

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 22nd, March, 2006

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

Mr. Speaker: The Clerks-at-the-Table, could you hold on the first Order until all hon. Members have taken their seats?

(Loud consultations)

Order, hon. Members! Hon. Members, please, take your seats because we have an hon. Member who should be sworn in. Hon. Members, take your seats so that we can go to the swearing in ceremony!

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:-
Patrick Cornel Ahenda

COMMUNICATION FROM THE CHAIR

PRESENCE OF SOMALI SPEAKER AND MEMBERS OF PARLIAMENT IN SPEAKER'S ROW

Mr. Speaker: Hon. Members, I wish to introduce to you and welcome the hon. Sharrif Hassan Sheikh Aden, the Speaker of the Parliament of Somalia, who is on a visit to our country. He is accompanied by four hon. Members, namely: Hon. Dr. Mohamud Jama Sifir, hon. Prof. Abdulrahman Ibbi and hon. Mohamed Abdi Yossuf. On your behalf, I would like to wish them a happy stay in Kenya. I also wish to state from the Chair that I have undertaken on your behalf, to extend

whatever technical assistance is necessary, which is in possession of our Parliament to help in establishing a properly functional Somali Parliament.

Thank you, hon. Members.

(Applause)

POINT OF ORDER

RAID ON EL-DIMTU AREA

Dr. Galgallo: Thank you, Mr. Speaker, Sir, for giving me this opportunity. Last week on Thursday, the 16th of March, one community from Marsabit District that has been literally at war with all its neighbouring communities in its unending quest for violence and lawlessness, raided El-Dimtu area which is at the common border between Marsabit District, Moyale District and Ethiopia and killed three people, including a Kenya Police Reservist from Moyale District. In the process, they stole 1,500 cattle, which was probably the only remaining livestock for my people. Up to date, none of those animals has been recovered.

Our security people, who would have---

Mr. Speaker: Order! Order! Dr. Galgallo, we have procedures in this House. You wanted to seek a Ministerial Statement. You are now debating the matter without notice!

Dr. Galgallo: Mr. Speaker, Sir, I want to build up my argument for the Ministerial Statement.

Mr. Speaker: No, no! Thank you. You must be on the right foot.

Dr. Galgallo: Mr. Speaker, Sir, I would like to know why the Government is unable to contain insecurity in this area and, instead, allows one community to perpetually wage war against all its neighbouring communities.

(Applause)

Mr. Speaker, Sir, there was a vehicle which was impounded in that area with livestock. That vehicle---

Mr. Speaker: Order! Order! Dr. Galgallo, you will wait for the Minister to respond and seek clarification. We are not going to have a debate on a Motion that does not exist. So, I think you have finished.

Dr. Galgallo: Mr. Speaker, Sir, I beg to seek a Ministerial Statement on this serious issue which continues to affect our people in that area. I would like to know what the Government is doing to contain the situation.

Mr. Speaker: Mr. Michuki, are you prepared to respond?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, with your indulgence, I will issue the Ministerial Statement on Tuesday next week. In the meantime, let me assure this House---

*(Hon. Members on the Opposition side
hissed continuously in their places)*

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

Mr. Speaker: Order! Order! Can you let him finish? The Minister is responding to a point of order.

Proceed, Minister!

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, I want to assure this House that our security forces---

*(Hon. Members on the Opposition side
continued hissing in their places)*

The Assistant Minister for Water and Irrigation (Mr. Wanjala): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it?

The Assistant Minister for Water and Irrigation (Mr. Wanjala): Mr. Speaker, Sir, there is too much hissing on the Opposition side. The hon. Members on that side are behaving like a big snake hissing at someone.

(Laughter)

Mr. Speaker: Order! Order, hon. Members! Now, shall we return to decorum and dignity? Minister, have you finished?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, I was assuring this House that our security forces are on the ground pursuing the bandits and also trying to recover the stolen cattle. Indeed, the hon. Member raised this issue privately with me this morning. I assured him that everything will be done to ensure that the stolen property is recovered and the affected people protected by the Government.

Mr. Speaker: Very well! Tuesday then.
Next Order!

MOTION

APPOINTMENT OF HOUSE BUSINESS COMMITTEE

THAT, the following be appointed as Members of the House Business Committee:-

The Hon. (Dr.) Moody A. Awori, MP., (Chairman).

The Hon. Martha Karua, MP.

The Hon. Amos Kimunya, MP.

The Hon. John Michuki, MP.

The Hon. Musikari Kombo, MP.

The Hon. Charity Ngilu, MP.

The Hon. (Dr.) Mukhisa Kituyi, MP.

The Hon. Chirau Mwakwere, MP.

The Hon. Kipruto Kirwa, MP.

The Hon. Raphael Tuju, MP.

The Hon. Moses Wetangula, MP.

The Hon. Norman M.G.K. Nyagah, MP.

The Hon. Simeon Nyachae, MP.

The Hon. Henry O. Obwocha, MP.

The Hon. Uhuru Kenyatta, MP.

The Hon. Justin B.N. Muturi, MP.

The Hon. (Dr.) Bonaya Godana, MP.

The Hon. Henry Kosgey, MP.

The Hon. Joseph Kamotho, MP.

The Hon. Marsden Madoka, MP.

*(The Vice-President and Minister for
Home Affairs on 22.3.2006,
Morning Sitting)*

(Resumption of Debate interrupted)

on 22.3.2006, Morning Sitting)

Mr. Speaker: Order! Order, hon. Members! We adjourned this morning for consultations, so that we can complete the issue of the House Business Committee. Are we there?

The Vice-President and Minister for Home Affairs!

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

THAT, the Motion be amended by deleting the following-

The Hon. Charity Ngilu, MP.

The Hon. (Dr.) Mukhisa Kituyi, MP.

The Hon. Moses Wetangula, MP; and, substitute the following in place thereof-

The Hon. Prof. Kivutha Kibwana, MP., and

The Hon. Moses Akaranga, MP.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I beg to second the amendment.

(Question of the first part of the amendment, that the names to be left out be left out, proposed)

Mr. Sungu: On a point of order, Mr. Speaker, Sir. I note that the Leader of Government Business has proposed that we delete three names and replace them with two names. So, there is something missing, unless there is room for including another name. If there is any difference, then I would like to know.

Mr. Speaker: Order! Order! Mr. Sungu, that makes perfect sense, taking into account the ruling I made this morning, which had the effect of increasing one more person for KANU. So, if the Government has removed three of its hon. Members and replaced them with two hon. Members, they have left a position for KANU. So, that makes perfect sense.

(Applause)

Do we have a name for inclusion from the KANU side?

Mr. Muturi: Mr. Speaker, Sir,---

Mr. Speaker: Mr. Muturi, do you want to move an amendment to the Motion?

Mr. Muturi: Yes, Mr. Speaker, Sir.

Mr. Speaker: I will, first, dispose of the amendment by the Leader of Government Business, so that we can come to the next amendment.

(Question of the first part of the amendment, that the names to be left out be left out, put and agreed to)

(Question of the second part of the amendment, that the names to be inserted in place thereof be inserted, proposed)

(Question of the second part of the

amendment, that the names to be inserted in place thereof be inserted, put and agreed to)

(Question of the Motion as amended proposed)

Mr. Speaker: Mr. Muturi!

Mr. Muturi: Mr. Speaker, Sir, I beg to move the following amendment to the amended Motion:-

THAT, the Motion as amended be further amended by deleting the names of the following Members-

The Hon. Uhuru Kenyatta, MP.

The Hon. (Dr.) Bonaya Godana, MP.

The Hon. J.B.N. Muturi, MP.

The Hon. Henry Kosgey, MP.

The Hon. Joseph Kamotho, MP.

The Hon. Marsden Madoka, MP.

(Applause)

My reasons are that we, as a party, have consulted and are not convinced that the Leader of Government Business, using the arithmetic that you have given us, has been able to give names of those persons who he can legitimately and validly say belong to his party. For that reason, we feel that the seven slots that we have been given is not exactly what our party is entitled to.

(Applause)

Mr. Speaker: Is there anybody seconding?

Hon. Members: Yes!

Mr. Samoei: Mr. Speaker, Sir, I rise to second the amendment proposed by Mr. Muturi.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Please, listen!

Mr. Samoei: Mr. Speaker, Sir, I rise to second the amendment proposed by Mr. Muturi as a further amendment to the amendment that has already been proposed and passed.

We feel that it is important for this House, using whatever arithmetic that has been used, to be fair and even when we are applying the rules of the House. It is our considered opinion that the arithmetic that has been used to allocate the numbers on both sides of the House is unfair. This is so because there has not been any consultation between the Leader of Government Business, the Leader of the Official Opposition and the whips. We, therefore, do not find any meaning in participating in a Committee that has been pushed down our throat.

(Applause)

We have, therefore, taken the liberty to give the Government whatever majority they want in that Committee and we are withdrawing the names as proposed by Mr. Muturi.

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

Mr. Speaker: Order! Order! We have to follow the law. The amendment is perfectly in order; the politics of it may not be right but the law is the law.

*(Question, that the names to
be left out
be left out, proposed)*

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I stand to oppose the Motion. The hon. Members are entitled not to sit on the Committee. They are also entitled to their stand. However, this sadly demonstrates shifting of goal posts. It is on the HANSARD the reason given in the objections raised in the morning; one more hon. Member was demanded and one more was given. It cannot be for the Official Opposition or for any other party to enter the business of the ruling party. Although we extended dialogue, we did not indicate that we will accept arm-twisting by another party to tell us how to put our house in order. The extension for dialogue is still open but I do not think it is in good faith to shift goal posts in the nomination of the hon. Members of the House Business Committee.

Prof. Anyang-Nyongo: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Minister to impute improper motive on the part of the Opposition, that they used arm-twisting when they were proposing an amendment?

(Loud consultation)

Mr. Speaker: Order, hon. Members! Hon. Members are entitled to express their opinions. I am personally perplexed that after adjourning this morning and the Leader of Government Business having ceded what I had ruled, this has to be but it is within your right. Let us, therefore, speak our mind and in the end, you will vote.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, those who were involved in the informal consultations understand perfectly what I am referring to; that the membership of this Committee was distributed according to the formula that has been used since 2003. From January 2003, we admitted that there are issues arising within the NARC party but they are for NARC itself. It is for the individual parties in NARC to discuss with one another and see the way forward. We want to proceed with the Motion. The House cannot operate without a House Business Committee and so we wish that this matter comes to a closure. We regret that goal posts have been shifted but we have to continue even amidst difficulties.

With those few remarks, I beg to oppose.

Mr. Billow: Mr. Speaker, Sir, our party, KANU, is not shifting any goal posts. It is very important for us to know who are hon. Members of a political party. If an hon. Member of KANU, our political party, serves the interest of another political party in broad daylight in capacities as high as the Cabinet, can we still consider that person a member of our political party?

The reason why we decided to withdraw is very simple. We have been told that we were entitled to seven positions because we have 68 hon. Members as KANU and the ruling party has the balance; 146. They are, therefore, entitled to 13 positions. Could we have a list of who are actually hon. Members of the ruling party?

(Applause)

Mr. Speaker: Order, Mr. Billow! I think there is something seriously wrong. This very morning, we said how many hon. Members were for NARC. If you all remember, we said they were 131, 68 for KANU, 15 for FORD(P). All these figures are within our official records. It is, therefore, not right for Mr. Billow to ask how many hon. Members belong to NARC. I do not think this House must be treated to things that it ought not to transact. So, please, make up your minds and be truthful about it. If you do not want to be in the Committee, you have put an amendment, so let us vote on it.

Proceed, Mr. Billow!

Mr. Billow: Mr. Speaker, Sir, I appreciate that hon. Members of the ruling party are 131. However, the question we are asking is very simple. You cannot at one moment tell Kenyans that hon. Members of the ruling party are 131 and, therefore, for the purpose of forming the House Business Committee, you will use that strength of 131 hon. Members and in the next breath, when you come to forming, for example, other Committees like the Departmental Committees, all those people who are sitting on this side of the House, who are legitimately elected into that party, are considered to be non-members of NARC. We, therefore, want to have a list of hon. Members whom they believe are hon. Members of NARC.

(Applause)

Mr. Speaker: Order, hon. Members! Mr. Billow, that is politics!

Hon. Members: No!

Mr. Speaker: Order, hon. Members!

Mr. Speaker: Mr. Billow, that is politics! You are not talking about the procedure. You are talking about justice and fairness. Let me tell you the following: That is a matter that has to be dealt with at the party level. If it was something that I must dispense of as the Chair, then you can ask me about it. I have no power to ensure that parties are run in any particular form. I appealed yesterday for parties to look unto themselves and I think you had better go and think about it.

The Minister for Planning and National Development (Mr. Obwocha): Mr. Speaker, Sir, I only have one comment to make. Indeed, you said that there are three recognised parties in the House. These are the NARC, KANU and FORD(P). Even if we were to go with those numbers in relation to all the hon. Members in the House, in fact, FORD(P) would be entitled to 1.6 Members in that Committee. That means that since we do not have a 0.6 of a person, the nearest would be two hon. Members. On that basis, FORD(P) would have been entitled on its own right to have two hon. Members. But since you said that in terms of us being with KANU, if we worked on that figure, the percentage comes to 1.4. We said that we can accede and leave it for KANU. It is on that basis that we were negotiating that we leave it to KANU and ask NARC since we are supporting it to accede one slot to us. Basically, these are the negotiations that have been going on and I am shocked beyond belief to see that KANU has turned round.

Mr. K. Kilonzo: Mr. Speaker, Sir, hon. Obwocha has said that FORD(P) has 15 hon. Members. Myself, hon. Mwandawiro and hon. Omingo are never invited to attend the FORD(P) Parliamentary Group meetings. So, hon. Obwocha should say that FORD(P) has 12 hon. Members.

(Applause)

Mr. Speaker: Order, hon. Members! It is now adequately clear to me that what you are asking of me to is to micro-manage political parties, a job I am afraid, I was never elected to do and a job that I am not willing to take even if I am elected. I have no business in managing your parties. Just to respond to you, have you ever heard of the concept of democracy, that the majority will

have their way and the minority will have their say? If your party made a decision and it was a majority decision, you either live with it or you leave them. I cannot manage that!

Please, whatever you do, let us concentrate on the Motion. Let us vote on it and let the majority have their way. I do not know what happens, if, for example, the Motion is defeated.

Mr. Raila: Mr. Speaker, Sir, in this House, people should reason rather than dictate to each other. In the morning when we were discussing here, you ruled that you were adjourning the House, so that there could be consultations between the various parties. We started the consultations here, but they never went very far. This was in the spirit in which hon. Ngilu ceded her slot and said that she wanted it to be taken by a more deserving party.

Over lunch time, I have spent a lot of time looking at Erskine May on the issue of Parliamentary procedure, particularly with regard to whipping of hon. Members. I have also consulted the Standing Orders of the House of Commons. If you will remember, the Minister for Justice and Constitutional Affairs in her contribution this morning said that the Whip has extensive powers to whip hon. Members on disciplinary grounds. I want to submit here that the Whip does not have unilateral powers to de-whip any hon. Member. These are issues that are discussed in parliamentary group meetings of the respective parties and hon. Members who are supposedly being de-whipped are given an opportunity to defend themselves. Standing Order No.131, which confers to the ruling party 13 slots in the House Business Committee includes hon. Members, I included, who are supposedly being de-whipped.

(Loud consultations)

Mr. Speaker: Hon. Members, these are grave matters and we want to listen to one another. Proceed, Mr. Raila!

Mr. Raila: Mr. Speaker, Sir, I am trying to say that it is unfair to purportedly de-whip a group of hon. Members of your party without giving them a chance to defend themselves and then use their numerical strength to acquire the number of--

(Applause)

That is why we are saying that the ruling party, on the basis of the number that it now has, does not qualify to get 13 slots in this Committee. It should have seven and not 13 slots. The House Business Committee is a very important Committee and we said that we needed to have proper consultations, so that, the Committee is properly representative of the House. So, it is a bit definite that NARC's numerical strength is now reduced to seven on the basis of the numbers that they enjoy and if that is not the case, then further consultations should be held on this matter before a decision is reached.

Mr. Speaker: It is very clear to all of you that I am actually presiding over an issue that I have no business presiding over. I have no business presiding over the equity or inequity of practice in parties. However, as one of you, an hon. Member of this House and a Kenyan, I plead to you, hon. Members, that whatever you do now, do not cut off links. Go and consult in the interest of the people of Kenya!

(Applause)

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): On a point of order, Mr. Speaker, Sir. Taking into consideration what you said yesterday and what you have said now, it is clear in everybody's mind that no mathematics will change either the

Government's side or the Opposition side in the decision that they have made. For this reason, we cannot continue discussing the same thing from morning until now. Would I be in order to ask that the Mover be called upon to reply, so that we can vote on the issue and solve the matter once and for all?

Mr. Speaker: Order, Mr. Mwenje! You are wrong! We already have an amendment which must be disposed of, before we go to the other substantive issues. So, Dr. Kituyi, I will hear you!

Mr. Muite: On a point of order, Mr. Speaker, Sir. You ruled - and very correctly in my view - that these positions are allocated on the basis of political parties represented in Parliament. I rise on a point of order to ask about those of us who are termed as fringe parties---

Incidentally, a party that ruled India for many decades had two hon. Members at one time. Should our voices not be heard? Those are parties like FORD(A), Sisi kwa Sisi and so on. Should we not be given an opportunity to be heard?

(Applause)

Mr. Speaker: Order, hon. Members! Mr. Muite, have you ever heard of "misdirected fire"? That fire is misdirected! As you know very well, in this House, I give every party an opportunity to be heard. As to the Membership of parties, I have no power. So, direct the fire to whoever is aligned or capable of giving it to you.

(Loud consultations)

Order, hon. Members! Order, Mr. Billow and company! You know you will never follow anything, if you do not listen! So, as I said, that is a matter outside the Chair. I think we do not have to deal with that. You have made the point. I had given the chance to Dr. Kituyi. When he finishes, I am inclined - unless I am properly persuaded - to give one more hon. Member an opportunity to talk on this amendment and I will dispose of the amendment in one way or the other. Then, we can know what happens.

Dr. Kituyi, please, proceed!

The Minister for Trade and Industry (Dr. Kituyi): Thank you, Mr. Speaker, Sir. In my modest conviction, while opposing the proposed amendment, I have three different kinds of things.

First of all, we are mixing two things. We are mixing the issue of the Official Opposition being dissatisfied with the slots allotted to them. They are withdrawing from a parliamentary committee with another extraneous matter which is the relationship between Members of the governing party sitting on the Government side and those sitting on the Opposition side.

Mr. Speaker, Sir, I want to repeat what you said this morning. It is very good if rules are obeyed and fairness is put into consideration. Humility should govern the relationship between people. However, the job of Mr. Speaker is to follow the rules. Humility and fairness is a virtue that we try to aspire to, but we cannot be forced into.

Mr. Speaker, Sir, I listened to my friend and brother Mr. Raila talk about the Government using hon. Members who are partly in the Opposition. Two things come to my mind. One, the Parliamentary Group of party of Government and its affiliates held a meeting to deliberate on how they will make their presentation on these issues. It was fairly publicly advertised. It was held at the Kenyatta International Conference Centre (KICC) and decisions were taken. If you are a Member of that party and you did not attend the---

Mr. Balala: On a point of order, Mr. Speaker, Sir. Is the hon. Member for Kimilili Constituency in order to misguide this House about an advertised meeting at KICC? Was it a

NARC meeting or a Government of National Unity (GNU) meeting? Could he clarify that?

(Applause)

The Minister for Trade and Industry (Dr. Kituyi): Mr. Speaker, Sir, if Mr. Balala listened to me, I described what met. It was a Parliamentary Group of parties of Government. It met to decide the order of business. Having said that, as to whether the deliberations were popular with the Opposition, is not a matter for the Speaker to decide on. All I am saying is this---

Mr. Speaker: Order! I think hon. Members should stick to what I said in the morning. I recognise the political parties I enumerated. Any other marriages of convenience or inconvenience are not part of my docket. So, could you please do that?

Dr. Kituyi, please, proceed!

The Minister for Trade and Industry (Dr. Kituyi): Thank you, very much Mr. Speaker, Sir, for what you have said. Sometimes marriages are very inconveniencing. However, we can externalise any differences that we have as parties and the spirit of fairness---

Mr. Ochilo-Ayacko: On a point of order, Mr. Speaker, Sir. Would I be in order to ask Dr. Kituyi, who is a good friend of mine, to correct the facts he is giving to this House. Members of LDP were not invited to that function. So, is it in order for Dr. Kituyi to mislead the House that the ruling party---

Mr. Speaker: Order! Mr. Ochilo-Ayacko, you know you are treading on very dangerous grounds. In fact, you are almost standing on quicksand. I think I made the position clear today. You had better listen to me. I made the position clear to the Minister for Local Government. I am not in the management of political parties! I put that to a stop now! Let us deal with the matter at hand.

Dr. Kituyi, please, proceed!

The Minister for Trade and Industry (Dr. Kituyi): Mr. Speaker, Sir, the principal matter at hand is the Official Opposition withdrawing candidates from Membership of a parliamentary committee, whom we understand they had presented.

Let me jog your mind, Mr. Speaker, Sir. This morning, the main contention of the Official Opposition was that they were entitled to seven and not six Members in the committee. Further to that, they went through the motions of appropriating the additional slot allotted to them. If you accepted that you wanted seven Members in the committee and even went through the process of giving a seventh name to join the committee--- We broke off because the listing as amended had not been completed properly so that the House could come up with the same names listed properly. That was the ruling of the Chair. There was a mix-up. I would expect that the Official Opposition would say they are dissatisfied because those are not the names they presented. They could also refuse if we breached the agreement that the number would be increased from six to seven Members. But to stand up and purport to remove, by an amendment, all the seven Members, I would recommend that the Motion passes and they resign individually. That is an easier way to go. If you are now saying that the principles on which you had presented the six names and even presented a seventh name have been negated because of consultations you have had, defeats logic.

I want to propose that this House proceeds to vote on this Motion. If the amendment is defeated, we continue with the serious business of this House.

Mr. Speaker: Very well! I think I will dispose of this amendment! I will now proceed to put the Question in order to dispose of the amendment.

(Loud consultations)

Mr. Speaker: Order! Quite frankly, after listening to both sides I cannot decide one way or

the other. I will attempt again to put the Question.

*(Question, that the names to be
withdrawn be withdrawn,
put and agreed to)*

Hon. Members, I cannot make up my mind but for the sake of this debate, the Ayes have it!

Hon. Members: Division! Division!

Mr. Speaker: Very well. You can take your seats! Sit down please! Order, hon. Members! I am sure if you were me, you would be in the same boat. It is quite difficult to know which side won. So, we now have the opportunity to actually find out which side had it. The hon. Members on the right hand side have demanded and have earned a right to a Division.

Hon. Members: No!

Mr. Speaker: They were shouting "Division"! I may have not known the numbers of the Ayes and Noes, but I am satisfied they called for a Division. I heard that and I am satisfied that they had an overwhelming number. So, they have more than the requisite number.

So, I will proceed to call for a Division. I order that the Division Bell be rung for five minutes.

(The Division Bell was rung)

Order, hon. Members! Please, take your seats! Before I explain the process of Division, I want to say the following: What we are doing today has never happened in this House. In fact, it has never happened in the history of this Parliament as we go to a Division on the election of Members of the House Business Committee or any other Committee for that matter. In fact, when the rules of the House were made, I do not think it was ever anticipated that a thing like this would happen. We are now charting a new ground. What happens later? We could go to a Division and the amendment to the Motion may very well be carried or thrown out. That, also, cannot force hon. Members to serve when they do not want to. So, we are getting into very interesting issues. These are issues that we have never thought of. Anyway, this is democracy at work. It makes us the wiser. We must, therefore, look for ways of curing these problems. So, let the wheels of democracy take their path. Out of their path we shall be able to find out the correct way to go.

Hon. Members, now coming to the law, the Division Bell has stopped ringing. I now order that the bars be drawn up.

*(The Bars to the Chamber were
drawn up)*

This, therefore, means that no hon. Member is allowed to come into this Chamber whether from the Back Bench or the Front Bench. Hon. Members who are outside are now locked out!

*(Messrs. Muiruri, Musila, Sudi and
G.G. Kariuki walked into the
Chamber through the back door)*

Hon. Members, please, take your seats! When the Division Bell rings, it is summoning hon. Members to the Chamber. So, those hon. Members who will not be in the Chamber in future when the Division Bell has stopped ringing, will be considered to be outside the Chamber. So, do whatever you please when the Bell is ringing. However, when it stops ringing, you should be

within the Chamber. Any hon. Member behind the Chair is not in the Chamber. So, I have given adequate notice and that is how things will operate. So, any hon. Member not in, is counted as being out.

Hon. Members, I will now announce the names of the Tellers. For the Ayes, the Tellers are Mrs. Kihara and Mr. Rotino, who will proceed to the voting booth to my right. The Tellers for the Noes are Mr. Ndile and Mr. Salat. They will proceed to the booth---

Hon. Members: But they are Ministers!

Mr. Speaker: Order, hon. Members! Ministers are hon. Members. This has been done in the past.

Now, the Tellers for the Noes will proceed to my left.

The third issue I want to bring to your attention as we proceed to vote is that no hon. Member is obligated to vote. You may be in this Chamber and you do not want to vote. If that be your position, then proceed to register your name with the Clerk-at-the-Table of the House as a person absenting---

Hon. Members: Abstaining!

Mr. Speaker: I am sorry! Such a person will be abstaining from voting. Abstaining and absenting oneself mean the same thing. Those words mean that you are not voting anyway. So, you will be abstaining from voting.

Now, I will put the Question, and after I have done so, do not reply to me, proceed to vote. Those who propose that the Motion be carried, that is the Ayes, will proceed to my right. Those hon. Members who are opposed to the amendment, or insisting that the names should not be deleted, should proceed to my left. There are set times to do this. You must do it within the time set. I will keep on informing you of the time left. It is in your interest that you vote as quickly as possible, so that you are not caught by time.

Hon. Members, I will now put the Question, as required by the Standing Orders.

DIVISION

(Question put and the House divided)

Mr. Speaker: Order, hon. Members. Any hon. Member who has not voted has no right to vote. Voting time is up. Let us have the results of the Division!

(Question defeated by 94 votes to 1)

AYES: Mr. Oparanya.

NOES: Messrs. Abdirahman, Akaranga, Angwenyi, Awori, Bifwoli, Mrs. Chelaite; Messrs. Ethuro, Gachagua, Githae, Kagwe, Kagwima, Kaindi, Kamama, Kamanda, Karaba, Kariuki G.G., Kariuki M.; Ms. Karua, Messrs. Karume, Kembu-Gitura, Kenneth; Dr. Khalwale; Messrs. Khamasi; Prof. Kibwana; Mrs. Kihara; Messrs. Kimathi, Kimunya, Kingi, Kirwa; Dr. Kituyi; Messrs. Koech J., Koech S., Kombe, Kombo, Kuria; Dr. Kuti; Mr. Leshore; Dr. Machage; Dr. Manduku; Messrs. Manoti, Masanya; Ms. Mbarire; Messrs. Mganga, Michuki, Miriti, M'Mukindia, Mohamed A.M., Mohamed H.M., Moroto, Muchiri; Mrs. Mugo; Messrs. Muiruri, Muite, Mukiri, Mungatana, Munya, Munyao, Munyes, Muriithi; Eng. Muriuki; Mr. Muriungi; Dr. Murungaru; Messrs. Murungi, Mwaboza, Mwakwere, Mwanacha, Mwangi O.K.; Ms. Mwau; Messrs. Mwenje, Mwiraria; Dr. Mwiria; Capt. Nakitare; Messrs. Nderitu, Ndile; Ms. Ndung'u; Messrs. Ndwiga, Ngozi, Ntutu, N. Nyagah, Obwocha, ole Metito, Opore; Prof. Saitoti; Messrs. Serut, Shaaban, Shitanda, Tarus; Mrs. Tett; Eng. Toro; Messrs. Wambora, Wamwere, Wanjala; Dr.

Wekesa; Messrs. Were and Wetangula.

ABSTENTIONS: Ms. Abdallah; Messrs. Achuka, Ahenda; Dr. Ali; Messrs. Aringo, Ayacko, Bahari, Balala, Bett, Billow, Boit, Cheboi, Choge; Dr. Galgallo; Dr. Godana; Messrs. Ivuti, Kajembe, Kamotho; Dr. Keino; Messrs. Kenyatta, Keter, Khalif, Khamisi, Khaniri, Kilonzo C., Kilonzo K., Kimeto, Kipchumba, Kofa, Kones, Korir, Koros, Kosgey, Ligale; Maj. Madoka; Messrs. Maitha M.M., Maore, Mbai, Midiwo, Mohamed M.A.H., Musila, Musyoka, Muturi, Mwandawiro, Mwanzia; Mrs. Mwendwa; Messrs. Ndambuki, Ndolo; Maj.-Gen. Nkaiserry; Rev. Nyagudi; Eng. Nyamunga; Prof. Nyong'o; Dr. Oburu; Messrs. Odoyo, Ogur, Ojaamong; Dr. Ojiambo; Messrs. Ojode, Okemo, Okundi, ole Ntimama; Prof. Olweny; Messrs. Omamba, Omingo, Omondi; Prof. Oniang'o; Messrs. Osundwa, Owino, Poghio, Raila, Rotino; Dr. Rutto; Messrs. Salat, Sambu, Samoei; Dr. Shaban; Messrs. Sirma, Sudi, Sungu, Syongoh, Too, and Weya.

Mr. Speaker: Hon. Members, this means that the Motion be reversed as previously amended containing all the names that were proposed to be deleted there as part of the Motion. We will proceed from there.

The Minister for Trade and Industry (Dr. Kituyi): On a point of order, Mr. Speaker, Sir. As we seem to be setting a precedent, I would like some assistance from the Chair to understand this. What does it mean if a Member of the House feels so strongly about a position that he moves the House to go into Division and him and his seconder abstain from supporting the Motion they have moved?

Mr. Speaker: In the ordinary course of events a person who is opposed to something will express that opposition either orally or by vote and the one who supports will do that by proposing and by voting for it. That is the position in our Standing Orders. There is also a provision in our Standing Orders which allows an hon. Member to abstain. It states that no hon. Member is obligated to vote on anything. That is the law. As to the moral consequences of proposing an issue which you have no intention of voting for, I think I will leave that to be judged by the House, the individual hon. Members and the society at large.

Mr. Samoei: The issue in question is actually on the other side. Why would anybody want to force---

Mr. Speaker: Order, Mr. Samoei! Could I finish with the formalities first. Now that we have finished with announcing the results of voting, could the Division Bars be removed?

(The Division Bars were removed)

Mr. Samoei: Mr. Speaker, Sir, the question I want to ask relates to the issue that has been raised by Dr. Kituyi. Why does the side to which Dr. Kituyi belongs want to force us into a Committee which we do not want to belong to? He cannot force me to vote on an issue which I do not think I should vote on because we have made our position known that we do not wish to be part of that Committee.

Mr. Speaker: Once we have disposed of an issue, we cannot revisit it. We have already disposed of the amendment, but the Motion is still there as amended by the inclusion of the previous names from the Government side.

We now revert to the original Motion and I intend to finish with it also. I will hear one more person and then finish with it.

Mr. Kenyatta: Mr. Speaker, sir, as you have correctly said from yesterday, through the entire morning, the issues before us are monumental and posterity will actually judge us.

On that basis, unless those issues are dealt with, I beg to withdraw my name from that list and so, I am not prepared to serve in that Committee.

(Applause)

Mr. Muturi: Mr. Speaker, Sir, in similar breath, I wish to withdraw my name from serving in the Committee that NARC had proposed me to.

(Applause)

Mr. Speaker: Order! Order! Order! I think that whatever we do, and however strongly we feel about these issues, we must follow the law. I think the law is that you cannot withdraw what you have not done. The proposal was from the Leader of Government Business. I think the correct thing to do is, immediately, upon that Motion going through, you tender your resignation.

(Loud consultations)

Order! Order! Order, hon. Members! Once the Motion goes through, if it does, you just tender your resignation immediately, because you cannot withdraw from what you did not put yourself there in the first place.

(Loud consultations)

Order! Order! Order, hon. Members! Unless there is any meaningful contribution, I will put the Question!

Mr. Muturi: Mr. Speaker, Sir, you have just said that the Motion has not been disposed of, and I believe it is perfectly in order for any hon. Member whose name is included here to stand in his or her place and decline to serve. It happened this morning with hon. Charity Ngilu, and her name was omitted! Why are we having double standards?

(Applause)

Mr. Speaker: Order! Order, Mr. Muturi! There is really nothing to be excited about.

Mr. Muturi: I am not excited!

Mr. Speaker: You can say very politely that you do not want to serve in that Committee and whatever happens, even if you say it, you will still have to resign officially. So, it is a very simple issue. Is there any other issue?

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Speaker, Sir. The matter at hand having been debated exhaustively, would I be in order to ask that the Mover be called upon to reply?

(Applause)

Mr. Speaker: Order! Order! I think there was one amendment I had approved from hon. Sungu. It is the only one I have. There was Mr. Muturi's amendment, which we have disposed of. There was another one from the Government side, which we have also disposed of. Mr. Sungu brought two amendments; one was in order and was accepted by the Chair. The other one was out of order and it was rejected. So, there is only one amendment which is valid. Hon. Ochillo-Ayacko's amendment was also rejected. That is it.

Mr. Sungu: Thank you, Mr. Speaker, Sir---

Mr. Balala: On a point of order, Mr. Speaker, Sir. Is it in order to resign when you have

not even accepted a position?

Mr. Speaker: Order, Mr. Balala! Please, sit down. This is not an employment issue.

(Laughter)

This is a Motion by the House. If the House passes it, that is it and the only thing you can do is to resign.

Where is Mr. Sungu? Are you still interested in the amendment?

Mr. Sungu: Thank you, Mr. Speaker, Sir. I am ready to proceed.

I wish to withdraw the amendment that I had proposed before the House.

Mr. Speaker: Very well!

Mr. Kamotho: On a point of order, Mr. Speaker, Sir. I would like to withdraw my name from the list of the hon. Members proposed for the Committee.

(Applause)

Mr. Speaker: Order! Order! Order! Hon. Members, do not blame anybody when we venture into very new and foreign territory. As I said earlier, this has never happened in the Kenyan Parliament. So, it is something new. I think what we should be asking ourselves is, why now?

(Loud consultations)

Order! Order! Order, hon. Members! I think what we should be asking ourselves is, why now? The second question we should ask ourselves is: Is it necessary? I am not giving answers, I am just posing questions for you to go and ponder. The third question, in my view, is: Is this sustainable for the country?

An hon. Member: No!

Mr. Speaker: The fourth question is: Must we continue that way?

An hon. Member: No!

Mr. Speaker: Finally, the fifth question is: If all the other three should not be or should not have been, how do we retract our steps and get this House and this country working properly again? I leave all those questions to you, hon. Members, to go and think about.

Think about them very soberly as I put this Question. In spite of this unprecedented action, I am again inclined to commend you, hon. Members, from both sides of the House, for doing whatever you are doing, even when it is unprecedented, in a dignified and honourable fashion.

(Applause)

That is how Parliament should be. We may disagree but we do not have to fight in disagreement.

DIVISION

(Question put and the House divided)

(Question carried by 94 votes to 81)

AYES: Mr. Abdirahman, Rev. Akaranga, Messrs. Angwenyi, Awori, Bifwoli, Mrs.

Chelaite, Messrs. Ethuro, Gachagua, Githae, Kagwe, Kagwima, Kaindi, Kamama, Kamanda, Kanyingi, Karaba, Kariuki G.G., Kariuki M., Ms. Karua, Messrs. Karume, Kembu-Gitura, Kenneth, Dr. Khalwale, Khamasi, Prof. Kibwana, Mrs. Kihara, Messrs. Kimathi, Kimunya, Kingi, Kirwa, Dr. Kituyi, Koech J.K., Messrs. Kombe, Kombo, Dr. Kulundu, Dr. Kuti, Mr. Leshore, Dr. Machege, Dr. Manduku, Messrs. Manoti, Masanya, Ms. Mbarire, Messrs. ole Metito, Mganga, Michuki, Miriti, M'Mukindia, Mohamed A.M, Mohamed H.M., Moroto, Muchiri, Mrs. Mugo, Messrs. Muiruri, Muite, Mukiri, Mungatana, Munya, Munyao, Munyes, Muriithi, Muriuki, Muriungi, Dr. Murungaru, Messrs. Murungi, Mwaboza, Mwakwere, Mwanicha, Ms. Mwau, Messrs. Mwenje, Mwiraria, Capt. Nakitare, Nderitu, Ndile, Ms. Ndung'u, Messrs. Ndwiga, Ngozi, ole Ntutu, N. Nyagah, Obwocha, Oporo, Prof. Saitoti, Messrs. Serut, Shaaban, Shitanda, Tarus, Mrs. Tett, Eng. Toro, Messrs. Tuju, Wambora, Wamwere, Wanjala, Dr. Wekesa, Messrs. Were and Wetangula.

Tellers of the Ayes: Messrs. Keter and Gachagua.

NOES: Ms. Abdalla, Mr. Ahenda, Dr. Ali, Prof. Anyang'- Nyong'o, Messrs. Bahari, Balala, Bett, Billow, Boit, Cheboi, Chepkitony, Choge, Dr. Galgalo, Dr. Godana, Messrs. Gumo, Ivuti, Kamotho, Dr. Keino, Messrs. Kenyatta, Keter, Khalif, Khamisi, Khaniri, Kilonzo C., Kilonzo K., Kimeto, Kipchumba, Kones, Korir, Koros, Kosgey, Ligale, Maj. Madoka, Messrs. Maitha M., Maore, Mbai, Midiwo, Mohamed M.A.M., Musila, Musyoka, Muturi, Mwandawiro, Mwanzia, Mrs. Mwendwa, Messrs. Ndambuki, Ndolo, Maj-Gen. Nkaisserry, Mr. ole Ntimama, Rev. Nyagudi, Eng. Nyamunga, Dr. Oburu, Messrs. Ochilo-Ayacko, Odoyo, Ogur, Ojaamong, Dr. Ojiambo, Messrs. Ojode, Okemo, Eng. Okundi, Mr. Oloo-Arango, Prof. Olweny, Messrs. Omamba, Omingo, Omondi, Prof. Oniang'o, Messrs. Oparanya, Osundwa, Raila, Rotino, Ruto, Dr. Rutto, Messrs. Salat, Sambu, Sang, Dr. Shaban, Messrs. Sirma, Sungu, Syongoh, Too, Wario and Weya.

Tellers of the Noes: Messrs. Karaba and Rotino.

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, the following be appointed as members of the House Business Committee.

The Hon. (Dr.) Moody A. Awori, MP., (Chairman).

The Hon. Martha Karua, MP.

The Hon. Amos Kimunya, MP.

The Hon. John Michuki, MP.

The Hon. Musikari Kombo, MP.

The Hon. Prof. Kivutha Kibwana, MP.

The Hon. Moses Akaranga, MP.

The Hon. Chirau Mwakwere, MP.

The Hon. Kipruto Kirwa, MP.

The Hon. Raphael Tuju, MP.

The Hon. Norman M.G.K. Nyagah, MP.

The Hon. Simeon Nyachae, MP.

The Hon. Henry O. Obwocha, MP.

The Hon. Uhuru Kenyatta, MP.

The Hon. Justin B.N. Muturi, MP.

The Hon. (Dr.) Bonaya Godana, MP.

The Hon. Henry Kosgey, MP.

The Hon. Joseph Kamotho, MP.

The Hon. Marsden Madoka, MP.

Mr. Speaker: Order, hon. Members! As we conclude the business of the day, I wish, again, to ask Members to reflect on the five questions I put earlier. Think about them again. The last question was whether you can sustain this. Secondly, I would like to again recall what I prayed in front of all of you yesterday. I prayed to God that you give yourselves the ability to lead and dialogue. I still pray that we give leadership and direction to this country. We have immense responsibility. We can break this country or unite it. I believe it is in our own common interest that we do not even contemplate breaking it. Give dialogue a chance. Nobody dies because he has talked.

(Applause)

An hon. Member:---(Inaudible)

Mr. Speaker: You know, it is jokes like that, that diminish serious thinking and serious talk. Whoever that was, I am sorry, we are on serious thoughts; a matter of grave national concern.

Finally, again, I thank you, hon. Members. You have done these extra-ordinary things but you have done them within the law and with dignity. At least, that is a plus for both sides of the House.

(Applause)

That is, at least, a sign of leadership. We have demonstrated that we will obey the law and that we can listen to what others have to say without having to insult one another. I thank you for that, and that ends our business today.

As we conclude our business, I understand that the Vice-President and Minister for Home Affairs wants the newly elected House Business Committee to meet in the usual Room No.7 to prepare for tomorrow's business. For those hon. Members who do not understand, without that Committee, the House will never transact any business.

So, you must also understand that it is a grave matter. It is not a question of scoring points.

ADJOURNMENT

Mr. Speaker: Hon. Members, that brings us to the end of our business today. Therefore, the House is adjourned until tomorrow, Thursday, 23rd March, 2006, at 2.30 p.m.

The House rose at 5.05 p.m.