) in sub-clause (1)-

(i) by deleting the words "National Labour Court" and substituting therefore the words "Industrial Court;"

(ii) by deleting the words "subordinate National Labour courts;"

(c) in sub-clause (2)-

(i) by deleting paragraph (b);

(ii) in the existing paragraph (c), by deleting the word "advice" appearing in the third line and substituting therefore the word "recommendation;"

(iii) by renumbering paragraph (c) as paragraph (b);

(d) in sub-clause (3)-

(i) by deleting the word "may" appearing in the second line and substituting therefore the words "shall in consultation with the Chief Justice;"

(ii) by deleting the words "National Labour Court and the subordinate labour court" and substituting therefore the words "Industrial Court;"

(iii) in paragraph (a) by deleting the word "courts" and substituting therefore the words "Industrial Court;"

(iv) in paragraph (d)-

(a) by deleting the word "courts" and substituting therefore the words "Industrial Court;"

(b) by deleting the words "after consulting the Chief Justice" appearing in the first line;

(v) in paragraph (e) by deleting the word "courts" and substituting therefore the words "Industrial Court;"

(e) by renumbering the second Sub clause (2) and sub-clause (3) as Subclauses (3) and (4) respectively.

(Question of the amendment proposed)

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

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

(Clause 20 as amended agreed to)

Clause 21

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr.

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

THAT, Clause 21 of the Bill be amended-

(a) by deleting the words "National Labour Court" wherever they appear and substituting therefor the words "Industrial Court;"

(b) by deleting Subclause (3) and substituting therefor the following new sub-clauses-

(3) A judge of the Industrial Court may admit members of the Press to any proceedings before the court.

(4) Where a member of the Press is admitted to any proceedings referred to in Subsection (3), the member of the Press shall publish a fair and accurate report or summary of the proceedings:

Provided that a member of the Press shall not publish any comment in respect of the proceedings or the evidence in the proceedings until the award, judgement or order of such proceedings has been published in accordance with the provisions of this Act.

(c) by renumbering Sub clauses (4) and (5) as Sub clauses (5) and (6) respectively.

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I just want the Minister to explain the proviso in the proposed amendment which reads:-

"Where a member of the Press is admitted to any proceedings referred to in Subsection (3), the member of the Press shall publish a fair and accurate report or summary of the proceedings: Provided that a member of the Press shall not publish any comment in respect of the proceedings or the evidence in the proceedings until the award, judgement or order of such proceedings has been published in accordance with the provisions of this Act."

Mr. Temporary Deputy Chairman, Sir, I think even in the courts of law the Press usually will publish the various comments made during the proceedings. We are trying to make the Industrial Court an extraordinary kind of court where the comments or even the evidence that is adduced upon admission--- I suspect that in open courts the Press may not comment on even that evidence or even publish it. This is now another area of gagging the Press which recently we were told we should not do.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, we are in no way muzzling the Press. On the contrary, we are only calling for fair and just reporting of what goes on in the Industrial Court.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, the clause says:-

"Provided that a member of the Press shall not publish any comment in respect of the proceedings or the evidence in the proceedings---"

We have seen even cases of divorce, rape and so on and the Press would publish the evidence given. People would then comment. An advocate appearing would make a comment that what you are saying is not correct. For instance, he could say, "you were not sacked on that day". The Minister is saying that the Press may not publish a comment like that one. Here, we are actually gagging the Press.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I will be the last one to gag the Press. As you know, I have been a subject of many unfair reportage. However, I will go by what hon. Muturi is saying, that is, that proviso there should be done away with.

The Temporary Deputy Speaker (Mr. Khamasi): So, *Bwana Waziri*, you are effectively withdrawing that proviso. Could you, please, move near the microphone so that you are captured on record?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, yes, I am withdrawing that proviso because it kind of contradicts what is said in the First Section.

(Proposed proviso in the amendment withdrawn)

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I want to applaud the Minister for agreeing to withdraw that proviso. However, I want the Minister to give us an assurance with regard to Clause 21(3) in the original Bill, which also deals with the same matter.

It states:-

"No comment shall be published in respect of the proceedings or the evidence before an award, judgement or order has been delivered on the matter at issue."

That, again, is on the same question of Press freedom. This is a very important matter because it is part of our Constitution. We are talking about freedom of expression and freedom of the Press. Could the Minister kindly confirm that it is clear that this particular clause is also not going to be part of the Bill? I am not sure whether it is being amended as well.

The Temporary Deputy Speaker (Mr. Khamasi): Yes, but you see the proposal by the Minister is to delete Subclause 3 and substitute it with a new subclause. So, what you are referring to is basically not there.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, once he withdraws it, then we will revert to the original Bill. We are no longer deleting Subclause 3. That means that Subclause 3---

The Temporary Deputy Speaker (Mr. Khamasi): No! No! You see, in the original Bill, there is exactly what you are complaining about and in the Minister's amendment, he is deleting it! So, there is nothing to complain about!

Mr. Sungu: Thank you, Mr. Temporary Deputy Chairman, Sir.

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

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

The Temporary Deputy Speaker (Mr. Khamasi): Yes, Dr. Manduku!

Mr. Manduku: Mr. Temporary Deputy Chairman, Sir, I beg to withdraw my amendment.

The Temporary Deputy Speaker (Mr. Khamasi): Thank you. So, the amendment by Dr. Manduku is withdrawn.

*(Amendment withdrawn)
(Clause 21 as amended agreed to)*

Clause 22

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr.

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

THAT, Clause 22 of the Bill be amended by deleting the words "National Labour Court" wherever they appear and substituting therefore the words "Industrial Court".

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, we have already heard that! So, we can save time on it.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you.

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

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

(Clause 22 as amended agreed to)

Clause 23

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 be amended-

(a) by deleting Subclause (1) and substituting therefore the following new Subclause-

(1) The Industrial Court and a Board of inquiry shall not be bound by the rules of evidence in civil or criminal proceedings;

(b) by deleting Subclause (2) and substituting therefore the following new Subclause-

(2) If a witness objects to answering any question or to producing any relevant document on the ground that it will incriminate him, or on any ground on which the witness could lawfully object if the objection was made in civil or criminal proceedings in the High Court, the witness shall not-

(a) be required to answer the question or to produce the document; and

(b) be liable to any penalties for refusing to do so.

(c) in Subclause (3) by deleting the words "National Labour Court" wherever they appear and substituting therefor the words "Industrial Court";

(d) in Subclause (5)-

(i) by deleting the words "National Labour Court" and substituting therefore the words "Industrial Court";

(ii) by inserting the word "Industrial" immediately after the second "the" appearing in the fifth line.

(e) in Subclause (6) by inserting the words "and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both" immediately after the word "offence" appearing at the end thereof.

(f) by renumbering Subclause (5) appearing immediately after Subclause (7) as Subclause (8).

(Question of the amendment proposed)

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, you are a bit fast for me. I am concerned that this Clause 3 which is being amended---

The Temporary Deputy Chairman (Mr. Khamasi): Clause 3?

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I meant to say Clause 23. It is to be amended by deleting Subclause (1)--- I think I am mistaken. I apologise because I thought that they are going to do away with the rules of evidence which apply in the courts. In this case he is bringing them back.

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

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

(Clause 23 as amended agreed to)

Clause 24

The Temporary Deputy Chairman (Khamasi): The amendment is on page 567. Dr. Manduku, you have an amendment which comes before the Minister's amendment.

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I have amendments there but I now wish to withdraw them, because they follow one another. So, I withdraw them.

(Amendments withdrawn)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 24 of the Bill be amended-

(a) in Subclause (1)-

(i) by deleting the words "National Labour Court" wherever they appear and substituting therefor the words "Industrial Court";

(ii) by renumbering the first paragraph (b) as paragraph (a);

(b) in Subclause (3) by deleting the words "National Labour Court" and substituting therefor the words

"Industrial Court";

(c) by renumbering Subclause (3) as Subclause (2).

(Question of the amendment proposed)

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

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

put and agreed to)

(Clause 24 as amended agreed to)

Clause 25

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 25.

(Question of the amendment proposed)

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

(Clause 25 deleted)

Clause 26

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 26.

(Question of the amendment proposed)

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, we are making many deletions, which could be very dangerous. We have just deleted one regarding reporting, which we had discussed earlier. Clause 26, which is being proposed to be deleted, says:- "Any decision, award, judgement or order of the National Labour Court may be served and executed as if it were a decision, judgement or order of the High Court".

I wonder why the Minister wants to delete that. This will be a judge qualified to be a judge in the High Court. Why would his or her decisions, or orders, not be enforced as is the case with those of the High Court? Do you want to emasculate this Industrial Court, so that it will not have enough powers to enforce its rulings?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, if my friend was observant when I attempted to move this Bill, I proceeded on the line that the High Court and the Industrial Court would be the same. Now, here is a situation that should inform us that, indeed, the decision of the Industrial Court can be reviewed by the High Court.

The Temporary Deputy Chairman (Mr. Khamasi): Are you all right?

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I am sorry I did not understand that. Are you suggesting---

The Minister for Labour and Human Resource Development (Dr. Kulundu): I am saying that the decisions of the Industrial Court can be reviewed by the High Court.

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

(Clause 26 deleted)

Clause 27

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 27 of the Bill be amended-

(a) by deleting the words "National Labour Court" wherever they appear and substituting therefor the words "Industrial Court";

(b) by deleting the words "as if it were High Court" appearing at the end thereof.

The Temporary Deputy Chairman (Mr. Khamasi): Sorry! I am told that we need to start with the one by Dr. Manduku. I think you are looking forward to delete the entire Clause.

Dr. Manduku: Mr. Temporary Deputy Chairman, Sir, I wanted to delete Clause 27. But now, I wish to withdraw my amendment.

(Amendment withdrawn)

The Temporary Deputy Chairman (Mr. Khamasi): Then, *Waziri*, proceed to move your amendment.

(Question of the amendment proposed)

Mr. Muturi: I just want to support because I was very worried! That is because any court should have powers to review its own orders upon discovery of new matters that may not have been within its purview, or could not have been discovered even with the exercise of due diligence.

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

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

(Clause 27 as amended agreed to)

Clause 28

The Temporary Deputy Chairman (Mr. Khamasi): Is there notice of an amendment?

Dr. Manduku: There is an amendment. But I wish to withdraw it.

The Temporary Deputy Chairman (Mr. Khamasi): Dr. Manduku, are you withdrawing your amendment?

Dr. Manduku: Yes, I am withdrawing it, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Khamasi): Very well! So, it is withdrawn.

(Amendment withdrawn)

(Clause 28 agreed to)

PART IV

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting PART IV.

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, just to explain, we have already passed a Clause that gives the Chief Justice the power to appoint certain magistrates and give them jurisdiction to hear matters relating to labour.

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

(PART IV deleted)

The Temporary Deputy Chairman (Mr. Khamasi): Hon. Members, I think it is good to understand the import of what we have done. We have deleted entire clauses from Clause 29 all the way up to Clause 39. That is the import of what we have done.

We will proceed.

*(Clauses 29, 30, 31, 32, 33, 34,
35, 36, 37, 38 and 39 deleted)*

Part V

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by renumbering PART V as PART IV.

(Question of the amendment proposed)

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

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

(PART V as amended agreed to)

Part VI

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by renumbering PART VI as PART V.

(Question of the amendment proposed)

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

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

(PART VI as amended agreed to)

Clause 40

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

THAT, Clause 40 of the Bill be amended -

(a) in Subclause (3) by deleting the words "one person or of two" appearing in the first and second lines and substituting therefor the word "three";

(b) in Subclause (4) by deleting the word "two" appearing in the first line and substituting therefor the word "three".

(Question of the amendment proposed)

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

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

(Clause 40 as amended agreed to)

(Clause 41 agreed to)

Clause 42

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 42 of the Bill be amended -

(a) in sub-clause (1) by deleting the words "Labour Commissioner" and substituting therefor the words "Commissioner of Labour";

(b) in the marginal note by deleting the words "Labour Commissioner" and substituting therefor the words "Commissioner of Labour".

(Question of the amendment proposed)

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

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

(Clause 42 as amended agreed to)

Clause 43

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, you have amendments to Clause 43.

Hon. Members, in view of the time, probably this is the last clause we will tackle and then we will report progress. Hopefully, we will sit again.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 43 of the Bill be amended-

(a) in Subclause (1) -

(i) by inserting the word "federation" immediately after the word "and" appearing in the fourth line;

(ii) by deleting the words "registered under the Labour Relations Act" appearing at the end thereof.

(b) in Subclause (1) by inserting the words "in consultation with the Minister for the time being responsible for Justice and Constitutional Affairs" immediately after the word "shall" appearing in the first line;

(c) in Subclause (2) by inserting the words "in consultation with the Minister for the time being responsible for Justice and Constitutional Affairs" immediately after the word "may" appearing in the first line;

(d) by inserting the following new Subclause immediately after Subclause 2 -

(3) The Registrar of Trade Unions shall, in the exercise of his powers relating to the registration and regulation of trade unions, act on the advice of the National Labour Board.

(Question of the amendment proposed)

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, where is the Minister for Justice and Constitutional Affairs coming in because the Registrar of Trade Unions is an associate of the Attorney-General? Indeed, the Registrar-General, as the statutes indicate, is generally working with, for and to the Attorney-General. So, where the Minister for Justice and Constitutional Affairs comes in negates the spirit of the Civil Service nature of the role of the Registrar of Trade Unions, which lies with the Attorney-General.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, there is the principle of collective responsibility which we exercise in matters of this nature.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I want to agree with hon. Odoyo that, it is wrong, since we are dealing with matters of labour, to say that the Registrar of Trade Unions will have to go to the Ministry of Justice and Constitutional Affairs or to whoever may be responsible for matters of justice and constitutional affairs. The Registrar should have the kind of independent office we have created in the Bill without reference to the Minister for Justice and Constitutional Affairs. Indeed, we will sum it up with a lot of confusion if the Registrar has to make consultations elsewhere. I want to appeal to the Minister to withdraw references to the Minister for Justice and Constitutional Affairs.

The Temporary Deputy Chairman (Mr. Khamasi): And replace it with what?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I would prefer if he leaves it the way it

was in the Bill.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, could I consult with officials from my Ministry?

The Temporary Deputy Chairman (Mr. Khamasi): Yes!

*(Dr. Kulundu consulted with
Ministry officials)*

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, my technical officers says that Mr. Muturi is right.

The Temporary Deputy Chairman (Mr. Khamasi): So, you are withdrawing the whole amendment? You will delete it?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Yes, we delete it, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Khamasi): So we are deleting part "b" and "c" of your proposed amendment, is that so?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Yes, Mr. Temporary Deputy Chairman, Sir.

*(Proposed amendments to
parts b and c withdrawn)*

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

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

(Clause 43 as amended agreed to)

The Temporary Deputy Chairman (Mr. Khamasi): Now, I think we need to report progress. First of all, Mr. Minister, could you move the Motion to report progress?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report progress and seek leave to sit again.

*(Question proposed)
(Question put and agreed to)*

*(The House resumed)
[The Temporary Deputy Speaker
(Mr. Sungu) in the Chair]*

PROGRESS REPORT

THE LABOUR INSTITUTIONS BILL

Mr. Khamasi: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the

whole House do report progress and seek leave to sit again.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister for Labour and Human Resource Development (Ms. Mwau): seconded.

(Question proposed)
(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Sungu): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 25th September, 2007, at 2.30 p.m.

The House rose at 6.30 p.m.