

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 28th November, 2001

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.758

KILLING OF TAVETA RESIDENTS BY ELEPHANTS

Mr. Mwalulu asked the Minister of State, Office of the President:-

- (a) whether he is aware that residents of Jipe, Challa and Njukini areas of Taveta Constituency have been killed and their crops destroyed by rogue elephants from Tsavo National Park; and,
- (b) what he is doing to ensure that the residents are safeguarded and duly compensated.

Mr. Deputy Speaker: Is anybody here from the Office of the President?

An hon. Member: There is nobody here!

Mr. Deputy Speaker: If nobody is here now, we will come back to the Question later.

Mr. Orengo's Question!

Question No.768

HOSTING GENOCIDE PERPETRATORS

Mr. Deputy Speaker: Is Mr. Orengo present?

An hon. Member: He is not here!

Mr. Deputy Speaker: If Mr. Orengo is not in the House, I will come back to the Question later.

Next Question, Mr. Kaindi!

Question No.769

CRITERIA FOR ISSUANCE OF WORK PERMITS

Mr. Kaindi asked the Minister of State, Office of the President:-

- (a) whether he is aware that the informal sector in Nairobi and other major towns has been invaded by people of other nationalities thereby disadvantaging Kenyans; and,
- (b) whether he could explain to the House the criteria being used to allow and issue work permits.

Mr. Deputy Speaker: Is anybody here from the Office of the President?

An hon. Member: Nobody has arrived yet!

Mr. Deputy Speaker: Since nobody is here, I will come back to the Question later.

Next Question, Mr. Mwakiringo!

Question No.774

ALLOCATION OF WATER CATCHMENT
POINT TO VOI RESIDENTS

Mr. Mwakiringo asked the Minister for Transport and Communications:-

- (a) whether he is aware that the Kenya Railways Corporation has a water catchment point at Man-Eaters Station of Tausa Division, Voi Constituency; and,
(b) whether he could consider handing over the above point to the residents of Ngolia Location in Tausa Division for domestic and agricultural use.

Mr. Deputy Speaker: Is anybody here from the Ministry of Transport and Communications?

An hon. Member: There is equally nobody here from that Ministry!

Mr. Deputy Speaker: If nobody is here from that Ministry, I will come back to the Question later. Next Question, Mr. Tom Onyango!

Question No.778

RELOCATION OF KENYA SUGAR
AUTHORITY HEADQUARTERS

Mr. Deputy Speaker: Is Mr. Tom Onyango present?

An hon. Member: He has not been seen in here also!

Mr. Deputy Speaker: Since Mr. Tom Onyango is not in, I will come back to the Question later. Next Question, Mr. Moses Muihia!

Question No.777

TARMACKING OF ROAD E497 IN GATUNDU

Mr. Deputy Speaker: Is Mr. Muihia not in here?

An hon. Member: He is equally not in the House!

Mr. Deputy Speaker: If he is not here, I will come to the Question later.

We are not doing very well today, are we?

Mr. Mwalulu's Question for the second time.

Question No.758

KILLING OF TAVETA RESIDENTS BY ELEPHANTS

Mr. Mwalulu asked the Minister of State, Office of the President:-

- (a) whether he is aware that the residents of Jipe, Challa and Njukini areas of Taveta Constituency have been killed and their crops destroyed by rogue elephants from Tsavo National Park; and,
(b) what he is doing to ensure that the residents are safeguarded and duly compensated.

Mr. Deputy Speaker: Is anybody here now from the Office of the President?

An hon. Member: The situation has not improved yet!

Mr. Deputy Speaker: Well, let us give them a little more time instead of deferring this Question now.

It seems I have a problem from both sides of the House. Instead of deferring these Questions, let me give hon. Members a few minutes and see if they will come in. So, we will have to go through the Questions for the first time, second time and then the third time.

Mr. Orengo's Question for the second time!

Question No.768

HOSTING OF GENOCIDE PERPETRATORS

Mr. Deputy Speaker: It seems Mr. Orengo is still not in the House, neither is the Minister of State, Office of the President.

Mr. Kaindi' Question for the second time.

Question No.769

CRITERIA FOR ISSUANCE OF WORK PERMITS

Mr. Kaindi asked the Minister of State, Office of the President:-

- (a) whether he is aware that the informal sector in Nairobi and other major towns has been invaded by people of other nationalities, thereby disadvantaging Kenyans; and,
- (b) whether he could explain to the House the criteria being used to allow and issue work permits.

Mr. Deputy Speaker: It seems the Ministers from the Office of the President have not yet come in. Let the Question be stood over.

Mr. Mwakiringo's Question for the second time.

Question No.774

ALLOCATION OF WATER CATCHMENT
POINT TO VOI RESIDENTS

Mr. Mwakiringo asked the Minister for Transport and Communications:-

- (a) whether he is aware that the Kenya Railways Corporation has a water catchment point at Man-Eaters Station of Tausa Division, Voi Constituency; and,
- (b) whether he could consider handing over the above point to the residents of Ngolia Location in Tausa Division for domestic and agricultural use.

Mr. Deputy Speaker: Is there anybody here from the Ministry of Transport and Communications?

An hon. Member: Nobody has come in yet!

Mr. Deputy Speaker: If there is nobody, I will come back to the Question later.

Mr. Tom Onyango's Question for the second time!

Question No.778

RELOCATION OF KENYA SUGAR
AUTHORITY HEADQUARTERS

Mr. Deputy Speaker: It seems Mr. Onyango is still not here. Is the Minister for Agriculture here?

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): I am here, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Well, there is nobody to ask you the Question!

Mr. Muihia's Question, for the second time.

An hon. Member: Mr. Muihia is still not here!

Question No. 777

TARMACKING OF ROAD E497 IN GATUNDU

Mr. Deputy Speaker: Well, hon. Members, I have no choice but to defer all these Questions.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. The Chair has made many rulings on this matter and issued many warnings, which, apparently, appear to have fallen on deaf ears. All the Ministers and some of the hon. Members on the Back Bench are absent!

Mr. Deputy Speaker, Sir, Parliament cannot operate like this. I think the House, or the Chair, as the case may be, ought to apply serious sanctions in order to demonstrate to the country that Parliament, and particularly the Chair, is serious about the business of Parliament. This is because Parliament will fall into disrepute due to the conduct of a few hon. Members.

Mr. Deputy Speaker, Sir, one of the unanswered Questions is directed to the Minister for Transport and

Communications, who is also the Deputy Leader of Government Business. The Minister is not here in the House, neither is the Leader of Government Business. There is no Whip here! This is Question Time and I think something must be done!

Mr. Deputy Speaker: Order! Order! The Chair has done what is within its power to do. The seriousness with which this House takes its business is the responsibility of all hon. Members. The Chair cannot drag people from their offices or from their homes to come here. When they are in here, they are under the guidance and authority of the Chair. So, I would merely want to repeat what the Speaker said the other day that; from now henceforth, any hon. Member who has a Question standing under his name and does not show up to ask it, will be named. Any Minister who has a Question standing under his Ministry and does not turn up to answer it, will be named.

Today, I have found myself in some difficulty because there are neither the Questioners nor the responders in the House. So, I cannot name people who are not present. I want them to be here so that they can see the seriousness of this laxity. Hon. Members are elected to come to the House to deliberate on issues. The Speaker can only act when a breach of Standing Orders arises. But in this case, they are not only breaching the Standing Orders, but also the very fundamental reasons why they were elected to this House. So, I am going to take action. The concerned hon. Members who are not here had better be informed about it when they come to this House next time. Whether they come together or individually, I will deal with them, as and when they come to the House.

The Assistant Minister for Education, Science and Technology (Mr. Karauri): On a point of order, Mr. Deputy Speaker, Sir. I would like to suggest the way forward. I think many Ministers and hon. Members are in the evenings engaged in their constituency work and sleep late. There will be an improvement if the Standing Orders Committee could amend the rules so that instead of sitting from 9.00 a.m. to 12.30 p.m., we sit from 9.30 a.m. to 1.00 p.m. on Wednesdays.

Mr. Deputy Speaker: Order! I am dealing with the current situation and not what will happen tomorrow. Really, if I had my choice we would start our business at 8.00 a.m. because that is when every Kenyan goes to work. Our fellow Kenyans report to their places of work at 8.00 a.m. unless they are on shift. I would like to point out that there is no Kenyan who reports to his place of work at 9.00 a.m. or 9.30 a.m. So, Mr. Assistant Minister, all those hon. Members who are here now also have constituencies, so does the Chair. It is immoral for you to expect the Speaker to be in the Chair on Wednesday at 9.00 a.m. and for others not to come to the House. This is because, in addition to being in the Chair, he also has a constituency to look after. So, I am sorry, for the time being, I want to deal with this matter on that basis.

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

Mr. Deputy Speaker: I am sorry, I will not entertain any point of order on my ruling.

Mr. Kihoro: On a point of order, Mr. Deputy Speaker, Sir. Standing Order---

Mr. Deputy Speaker: Order! Look at your Order Paper. We have not commenced business! So, you can only raise a point of order on Questions and not on other issues!

Mr. Kaindi: On a point of order, Mr. Deputy Speaker, Sir. The docket of the Office of the President has more than three Ministers and Assistant Ministers. Of late, we have seen that they are still trying to find their ground on who should answer to who. Could the Chair guide us as to whether they have sorted out their portfolio programmes so that we can get a Minister to answer Questions?

Mr. Deputy Speaker: Order! You are asking the Chair to do what is not within its capability! I do not run the Government nor do I organise their schedules!

Mr. Muihia: Mr. Deputy Speaker, Sir, I apologise for not being in the House when you called out my Question. I was trying to pick some documents outside---

Mr. Deputy Speaker: Order! That is not an excuse for coming late! The House commences its business at 9.00 a.m.!

Mr. Muihia: Mr. Deputy Speaker, Sir, I was actually outside.

Mr. Deputy Speaker: So, you were not in the House!

Mr. Kihoro: On a point of order, Mr. Deputy Speaker, Sir. I wanted to point out the contents of---

Mr. Deputy Speaker: I have told you that we are only dealing with matters arising from these Questions. We have not commenced business and so, you cannot refer me to any other Standing Order because we are dealing with Questions.

Mr. Kihoro: Mr. Deputy Speaker, Sir, the Ministers should have been here this morning because the Standing Orders are very clear, and you have made previous rulings on this matter. I thought that there should be some sanctions---

Mr. Deputy Speaker: Mr. Kihoro, I have already stated what the Chair is capable of doing and it will do it!

Mr. Kihoro: Mr. Deputy Speaker, Sir, my fear is that the matter will not be taken up again later on today,

tomorrow or even this afternoon.

Mr. Deputy Speaker: Order! Mr. Kihoro, I would like to tell you, hopefully, for the last time, that the Speaker has invoked the relevant Standing Order, and he is ready for these offending Members to be named. What other sanctions do I have over and above that?

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. I just wanted to find out, in terms of procedure, whether the House as assembled now, in view of your ruling, could, in fact, make a resolution that these Members shall be named when they come. This will ensure that the resolution is in place and it is just a question of when they will appear in the House.

Mr. Deputy Speaker: We cannot do it now, as you all know, until we come to the end of Question Time! So, I will proceed to Questions by Private Notice!

Mr. Obwocha: On a point of order, Mr. Deputy Speaker, Sir. I heard you say that you will go an extra mile and call out the Questions for the third time.

Mr. Deputy Speaker: That is right! Mr. Mwalulu's Question for the last time!

Question No.758

KILLING OF TAVETA RESIDENTS BY ELEPHANTS

Mr. Mwalulu asked the Minister of State, Office of the President:-

- (a) whether he is aware that residents of Jipe, Challa and Njukini areas of Taveta Constituency have been killed and their crops destroyed by rogue elephants from the Tsavo National Park; and,
- (b) what he is doing to ensure that the residents are safeguarded and duly compensated.

Mr. Deputy Speaker: Anyone here from the Office of the President? This Question is deferred until Wednesday next week!

(Question deferred)

Let us move on to the Question by Mr. Orengo!

Question No.768

HOSTING OF GENOCIDE PERPETRATORS

Mr. Gatabaki: Mr. Deputy Speaker, Sir, considering that Mr. Orengo is my attorney, could I be allowed to ask this Question on his behalf?

Mr. Deputy Speaker: Order, hon. Members! Really, unless you take yourselves and the business before the House seriously, nobody will take you seriously. Mr. Gatabaki, if you want Mr. Orengo to act as your lawyer, go to court, and you are often there!

(Laughter)

This is not a place for jokes! I have called out this Question now for the third time, and I think it is a bit cheeky for you to rise now and say that you would like to ask it on behalf of Mr. Orengo, because he is your attorney. Jokes are okay, but not when we are dealing with a serious matter over which you have expressed your disappointment. This Question is deferred!

(Question deferred)

Let us move on to Mr. Kaindi's Question for the last time!

Question No.769

CRITERIA FOR ISSUANCE OF WORK PERMITS

Mr. Kaindi asked the Minister of State, Office of the President:-

- (a) whether he is aware that the informal sector in Nairobi and other major towns has been invaded by people of other nationalities thereby disadvantaging Kenyans; and,
- (b) whether he could explain to this House the criteria being used to allow and issue work permits.

Mr. Deputy Speaker: Anyone here from the Office of the President? This Question is deferred to Wednesday next week.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. The normal practice is that when a Member is present, but the Minister is not present, the Question is deferred because it is not the Member's fault. But when the Member is not there, the normal practice is to drop the Question.

Mr. Deputy Speaker: Well, in this instance, both of them are not there! The best I can do is to defer the Question!

(Question deferred)

Let us move on to Mr. Mwakiringo's Question for the last time!

Question No.774

ALLOCATION OF CATCHMENT POINT TO VOI RESIDENTS

Mr. Mwakiringo asked the Minister for Transport and Communications:-

- (a) whether he is aware that the Kenya Railways Corporation has a water catchment point at Man-Eaters Station of Tausa Division, Voi Constituency; and,
- (b) whether he could consider handing over the above point to the residents of Ngolia Location in Tausa Division for domestic and agricultural use.

The Assistant Minister for Transport and Communications (Mr. Lengees): Mr. Deputy Speaker, Sir, I apologise for coming late. I am sorry about the Chair calling out this Question for the third time.

Dr. Kulundu: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to merely say that he is sorry for coming late without giving us the reason why he is late?

Mr. Deputy Speaker: Order! The only time he can tell us why he is late is when you know the reason but he can choose to tell us any story. That apology is enough.

Proceed, Mr. Assistant Minister!

The Assistant Minister for Transport and Communications (Mr. Lengees): Thank you, Mr. Deputy Speaker, Sir, for rescuing me.

I beg to answer.

(a) I am aware that the Kenya Railways Corporation has a water catchment point at Man-Eaters Station of Tausa Division of Voi Constituency.

(b) The Kenya Railways Corporation cannot hand over the water catchment point facility at Man-Eaters Station to residents of Ngolia Location. This is because the water catchment point serves other stations in the vicinity and is vital to the supply of water to the Kenya Railways Corporation. However, the corporation can consider selling water to the residents of Ngolia Location provided that their requirements are accommodated within the water surplus capacity.

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, this water catchment point was built when the railway line was being constructed. Currently, the engines which ply the Mombasa-Nairobi railway line do not use water. In fact, they are filled with water in Samburu and this catchment point is hardly used by the railway stations and all gang-lines. I am asking this question because the water catchment point is not in use and Tausa people are in dire need of water. Could the Ministry, apart from selling that water to Tausa people, reconsider handing over the maintenance and distribution of water from that water catchment point at Man-Eaters Station?

Mr. Lengees: Mr. Deputy Speaker, Sir, it is not possible to hand over that water point to the residents of the area because the Kenya Railways Corporation spent more than 125 million to rehabilitate it. It is not possible to hand over the facility because there was no compensation made to the Kenya Railways Corporation. The only way the corporation can get back their money is by sharing the cost with the residents through selling water to them.

Mr. Keriri: Mr. Deputy Speaker, Sir, in view of the fact that the residents of that area need water badly, and in view of the fact that the Government is responsible for making sure that Kenyans have water, could the Government

consider compensating the Kenya Railways Corporation and allow that water to be used by Kenyans who need it?

Mr. Lengees: Mr. Deputy Speaker, Sir, at the moment, I am unable to answer that question. But as of now, the chairman of Ngolia Water Project is in negotiations with the management of the corporation. At the grassroots level, residents are comfortable to share the cost with the corporation. Maybe, the Government can assist them later because these are Kenyans and they need water.

Mr. Kaindi: Mr. Deputy Speaker, Sir, could the Assistant Minister explain to us the Government's policy in respect to undertakers who have also been commissioned to give water to their corporations? The EPZ, just like the Railways Corporation, which gives Athi River residents water charges them a lot of money. What guarantee is there that the people of Ngolia will afford the water once the negotiations are over?

Mr. Lengees: Mr. Deputy Speaker, Sir, I think the policy on water should be explained by the Minister for Water Development. I am answering the Question which was directed to the Kenya Railways Corporation which falls under the Ministry of Transport and Communications. At the grassroots level, the people of Ngolia Division have no problem sharing the cost with the corporation. When the corporation will have enough money, they will extend a line outside at a minimum cost.

Dr. Murungaru: Mr. Deputy Speaker, Sir, water, like many other natural resources, is becoming increasingly scarce. At this time, the residents of Man-Eaters have been denied the commodity by the corporation. That being the case, could the Assistant Minister consider liaising with his colleagues in the Ministry of Environment and Natural Resources to identify an alternative source of water for the residents of this area and assist them to access that water?

Mr. Lengees: Mr. Deputy Speaker, Sir, as I said earlier on, the chairman of the water project in Tausa Division is already in consultation with the management of Kenya Railways Corporation. As I speak now, the corporation has agreed to sell water to the residents. Maybe, the Minister for Water Development will have to look into other sources of water to provide water to those citizens in that area.

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, I am aware that the chairman of the water project, Tausa Division, is consulting with the corporation. My major concern, and that is why I asked this Question, is that the China Roads and Bridges Corporation has been using that water free of charge for the last two years when they were constructing the road between Mtitio Andei and Bachuma Gate. Why is it that the residents of that area are being asked to pay for that water?

Mr. Lengees: Mr. Deputy Speaker, Sir, it is true that China Roads and Bridges Corporation use that water free of charge because they are also rehabilitating parts of the road. The corporation entered into an agreement with them to use water free of charge up to the end of 2002.

Mr. Deputy Speaker: Mr. Lengees, are they charging for this water because they developed it or just because of putting a pipe to lead it to the station?

Mr. Lengees: Mr. Deputy Speaker, Sir, as I said earlier, the Kenya Railways Corporation has spent more than 125 million to rehabilitate that water point.

Mr. Deputy Speaker: Who has?

Mr. Lengees: The Kenya Railways Corporation has already spent Kshs125 million to rehabilitate that water point.

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, I beg to differ with the Assistant Minister because the rehabilitation of that water point was done by the China Roads and Bridges Corporation in consultation with the local communities. They agreed that after finishing the construction, the water point would be handed over to the people. No Government body was involved in the rehabilitation of the water point. The Assistant Minister is misleading the House!

Mr. Lengees: Mr. Deputy Speaker, Sir, I am not misleading the House. The Kenya Railways Corporation has never been compensated for the infrastructure that was handed over to the National Water Conservation and Pipeline Corporation. The Kenya Railways Corporation spent over Kshs125 million to rehabilitate that water point. That is why the corporation is selling water to see whether they can get money to compensate themselves.

Mr. Keriri: Mr. Deputy Speaker, Sir, I believe that the Assistant Minister is not quite sure why the citizens of this country should be charged for this water which has been given to others free. The Kenya Railways Corporation is a public corporation owned by Kenyans. This Government belongs to Kenyans. This Government is responsible for making sure that Kenyans have water. Could the Assistant Minister go back and consult with his colleagues to find an amicable solution to give those people water in an appropriate manner? He should not just tell us that the Kenya Railways Corporation has spent over Kshs125 million to rehabilitate that water point. We know that. But, we want those people to get water appropriately because they are Kenyan citizens and they pay taxes. Could he consult before he answers the Question the way he was asked to answer?

Mr. Lengees: Mr. Deputy Speaker, Sir, I agree with the hon. Member that Kenyans need water because water is life. But, in this case, the Kenya Railways Corporation would like to share the cost with those citizens. They do not pay much money to the Kenya Railways Corporation. We will look into it and see what can be done.

Mr. Deputy Speaker: Mr. Lengees, further up the road at Kibwezi, the source of Kikutumbulyu Water Project is in fact the railway source up the hills. That has not been charged. Why is it so?

Mr. Lengees: Mr. Deputy Speaker, Sir, I am not aware of that one.

Mr. Deputy Speaker: Anyway, you better look into that one.

Next Question, Mr. Onyango.

Question No.778

RELOCATION OF KENYA SUGAR
AUTHORITY HEADQUARTERS

Mr. Achola: Mr. Deputy Speaker, Sir, I must apologise for coming late.

Mr. Deputy Speaker: Order!

Mr. Achola: Mr. Deputy Speaker, Sir, I was not here when this Question first came up.

Mr. Deputy Speaker: Order! This is the third time I am calling out this Question.

Mr. Achola: But I was not even here when it was called for the second time.

Mr. Deputy Speaker: I will not allow it. The Question is dropped!

(Question dropped)

Mr. Deputy Speaker: Next Question, Mr. Muihia.

Mr. Muihia: Mr. Deputy Speaker, Sir, I once again wish to apologise for coming late in the House because I was within the precincts of Parliament.

Question No.777

TARMACKING OF ROAD E497 IN GATUNDU

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

(a) whether he is aware that Road E497 in Gatundu South is listed as a tarmacked road in the Ministry's record while not all sections of the road are tarmacked;

(b) how much money was spent to tarmack this road; and,

(c) when the section of the road between Kiganjo and Gitwe trading centre will be tarmacked.

Mr. Deputy Speaker: Is there anyone here from the Ministry of Roads and Public Works? If they are not here, I will defer this Question to Wednesday next week.

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

IMPORTATION OF HIV/AIDS DRUGS

Dr. Kulundu: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Trade and Industry, the following Question by Private Notice:-

(a) Why has the Ministry not given the commencement date for the recently enacted Industrial Properties Act, 2001?

(b) How many pharmaceutical companies have shown interest in either parallel importation or local manufacture of anti-HIV drugs?

Mr. Deputy Speaker: The Minister for Trade and Industry is not in? I will defer this Question to next week!

Dr. Kulundu: Mr. Deputy Speaker, Sir, I did not hear you.

Mr. Deputy Speaker: I will defer this Question to Wednesday next week.

Dr. Kulundu: Mr. Deputy Speaker, Sir, since it is a Question by Private Notice, and in view of the fact that nearly 800 Kenyans are dying of AIDS daily---

Mr. Deputy Speaker: I will defer the Question to Tuesday next week!

(Question deferred)

WRONGFUL DISMISSAL OF COTU EMPLOYEES

(Dr. Ochuodho) to ask the Minister for Labour:-

(a) Is the Minister aware that since the new officials took over, seven COTU employees have been wrongfully dismissed?

(b) Why did the Secretary-General terminate services of the following in September, 2001 without prior notice or warning; Messrs Jeremiah M. Katuli, Cecilia Wairimu Ng'ang'a, George Mwatu, Ngatia Kiboi and Hassan Yusuf?

(c) Why was Mr. Nasib Makuwa sent on compulsory leave on 3rd September, 2001?

Mr. Deputy Speaker: Dr. Ochuodho not in? The Question is dropped!

(Question dropped)

DE-SILTATION OF DAMS IN MACHAKOS

(Mr. Katuku) to ask the Minister for Water Development:-

(a) What plans does the Minister have to de-silt dams in Machakos, Mwingi, Makueni and Kitui districts?

(b) Could the Minister consider constructing at least one dam in each sub-location in the four districts in order to permanently address the problem of water in the area for domestic, livestock and irrigation?

Mr. Deputy Speaker: Mr. Katuku also not in? The Question is dropped!

(Question dropped)

Mr. Anyona: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Local Government, the following Question by Private Notice:-

(a) Could the Minister confirm whether the Ministry and Kisii Municipal Council complied with all the provisions and requirements of Section 172 of the Local Government Act, Cap.265, Laws of Kenya, with respect to the construction of the Kisii Sewerage Plant?

(b) What was the cost and completion date of the project?

(c) What was the total acreage and number of families displaced by the Kisii Sewerage Plant at Iruma Village?

Mr. Deputy Speaker: The Minister for Local Government is not in? The Question is deferred to next week!

(Question deferred)

ISSUANCE OF IRREGULAR LEASES IN NYANDARUA

Mr. Waithaka: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands and Settlement, the following Question by Private Notice:-

(a) Is the Minister aware that the District Land Registry, Nyandarua has been issuing certificates of lease to people without lease documents being granted by the Government?

(b) Who is/are the allottee(s) of all that leasehold interests referred to as:-

- (i) Nyandarua/Njabini Township/108
- (ii) Nyandarua/Njabini Township/115
- (iii) Nyandarua/Njabini Township/118
- (iv) Nyandarua/Njabini Township/119
- (v) Nyandarua/Njabini Township/123
- (vi) Nyandarua/Njabini Township/338
- (vii) Nyandarua/Njabini Township/263
- (viii) Nyandarua/Njabini Township/266
- (ix) Nyandarua/Njabini Township/268
- (x) Nyandarua/Njabini Township/267

(c) Could the Minister table the copies of the leasehold documents of all the pieces of land mentioned in part "b" above?

The Minister for Lands and Settlement (Mr. Ngala): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the District Land Registrar, Nyandarua, has been issuing certificates of lease to people without lease documents being granted by the Government.

(b) Some of the allottees listed have been regularly registered at the Nyandarua Land Registry. These are:-

<u>Plot Number</u>	<u>Registered Owner</u>
Nyandarua/Njabini Township/267	Muriu Manguru
Nyandarua/Njabini Township/268	Kaburu Gichanga
Nyandarua/Njabini Township/266	John Nderitu Kariuki
Nyandarua/Njabini Township/263	John Wainaina Kuria

However, investigations show that the following leases were forged:-

<u>Plot Number</u>	<u>Registered Owner</u>
Nyandarua/Njabini Township/108	Yaanga General Agencies Ltd
Nyandarua/Njabini Township/111	Yaanga General Agencies Ltd
Nyandarua/Njabini Township/115	David Ngugi Mwangi
Nyandarua/Njabini Township/118	David Kamau Ndirangu
Nyandarua/Njabini Township/119	David Kamau Ndirangu
Nyandarua/Njabini Township/123	David Ngugi Mwangi
Nyandarua/Njabini Township/125	Yaanga General Agencies Ltd
Nyandarua/Njabini Township/127	Yaanga General Agencies Ltd

Further investigations are being done with a view to bringing those behind the forgeries to book.

(c) Copies of leases in respect of all the above mentioned pieces of land cannot be availed as they are with respective owners. However, a search can be done at the Nyandarua District Land Registry.

Mr. Waithaka: Mr. Deputy Speaker, Sir, if you look at the answer given by the Minister in part "a", and the answer given in the second section of part "b", where he has listed eight forged leased plots, those answers are contradictory. I would expect that they have not been prepared by somebody who ever went to school. I am not saying that the Minister never went to school, but the officers who gave him that answer. He says that eight plots were issued through forgery, and at the same time he is not aware that the District Lands Registrar, Nyandarua, is issuing certificates of lease without lease documents having been granted by the Republic of Kenya.

As a lawyer, I would like to inform the Minister that the Ministry of Lands and Settlement issues leases in triplicate. One copy is left in the Ministry of Lands and Settlement while the other copy is deposited at the Lands Registry, in the respective district where that piece of land lies. The third copy is taken by the allottee. So, for the Minister to tell the House that his officers cannot get the lease documents because they are with the allottees, is an abuse of the integrity of the House. Could the Minister tell the House whether he has a file in the Land Registry indicating when Yaanga General Agencies Ltd. and David Ngugi Mwangi, who are actually members of the same family, applied for the allotment of these pieces of land? There must be the application letter, a file indicating when they were given the letter of allotment, when they paid the premiums and, when the leases were issued. I would like to request the Minister to lay that file on the Table, because my understanding is that there is no file or lease document in the Office of the Commissioner of Lands'. This answer is inadequate!

Mr. Ngala: Mr. Deputy Speaker, Sir, I think the hon. Member is also contradicting himself, because he says that he is aware that the documents he is referring to are not in the office. We are dealing with forgeries, and as I said,

the three plot numbers were registered properly, but there was forgery with regard to the others. The forgery was discovered, and steps are being taken to investigate and find out how they were done. Therefore, my answer is correct. I do not think I have given a contradictory answer.

Mr. Imanyara: Mr. Deputy Speaker, Sir, the Minister correctly says that investigations are going on. Could we be told who is investigating with a view to bringing the culprits to book, because the people investigating may very well be involved in the forgeries? The problem of forgeries leading to grabbing of land is not only in Njabini, but all over the country.

Mr. Ngala: Mr. Deputy Speaker, Sir, the office that is doing the investigations is the District Criminal Investigations Office in Nyandarua.

Mr. Muchiri: Mr. Deputy Speaker, Sir, the issue of land grabbing is rampant in this country. The Government is supposed to auction its land under the law. For the last 40 years, since Independence, the Government has never advertised for sale of land through public auction. When are they going to do it, so that the issue of corruption in this Ministry can be checked?

Mr. Ngala: Mr. Deputy Speaker, Sir, I think that is a different question from what we are dealing with. He is talking about advertising land for sale.

Mr. Deputy Speaker: Well, in my understanding, he is asking you about these plots that you indicated were issued. Why were they not advertised for sale? There are four plots which you said have been regularly registered. I think the Member is saying that the law does provide for you to advertise. In the case of these four, when were they advertised?

Mr. Ngala: Well, Mr. Deputy Speaker, Sir, I do not have that information because it was not part of the Question. But we can try to find out if they were advertised and when.

Mr. Mwalulu: The Minister has talked about investigations that have been going on, on these forgeries. Could he tell this House when those investigations started and when he intends to complete them? These investigations can go on forever. This is an urgent matter.

Mr. Ngala: Mr. Deputy Speaker, Sir, the forgeries were discovered late last year and the process is going on. Investigations take a long time. Unfortunately, the investigation portfolio is not under my Ministry. So, I cannot say when they will be completed, but they are being done.

Mr. Ndicho: Mr. Deputy Speaker, Sir, sometime back, the current Minister for Lands and Settlement was also in that Ministry when land grabbing was rampant in this country. I remember visiting him and he was on track to tackle this problem of corruption and grabbing of public land. He was almost at it when there was a reshuffle and he was removed. Now that he is back there, would I be in order to ask him to start where he stopped at that time? I think he remembers the discussion we had about land registrars, both at the district level and the headquarters. There is no corruption that can involve only outsiders; there must be collaboration between outsiders and his officers. He had promised to sack district land registrars who are involved in corruption, to serve as a lesson to others. Could the Minister assure this House that he is going to take action against district land registrars who are involved in corrupt deals?

Mr. Ngala: Mr. Deputy Speaker, Sir, I know that Government records are continuous. I am sure, even when I left, the Ministers who were there continued to do what the hon. Member is asking. I [**Mr. Ngala**] want to assure the House that we will do our best in trying to deal with corrupt cases in the Ministry, because the Government itself is determined. There are programmes which have been put in place to deal with corruption. So, the Ministry will also take part in that programme.

Mr. Muihia: Mr. Deputy Speaker, Sir, the Minister has given us the names of the people who were allocated the land. In this country, there are several forgeries going on in all land registries. For example, in my constituency, a forgery took place with regard to land LR.No.Ng'enda/Githungu 1299 and Ng'enda/Githungu 1300. The people who were supposed to give the correct information as landlords connived with the DOs and the land board to defraud people of their land. Why has it taken one full year to investigate matters that are well-known to the Government? When is the Minister going to finalise the investigations into the land cases in Njabini?

Mr. Ngala: Mr. Deputy Speaker, Sir, I thought I answered that question when I was being asked how soon I was going to conclude the investigations. I said that the Investigation Department is in another Ministry and I hope it will speed up the investigations. As far as the forgeries and other activities that the hon. Member has mentioned are concerned, I do agree we have become a very interesting society. We have crooks who are doing all sorts of forgeries with the documentation on land. We have seen some of them on television and the areas where some of this printing is being done. It is unfortunate this is happening. But I am sure the Government is doing everything possible to bring to book, some of these people who do this printing, thereby creating a lot of problems to the authenticity of documents in the Ministry of Lands and Settlement.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. This is a very important---

(Mr. Noor's mobile rang in the Chamber)

Mr. Deputy Speaker: Order! Order! Mr. Noor, you will not be allowed back in the Chamber!

Mr. Anyona: Mr. Deputy Speaker, Sir, this is a very important Question and the Minister is unable to tell the House why the investigations have taken so long and when they are likely to be concluded because, as he has said, he is not in charge of the Investigation Department. We live in this country and we know what goes on. No investigation ever takes place. The CID officers take the opportunity to make money from these people and the longer it takes, the more money they make. Would it not be right for the House to require that the Attorney-General, if that is the right place, acts on this matter and brings an answer to this House as to why it has taken so long and when it is going to be finalised?

Mr. Ngala: Mr. Deputy Speaker, Sir, I have heard what the hon. Member has said. If it is the wish of the House to ask the---

(Mr. Noor stood up while Mr. Ngala was on his feet)

Mr. Deputy Speaker: Order! Order! Mr. Noor, I require you to leave the Chamber for the rest of this morning sitting! Proceed, Mr. Ngala!

Mr. Ngala: Mr. Deputy Speaker, Sir, I have heard what the hon. Member has said.

Mr. Deputy Speaker: Order! Let that stranger depart!

(Mr. Noor withdrew from the Chamber)

Mr. Ngala: Mr. Deputy Speaker, Sir, I was saying I have heard what the hon. Member has said. That is a situation which is out of my control. But I do share the concern that this investigation has taken some time to be concluded. I will try, in my office, to see whether I could assist in finalising these investigations sooner than the time they have taken.

Mr. Mwakiringo: On a point of order, Mr. Deputy Speaker, Sir. While the Minister was answering this Question, he told this House that a search can be done at the Land Registry in Nyandarua. Is it in order for the Minister to mislead this House by telling us that a search can be done and yet, he is supposed to have done it and given an appropriate answer to this House?

Mr. Ngala: Mr. Deputy Speaker, Sir, I gave the answer earlier on. If the hon. Member wants to check and find out about some of these documents, he can do so. I have replied to the Question about the names of the areas that he had asked for.

Dr. Murungaru: Mr. Deputy Speaker, Sir, this Question has not been adequately answered. I am seeking your guidance on whether---

Mr. Deputy Speaker: Under which Standing Order?

Dr. Murungaru: Under Standing Order No.18.

Mr. Deputy Speaker: Standing Order No.18 talks of Adjournment Motions and end of normal sitting days.

(Laughter)

Order! As I informed the House the other day, the Chair will be accommodating, but you must make up your mind. If you stand up on a point of order and you do not raise one, the only punishment open to the Chair is to send you out. If you want to ask a question, stand up and ask it.

Hon. Members: Forgive him!

Mr. Deputy Speaker: You seem to have a lot of sympathy around the House. So, I will forgive you this time.

Dr. Murungaru: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Order! Now I will require you to leave the Chamber!

(Dr. Murungaru withdrew from the Chamber)

Mr. Waithaka: Mr. Deputy Speaker, Sir, if you look at this Question, part (vi) refers to Nyandarua/Njabini

Township/338. The Minister has not mentioned that property in his answer. That property is 20 acres and the whole of Njabini Town has been allocated to an individual. This individual was allocated Njabini Town in 2000, but the title document was backdated to 19th October, 1994. I would like the Minister to confirm why he has not mentioned that property in Njabini which is 20 acres. Is it because one person in the Ministry, who is very senior, has an interest in it? Could he confirm or deny whether Yanga General Traders---

Mr. Deputy Speaker: Order! Ask one question at a time!

Mr. Waithaka: It is just the same question on which I am seeking clarification.

Mr. Deputy Speaker: It is not the same question!

Proceed!

Mr. Waithaka: Could the Minister deny or confirm whether he omitted mentioning that property, which is 20 acres, because a senior person is interested in it?

Mr. Deputy Speaker: You have already asked that question!

Mr. Ngala: Mr. Deputy Speaker, Sir, if it is of particular interest to the hon. Member, I will try to get the information because I was giving examples of the areas that this information was given about. If this particular plot is not included here I will find out about it.

Mr. Anyona: Mr. Deputy Speaker, Sir, the point of order raised earlier was really directed at the Chair because clearly there is nothing the Minister can do if investigations are going on in another Ministry. As I said, we know that this is just a tale; investigations never take place. I think we would be condoning corruption as a Parliament if we just glossed over it. That is why I was asking if the Chair would direct, in view of the seriousness of the matter, that the investigating authority, either the Ministry, Attorney-General or the President, looks into this issue and finds out why it has taken so long. The concerned Ministry should bring results here and tell us when it will be finalised. Otherwise, nothing will happen and there is not much the Minister can do. He will not be able to push them around.

Mr. Ngala: Mr. Deputy Speaker, Sir, I think the hon. Member has generalised too much by saying that investigations do not take place in this country. Investigations of various degrees do take place. Given time, we will get the outcome of the investigations that are being done. I would like to tell the House that something is being done. We have moved fast as a Ministry to try and alert the relevant department to do the investigations, but this is taking time. I am sure they are working on it. Investigations do take place and some of them yield the necessary results.

Mr. Deputy Speaker: Order, Mr. Minister! There is a specific issue that has been raised by the hon. Member; that is the question of plot No.338. Your answer has in fact omitted reference to that plot. So, we will give you two weeks to tell us what has happened to that plot and to inform us how far the investigations have gone.

Mr. Ngala: Mr. Deputy Speaker, Sir, I will do my best within those two weeks to bring some information to the House.

Mr. Muchiri: Mr. Deputy Speaker, Sir, I stand to seek your guidance. When the Minister was answering my question, he said it was not part of the Question. For the last 40 years the Government has not advertised the sale of any land by public auction. There has been an outcry about land grabbing in this country and illegal allocation of plots. Could the Chair advise the Government on what action it should take with regard to allocation of land?

Mr. Deputy Speaker: Mr. Muchiri, the Chair cannot give advice because the Chair does not run the Government. If you want, you can put a Question.

Mr. Muchiri: Mr. Deputy Speaker, Sir, can I put the question now?

Mr. Deputy Speaker: No. I had already ruled on that issue. It was marginally related to this Question, but the Minister is really not expected to have all the information on land matters in the whole country. So, put the Question to the Minister and I will make sure he answers it.

Next Order!

POINTS OF ORDER

ABSENCE OF MINISTERS IN THE HOUSE

Mr. Imanyara: Mr. Deputy Speaker, Sir, I do not wish to re-visit the ruling that you made in respect to absence of Ministers to give answers because, as you rightly said, today both sides were to blame. I would like to seek your guidance on a specific provision in the Constitution. There to be a misunderstanding on the part of the Government that answering Questions is a favour that they do for Kenyans. The provisions of Section 17(3) of the Constitution state:-

"There shall be a Cabinet consisting of the President, Vice-President and other Ministers. The function of the Cabinet shall be to aid and advise the President and the Government of Kenya."

Sub-section 3, which is the one that I am referring to, states: "The Cabinet shall be collectively responsible to the National Assembly." I want to underline the words: "They are responsible to the National Assembly". The National Assembly is the creature that the Constitution recognises as one of the arms of the Government. When the Constitution says that the Cabinet's responsibility is to the National Assembly and Members of the Cabinet are not in the Assembly to answer Questions, they are undermining the Constitution. This is not provided for in the Standing Orders and we know that the Standing Orders are subordinate to the Constitution. We have a unique situation where the Standing Orders do not make provisions for what the Chair can do to Ministers apart from naming them, which is discretionary, and yet the Constitution imposes a mandatory collective responsibility to this House.

If you look further you will see that Section 23(2), clearly states that:-

"The executive authority of the Government of Kenya shall rest in the President and subject to this Constitution, may be exercised by him, either directly or through others subordinate to him."

Those others subordinate to him are the Cabinet. They are collectively responsible to the National Assembly and they are not in the House. Section 23(2) provides that nothing in this Section shall prevent Parliament from conferring functions on persons or authorities other than the President. Since the Cabinet has shown, on more than one occasion, that they are not interested in the functions that have been conferred upon them by the President, am I in order, because there is no provision in the Standing Orders, to request you to allow this House to go into adjournment to discuss the possibility of this House conferring those powers on other Members of the House who are prepared to perform the functions that are set out in the Constitution?

Mr. Deputy Speaker: Well, the Chair has ruled and that rule is going to be applied to the letter. What did the Chair say? This is contained under Standing Order No.88 which states:-

"Any Minister who refuses to answer a legitimate question is guilty of gross misconduct."

That Standing Order is now going to be exploited because we cannot continue to disregard our own rules. These are our own rules; they are not made by anybody and imposed on us. If we do not want them, we change them. However, as Mr. Speaker did rule, from now on, any Minister who does not turn up to answer a Question will be judged guilty of gross misconduct. So, will Backbenchers who field Questions but do not turn up to ask them.

I had already made that ruling earlier today and I see that the Deputy Leader of Government Business is here. This issue of collective responsibility was raised before, I think by hon. Imanyara himself, and we required that a statement comes from the Leader of Government Business to tell this House what is happening. The House, or discretion of the business, belongs to all of us. So, if there is a problem, we want to know so that we can work together to find a solution, but silence is just not good enough. From now on, if a Minister does not turn up to answer a legitimate Question, action will be taken. In this regard, I want the Leader of Government Business to inform me as to which Minister in the Office of the President was supposed to answer the three Questions that went unanswered this morning. In respect of the other Ministries, I know who they are and I will deal with them.

Mr. Anyona: Mr. Deputy Speaker, Sir, I had made reference to that issue earlier on where I was seeking guidance as to whether the House can, indeed, resolve in advance that those Ministers will be named but I do not want to belabour the point. I think you have indicated enough indignation on behalf of the House and the nation about this issue. So, I think I will leave it here.

CLARIFICATION ON UNANSWERED QUESTIONS BY MINISTERS

Mr. Deputy Speaker, Sir, I would like to raise two other points of order; and one is closely related to the one that we have been dealing with. Sometime last week, Dr. Murungaru and myself did raise issues on statements of clarification that were expected from certain Ministers that were not forthcoming for a long time. You did rule that the Ministers concerned make statements or make good what they were supposed to do yesterday. That did not happen and I am just wondering when it is going to happen, whether it is going to happen and why it did not happen. I thought I would bring up that issue again.

DISTRIBUTION AND BILLING OF WATER BY NAIROBI CITY COUNCIL

Mr. Anyona: Mr. Deputy Speaker, Sir, my second point of order is one which seeks not just a Ministerial Statement but actual investigations to support that Ministerial Statement by the Minister for Local Government. Well, the English say: "New brooms sweep clean." We have also been made to believe that the destiny of this nation lies in the hands of the so-called "Young Turks". Well, here is one and we can experiment.

Mr. Deputy Speaker, Sir, the Nairobi City Council has committed many sins and inequities against Kenyans, and one of them is the issue of water. Many a time, residents of this City have no water. This is not because there is no water but because officials of the City Council go and divert water which they then sell to some vendors, who in turn, sell it to the residents and, of course, residents go without water. Now then, they come and give residents exorbitant and fictitious bills for water that has not been delivered.

A hon. Member: Declare your interest!

Mr. Anyona: My interest is that I am one of those victims. I am a resident of Madaraka Estate and sometime, one or two months ago, there was an outcry in Nairobi when residents got huge bills. The City Council cannot account for them. You go there and say: "Give me a record", and there is no record.

Mr. Deputy Speaker: Make it short!

Mr. Anyona: Yes, Mr. Deputy Speaker, Sir. I would like the Minister to investigate the question of distribution of water and the billing. Now, just to assist him, so that it is not just a story, if I give my own case so that he can use it, now I am given a meter number which is 72171014. That is supposed to be the meter number and there has been no meter for a long time and then the account number is 12436591. The account date when I was supposed to have got this bill is 17th February this year. I believe that is when many City residents were given these bills.

Mr. Deputy Speaker: Order, hon Anyona!

Mr. Anyona: Yes, Mr. Deputy Speaker, Sir. I am finishing! I just wanted to assist.

Mr. Deputy Speaker: You are now not raising a point of order but you are making a speech.

Mr. Anyona: Mr. Deputy Speaker, Sir, I just want to give an example. I want to say that then I got a bill of Kshs34,323.95. Mine is nothing since there are people who got bills amounting to millions of shillings. Could the Minister investigate and come and make a statement in this House as to the distribution of water and bills that residents have been given which are not justified? I beg to lay this document on the Table so that it can assist him to investigate.

(Mr. Anyona laid the document on the Table)

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

Mr. Deputy Speaker: Order! You cannot ambush me with points of order! Sorry!

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

Mr. Deputy Speaker: Sorry! No! As I have told you, you cannot ambush me with points of order. I also have to arrange my time!

Mr. Ndicho: Mr. Deputy Speaker, Sir, it is about Mr. Imanyara's point of order.

Mr. Deputy Speaker: I have already made a ruling on that.

Mr. Kombo: Mr. Deputy Speaker, Sir, it is on Mr. Imanyara's issue which has not been resolved.

Mr. Deputy Speaker: But you cannot resolve any issue during Question Time. I am sorry!

Hon. Members: On a point of order, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: Order! I had already directed the Deputy Leader of Government Business to come back as the Leader of Government Business undertook to tell us what is happening in respect of this collective responsibility. That is not one of the Motions you can move without notice. So, Mr. Imanyara, what do you have to say?

Mr. Imanyara: Mr. Deputy Speaker, Sir, I sought your guidance. You were interpreting the Standing Orders and I respect your ruling on that. However, the issue that I was raising has nothing to do with Standing Orders. It is to be found in the Constitution which is higher than the Standing Orders. The Constitution says that it is a mandatory responsibility. So, since Parliament has these powers, I sought your guidance under Section 23, Sub-section 2 of the Constitution. So, could you allow it because it is not provided for in the Standing Orders? You have that discretion now because it is not provided for in the Standing Orders; to make a ruling even now so that we can discuss it. This is because it is an issue where we respect the Constitution but we are supposed to uphold and defend it as a concern and yet we are here invoking Standing Orders that are subsidiary to the Constitution; forgetting that the Constitution is the real law of the land and it imposes an obligation on us. That is why we are here. If we are here because the Constitution obligates us to be here, I think that should take priority and we should be able to debate that issue as a matter of national importance immediately.

Mr. Deputy Speaker: Which Standing Order did you cite?

Mr. Imanyara: Mr. Deputy Speaker, Sir, I was citing the Constitution.

Mr. Deputy Speaker: Yes, that we have already done.

Mr. Imanyara: Mr. Deputy Speaker, Sir,

it is not provided for but, under Standing Order No.2 where there is no rule, where there is no provision in the Standing Orders, Mr. Speaker can make a ruling. This is because there is no provision in these Standing Orders where there is a breach and deliberate undermining of the Constitution in the Standing Orders on what we are supposed to do. So, we

go to the Constitution and because Standing Orders do not have the provision, you can make a ruling directly under the Constitution and let us debate that issue now as a matter of national importance.

Mr. Deputy Speaker: Order, Mr. Imanyara! Standing Order No.2 is precise. It indicates which Motions can be moved without notice. So, I cannot overrule that section, but more importantly, if I am required to interpret the Constitution, I would say that we are in the wrong forum. I have already stated that pursuant to that section of the Constitution which you have cited, not today only, but even before when you did raise this issue--- You asked for a Ministerial Statement from the Leader of Government Business - whether he asked the Attorney-General to do it on his behalf I have no problem - as to why the principle of collective responsibility and its deference to the House is not being observed.

I am not against what Mr. Imanyara is chasing; I am merely saying that we cannot follow that route; not now.

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

Mr. Deputy Speaker: There should be no arguments!

Mr. Imanyara: Mr. Deputy Speaker, Sir, I am asking you: Which is the right forum for interpreting the Constitution?

Mr. Deputy Speaker: The High Court!

Mr. Imanyara: Mr. Deputy Speaker, Sir, this is because the High Court interprets the cases in the courts. This National Assembly has powers to debate Motions. We have sworn to defend the Constitution.

Mr. Deputy Speaker: You can make this a court case!

Proceed, Mr. Mudavadi!

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I think the Attorney-General may want to comment on the legal aspect of it, but I would just like, on behalf of the Government, to profusely apologise to the House because it is, indeed, very awkward that, today, perhaps, only two Questions were responded to. That is not in keeping with the correct interest of the House. So, I want to apologise and I will, definitely, take it very seriously and inform all the Ministers and Assistant Ministers concerned, that they must make sure that they respond to the Questions that are being raised in the House.

Mr. Ndicho: Mr. Deputy Speaker, Sir, I appreciate the sentiments that neither this House nor yourself can interpret the Constitutional provisions in this document. But Section 23(2) does not need any interpretation at all. If you read it with Section 3 of the same Constitution, it says that "this Constitution is the Constitution of the Republic of Kenya and shall have the force of authority throughout Kenya and subject to Section 47, any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency be void."

So, the provisions of Section 23(2) make the provisions of the Standing Orders void. Now that it does not need any interpretation at all, and it is just the implementation of this House---

Subsection 2 states as follows:-

"Nothing in this Section shall prevent Parliament from conferring functions on persons or authorities

other than the President."

So, we can take it over and say that this Minister has failed and we appoint another one to discharge his duties. It needs no interpretation.

Mr. Deputy Speaker: I think you can go and try that one in the High Court, but for the time being, I am saying that if you want any such action - once any such person conferred on the Chair or whoever - you can do so via a substantive Motion.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I totally accept your ruling in this matter, but so that there is no misapprehension about Section 23(2), let me state that I do not agree with the interpretation of Section 23(2) which Mr. Imanyara has referred to. However, let me begin by saying that I wish to thank Messrs. Imanyara, Anyona and Kihoro for having kindly agreed to postpone Questions directed to my office, which are coming up this afternoon and tomorrow. This is because I am just here to deal with the Motion and then I will be on the way to Arusha until Friday. So, I want to take this opportunity to thank them for accommodating me in that regard. So, if I am not here, it will be because of the goodwill that I have received from the three hon. Members of the Opposition.

Section 23(2) does not deal with the Cabinet.

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

Mr. Deputy Speaker: Order, Mr. Imanyara! He is on a point of order!

Mr. Imanyara: But, Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Order, Mr. Imanyara!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I agree with you that issues of interpretation of the Constitution belong to the High Court, but since they have given one interpretation, I would like to inform the House that there is another interpretation and then the court decides, so that there is no misapprehension. Section 23(2)

comes under Part 3 which deals with the Executive powers, and that has to be clear. Issues of the Cabinet; appointment of the Cabinet, and their responsibilities amongst others to this House come under another part of the Constitution which is Part 2. What Section 23(2) is saying is that not the Cabinet, but this Parliament, can choose another person or authority to exercise some power.

This House has done that in the past. This House has legislated for the Clerk of the National Assembly and his staff who are exercising some powers. In other words, this Section is clear; that when it comes to the real exercise of the power of the President, it is not just the President who can appoint somebody else to exercise that power, but that power is exercisable through the Public Service, civil servants and so on. That is why - through legislation - Parliament has conferred, on the two Clerk Assistants here, powers.

When it comes to issues of the Cabinet, we look at Part 2, and not Part 3 of the Constitution. That is where my learned friend went wrong.

BEATING OF MR. KIKUYU

Mr. Katuku: Mr. Deputy Speaker, Sir, two weeks back, I raised an issue concerning the beating of Mr. Kikuyu. The Minister promised to issue a Ministerial Statement last week, Tuesday, but it was not done. He promised to do so yesterday, but still it has not been done. I am wondering when that Ministerial Statement will be issued.

DIRECTORSHIP OF MAASAI MARA RESERVE

Mr. Deputy Speaker, Sir, I would also want to raise an issue regarding the accuracy of hon. Members' statements in this House as contained in our Standing Orders. I had asked a Question here over the Maasai Mara Triangle Reserve and when the then Minister for Local Government, Mr. Kamotho, was responding to that Question, he said that one of the Ministers was not a director. On 6th this month, Mr. Sunkuli came to this House and admitted that he was a director of that company. Would I not be in order to call upon the Minister, who misled this House, to clarify the matter because he deliberately misled this House when he knew that his colleague was a director of that company? This is a company where certain individuals are stealing Kshs9 million per week! I would also want, in view of the same, the Minister to tell us how far he has gone with the investigations.

Mr. Deputy Speaker: Have you got copies of the search you carried out in the Registry?

Mr. Katuku: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Can I have a look at it?

(Mr. Katuku took the copies to Mr. Deputy Speaker)

ACTION ON PENDING MINISTERIAL STATEMENTS

Mr. Anyona: Mr. Deputy Speaker, Sir, I have two points of order to raise. One is about the Ministerial Statements which should have been made yesterday. I did see one of the Assistant Ministers in the Ministry of Labour and Human Resource Development in the House. In fact, I think I also did see the Minister for Vocational Training in the Chamber earlier on. I saw the Assistant Minister who made the promise that he would issue the Ministerial Statement and bring the information a little earlier on. He seems to have disappeared into the thin air. I would like to know what is going to happen in that regard.

Secondly, in view of your ruling that Ministers should be given a maximum of one week to issue Ministerial Statements sought by hon. Members, would I be in order to expect the Minister for Local Government to issue the Ministerial by next Wednesday morning?

Mr. Deputy Speaker: Order! In fact, the Chair had ruled that all outstanding Ministerial Statements should have been made by yesterday. I will go through the HANSARD to find out which Ministers have issued Ministerial Statements sought and which ones have not. I am afraid that those Ministers who have not issued the Ministerial Statements sought must now suffer the consequences. Those who do not perform will be named.

Next Order!

MOTIONS

REGISTRATION OF CHURCHES
/RELIGIOUS ORGANISATIONS

THAT, considering the big number of churches and religious organisations in the country; noting that all religious organisations are currently registered under the Societies Act; and noting further the unnecessary delay in registering these organisations due to the large number of applications by persons wishing to register their societies, this House urges the Government to introduce a Bill for an Act of Parliament to deal specifically with the registration of churches and other religious organisations.

(Mr. Kiminza on 21.11.2001)

(Resumption of Debate interrupted on 21.11.2001)

Mr. Deputy Speaker: Mr. Ndicho, you were on the Floor when the House rose last Wednesday morning. You have five more minutes to conclude your contribution.

Mr. Ndicho: Mr. Deputy Speaker, Sir, when the House rose on that day, I was saying that we should establish a Ministry for religious affairs. We need a separate docket to deal with religious affairs because religion in this country has become a big industry which needs somebody to concentrate on it - a Minister who should be answerable to this House as far as religious matters are concerned. We should not leave religious matters to the Attorney-General, who is already overloaded with issues relating to legal affairs. So, when he appoints the Cabinet next, the President should create the Ministry of Religious Affairs to deal with matters of religion. The proposed Ministry will, through its own mechanisms, vet any new churches that may seek registration. Once the Minister is satisfied that a certain religious organisation is good religiously, he should register it without much ado.

Mr. Deputy Speaker, Sir, I must also say that religion has become a lucrative industry in this country, where everybody wants to start his own church, or religious order, so that he can raise money for his personal use. I can relate what I am saying to the biblical story that Jesus Christ went into a synagogue, where he found people had converted it into a trading building. So, Jesus overturned the tables and sent everybody out, telling them that they had turned his Father's house into a den of thieves. So, we should have a Minister, who will then determine whether some churches are actually dens of thieves, or of people who want to steal from members of the public, or whether they are truly committed to worshipping God.

Elsewhere, in the Arab world, Islamic states have established ministries in charge of religion. Kenya has over 800 registered Christian and other religious organisations. So, I think it is time that the Government established a department to deal with religious matters. I agree with the substance of this Motion. But rather than seek the introduction of a Bill to specifically deal with the registration of churches and other religious organisations, which will result in the creation of an extra department within the Office of the Attorney-General, this Motion should have sought the creation of a Ministry to deal with religious matters. If we had such a Ministry, its Minister would not have allowed the registration of religious organisations such as "The Mammoth", "Jesus Christ of Latter Day", among others which we have raised queries about in this House. If there was a Minister to deal with religious affairs, we would not have religious organisations with questionable activities such as the ones the President had appointed a commission to look into their activities; we would not be talking of devil worshipping.

The Attorney-General is overloaded with many issues. While he is tackling constitutional issues, another issue arises. Before he is even through with it, another issue crops up. So, we should take some of the Attorney-General's functions and give them to somebody else. Also, when he reshuffles his Cabinet next time, the President should appoint an Assistant Attorney-General. The Attorney-General has just said that he is going to be away, and that his business will come up when he is not around. Let there be an Assistant Attorney-General to tackle issues touching on the Office of the Attorney-General when the bearer of that office is out of the country.

With those remarks, I beg to second the Motion.

(Question proposed)

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I rise to support the Motion on behalf of the Government of Kenya.

This Motion is very important. Under our Constitution, freedom of religion is one of our most fundamental rights. Section 78 of the Constitution clearly states:-

"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion; freedom to change religion or belief; and freedom, either alone or in community with others, both in the public eye and in private, to manifest and propagate his religion or believe in

worship, preaching, practice and observance."

So, we are talking about something which, very fundamentally, touches on the life of a person and that of the nation. Kenya is a nation which is known to be religious by nature. Even the first line of our National Anthem calls upon God to bless this beloved nation of ours. So, Kenya is a nation of God-fearing people. Kenya communities try to live up to the expectations of the various religious faiths. That is why there has been an overwhelming response by the people of Kenya in joining one religion or another, or joining various foreign denominations within the Christian faith.

Mr. Deputy Speaker, Sir, the rise of Christianity or Islam in Africa is the highest in the world. Africa has witnessed a phenomenal increase in people joining various faiths. The same thing cannot be said about Europe. If you go to London today and enter into a cathedral ten times bigger than Nairobi's All Saints Cathedral, you may find only 50 people attending church on a Sunday morning. If you go to places of worship in Kenya today, you will find overwhelming attendance; they get filled to capacity and overflow outside. That is why I agree with Mr. Ndicho when he says that religion in this country has become a big industry. Indeed, it has become a big industry. You are bound to find some people who are exploiting others. They are not there genuinely to propagate their faith, but they want to exploit their followers. Their predominant motive is to exploit others and actually have a source of livelihood; a source of income.

Mr. Deputy Speaker, Sir, that is why in such situations, then it becomes dangerous just to allow every Tom, Dick and Harry to start his own ministry, church or religion. We have seen in a neighbouring country, for example, the dangers of this. Only last year, we saw in Uganda a sect that had been registered - because Uganda has the same procedure as we have now - more or less become a cult, and many people died as a result. This has been going on for sometime in Uganda. We saw the same happening in Guyana when Mr. Jones misled people. He went there under the guise of spreading the word of God and made people take poison. Over 930 people died. In Uganda, thousands of people died. In California and Switzerland many people have died. So, we now have to be careful on the issues of registration of religious groups while taking cognisance of the freedom of worship as enshrined in our Constitution.

Mr. Deputy Speaker, Sir, all manner of societies are registered under the Societies Act. These include political parties, non-governmental organisations (NGOs), welfare associations and religious organisations. All of them have the same procedure. Whereas that was possible sometime ago, in view of the increase in, and the special needs of the various associations, there is need to decentralise what is now currently under the Societies Act. There is need, for example, to have a law relating to the registration of political parties, which is currently under the Societies Act, so that their special needs are catered for. The Government is supporting this Motion because there is now need to have a law relating to the registration of religious organisations and cater for their special needs.

Right now, I have in my office just one Assistant Registrar of Societies, who is in charge of all these registrations. There is need, if not even at the ministerial level, at least to have just a department with its own registrar, to deal specifically and focus on the special needs of religious organisations and to register them. For this to happen, we need an enabling environment.

Mr. Deputy Speaker, Sir, the Law Reform Commission is currently studying ways and means of drafting a law, which will relate to the registration of religious organisations. It is under specific mandate to ensure that there is extensive and intensive consultations with all the stakeholders. We do not want to be put in a situation where we will put a law in place, which will in itself infringe the provisions of our Constitution. Whatever law that will be brought here, therefore, I can assure this House, will respect the tenets of our Constitution, and in particular its Section 78. Right now, of course, we are focused on constitutional review and this is taking a lot of our energy. But I am quite sure that in due course, the Law Reform Commission, possibly through some task force that will be appointed, will also start going round to collect views on this issue of having a law in place, which will deal with the registration of religious organisations.

I do not want to take long. I just wanted to respond very briefly and to state that the Government supports this Motion, and will ensure that it is implemented. Therefore, since this Motion touches on my office, I can now tell this House that it will be implemented, not just for reasons stated in it, but also for the additional reasons that I have given this House.

Let me just also inform the House that as of today, there are 830 registered religious organisations. We have 1,010 pending applications for the registration of religious organisations. I thought that those statistics would be useful. I now beg to leave this House, not because of anything else, but because I have to rush to some place for official duties. I know there will be a HANSARD Report on this debate and I can assure this House that when I come back, I will read it very closely.

Mr. O.K. Mwangi: Thank you, Mr. Deputy Speaker, Sir. I would like to thank the Chair for being the "bishop" in charge of "Parliament Diocese". I am very grateful to have this opportunity. I would also like to take this opportunity to thank the Government for having accepted that this is a very important matter that needs consideration.

[Mr. Deputy Speaker left the Chair]

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

I am only worried - I regret that the Attorney-General had to leave - that the Government had to take all this time even with the realisation of the magnitude of the problem that religious organisations in this country are facing. I would like to register my deep appreciation of this Motion. As you realise, and as the Attorney-General has said, it is a requirement of the Constitution of this country that there be freedom of worship. For that reason, everybody in this country is concerned about the manner in which the freedom of worship is exercised.

Mr. Temporary Deputy Speaker, Sir, as the Attorney-General has said, today we have got 830 registered religious organisations.

QUORUM

Mr. Kombo: On a point of order, Mr. Temporary Deputy Speaker, Sir. We are only ten hon. Members in the House as the Motion is being debated. So, there is no quorum in the House.

The Temporary Deputy Speaker (Mr. Imanyara): Ring the Division Bell; we do not have any other choice!

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, hon. Members! Order, hon. Karauri! We have a quorum now. You can now proceed, Mr. O.K. Mwangi!

Mr. O.K. Mwangi: Mr. Temporary Deputy Speaker, Sir, for the benefit of those who have just come into the House, we are talking about the registration of churches and religious organisations, which are a very important aspect in this country, taking into account that the Constitution recognises freedom of worship. There cannot be freedom of worship *per se*, if those who worship are not legally recognised, and if who or what they worship cannot be identified. This is because by virtue of having freedom of worship, it does not mean that we shall have freedom of worshipping the devil, animals, trees or something else. We need to have guided worship of the living God, the Creator.

Unfortunately, due to non-availability of registration of religious organisations, what we have today is the registration of societies. The registration of societies does not have anything to do with worship and that is why we have 830 registered societies which claim to have been registered for purposes of worship, as religious organisations. But when you look at what is happening today in this country, you find that there are many organisations which claim to be churches, but they are not registered anywhere. Because there is a standing ban by the Government on further registration of new churches, this Motion is very important. It should open the door so that anybody or any organisation which wants to be registered and recognised, can be registered. It is very unfortunate today, to find very many splinter groups in this country. There is no authority to be consulted or to look around to see whether it is an adequate organisation that is being registered.

Mr. Temporary Deputy Speaker, Sir, there are organisations that are going round collecting funds from the public, and such funds are not accounted for. Nobody supervises what is happening around and, therefore, you find every Tom, Dick and Harry wants to have his own registered organisation. It is, therefore, very vital to have a registry specifically meant for religious organisations. There should even be an Act of Parliament to give guidelines as to how religious organisations should operate in this country.

Mr. Temporary Deputy Speaker, Sir, just recently, the *Mungiki* sect claimed to be a religious organisation; in fact, it still does. But when you look at the activities of the *Mungiki* sect, you wonder what type of religious organisations we are talking about. If there was a registry specifically for religious organisations, it could have vetted them and found out what type of people they are. These questions are very important to ask. What do they want to do? What are their objectives? How do they intend to achieve them? Where will they operate from? Otherwise, the way it is now, we have got people just calling themselves religious organisations, like the *Israel Church*, *Akorino*, *Legio Maria*, *et cetera*. You do not know what actually happens amongst them. That is why you find that there are a lot of disagreements and fights among the so-called religious organisations. This has resulted in the many splinter groups that we have around the country.

Mr. Temporary Deputy Speaker, Sir, it is my feeling that the Government should, therefore, come up with a Bill to regulate this. I am happy the Attorney-General has promised this House that the Government is considering

coming up with a Bill on this issue, and he should be made to understand that this is a matter which is very urgent. There should be a tribunal to look into disagreements, disputes and problems facing religious organisations. Since the population of our country is 75 per cent Christian and our Constitutions guarantees freedom of worship, there should be a Ministry in charge of religious organisations, to give direction to the country. Religion is something that is very dear to every human being in this country. We should have a Ministry that is going to control and establish a registry, have a tribunal and even establish an audit department to look into the management of finances that are collected from members of the public. This Motion is important and it should be passed, so that the Government can go and prepare this Bill and bring it to this House for debate.

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

Mr. Kihoro: Thank you, Mr. Temporary Deputy Speaker, Sir. I do support the Motion on the basis that what will be introduced in this country will be a better way of dealing with religion. It will also be a better way of ensuring that people will enjoy their freedom of worship as enshrined in Section 78 of the Constitution. The Attorney-General actually quoted the section that I wanted to quote in Sub-section 1.

What has been happening previously has been discriminative. It is discriminative for the Government to register some organisations and fail to give reasons on why it fails to register others. There has been discrimination and the Government has tended to de-register or refuse to register African faiths or African-driven faiths. That partisanship has favoured foreigners in terms of worship. I would like to point out that foreigners are not anywhere nearer God than we are. I would like to point out that these people do not believe in God more than we do; they do not worship God better than we do; their beliefs are not better than ours, and they have no respect for God more than we do, but the process has tended to favour foreigners and discriminate against our people.

I have been looking at the subsidiary legislation under the Societies Act, Cap. 108, and I have identified some religious groups which are indigenous and have been banned in this country. This is improper. There is the Dini ya Jesu Kristo, Dini ya Mbojo, Dini Ap Mboyet, which appears to be a Kipsigis religion; Dini ya Mariam, Dini ya Mumbo, the Safina Church - I do not know how they registered Safina as a political party, but Safina as a church has been rejected; Mahoya Ma Jehova Church, and more importantly, Dini ya Musambwa which have been banned. I would like to point out that Dini ya Musambwa is banned in this country, and yet we know its founder, the late Elijah Masinde, who was a great nationalist. This is a man who fought with the Mau Mau for the Independence of this country, that the party opposite now treats him without value. It is important that we have a new law in place which will establish a board which will critically examine the basis on which one will be accepted as a religious organisation and the basis on which another organisation will be rejected. Standards for setting religious organisations should be set out.

Mr. Temporary Deputy Speaker, Sir, in that subsidiary legislation that has been made, I can see that it is only African groups which have been discriminated against. I would like to say that coming with a new law will regularise the position. If you look carefully, you will find that any mad man who comes from Europe will be allowed by the party opposite to register a church. Some Europeans have come to this country and made millions. You will even find leaders of that party attending these functions. I do not understand how they "foreignise" themselves to the extent that they see anything foreign as good, but what our people believe in is not good for this Government.

It is important that the Government considers why it should continue to ban some African religious denominations when there is no good reason to do so, and at the same time, encourage some religious organisations which should not be encouraged at all. Some of these organisations have no direction in this country. I would like to point out that where there is a good reason to put measures, sanction and ban some organisations, they do not do so because, for them, there are some political motives. Some of them have become so mixed up that they find religion as a way of advancing their reactionary politics. A way has been found that ensures that a reactionary, backward and retrogressive movement, if it will assist the party opposite in advancement of its position, is allowed to continue. That is what has happened in respect of the *Mungiki* sect. It appears to have been a recent fallout, but for the last one year, the party opposite has used *Mungiki* sect to advance its political agenda of dividing people. They have done that.

Mr. Temporary Deputy Speaker, Sir, it is important that when you look at the new law, it will look into oriental cults that operate in this country without regulations. There are some Buddhist faiths which operate in this country and nobody bothers or care and investigate what they are up to. I even do not know whether they are required to register their Korean or Chinese sects which are banned in their own countries but are allowed to operate in this country. This also applies to the Japanese. It is important that a wise board is established to set the criteria on which they register or reject to register some of the groupings.

There are some dangerous sects which also operate in this country. These sects operate in this country with false doctrines. These are quasi-religious and quasi-social, and they also teach our people the wrong things they should do. The Attorney-General actually spoke about it, that they have even fueled pogroms committed by churches like it happened in Uganda, Guyana, Canada and Switzerland. That is what we do not want to happen in this country in the

name of allowing people to worship under Section 78 of the Constitution. Some of these organisations teach our people not to wash, not to go to hospitals, while others say that they are faith healers. Some organisations also tell their adherents not to take their children to hospital and not to remove jiggers, and I saw one event on television last night. They pray for children when they fall sick and hope that God or Providence will intervene and they will get better. There are also others which teach polygamy like the Mormons while others teach racism; the doctrine of predestination. That is the one which actually did advance a lot of slave trade, and there are some people who still believe in it. They believe that they are born to go to hell and not heaven, and when you are black, you might appear like Satan, but when you are white, you will be nearer God. These organisations advance racism in the name of worship.

So, it is important that we have an open-minded board that will evaluate and look into these organisations. This board should also have the power, after registering these organisations, that in case some information has become clear that the motive is really not sincere religion, Christianity or the agenda turns out to be different, to de-register them. This is because under Section 78, it is very clear that there is no agreement that crime can be committed in the name of religion. There are laws in this country which should also be enforced. There is the Public Health Act which is very important with regard to treating the sick and contagious diseases. All these laws should be enforced. The law of this land should not be violated even in the name of religion. It is important that the board, using the criteria objectively, and not advancing certain party political interests, will be able to deregister some organisations, at certain times, if it is counter-productive and necessary.

With those few remarks, Sir, I beg to support.

Mr. Munyasia: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this particular Motion.

Mr. Temporary Deputy Speaker, Sir, I wish to state, at the beginning, that I also support this Motion. At the moment, I think this is an area that needs order, perhaps more than any other area. The current trend of churches being created day in, day out, does not augur well for our society. People go to America to solicit for funds to start churches. They stay half a year in America and half a year in the country. One month they are here, and next they are in America. Their followers also establish a few links with Americans and then they split up. They end up causing a lot of confusion. But what this country must be warned about is that America might not be doing this disinterestedly. This might be one way of Americans trying to establish controls over the minds of our people. I think there are too many links between churches that are being created and America.

As hon. Kihoro said, the strange thing is that when there are independent efforts by any of our citizens to establish a church after he disagrees with those that are already established, his church is frustrated. Up to now, we would like to know why *Dini ya Msambwa*, which was started in Bungoma in 1943, cannot be allowed to operate in spite of its immense contribution towards the Independence struggle.

Mr. Temporary Deputy Speaker, Sir, even the mainstream churches have been involved in politics. When we were struggling to establish the Constitution of Kenya Review Commission, those who wanted to lead this country into chaos were the mainstream churches. Those who were saying they would form the People's Commission outside Parliament and those who went to Ufungamano House, were the mainstream churches. When they were asked how the results of the People's Commission would become a Constitution for this country, they said: "Wait until we cross the bridge". There would be nothing more confusing than allowing people to start churches without a board to regulate them. They were not banned because they were advocating for civil disobedience. What *Dini ya Msambwa* did in the colonial days was to organise something like civil disobedience. How does an independent Government continue to restrain this organisation from operating, merely because they participate in politics? It is clear that you cannot separate the State and the church affairs.

Mr. Temporary Deputy Speaker, Sir, it is important to bring order in the religious organisations. I think some of the churches that are being introduced might be very dangerous to the minds of the youth. I have been to a particular church in Western Province called "Choma". Its leader refers to himself as the patron. As far as he is concerned, "patron" is the same as Jehovah or God. This man disagreed with the Salvation Army and he started his own church. There is hardly any difference in dogma except in the claim by the church leaders that he is as good as God. So, whatever he tells them is directly from God, and people come to believe him.

But when you look at the activities of this particular church leader, they are far from religious. One would expect that religion would keep families together and would do everything to counsel husbands and wives so that they live peacefully, at least, for the sake of children. But here is a man who was approached by one of the followers. She was a secondary school teacher. This man looked at her palm and said: "The way I see it, the future is not for you and your husband. So, you must leave him." She believed him and left her husband. Later, he told her: "I have looked at it again and your future is for you and me." The following Sunday that man brought two chairs at the altar and he announced that God had told him that there must be an assistant patron. The lady was appointed the assistant patron. Again, people believed that it was a message from God. So, the lady occupied the seat for sometime. The following

week, he told her: "The Lord has said that you should be my wife." So, the woman broke her family and joined the patron. After two years, the man said, again: "The Lord has said that you are an evil woman and so you cannot be in this church." If there was an organisation to scrutinise these churches, I do not think a fellow like that would have been allowed to start his own church. Up to now, there are many fellows in Western Kenya who wear red neckties. They must not remove them even when they go to sleep because they believe, like the children of Israel, that the Lord can come any time and he must not find them without them. They are taught that if they go to sleep and they want to untie them from their necks, then they must tie them on their legs.

Mr. Temporary Deputy Speaker, Sir, I am saying that if we had a special organisation to scrutinise fellows like that one, they would not be allowed to operate. These cults can be very dangerous. They should not be allowed to function. Some cults, like in Uganda, lead people to commit suicide. Sometimes, they even lead them to slaughter their own followers. If we had such an organisation in Afghanistan, I do not know whether people like Osama Bin Laden would have been allowed to perform.

Mr. Temporary Deputy Speaker, Sir, I am saying that there is need for order in the churches. If there was an organisation to scrutinise the churches, most churches today would not have been registered.

In conclusion, let us not over-play this issue. I heard one hon. Member say that some of the churches even teach polygamy. I was asking myself whether we should support the Motion on the basis of claims. In fact, some of these churches should africanise themselves and allow practices like polygamy. If there was such one, I would gladly join it.

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

Mr. Temporary Deputy Speaker (Mr. Imanyara): Since there is nobody else who wants to contribute to the Motion, could Mr. Kiminza reply?

Mr. Kiminza: Thank you, Mr. Temporary Deputy Speaker, Sir. While responding to this Motion, I would like to thank the Attorney-General for supporting the Motion. I also would like to thank Mr. Ndicho, Mr. Kihoro, Mr. Kihara and Mr. Munyasia, for having got time to contribute to the Motion. They have given a lot of insight to the Motion.

Mr. Temporary Deputy Speaker, Sir, while responding to the Motion, the Attorney-General revealed that there are 830 registered religious organizations in Kenya. He also said that there are 1,010 pending applications in his office, which have not been registered.

Mr. Temporary Deputy Speaker, Sir, while contributing, my colleagues mentioned how it is easy for foreign-registered churches to establish branches in this country, while it is difficult for the indigenous churches to be registered. Many times, we have talked about insecurity in the country and the declining economy. Most of my colleagues have noted that we have not given due consideration to the word of God. In many occasions, we have considered churches as a threat to security. One of my colleagues pointed out that it is actually the mainstream churches which are a security threat to this country than the others which are seeking registration. In order to end the in-fighting in churches, I believe the registration of the pending applications through an Act of Parliament or an established board, which can set the criteria and vet the applicants; whether they are of good conduct and have been truly called upon by God to propagate the word of God, is the only way out.

Mr. Temporary Deputy Speaker, Sir, in the study of theology we talk about the rule of the parallel truth. According to that rule, whatever is true on earth is also true in Heaven. So, whatever is happening in the political scene is also happening in the religious scene. For example, when there used to be one political party in Kenya, there was a lot of acrimony and in-fighting because all other routes for election to Parliament were curtailed. Other people, therefore, tried to look for other means of being elected to Parliament. In the religious world, the many mainstream churches have become bullies. They treat other preachers with scorn and, therefore, the route to the fulfilment of one's holiness is difficult because it is curtailed through non-registration of other churches.

Mr. Temporary Deputy Speaker, Sir, while moving the Motion last week, I talked about various countries that have achieved industrial growth, for example, South Korea, where the word of God was given room. They came up with proper Acts of Parliament to guide registration of churches, in order to end the in-fighting and confusion in churches. What the Motion is seeking -I thank the Government for supporting it - is to put order in the religious places, so that funny characters do not have access to registration, even through bribery, and the true men of God who want to genuinely preach the word of God are not denied the opportunity to assemble and fulfil the calling which says: "Go, therefore, into the whole world and make disciples in all the nations". The Bible also says: "Baptise them in the name of the Father, the Son and the Holy Spirit". It goes on to say: "---teach them to observe all things whatsoever I have commanded you". In conclusion, it says: "And Lord, I shall be together with you always and the whole world".

Mr. Temporary Deputy Speaker, Sir, I would like to thank everybody who has contributed to this Motion. If this Eighth Parliament passes this Motion, it will go down into history as the most religious Parliament. It would be a Parliament whose Members should be re-elected, because they have created room for the true freedom of worship.

Men of God will not have to sit in a kangaroo court and answer questions from funny characters who even ask them for bribes. This Parliament would go down into history as the Parliament which established a proper mechanism for preaching the word of God.

Mr. Temporary Deputy Speaker, Sir, without wasting more time, because I can read the mood of the House, I would like to once more, profoundly thank the Attorney-General, who, in person and office, has foreseen the need and agreed to advise the Government that the Motion has come at an opportune time, and that the Government should oversee the registration and running of religious organizations.

I beg to move.

(Question put and agreed to)

LEAVE TO INTRODUCE BILL TO
AMEND THE BANKING ACT

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, in view of the importance of promoting the participation of Kenya entrepreneurs in the banking industry, this House do grant leave to introduce a Bill to amend the Banking Act (Cap.488), Section 7(2) by removing the full stop and adding the following words after the schedule:

"taking into consideration the rate of economic growth and ensuring that at least 40 per cent of domestic banking is owned by Kenyan entrepreneurs".

Mr. Temporary Deputy Speaker, Sir, currently, Kenya is a country that has a reasonably well developed financial system, compared to a number of countries in Africa. This financial system comprises:-

- (i) 56 commercial banks,
 - (ii) 25 non-banking financial institutions,
 - (iii) Four building societies,
 - (iv) 45 insurance companies,
 - (v) Three re-insurance companies,
 - (vi) 12 development financial institutions,
 - (vii) One Capital Markets Authority,
 - (viii) 24 securities and equities brokerage firms,
 - (ix) One stock exchange,
 - (x) 14 investment advisory firms,
 - (xi) 61 hire purchase companies,
 - (xii) Several pensions funds and, approximately, 2,700 savings and credit co-operative societies (saccos);
- and,
- (xiii) 19 foreign exchange bureaux.

But the sector is largely controlled by commercial banks. These commercial banks control about 70 per cent of total loans and advances. They account for nearly 65 per cent of bank assets and claims. The claim that Kenya is over-banked is not quite true. If you look at the top four commercial banks; that is, Kenya Commercial Bank (KCB), Barclays Bank, Standard Chartered Bank and National Bank of Kenya, they control about 52 per cent of the market share in total assets. The remaining 49 banks control about 48 per cent of market share in total assets. In spite of accepting the fact that Kenya's financial market is reasonably well developed, it is overly controlled by major commercial banks in this country. As I will continue to argue, this is very important, especially when we are thinking about developing entrepreneurship in this country and supporting what the Government has called small-scale business entrepreneurs.

Mr. Temporary Deputy Speaker, Sir, you remember that at Independence, the banking sector was largely private. The State intervened in the banking sector, first, by taking over the National and Grindlays Bank and turning it to Kenya Commercial Bank, and establishing later, the National Bank of Kenya. The State went further to establish development financial institutions, like the Agricultural Finance Corporation, Industrial Development Bank and Industrial and Commercial Development Corporation (ICDC). These development financial institutions were

established to ensure that the State had financial institutions through which African entrepreneurship could be developed. In other words, these development financial institutions were going to lend money to entrepreneurs at reasonable interest rates and with financial advisory services over a long period of time. Over time, however, the development financial institutions have ground to a standstill for various reasons. One, there was a lot of money borrowed, but not paid back, especially by politically-correct individuals. Secondly, in certain cases, they were mismanaged and there was corruption. Finally, these development financial institutions depended a lot on money borrowed from abroad to strengthen their capital base. When that money was no longer coming, because Kenya was not in good relationship with donors, a lot of development financial institutions have ground to a standstill.

African entrepreneurship has been helped and supported by the development and savings and credit co-operative societies (saccos). Many people who are working, professionals and so on, have found it very useful to belong to saccos. It is from these saccos that they have received mortgages to buy their houses, some credit to start businesses and so on. But the saccos can only go that far. The saccos themselves invest their money with the Co-operative Bank of Kenya, which is a commercial bank. The Co-operative Bank of Kenya is the fifth largest bank, thanks to the saccos which have put money there. The emergence of saccos show that Africans can have the entrepreneurial skills to start financial institutions that will go a long way to give capital and credit to those people, who either want to improve their standards of living or want to start some businesses.

Mr. Temporary Deputy Speaker, Sir, if we look at the growth of non-banking financial institutions, you realise that most of them were started by Africans in the 1980s, sometimes alone or in the company of other business communities, like Asians, foreigners and so on. Between about 1981 and 1990, the non-banking financial institutions grew from being 23 in 1981 to 54 in 1989, just at the beginning of 1990. They doubled in the 1980s. There are many reasons why these non-banking financial institutions doubled. One, because people had money to start non-banking financial institutions. Two, because there was a demand for non-banking financial institutions by people doing business. Borrowing money from non-banking institutions was easier. They were more informal and user friendly. They could give credit easily and they served a clientele which was not the usual business man. You would realise that major commercial banks deal mainly with corporate business, like the CMC Motors Group, the Toyota Kenya and so on; big business. These non-banking financial institutions came in to give service to the small-scale entrepreneur, the person who wanted to build his house and so on. But it was unfortunate that as they mushroomed from 23 in 1981 to about 54 at the beginning of 1990, they were also amenable to abuse by directors lending money to themselves or the employees going to evaluate projects and giving larger values to assets which were then used as collateral. When the money could not be paid and the banks went to fore-close the loans and sell the assets, they found that they were much less than their value. The non-banking financial institutions started to collapse because of some of those internal problems. Not all of them had those internal problems. Quite a number of them were well managed and they could have survived up to now. There are some which have survived up to now.

Nonetheless, in 1990, the Government came up with a law which relates to this particular section we are talking about. The Banking Act, Cap.488, Section 7 says:-

"A licence shall not be granted to an institution unless the institution meets the minimal capital requirements specified in the schedule.

That the Minister may by gazette notice, amend the schedule."

It means, therefore, that the Government can, from time to time, fix the minimum capital requirement for a financial institution. In the 1980s, this minimum capital requirement was much lower for non-banking financial institutions than for commercial banks. But in 1990, the Government came up with the rule that this minimum capital requirement would be the same for commercial as well as non-banking financial institutions, and that from time to time, it will be amended, raising the capital as we went on. That is one of the reasons why you see that from 1990 up to now, the number of non-banking financial institutions has decreased from 54 to 11. In other words, part of the decrease is explained that since the capital requirement has increased, and since in 1990, the non-banking financial institutions were required to behave like commercial banks, most of them either went out of business or amalgamated with other non-banking financial institutions to make bigger units. Some were bought up by commercial banks.

One of the persons who is involved in this, Mr. Manganglal Chandaria, the chairman of the Small Banks Association, in April this year wrote an extremely interesting article in Market Intelligence. The article was called: "A case for small banks". Mr. Chandaria makes a very good argument that whereas he is not opposed to the fact that there should be minimum capital requirement for small banks and non-banking financial institutions, this requirement should take into account the need to encourage entrepreneurship in the financial sector in Kenya. He says that crowding out the small banks by raising minimum capital requirements unreasonably will kill entrepreneurship and could easily continue with the present trend where the financial market is dominated by big commercial banks.

I will just refer to what Mr. Chandaria says in this article. He says among other things that during the banking crisis in the early 1990s, some banks ran down after issuing unsecured loans to people who later could not repay them.

To complete the vicious cycle, the unprofessional bankers lent imprudently to those who helped them get the jobs and finally, several of these banks collapsed. The Government set up the Deposit Protection Fund after that, which now protects depositors. The Government has come up with several regulations to be implemented by the Central Bank of Kenya which makes it a little bit more difficult for some of these malpractices to go on. So, argues Mr. Chandaria: "If the Central Bank can function properly as a regulatory mechanism in the financial market, a lot of these malpractices can be weeded out." While Mr. Chandaria accepts that there should be minimum capital requirements for all commercial banks and non-banking financial institutions, it is important to note that when this amount is too high, it can, indeed, penalise the small banks. It forces them to seek mergers with other smaller banks to meet the minimum capital requirements. He argues that mergers have not always worked in Kenya. Mr. Chandaria says: "The existing controls are in the interests of the depositors in the banks, for example, the decision to raise capital to Kshs500 million by the year 2002. The process of merging two or more banks is very arduous." The word "arduous" simply means difficult or complicated. More often than not there are no real mergers, but acquisitions. There is always the question of which bank will take over the others debts and who will be the manager doing due diligence among other things."

I would like to emphasise that quotation from Mr. Chandaria. It is assumed that when you raise the minimum capital to Kshs500 million and small banks or non-banking financial institutions cannot afford it, you will force them to merge. Merging has two bad effects. One of them is that it kills entrepreneurship. If you force somebody who has a small bank to merge after three or four years, you will not have given him time to prove his entrepreneurial skills. Secondly, small banks have the advantage of being user-friendly. They have clients who are kind of in-house persons. When they come there, the queues are short and they are given personal attention. When you merge, you lose some of these things.

In any case, Mr. Chandaria says that mergers have not worked in Kenya. What works is that when you are in trouble, you are acquired by a "bigger brother". In other words, raising this minimum capital beyond the reasonable threshold forces the small banks to be taken over by the big commercial banks. In the end, you are reinforcing the present skewed method of share of assets in the financial market by the big banks. Sooner or later, you will find that the KCB, Barclays Bank, Standard Chartered Bank, National Bank of Kenya and the Co-operative Bank may increase their share of the total assets from 52 per cent to 70 per cent. I think this is a very unhealthy state of affairs. It is these big banks who have large portfolios of non-performing loans. Between the KCB and the National Bank of Kenya, the portfolio of non-performing loans is very huge.

I am quite sure that if the market was more liberalised and the law allowed more small banks and non-banking institutions to participate; and if the Central Bank played its role effectively as a regulator, we would reduce the cases of non-performing loans because small banks cannot afford huge portfolios of non-performing loans, but big banks can. By giving the share of the market to many more small banks and non-banking financial institutions, we will be doing this country a lot of good. It is in that spirit that I was proposing to the Government that Cap.488 of the Laws of Kenya be amended to ensure that we take into account, not just figures set arbitrarily by the Central Bank of Kenya, but the real economic environment.

In the last Budget Speech, the Minister proposed that as of December, 2001, the minimum capital requirement for banks and mortgage companies should stay at Kshs300 million, but that it should go to Kshs350 million in 2002. He said that it should increase by Kshs50 million every year until 2005. I asked myself how the Minister fixed that annual increment at Kshs50 million when the economy is not growing. It is either stagnant or it records a negative growth. If the economy is not growing, how do you expect the banks to increase their minimum capital requirement every year? Where do you expect them to get the money from? Who is doing the business? The business can only be done, and they can only increase their minimum capital requirement if the economy is growing.

I thought that one of the conditions we should give the Minister is that this sum of money, in terms of minimum capital, should be pegged to two things: One, it should be pegged to the rate of economic growth. Secondly, it should be pegged to the participation of African entrepreneurs in the banking industry or financial market. The minimum capital requirement should not be raised by undermining African entrepreneurship. African or indigenous entrepreneurship as Mr. Chandaria has pointed out, has been demonstrated more in the small banks and the small non-banking financial institutions than the big financial institutions whose owners we know. Even when KCB, NBK and Barclays Bank floated their shares in the stock exchange market, not many small people got them. If you analyze how the shares were bought, you will find that the corporate sector got a substantial portion of those floated shares in the market rather than small persons.

So, I think that if we are really going to have economic growth and, especially, if we are serious about poverty alleviation; including the standards of living of the people. let us think of these so many people who have been able to put so much money into SACCOS; that, were those SACCOS also to be allowed to set up their financial institutions; non-banking and banking, we would really have the banking industry penetrating into the rural areas. One of the reasons why the banking industry has not penetrated into the rural areas is because the big ones make enough

money anyway. They do not want to worry about going to collect little cents and shillings in Luanda or Kit Mikayi markets and so on. However, if you really allowed somebody with Kshs50 million to set up his non-banking financial institution, you will find them in Kit Mikayi and Kanyamkago and all these places reaching the people whose poverty you want to alleviate.

Mr. Temporary Deputy Speaker, Sir, if you look at the financial institutions, their capital requirement is being increased from Kshs225 million in December, 2001, to Kshs375 million by December, 2005. Again, if you ask the Minister for Finance on what basis did he base these figures, I am quite sure that you will not get a reasonable answer. This is because, again, I would like to add that these figures are not based at all on projections regarding economic growth or the improvement in the business climate in this country. So, I would appeal to the Government to come to my support and support this amendment to Cap.488 of the Laws of Kenya.

Hon. Kihoro will second the Motion.

Thank you.

Mr. Kihoro: Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support the Motion which has been moved very ably by Prof. Anyang'-Nyong'o, and especially support the thrust of this Motion that the Government should do more to promote the participation of Kenyan entrepreneurs in the banking industry. That can be done, as the Professor has said, by being more sensitive to what is happening to our economy, taking into consideration the rate of economic growth and also ensuring that the demands on the capital requirements are reasonable and within the reach of the African entrepreneurs.

Mr. Temporary Deputy Speaker, Sir, the Motion is requesting and urging that 40 per cent of the domestic banking should be owned by Kenyan entrepreneurs. That is a reasonable request. The Motion is not requesting 51 or 100 per cent. Usually, you find in investments that there is usually a local requirement that there should be a 51 per cent local participation, but this Motion is requesting that the Government should ensure that there should be a 40 per cent local entrepreneurship in the banking industry in this country.

Mr. Temporary Deputy Speaker, Sir, that is important. Opportunities should be given to our people to ensure that the four big banks in this country, whereas they make good profit for their shareholders, many of them who are foreigners, that is of no consequence to our people. The Government in this country should understand and accept that our people should be at the heart and centre of development in this country. Globalisation should not mean "foreignising" our economy; giving more opportunities to foreigners. They also have opportunities in their own respective countries, while denying that opportunity to our people.

Mr. Temporary Deputy Speaker, Sir, if you look at what is happening in the capitalist world in America, Europe and Asia, you find that local indigenous banking is at the heart of their development. Morgan Chase Bank and Citibank in the US, National Westminster Bank in London and in the midlands, Mitsubishi Bank and Bank of Tokyo in Japan, Bank of India and Bank of Baroda are all operating here and many people might even tend to think that they are actually Kenyan banks, when they are not. It is important that, as we think about how to resuscitate our economy that has shown negative growth; and that is admitted by the Government, we also think more about how we are going to enable local entrepreneurs to, maybe, be reinstated in the banking industry. This is because I am also aware that 20, 30 and maybe up to 15 years ago, there was a thriving local banking industry. We all remember the Continental Bank, and it is proposed that Members will have offices in that building called Continental House, in due course. There was the Continental Bank. There used to be the Rural, Urban Credit Finance Company. There are many banks that used to exist that were indigenous, but they are no longer in operation.

Mr. Temporary Deputy Speaker, Sir, you will find that there are sufficient resources which should enable adequate local banking. A lot of the money, pension funds and savings by the employed population in this country below certain job groups has been put in the National Social Security Fund (NSSF). You find that a lot of that money has been spent to support non-viable local banking, which has ended up into liquidation and many of these local banks are no more. What is then important is to support viable, indigenous and local entrepreneurs prepare to do the job and remove politics out of this very important area. This is because politicians, as bankers, have proved to be a disaster. That is why, if you look, you find that what used to be a thriving banking industry driven by local people, many of them patriotic and out to give Kenya a certain ability to enhance savings, is no more.

Mr. Temporary Deputy Speaker, Sir, the service industry in this country is something that can really earn our country a lot of foreign exchange and wealth. A country like Britain, with its own banking and insurance, is a leading earner of wealth from these industries. Banking, insurance, service industry, merchant banking and also shipping, have earned a lot of wealth in these areas. In our position, with our level of literacy, it is important that this is an area that is still pending to be fully exploited, and, at the centre of it, there should be our own people. These are people, who when they do their savings and work and make profits, plough it back into our economy. It is not people who operate here, take the wealth out of the country and repatriate their profits year in, year out.

Mr. Temporary Deputy Speaker, Sir, sometime ago there was the story of a Foreign Minister of a certain

country which I am not prepared to name today, who came to this country. When she tried to put a bit of pressure on the powers that be, she was categorically told that one of the banks in this country earns nearly Kshs5 billion in profit and Kenya is not only making a request to be assisted but she is of great assistance to that foreign country in terms of generating wealth. Imagine Kshs5 billion generated by one bank and taken elsewhere to shareholders who are not Kenyans.

Mr. Temporary Deputy Speaker, Sir, it is important that we support this Motion that is going to ensure that as we resuscitate our economy, we are going to give a viable and realistic option to the local bankers and entrepreneurs to participate in the banking industry. Our own local banks leave a lot to be desired, like the two leading local banks. It is important to note that money is about building confidence in the people. Building confidence is the best way to advertise your banking. It is not good for the banking sector to experience scare from time to time; that a certain bank cannot be able to meet all its banking obligations. If the story is that you wait until you are told of the amount of debts that are uncollected by a certain bank in this country, that is not good for banking.

What is important to know is that the heart of banking is confidence by the members of the public; when they have got savings to make and which can be marshalled into certain investments and enterprises. If that is done, it would form the heart of local banking. It is important that we encourage local banking, and it is not too much to ask for 40 per cent when the schedule is prepared. The Minister will take into account the need to encourage local banking and ensure that our people are involved. For example, the Equity Bank that operates in Central Kenya; it is a local bank. Many people who found out that they could not put their little savings in a bank like Barclays Bank of Kenya after they raised their requirement of minimum banking deposits and said that so much money must always remain in the account, and yet it is the poor who give credit to the bank, they resorted to the Equity Bank. That is what it amounts to. When you are told that there must be minimum banking requirements and deposits, what you are being told is that you are giving that bank free credit. Many could not be able to sustain the high requirements that were demanded, being aware of the income that our people have these days. The Equity Bank is able to operate, and it is opening branches in other parts of the country. It is striving to support farmers in this country and low-income earners in a way unprecedented. This is one of those banks that is a good example and, if assisted, it is going to rival some of these big multinational banks in this country and end up giving a lot of assistance to our people.

I beg to second this Motion.

(Question proposed)

The Minister for Transport and Communications (Mr. Mudavadi): Thank you, Mr. Temporary Deputy Speaker, Sir. Maybe, before I address myself specifically to some aspects of the Motion, I would just like to highlight one or two issues that are very critical for the financial sector. First, I think it is quite clear, at the moment, that Kenya's financial sector is in a very unstable situation in the sense that, currently, it is not vibrant enough as it should be because of the state of our economy. Also, because the financial sector is usually the heart of any economy and it has to be handled very carefully when legislation and adjustments are being proposed.

Without touching on issues that may be before the court, one of the critical challenges facing the financial sector today is no doubt the implications of the so-called "Donde Bill". It is an issue that the financial sector globally is grappling with in this country, and it has the ramifications which could either be positive or negative towards the sustainability of the growth of the economy. The second aspect that we are looking at here is that through the proposal that is being put forward by Prof. Anyang'-Nyong'o, there is a second label of regulations or second tier of controls that is being instituted through the proposed amendment.

I want us to focus on two issues; one is about the amendment. I presume that Prof. Anyang'-Nyong'o wants to talk about the share capital in these financial institutions. But there is also the broader capitalization of the banking institutions which we will be talking about, the core capital of the banking sector as a whole. So, I presume that the gist of his Motion may be the one that wants to talk about share capital within the banking industry. My view is that if I may give some figures and, may be, he has some them as well--- For instance, broadly, today, we have the core capitalization of the banks which is estimated to be about Kshs42 billion and this involves about 55 banking institutions. Out of this, seven are totally foreign-owned and then we have another list of banking institutions - about eight - which are both foreign. Sometimes, they are also Kenyan through either the Stock Exchange or through the Government Equity. Then, we have close to another 24 institutions which are already Kenyan-owned, but largely Kenyans of Asian origin, who are key players in these other 24 institutions.

But be that as it may, I think what Prof. Anyang'-Nyong'o wants to put across is that in the financial sector, the indigenous Kenyans should not be ignored. The principle and the objective are correct. Hopefully, as we debate, Prof. Anyang'-Nyong'o, will be amenable to some adjustments to his proposal because what we need to reflect is a process that encourages Kenyans to play a key role within the financial institutions, both for purposes of ownership

and also for gaining the expertise within this sector and also bearing in mind that they will be, perhaps, more responsive to the needs and requirements of Kenyan borrowers.

I will try to persuade him against being very rigid and assume that we should take a certain fixed percentage and say that it should be owned by Kenyans. This is because when you talk about financial sector, that percentage will require capital injection in the first place. So, the Kenyans will need to have it.

Secondly, we must also bear in mind that part of the problem that we are facing within the financial sector has also to do with the broad micro-economic problems which have made it also difficult for some of these institutions to run and be effective. This is because other factors within the economy may not be right and, therefore, the financial sector also starts being affected by those distortions.

When we want to look at some of these things, we should not compromise whatsoever the issue of ownership with management. Indeed, Prof. Anyang'-Nyong'o made reference to this; that, one of the problems that we are faced with in this country, especially where indigenous ownership has been involved, is that those who had a stake in the financial institutions did not want to distinguish between their shares or their role as shareholders and their role as the managers. They wanted to play a dual role. They wanted to own and at the same time they wanted to be the chairman, managing director, loan officer and the person to recover the loans. So, all these different roles that were being played by some of the indigenous owners, definitely, led to a situation where there was a conflict of interest and, in the process, professionalism in the management of these institutions deteriorated. Indeed, it led to the collapse of quite a number of them. So, I think, as we deliberate on this issue, we should not lose sight of the fact that we must be very careful; that, we do not, in any way, create instability in our financial sector. As things stand now, there is instability; banks are not lending. Commercial banks are not extending credit to the public because the Central Bank of Kenya (CBK) constantly puts out Treasury Bills (TBs) and bonds, and money does not go into actual productive work.

Mr. Temporary Deputy Speaker, Sir, we have created a situation where all the resources within the economy go back to the central Government to fund its activities. We should not be funding the activities of the central Government out of the latent resources within the financial sector. We should be having a broader and growing economy with a wider tax base from which Government resources can grow. We should not be having the situation where commercial banks hold onto these very vital resources. Nobody borrows from banks except huge corporate customers who have a tradition with a particular financial institution. Be they the Toyota Group of companies, or whichever, the truth of the matter is that very few people can now go to a bank and access any credit. Banks have no interest in lending to ordinary customers.

We only have to look at the parameters and the figures in our economy to figure out what is happening. Ordinarily, one would think that if the TB rates go down - in our case the TB rates have dropped to about 12 per cent - and, at the same time, interest rates go down, the banks should have shifted from putting money to TBs and started lending it out. That is not happening. If you look at the CBK statistics, you will realise that the growth in terms of credit is not there. So, what has happened? Because instability has been generated in the financial sector, money is there but it is not being accessed; it is going back to the CBK. It is just moving in circles in the form of Government paper.

So, I would like to urge hon. Members that we would all like to have an economy that is largely owned and controlled by Kenyans. However, in the current situation, we need to be very careful. We are dealing with a system that is already "wounded" seriously. Whatever we do, we should not inflict another major blow to it. We must also take into account the fact that, right now, the flow of capital, both inward and outward, globally, is such that it is very difficult, in many sectors, to distinguish between foreign and local ownership. So, I would like to plead with Prof. Anyang'-Nyong'o and hon. Members of this House that somewhere along the line, I hope we will be amenable to some suggestions of an amendment which will not destroy the spirit of the Motion, but rather will send out some olive branch and the message that the Minister for Finance should always encourage local entrepreneurship in the financial sector. At the same time, we should not be seen to be introducing some level of nationalisation, or introducing a measure which will, for example, provide for our forceful grabbing of shares from institutions without necessarily paying for them.

Mr. Temporary Deputy Speaker, Sir, those are my views. I hope that the hon. Member will consider accepting some amendments.

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, the Minister seems to have totally missed the point of this Motion. This Motion is about ownership to the extent of the banking sector being controlled by indigenous Kenyans. Part of the Motion is about how to ensure that, that happens. That is why the spirit of this Motion is about ensuring that, at least, 40 per cent of the banking sector in this country is in the hands of Kenyans; I would even go further and suggest that it should be in the hands of African Kenyans. We are saying that African Kenyans have been locked out of the banking sector.

Mr. Sajjad: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to say that

he would go further and call for the control of the banking sector by African Kenyans? Is he implying that Kenyans of Asian and British origins are not Kenyans? Why the distinction?

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, that is my opinion. I said that if this were my Motion, I would go further to suggest that African Kenyans should control the financial sector. I have a right to say so.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Sajjad also has a right to raise a point of order.

Mr. Murathe: That is not a point of order! He has a right to talk about Asian Kenyans.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, Mr. Murathe!

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, African Kenyans have been locked out of banking because of the stringent capital requirement, which has deliberately been put at Kshs500 million to lock out Africans. This Government has been busy protecting the interests of the big banks in this country. How many Africans can put together a capital of Kshs500 million? As we speak, the Government has required indigenous African bankers to increase their capital from Kshs150 million to Kshs200, and then to Kshs250 million and to Kshs500 million by the Year 2002. As it is now, nobody wants to invest in banking. Who wants to invest his Kshs20 or Kshs30 or Kshs40 million in banks when, as the Minister rightfully said, the profit margins for banks are reducing?

The profit margins for banks are narrowing because banks do not want to put up with the spirit of the "Donde" Bill, which successfully sought to amend the Central Bank of Kenya Act and provided for the regulation of interest rates. Banks in this country are used to making super-profits. It is only in Kenya where banks make profits of between 30 and 40 per cent. Barclays Bank makes a profit of 4 per cent in England, which is its headquarters. It is only in Kenya where foreign banks make a lot of money, which they then take abroad. The interest rate regime in this country is very high partly because of the CBK's requirements on capital deposit, cash and liquidity ratios. Banks have to deposit so much money with the CBK instead of lending it out to investors. Subsequently, this cost is passed on to borrowers.

So, I would encourage Prof. Anyang'-Nyong'o to also propose an amendment to the Statute Law (Miscellaneous Amendments) Bill, which will come up for debate before the end of this Session. We will wholeheartedly support him and enact the proposal into law. This country today has only two indigenous African banks, namely, Euro Bank and Daima Bank. All the other banks have been "killed". We recently heard some hon. Members suggest that the Minister for Finance withdraws the deposits put into those banks by the Ministry of Health, so that they can also "die". We know how these people killed the Kikuyu-owned banks on the basis of politics and hatred.

Mr. Temporary Deputy Speaker, Sir, we need to restructure the CBK. The CBK can no longer be a regulator and a player. The CBK gives the Government huge dividends annually, from the proceeds of the deposits it holds from commercial banks in form of cash ratio and TB interest rates. It is because the CBK is not playing its role of regulating the banking sector that all these banks have collapsed. How did Trust Bank get indebted to the tune of Kshs5 billion, plus depositors' money without the CBK knowing? What was the CBK doing? The CBK was busy taking part in business and declaring a dividend of Kshs4 billion annually for the Government. What business does the CBK have in trading? The CBK cannot be the regulator of the banking sector and a player at the same time. It is high time we reviewed the roles and core functions of the CBK. It is a high time that we restructured the functions of the Central Bank of Kenya (CBK) in terms of monetary policy regulation. Pure and simple. That is why it has so much money to start building buildings such as the Times Tower, which it never needed and it has had to sale it to the Kenya Revenue Authority. One of the ways which people use here to siphon money is by construction and over-pricing of goods and services.

Mr. Temporary Deputy Speaker, Sir, the reason why banks are not lending to Kenyans is so that they can frustrate the implementation of the Donde Bill. We know that and they are in court about this. We are looking forward to the day when we shall pass a law here that says that whenever Parliament passes a law, no other authority can challenge it. We are here to make laws for the benefit of Kenyans. Kenyans are wondering when this law will ever be enforced so that they can go to the banks and borrow money. The banks have gone to court and this issue is *sub judice* and we are not supposed to talk about it. Kenyans are very frustrated. We even know that these banks are paying so that these whole processes, right from the enactment of the law up to its implementation, are delayed.

If we are really serious, let us forget all this donor business of liberalisation. There must be liberalisation criteria. You cannot have criteria that locks out your own people by setting targets that your local people cannot achieve. We have proportions. Even in liberalising Telkom Kenya Limited, we have said that foreigners should take 49 per cent of its shares and Kenyans should keep 51 per cent. Why is it not possible to do the same with the banks? The politics of the 1960s required joint ownership. There was Africanisation where anybody who intended to do business

in this country had to do it in partnership with the local people. That is how they took over all businesses in places such as Biashara Street, Tubman Road and River Road. Today, there is not a single African in Kirinyaga Road, River Road or Biashara Street. This is because we just open our doors for any Tom, Dick and Harry, and even comen.

If you go to the United Arab Emirates (UAE), you will find that you cannot own a business there unless you are sponsored by a citizen of the UAE. Why is it that in this country we are treated like trash? I support what Prof. Anyang'-Nyong'o has said about ownership. We will take up this issue in courts. These banks, after charging illegal interest rates since 1991, because the law came into force in 1997, now have the audacity to say that they will make losses. We want to give them notice that we will take them to court and they will tell us under what law they charged interest rates of over 16.5 per cent, which was legally allowed. You do not change the law through administrative circulars of the CBK. The law was changed only in August, 1997. But we are putting these banks on notice that we will go to court against them because they should not have ripped off our people for six years, and when we want to regulate a situation by regulating interest rates and controlling them, they start running around and saying that it is no longer profitable to do business in Kenya. This is not correct and we will not stand it.

Mr. Temporary Deputy Speaker, Sir, we want a framework also that can strengthen the micro-finance institutions such as rural SACCOs, provided we can tighten the regulatory mechanism to protect depositors. We are also aware, as the Minister has said, that if we set up two rules, then we will run the risk of people losing money. But just to emphasise the point of the Motion by Prof. Anyang'-Nyong'o, banking is about prudent lending. It is not about capital. It is about lending prudently. It is actually not even about securities. You can lend somebody money on the basis of your conviction that he has a viable project and that, that project can become the security because you, as a banker, are convinced that the project is viable, profitable and will pay you back. But if it is purely about providing securities and guarantees, which is why people are required to raise heavy capital, I am not surprised that the National Social Security Fund (NSSF) accepted quarries as securities and gave out a lot of contributors' money.

Finally, and I want the Minister to answer this when he is responding to debate, what was the basis in setting the minimum capital requirement? He should also tell Kenyans whether it is true or not that the Government is today printing Treasury Bonds in anticipation of the next general election.

Mr. Sajjad: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to this very important debate.

I would very much like to support this Motion because I feel that the cost of borrowing in this country is unbelievably high. Today, in Europe, you can borrow in dollars at an interest rate of between 2.5 and 3.5 per cent and between 4.5 and 5.5 per cent in Sterling Pounds and the Euro. In Kenya, the minimum borrowing interest rate is between 17 and 18 per cent, and minimum account charges are 1 per cent, while in Europe they are 0.2 per cent. The minimum corporate guarantee charge in Kenya is 1 per cent, while in Europe you do not pay more than 0.2 per cent.

We had the Donde Bill, but I personally think it does not address the issue of high interest rates. Mr. Mudavadi mentioned that there is no growth in trade because there is no financial stability. I tend to agree with him. I think there is no growth in trade because of the very high cost of borrowing. However, I am at a loss because I really do not understand whether this Motion will really address this issue. If we support it and say that 40 per cent of the banks should be owned by Kenyans of any origin, will this help us? We have Kenyan-owned banks which are still charging the same interest rate of between 17 and 18 per cent; give 8 per cent on deposits, and have a retention ratio of 10 per cent. In Europe, banks have 2.5 per cent interest rate both on borrowing and deposits. Why should banks charge 10 per cent interest rate in Kenya?

In Europe, big companies pay between 0.5 and 1 per cent interest rate and between 0.1 and 0.2 per cent for guarantee. No bank in Kenya is willing to give you a guarantee for less than 1 per cent. In Europe you will get the same guarantee for 0.2 per cent. If you go to borrow, you will find that banks require between 1.25 and 2.5 per cent commitment fee. By the time you will have borrowed and paid the commitment fee, you will realise that the charge will have amounted to between 21 and 22 per cent. Why are businesses going under receivership? For example, the House of Manji and Jambo Biscuits Ltd were placed under receivership last week due to excessive power bills and high cost of borrowing.

Will this Motion, in any way, solve the problem of the cost of borrowing? I very much support it, but how will we implement it? Will we have two sets of laws? Will we say that a Kenyan banker should contribute Kshs40 million, while a foreign banker puts in Kshs100 million? How sure are we that the Kenyan banker will be able to compete and reduce the borrowing charges? What we require is to look into ways and means of reducing the borrowing rates for this country to prosper and its businesses to become viable. Today, only companies that make big profits are able to enjoy banking facilities. Individuals do not even get loans from the banks. How will they trade? Are we again going to say that Kenyans will get those loans? How can a company in Kenya survive, if in Dubai and Europe people are paying 2.5 per cent interest rates? Even donors who have taken over management of institutions are charging 10 to 12 per cent. Why are they charging such high percentage? In Europe, interest on loans is given at 8 per

cent! Why are Kenyan banks charging 10 per cent, when in Europe the charge is 12 per cent? People should go for off-shore borrowing. The programme for off-shore borrowing is easy. What we require is for this House to find ways and means of making borrowing cheap in order for the economy to grow. So, small enterprises should be given loans at affordable interest rates. We should bring a Motion into this House to say that a certain percentage of borrowing from banks should be reserved for individual businesses.

Mr. Temporary Deputy Speaker, Sir, the American economy has been in recession for the last three months, since the 11th of September, 2001. They have reduced bank interest rates by 2 per cent for borrowers. Why can the Central Bank of Kenya not do something about loans? Why are we being told that, if we can control bank interest rates, then that is not liberalization? How can America reduce bank interest rates and nobody queries it? Bank rates for the Sterling Pound and the Euro have been reduced. Why are we being told that we cannot reduce our interest rates? Why can we not have a Government whereby the Central Bank restricts the borrowing rates and sets a ceiling on that, and everybody will follow it? If banks in Europe can survive--- Of course, we have been told that Kenya is a Third World country and we have got no room for these types of rates. Who tells them to set for us bank rates? Do they not demand for security? Are they not charging interest rates too? Go to the bank to borrow and they will mortgage everything that you own. Somehow, for the Kenyan economy to grow, and for us to be able to survive in this very competitive world, the cost of borrowing should be drastically reduced.

Mr. Temporary Deputy Speaker, Sir, this House should find ways and means of ensuring that somehow, banks bring down the interest rates. This can be done by the Government introducing some sort of regulatory measures which will make them compete in the market and pull the rates down. Maybe, the Kenyan businessmen should form a consortium with the aim of trying to pull the rates down.

Mr. Temporary Deputy Speaker, Sir, I do not think that this Motion will help to pull those rates down. I would advise the Mover of this Motion, other hon. Members and the Government, to find ways of developing the banking sector in order to bring down the cost of borrowing and thus reduce interest rates. Any new bank which comes into being today follows the trend of the major banks in order to compete with them. The established banks should bring down their interest rates so that they can help the local businessmen make progress in their businesses. Reducing a section or a percentage of the interest rates for indigenous entrepreneurs is not the solution.

Thank you.

Mr. Wamae: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this very important Motion. It is true that the Kenyan banking sector has gone through a very trying period. We have foreign and local banks in this country. Local banks, whether they are owned by Africans or Asians, have predominantly collapsed. These banks have collapsed despite the fact that we have the Central Bank of Kenya (CBK), which is supposed to audit and ensure that they run on a prudent manner so that they can survive. What we are left with now are predominantly foreign banks which control most of their deposits and, therefore, most of the advances.

It is interesting to note that since we passed the Central Bank of Kenya (Amendment) Bill 2000, the banks, as Mr. Mudavadi said, do not lend out money. They do not lend out money for business, industries and tourism. These banks only lend out money to first-class clients who are mostly multinationals, or first-class business enterprises. In fact, some of these banks have been put under receivership. Why is this the case? This is not because the Central Bank of Kenya (Amendment) Bill 2000 reduced interest to a level where the banks do not make profits, but it is because the Government is not convinced yet that this Act will work. The Government has sabotaged this Act by ensuring that the Attorney-General brings a Bill before this House to seek its leave to change the Act. This is what has made the banks refuse to lend out money. The banks have done this so that there can be a public outcry in the country and this Parliament and the Government can be pushed to change the Act. I would like to point out that the rate of interest of 4 per cent or 5 per cent above Treasury Bills, which was proposed in the Central Bank of Kenya (Amendment) Bill 2000, is not low. The provision that the saving rate should be 7 per cent of the Treasury Bill rate is not very high. The margin between the deposit saving and lending would still be 7 per cent or 8 per cent, which is still very high internationally, as Mr. Sajjad said. This rate is still too high but the banks have refused to lend out money because they think that there is hope that we will change the Act. We should let the banks know that it is our intention to have this Act in place. We will still pass this Bill if it comes to this Parliament again. We will also ensure that it becomes law.

This Motion which has come after the Central Bank of Kenya (Amendment) Bill 2000 will frighten some of those foreigners who own banks now. Naturally, it will have a negative effect on them, but it should be worked out in such a way that they aim at achieving this rate within a certain period of time. It is not something which we should come up with overnight and say: "Go and sell up to 40 per cent of your shares." In fact, some of the major banks have already sold 20 per cent of their shares to the local people through the Nairobi Stock Exchange. Some of the banks which have done this are Barclays Bank and the Standard Chartered Bank.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Wamae! You will have five minutes to conclude your contribution on Wednesday next week.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until this afternoon, at 2.30 p.m.

The House rose at 12.30 p.m.