

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 3rd October, 2001

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

NOTICES OF MOTIONS

ESTABLISHMENT OF INDEPENDENT ANTI-CORRUPTION AUTHORITY

Mr. Kombo: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-
THAT, this House do grant leave to introduce a Bill for an Act of Parliament entitled the Constitution of Kenya Amendment Bill to amend Section 26 of the Constitution to provide for the establishment of an independent Anti-Corruption Authority.

SELECT COMMITTEE TO INVESTIGATE HON. NDILINGE'S MURDER

Dr. Kituyi: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-
THAT, following the sudden disappearance and murder of the Member of Parliament for Kilome, hon. Anthony Wambua Ndilinge, on 2nd August, 2001; this House resolves that a Select Committee of Parliament be set up to investigate the circumstances of the murder and report its findings and recommendations to Parliament as soon as possible and that the Committee be composed of the following Members:-

The hon. S. Kamolleh, MP.

The hon. J. Koskei, MP.

The hon. S. Ndicho, MP.

The hon. W. Kihoro, MP.

The hon. H. Odongo, MP.

The hon. M. Karua, MP.

The hon. M. Kitonga, MP.

The hon. J. Orengo, MP.

The hon. N. Kathangu, MP.

The hon. P. Muite MP.

Dr. The hon. N. Kulundu, MP.

Dr. The hon. S. Ochuodho, MP.

Dr. The hon. M. Kituyi, MP.

The hon. Henry Obwocha, MP.

Dr. The hon. A. Ali, MP.

ORAL ANSWERS TO QUESTIONS

Question No.255

POLLUTION OF ATHI RIVER

Mr. Deputy Speaker: Mr. Katuku is not here? We will come back to the Question later.

Next Question, Mr. Angwenyi!

Question No.568

LEASING OF GUSII COUNCIL GRADER

Mr. Angwenyi asked the Minister for Local Government:-

- (a) whether he is aware that the Gusii County Council grader was leased to a private person for two years and that it was returned to the council in an unserviceable condition;
- (b) what steps he is taking to ensure that the proceeds for the use of the grader by the private person for two years are surrendered to the council; and,
- (c) whether he could order that the grader be repaired immediately.

Mr. Deputy Speaker: Is anyone here from the Ministry of Local Government? We will come back to the Question later.

Next Question, Mr. Kombe!

Question No.326

LAND REGISTRATION IN COAST PROVINCE

Mr. Deputy Speaker: Mr. Kombe is not here? We will come back to the Question later.

Next Question, Mr. P.K. Mwangi!

Question No.474

LAND ACQUISITION FOR SABA SABA
RAILWAY STATION

Mr. P.K. Mwangi asked the Minister for Lands and Settlement:-

- (a) whether he could explain how Kenya Railways acquired title deed No. LOC.17 Saba-Saba/1357, measuring 18.6 acres for construction of Saba Saba Railway Station; and,
- (b) when the Government will compensate the people whose land was taken away for the project.

Mr. Deputy Speaker: Is anyone here from the Ministry of Lands and Settlement? We will come back to the Question later.

Next Question, Mr. Wamae!

Question No.502

REHABILITATION OF KARATINA COURT BUILDINGS

Mr. Deputy Speaker: Mr. Wamae is not here? We will come back to the Question later.

Mr. Katuku's Question for the second time!

Question No.255

POLLUTION OF ATHI RIVER

Mr. Deputy Speaker: Mr. Katuku is not here? The Question is dropped.

(Question dropped)

Mr. Angwenyi's Question for the second time!

Question No.568

LEASING OF GUSII COUNCIL GRADER

Mr. Angwenyi asked the Minister for Local Government:-

- (a) whether he is aware that the Gusii County Council grader was leased to a private person for two years and that it was returned to the council in an unserviceable condition;
- (b) what steps he is taking to ensure that the proceeds for the use of the grader by the private person for two years are surrendered to the council; and,
- (c) whether he could order that the grader be repaired immediately.

Mr. Deputy Speaker: Is anyone here from the Ministry of Local Government? The Question will be deferred to Tuesday next week in the afternoon.

(Question deferred)

Mr. Kombe's Question for the second time!

Question No.326

LAND REGISTRATION IN COAST PROVINCE

Mr. Deputy Speaker: Mr. Kombe is not here? The Question is dropped.

(Question dropped)

Mr. P.K. Mwangi's Question for the second time!

*Question No.474*LAND ACQUISITION FOR SABA SABA
RAILWAY STATION

Mr. P.K. Mwangi asked the Minister for Lands and Settlement:-

- (a) whether he could explain how Kenya Railways acquired title deed No. LOC.17 Saba Saba/1357, measuring 18.6 acres for construction of Saba Saba Railway Station; and,
- (b) when the Government will compensate the people whose land was taken away for the project.

Mr. Deputy Speaker: Is anyone here from the Ministry of Lands and Settlement? The Question is deferred to Tuesday next week in the afternoon.

(Question deferred)

Mr. Wamae's Question for the second time!

Question No.502

REHABILITATION OF KARATINA COURT BUILDINGS

Mr. Deputy Speaker: Mr. Wamae is not here? The Question is dropped.

(Question dropped)

QUESTIONS BY PRIVATE NOTICE**MURDER OF MR. MBUBA**

Mr. Kihoro: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that Mr. Alfred Muriithi Mbuba, ID No. 13247731 was found murdered in his place of work at Temple Road Petrol Station, Nyeri Town, on 5th June, 2001?

(b) Under what circumstances did the deceased lose his life and what action has the police taken to bring his murderer(s) to justice?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I beg to reply.

Mr. Alfred Muriithi Mbuba--

Mr. Deputy Speaker: Order, Mr. Minister! Yesterday, we had three Questions directed to your office which were not answered. We would like you to offer an explanation for that omission.

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I believe that my office was attacked unfairly---

Mr. Deputy Speaker: No! We are not attacking your office! We would like to get an explanation as to why you were not here to answer the Questions.

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I was in a workshop with top religious leaders to discuss the AIDS scourge at Brekenhurst. We did ring the Clerk's office to ask that those Questions be deferred. I believe that Mr. Gichohi told the Speaker the same, but he declined to accept.

Mr. Deputy Speaker: Order, Mr. Minister! It takes quite some time for us to set out the Order Paper. If a Minister rings at 2.00 p.m. saying his Question should be deferred he is not being fair either to the Chair or to the House. Secondly, it is only the Chair who can defer those Questions and the person wanting Questions to be deferred, must contact him directly and not through a secretary who then rings the Clerk to inform the Speaker. That will not do!

(Applause)

More importantly, if Ministers feel that other work is more important than Parliamentary work, then we must find another way of getting Parliamentary work to be carried out! Any other function, in my humble view, cannot subordinate Parliamentary work; because we are all elected to this House to work for the nation.

Mr. Minister, with considerable respect, I did not find that line of logic sufficient for me to defer the three Questions. If we defer three Questions on the Order Paper in an afternoon, then we will have dislocated totally the work of Parliament.

(Applause)

Thirdly, those of us who have grown up in the system know that if the Minister was unable to attend Parliament for some reason, the Question was supposed to be passed on to another Minister in the principle of collective responsibility. In the Office of the President, there are more than one Minister and more than three Assistant Ministers. So, Mr. Minister, I will let you get away with it this time. But that does not add to the dignity and respect of this House the way we want. So, please, take note.

The Minister of State, Office of the President (Maj. Madoka): Thank you, Mr. Deputy Speaker, Sir. As you know, I take my parliamentary business very seriously. It was unfortunate that, that happened!

Mr. Deputy Speaker, Sir, Mr. Alfred Muriithi Mbuba was shot dead by a police officer who mistook him for one of the thugs who had attacked the petrol station on 6th June, 2001, at 4.10 a.m. The Nyeri inquest file has been opened and the investigations are continuing. Once investigations are completed, appropriate action will be taken.

Mr. Kihoro: Mr. Deputy Speaker, Sir, it is more than four months since Mr. Mbuba was killed by a police officer. Could the Minister tell this House the name of that police officer, who was armed by the Police Department to open fire on innocent people at their place of work? Why has it become necessary to hold an inquest when the name of the police officer is known? Is it another avenue that the Minister has found of sidetracking and exonerating police officers who are using firearms very recklessly? Is it not true that more citizens in this country have lost their lives in the hands of the police than the criminals? More citizens have lost their lives in the hands of the police as opposed to the criminals!

Mr. Deputy Speaker: What is your question?

Mr. Kihoro: Mr. Deputy Speaker, Sir, my question is on the police standing regulations on the use of firearms and more importantly, why it is necessary to hold an inquest when the name of the person who killed Mr. Mbuba is known. Why do you want to have an inquest? You should charge the person in court!

Maj. Madoka: Mr. Deputy Speaker, Sir, that is not correct, and I would like the hon. Member to produce facts to show that more civilians have died in the hands of the police than the criminals. I think we need to know the circumstances which led to that particular incident. What happened is that some gangsters had raided a petrol station and when the policemen went there, Mr. Mbuba was seen jumping over the fence trying to run over to the other side. The police officer thought that he was one of the criminals. That is when the incident took place.

Mr. Muite: Mr. Deputy Speaker, Sir, is the Minister aware that the Kenyan public has no trust or faith in the ability of the police to investigate themselves? Where police are involved in crime, even when they are arrested and taken to court, the cases drag on and on and eventually, they are dropped. There are very few cases where police officers have been convicted because of crimes they have committed! Is the Minister aware of the loss of faith on the part of the public for the police to investigate themselves?

Maj. Madoka: Mr. Deputy Speaker, Sir, we have evidence where we have investigated our own police officers. They have been charged, convicted and imprisoned. There are many cases of that nature. If there is any particular case, he can bring it up and we can tell him why the case has not been completed.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, it is now evident that police officers are negligent in handling their duties. They have killed suspects and innocent people in the name of suspects when they are carjacked. Just two weeks ago, a university don was killed by police officers in similar circumstances as the Nyeri incident!

Could the Minister tell this House what action he will take to ensure that the law enforcement officers are able to identify suspects, and that disciplinary action will be taken against those officers who do not act according to the Police Act?

Maj. Madoka: Mr. Deputy Speaker, Sir, we have said it time and again that where police officers have not acted within the law, we have dealt with them accordingly.

Mr. Muchiri: Mr. Deputy Speaker, Sir, in future, could the Minister appoint an independent investigator from another division in cases where the police are involved? Currently, what is happening is that, once complaints have been raised against the police, they cover-up to protect themselves. Could the Minister appoint a different investigator from a different station, so that he could get the truth about the allegations made against the police?

Maj. Madoka: Mr. Deputy Speaker, Sir, in fact, that is what we have been doing of late.

Dr. Kituyi: Mr. Deputy Speaker, Sir, if the Minister could remember, when six inmates were butchered at King'ong'o, there were only two persons who were material witnesses who survived. One of those was released and mysteriously killed by police at a petrol station. Under very strange circumstances, the only other one remaining, who was on death row, has been released on bond! Could the Minister give this House an assurance that special attention will be given to the protection of that gentleman, so that we do not accidentally lose the only remaining person with first-hand evidence of what happened at King'ong'o?

Maj. Madoka: Mr. Deputy Speaker, Sir, if that individual could come and report to the police station, we will look after him.

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, it is common knowledge that Kenyan police are not well trained because six months are too short! But now that the Minister has admitted that the man was accidentally shot by the police, what compensation was given to the family towards the burial and other expenses for the loss of life? The Minister has admitted that he was accidentally shot by the police who mistook him to be a robber!

Maj. Madoka: Mr. Deputy Speaker, Sir, no claims have yet been submitted.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, the Minister has accepted that the person was shot by a police officer. Why is he conducting an inquest when he knows the person who committed the offence?

Maj. Madoka: Mr. Deputy Speaker, Sir, we have to look at the circumstances which led to the shooting. Once we have established what the circumstances were, and what really led to that incident, we will take appropriate action. That is why the inquest is being conducted.

Mr. Imanyara: Mr. Deputy Speaker, Sir, given that there are many cases where police officers act outside the law, could the Minister tell us how many such cases have been dealt with? How many police officers have been dealt with for taking the law in their own hands for the last six months only?

Maj. Madoka: Mr. Deputy Speaker, Sir, I did not come with those figures, but I can present them later.

Mr. Deputy Speaker: Yes, I agree with you. Those are too many figures to carry in your head all the time.

Mr. Ndicho: Mr. Deputy Speaker, Sir, the other problem that we have with the police officers is that there are officers who have overstayed in stations for five, six, seven and even ten years! It is out of that delay that those people devise some mechanisms leading to the problems that we are facing today. Could the Minister ensure that, just like civil servants, there is no unnecessary delay of officers in one station, where they create relationships with thugs? Could he assure us that he will have them transferred and they will not remain in one station for too long?

Mr. Kihoro: Mr. Deputy Speaker, Sir, four months after the event, the person who killed Mr. Mbuba has not been indicted and the Minister has not informed this House about the progress made in the inquest. Could he prepare to liaise with the Attorney-General so that he can set up an independent authority to investigate serious complaints like this one? An independent investigation authority should be set up to be dealing with complaints against the police instead of having a situation where the police investigate themselves. Kenyans are losing their lives and the Minister is avoiding to answer the Question after ten minutes.

Maj. Madoka: Mr. Deputy Speaker, Sir, what the hon. Member has said is true. We do have some unnecessary delays and I know that the Attorney-General has been liaising with the Commissioner of Police to see how best we can establish such a body.

Mr. Deputy Speaker: Next Question!

OPENING OF NYAMASARIA RIVER CHANNEL

(Mr. Sungu) to ask the Minister of State, Office of the President:-

(a) Is the Minister aware that a wall collapsed and killed three family members, namely, Mr. Paul Ondoi, his pregnant wife, Florence Auma and their four-year old daughter, Susan Atieno, in Nyamthoi area of Kolwa Central Location within Kisumu Town East Constituency?

(b) Is he further aware that the wall which fell on the victims had been weakened by perennial floods which occur in the area due to blockage of River Nyamasaria?

(c) What urgent measures has the Minister taken to open up the channel of River Nyamasaria to ensure that it reaches the lake without destroying homes and crops?

Mr. Deputy Speaker: Is Mr. Sungu not here? We will come back to that Question later.
Next Question!

DISAPPEARANCE OF MR. MWANGI GICHUHI

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that Mr. Johnson Mwangi Gichuhi, a policeman No.32146, attached to the Traffic Department, Parklands Police Station, disappeared on 4th June, 2001, while on duty at the Museum Roundabout?

(b) Could he explain the whereabouts of the officer?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that P.C. Johnson Mwangi Gichuhi was among several police officers from Traffic Department who were at a sports camp in Ruaraka. He was released together with other officers on 24th May, but he never reported to his station as directed. He was not seen until 3rd June, 2001, when he was spotted at the Mathare Police Canteen. He has never been seen since that day and was not on duty on 4th June, 2001, as alleged.

(b) A signal has been dispatched to all police stations in the country with a view to tracing the policeman, but so far no information has been received.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, I have enough information from a brother and an uncle of the said police officer. They have evidence that he left them early in the morning and was headed for the International Casino Roundabout where he was supposed to go and control vehicles in the morning. That is the time he disappeared. However, we know that a police officer is provided with a kit box by the Government which contains police uniform and the coat of arms, among other things. The Government might not be worried about the disappearance of the police officer, but it should take proper consideration of its properties which can jeopardise the peace of this country. These items can be used by criminals to hijack vehicles. Why has the Government taken this long, not only to investigate the whereabouts of this officer, but also to recover its own property whose disappearance can jeopardise the peace of this country?

Maj. Madoka: Mr. Deputy Speaker, Sir, we have been investigating and trying to establish the whereabouts of the officer in question and we have even sent out an appeal to people who might know of his whereabouts. So, it is not true that we have not taken the trouble to investigate. We are doing that.

Mr. Kombo: Mr. Deputy Speaker, Sir, given that the Kenyan public has actually lost faith in the Police Force it is not surprising that they cannot even find one of their own. We also know that they are trigger happy and are fond of killing innocent Kenyans. Is it not high time the Government considered abolishing the entire Police Force? It should seek help from other countries and start afresh so that we hire new people and train a completely new Police Force in this country, which Kenyans can have some confidence in.

Maj. Madoka: Mr. Deputy Speaker, Sir, the truth of the matter is that Kenya has one of the best police forces in the world, and statistics will prove that. I think it is unfair to make a general statement about the police whenever we have a few isolated incidents.

Mr. Maore: Mr. Deputy Speaker, Sir, there has been a prevalence of very many cases of disappearance of policemen and even ordinary Kenyans. Could the Minister confirm or deny that the numerous gangsters within the Police Force are responsible for the disappearance of their own colleagues who might be betraying or exposing them? They may also end up killing their own during instances of robbery, kidnappings and hijackings by the policemen themselves.

Maj. Madoka: I cannot deny or confirm unless the hon. Member refers to specific cases.

Mr. Munyasia: Mr. Deputy Speaker, Sir, the Minister said that Kenya has one of the best police forces in the world. Could the Minister tell us which evaluating body made that survey so that we also know that our country, indeed, has one of the best police forces?

Maj. Madoka: Mr. Deputy Speaker, Sir, I will refer him to Interpol.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, we have heard of many cases of policemen and other citizens disappearing and investigations not being done or being done haphazardly. Could the Minister confirm or deny that the inefficiency in our Police Force is caused by the corrupt methods of recruiting policemen in the first place?

Maj. Madoka: Mr. Deputy Speaker, Sir, I deny.

Mr. P.K. Mwangi: Mr. Deputy Speaker, Sir, the Minister has told us that they have been trying to look for this missing police officer using police signals. Could the Minister tell us which other forms of advertisement the Government has used in search of this man?

Maj. Madoka: Mr. Deputy Speaker, Sir, we have sent out various circulars. I believe we even put out a public notice, but I will have to verify this one.

Mr. Muchiri: The question was: Why has the police not collected the policeman's uniform after he disappeared for 21 days and yet the Minister is aware that if a policeman disappears for 21 days he is deemed to be a deserter? This uniform is still lying in the house of the policeman's relatives.

Maj. Madoka: Mr. Deputy Speaker, Sir, it is true that, that uniform should have been collected. I will have to find out why it was not collected.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, it is the gospel truth that the most corrupt department in the Police Force is the Traffic Department. It is also true that whenever policemen are dispatched from their offices to the field they have to take back to their superiors part of what they collect on the roads and then they divide the balance amongst themselves in the evening. If we go by what the Minister is telling us, from 24th May up to 3rd June, more than 21 days elapsed and yet they have not collected this officer's uniform nor taken any action to arrest him for deserting his duties according to Cap.84, the Police Act. Could he now explain to this House whether there was no misunderstanding between this officer and his bosses, which led to his disappearance?

Maj. Madoka: I am not aware of any differences which existed between this officer and his boss.

Mr. Deputy Speaker: Next Question!

RENT COLLECTION FROM RESIDENTIAL ESTATES

Mr. Anyona: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Roads and Public Works the following Question by Private Notice.

(a) Is the Minister aware of the Ministerial Statement in Parliament on 22nd April, 1998, giving assurance that tenants of Madaraka and other residential estates would not be evicted, harassed or intimidated?

(b) How much money does the Nairobi City Council and other local authorities owe the National Housing Corporation in respect of Madaraka, Kariakor and other residential estates?

(c) How much money has the National Housing Corporation collected from Madaraka and other residential estates in compliance with provisions and obligations of sections 11(2), 12(1)(2) and 19 of the Housing Act (Cap.117)?

The Minister for Roads and Public Works (Mr. W.C. Morogo): Mr. Deputy Speaker, Sir, I beg the indulgence of the House that this Question be deferred to Thursday, next week to enable me get more details which are necessary to fully answer this it.

Mr. Deputy Speaker: Mr. Minister you are now defeating the purpose of this Question being raised by Private Notice. It must have come to you in July. If it was asked by Private Notice in July, it will not do justice to the hon. Member or the Question for me to defer it in October for longer than 48 hours.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. In fact, yesterday, I was informed by the Clerk's office that this Question would be on the Order Paper today afternoon. I am very surprised that this morning, I was unprepared to ask it. I am prepared to pursue the Question but I do not know why this kind of thing happens. I was told yesterday that it would be in the afternoon and now it is this morning. Nevertheless, this is an extremely serious matter because the National Housing Corporation (NHC) is harassing innocent tenants in Madaraka and other estates. Right now, tenants are being forced to sign leases and there is an outcry out there. It is for that reason that I have conceded to the Minister that the matter is so serious and important, that it needs as much time as he requires to be able to sort out this mess.

Mr. Deputy Speaker: Well, the Chair will vote with the underdogs. The Question is deferred to Tuesday. Mr. Minister, is that okay with you?

The Minister for Roads and Public Works (Mr. W. Morogo): Mr. Deputy Speaker, Sir, I request that it to be deferred to Thursday!

Mr. Deputy Speaker: That is tomorrow?

The Minister for Roads and Public Works (Mr. W. Morogo): No, Mr. Deputy Speaker. It should be deferred to Thursday next week.

Mr. Deputy Speaker: No! I cannot defer it to Thursday!

The Minister for Roads and Public Works (Mr. W. Morogo): Alright. Fine, I will go by your ruling of Tuesday next week.

Mr. Deputy Speaker: The Question is deferred to Tuesday next week.

(Question deferred)

Next Question, by Mr. Sungu!

OPENING OF NYAMASARIA RIVER CHANNEL

(Mr. Sungu) to ask the Minister of State, Office of the President:-

(a) Is the Minister aware that a wall collapsed and killed three family members, namely; Mr. Paul Ondoi, his pregnant wife, Florence Auma and their four year old daughter, Susan Atieno, in the Nyamthoi area of Kolwa Central Location, within Kisumu Town East Constituency?

(b) Is he further aware that the wall which fell on the victims had been weakened by perennial floods which occur in the area due to the blockage of River Nyamasaria?

(c) What urgent measures has the Minister taken to open up the channel of River Nyamasaria to ensure it reaches the lake without destroying homes and crops?

Mr. Deputy Speaker: Is Mr. Sungu not here? The Question is dropped.

(Question dropped)

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. I notice that the Minister for Local Government is here and probably, he could answer this Question which is a very important one for the people of Kisii Central. Since he is here, could he answer the Question?

Mr. Deputy Speaker: Hon. Angwenyi, we have now finished Questions by Private Notice. I did go back to that Question twice but the Minister was not here at that time. So, the Question---

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. When is it going to be answered so that I can be around? Could you ask the Minister when he will be available to answer this Question?

Mr. Deputy Speaker: I did rule that the Question will be deferred to Tuesday afternoon.

Dr. Kituyi: On a point of order, Mr. Deputy Speaker, Sir. You notice that quite a few of the Ministers, either because of traffic jam or just being inept in the performance of their duties, come when their Questions have been passed. Is it not fair that, after censuring them, you can exercise discretion as the Chair to--- The Minister for Lands and Settlement also staggered in after the Question had been asked.

Mr. Deputy Speaker: "Staggered in" is the correct expression and the Chair does not want them to bring to this House---

Dr. Kituyi: But you do not punish the victims of the electorate.

Mr. Deputy Speaker: Order! The inefficiency is from the corridors of chaos. They can retain it there.

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. What happened to my yesterday's Question because you never deferred them?

Mr. Deputy Speaker: Your Question is appearing this afternoon.

POINTS OF ORDER

CONFUSION IN THE MINISTRY OF LOCAL GOVERNMENT

Mr. Anyona: Mr. Deputy Speaker, Sir, I would like to beg your indulgence since I have not been able to consult you before raising this but I wanted to seek a Ministerial Statement from the Minister for Local Government. If you permit me, I will raise it. Can I go ahead?

Mr. Deputy Speaker: Yes, you can do it.

Mr. Anyona: Thank you, Mr. Deputy Speaker, Sir. There is a lot of confusion and chaos in certain sections of the Ministry of Local Government. If you walk in the streets of Nairobi, there is a big problem between the hawkers and the shopkeepers. Both have the right to do business but someone must sort it out to establish some order. You also know there is a lot of chaos in Mombasa, Kisumu and Thika. I would like the Minister to explain why and in what circumstances, Keroka Town Council offices are right now closed by a section of the councillors? What is going on in this Ministry? Has the Minister lost control of the running of the local authorities or what has happened? Could he make a Ministerial Statement with respect to Keroka, Nairobi, Kisumu, Mombasa and all the other areas where there are problems and tell us what he is going to do to sort out this mess?

The Assistant Minister for Local Government (Mr. Hashim): The Minister is in control of the Local Government Ministry and he is going to make a Ministerial Statement on Wednesday.

Mr. Deputy Speaker: Wednesday next year?

The Assistant Minister for Local Government (Mr. Hashim): On Wednesday afternoon, next week.

Mr. Deputy Speaker: No! Wednesday morning? Mr. Assistant Minister, you have to make it Tuesday afternoon because Wednesday is Moi Day. Is that right?

The Assistant Minister for Local Government (Mr. Hashim): Yes, Mr. Deputy Speaker, Sir.

INSECURITY IN KISII CENTRAL

Mr. Angwenyi: Mr. Deputy Speaker, Sir, although I did not follow up my consultation with you yesterday, I rise to seek a Ministerial Statement in respect to insecurity in Kisii Central. In the last few months, we have had a spate of murders in Kisii Central and whenever the public has arrested some people who are committing the offenses, those people are released within a day or two without being charged in a court of law. As a result of this, insecurity in Kisii Central District is so high that people cannot go about their business as they should normally do. Could the Minister of State, Office of the President in charge of internal security and provincial administration issue a Ministerial Statement as to how he is going to combat this insecurity in Kisii District?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I will make that Statement next week.

Mr. Deputy Speaker: When? Will it be on Thursday next week?

The Minister of State, Office of the President (Maj. Madoka): Yes, Mr. Deputy Speaker, Sir.

KILLINGS IN THIKA POLICE CELLS

Mr. Ndicho: Mr. Deputy Speaker, Sir, yesterday, I raised the issue of people who were killed in Thika Police cells and I asked the Minister of State, Office of the President to issue a Ministerial Statement and it seems as if he is not ready to do that this morning. So, could he do that?

Mr. Deputy Speaker: Hon. Ndicho, we are still dealing with Points of Order after Question Time. So, how have you determined that he is not ready?

Mr. Ndicho: Mr. Deputy Speaker, Sir, look at the way he is relaxed!

(Laughter)

He does not seem to be ready to issue that Ministerial Statement. This is a very serious matter and I demand that he tells us what happened, what action he is taking and whether he is compensating the families of the deceased.

Mr. Deputy Speaker: Order! You are prejudging the issue. The Minister has not told us whether he is ready or not. Mr. Minister!

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I am definitely not ready. I think I would like to carry out more investigations before I make a Ministerial Statement because it will be a bit premature at this stage.

Mr. Deputy Speaker: Will you make it on Tuesday next week?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, maybe Thursday next week.

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. If you watched television news last night, you saw the Minister issuing a statement and according to what I watched, the statement was exhaustive. What type of investigations is he promising that will take another full week?

Mr. Deputy Speaker: So, what is it that you want him to raise, since you watched him make a statement on the television?

Mr. Ndicho: Mr. Deputy Speaker, Sir, but I want him to finish with the statement!

Mr. Deputy Speaker: Order! The whole purpose of asking for Ministerial Statements is to ordinarily seek a matter of clarification on policy and not to answer questions about events that have taken place. Now, I did agree with you that I will allow you to raise that matter by rising on a point of order to ask for this Statement. Now, if the Chair allows that to happen, it is in the interest of the House that the Minister makes a factual Statement and I do not see anything wrong with the Minister saying: "Look, I do not have enough information", which is to say that, what you saw him say on TV last night, is even in his own view, inadequate.

Next Order!

MOTIONS

LEAVE TO INTRODUCE "MINISTERS OF GOVERNMENT OF KENYA" BILL

THAT, this House do grant leave to introduce a Bill for an Act of Parliament entitled Ministers of the Government of Kenya Bill in order to establish offices of the Ministers of the Government of Kenya and to provide for the establishment of such offices by the President and for matters connected therewith and incidental thereto.

(Mr. Muite on 15.8.2001)

(Resumption of Debate interrupted on 15.8.2001)

Mr. Deputy Speaker: Hon. Muite, you were on the Floor and you still have ten minutes. Proceed!

Mr. Muite: Mr. Deputy Speaker, Sir, when this country is in the middle of a constitutional reform process, it is of extreme importance that we as the National Assembly, should set an example in respecting and obeying the current Constitution. If we as the National Assembly are violating the current Constitution, by not complying with it, what moral authority do we have as the august House, to spearhead or even to participate in the ongoing constitutional reform process? Nothing could be clearer than Section 16 of the current Constitution.

Mr. Deputy Speaker, Sir, Section 16 imposes the constitutional responsibility of fixing the number of Government Ministries on this House. Alternatively, we can pass a law to authorise, permit or enable the President to fix the number of Ministries. As the National Assembly, we have been acting in violation of Section 16 of the Constitution in that we have never fixed the number of Government Ministries as required of us by that law. Neither have we passed a law authorising or enabling the President to fix the number of Ministries. So, the purpose of seeking this leave is simply to enable this House to stop forthwith the further violation of the Constitution by bringing a law pursuant to which this House will fix the number of Ministries.

If the leave being sought is granted the Bill could, for example, seek to provide for the creation of 15 Ministries and give the President authority to create an additional three or four Ministries. But the responsibility of fixing the number of Ministries lies with this House. Alternatively, we can make a law authorising the President to fix the number of Ministries. Failure to do so is an embarrassing violation of the Constitution by this august House. The first thing each one of us does, the Speaker included, when we are elected to this House is to take an oath to defend the Constitution.

Mr. Deputy Speaker, Sir, all that I am asking hon. Members from both sides of the House is that we should individually and collectively live up to the oath we took to respect the Constitution. Respecting the Constitution means passing this Motion to grant the leave being sought so that a Bill can be brought here for enactment into law. It was thought fit to introduce the envisaged legislation through a Private Members' Bill because this issue was raised several times during the Seventh Parliament without success. I personally raised it here; Mr. Orengo and other hon. Members did likewise. We called upon the Attorney-General to bring a law to enable the House to comply with Section 16 of the Constitution.

We had told the Attorney-General: "We want to respect Section 16 of the Constitution. If you do not want the number of Ministries to be fixed by Parliament as required by Section 16, propose a law for this House to pass to authorise the President to fix the number of Ministries. One of these things must be done in order to stop violating Section 16 of the Constitution." However, to date, the Attorney-General has not proposed such a law. Even during the previous regime, Section 16 of the Constitution was being violated. The Section has been violated since 1963. The continued violation of this Section does not legitimise the violation of the Constitution. It continues to be a violation of the Constitution.

Mr. Deputy Speaker, Sir, therefore, the fact that this Section appears to have been breached since 1963 is no reason for us not to stop that violation by proposing a law so that this House can fix the number of Ministries and, perhaps, simultaneously give the President authority to create a smaller number of Ministries. So, I cannot foresee any legitimate objection to the leave being sought by this Motion. It is no use saying that we are in the middle of constitutional reforms and, therefore, that this matter should wait to be handled by the Constitution of Kenya Review Commission (CKRC). I say so because of several reasons, the first one being that even at the on-going constitutional reform discussions the emphasis has been on devolution or decentralisation of powers.

In fact, Section 16 of Constitution decentralises powers from the institution of the Presidency by requiring Parliament to be the one to fix the number of Ministries. So, this is not one of the Sections that can possibly be targeted by the CKRC in terms of devolution of powers since the Section has already done that. That is why Section 16 provides that the number of Ministries shall be fixed by Parliament. It is for Parliament to decide whether we should have 15, 18 or 20 Ministries. Once we have done that, the President can appoint his Ministers.

The rationale behind empowering Parliament to determine the number of Ministries is very good. Nothing has greater impact or implication on the Budget than the number of Ministries. The number of Ministries has been an issue of great concern. That is why the power to determine that number is vested in the National Assembly rather than in the President. It is for this House to decide how many Ministries there should be based on how many we can afford. It is truly embarrassing that we have been acting in breach of that Section. So, I am saying that since Section 16 already devolves the powers we are talking about, we should not wait for this issue to be handled through the on-going constitutional review process. We should handle it rightaway and discharge our responsibility in accordance with the oath of office we took when we came here. We bound ourselves to protecting the Constitution.

Mr. Deputy Speaker, Sir, the second reason is that, as matters stand today, one cannot see where the constitution reform process is heading. It is highly unlikely that, in the absence of an interim Constitution to create an interim transitional Government of national unity that would then create an enabling environment for the current constitutional reforms to be successful, the current constitutional reforms will head anywhere soon. So, it should not be argued that the issue of the National Assembly violating the Constitution should wait until the current constitution review process by the CKRC is completed. This is a matter which has been brought to the attention of the Attorney-General, who has failed to bring the Bill being sought. That is why we, as Members of Parliament, are now rising to the occasion through this Motion to bring the Bill so that the National Assembly can set an example to Kenyans, nationally and internationally, that we respect constitutionalism. That will even justify debate on the current constitutional review process.

I hope, therefore, that the Attorney-General will second this Motion and not object to the leave being sought. Anybody who will object to the leave being sought by this Motion will mean that he would like the National Assembly to continue acting in violation of Section 16 of the Constitution. That is unthinkable in view of the fact that we all took the oath to protect the Constitution. How else can we protect the Constitution unless we comply with its current provisions? I am not, at this point in time, talking about the number of Ministries because that is a matter for debate. That argument can come later. As of now, all that is being sought is the leave. This matter of violating the Constitution is a serious matter.

Mr. Deputy Speaker, Sir, the other day, the Attorney-General conceded in this House that the manner in which additional districts had been created was unconstitutional. All I am saying is that we should stop acting in a manner which is unconstitutional because when we act in an unconstitutional manner, we initiate the beginning of anarchy. Hon. Kihoro will second the Motion.

With those few remarks, I beg to move.

Mr. Kihoro: Thank you, Mr. Deputy Speaker, Sir. I stand to support this very important Motion and state that we are 38 years late in carrying out very important business set out in the Constitution of this country. It is true that if

we cannot obey and respect the present Constitution, there is no hope that the forthcoming Constitution will be obeyed out there in the country and also by this House. So, it is very important that we act in compliance with the stipulations of the Constitution, especially in Section 16.

It is the right of the citizen of this country to know the nature of the Government and the Ministries that are set out to serve him. As matters have evolved throughout the last 38 years, the citizen has been left confused about the structure of the Government in this country. Setting up Government Ministries has become a lottery to be played from State House, fit in any Minister the President wants to fit in and dropping those he wants to drop. It is important that the right of the citizen to know the nature and the state of the Government is respected, and he will be able, with time, to know exactly where every Ministry is. So long as that has not happened, there will continue to be confusion in this country to the extent that somebody from Lamu or Shirat will be coming to Nairobi to look for the Government, an invisible structure that he cannot identify. The Government has been removed from the people. The best way of enabling citizens to identify the Government is to set up Ministries that are identifiable, and also Ministries whose responsibilities are clearly set out. It is very important that the Government be set out for the citizen to identify.

Mr. Deputy Speaker, Sir, we started the freedom journey 38 years ago. We had only nine million Kenyans then. Today, we have 30 million Kenyans and for the Government to serve them, it is important that the citizen knows the structure of the Government, the Ministries that there are in the Government and also their location. Some Ministries have shifted from one building to another. I do not see why the identified Ministries cannot also be housed on a permanent basis in certain buildings, both in Nairobi and also in the provinces. What has happened is that the citizen has found it difficult to identify where the Government is and the Government cannot continue playing "maradona" with the Kenyan people.

It is true that the Office of the President has never been relocated for 38 years. State House has not shifted, but it is important that all the other Ministries be similarly identified by where they are located, their names and responsibilities. So long as that has not happened, you will have this situation where the citizen is uninformed and the Government is then monopolised by a few people who happen to be called Ministers, and who are ready to avoid responsibility. This is the practice elsewhere. If you look at what has happened in Great Britain, you will see that it has "the Ministers of the Crown Act", which identifies Ministries and their responsibilities. This is a good practice because the Government deals with so many people across the country.

In the United States of America, there is the Structure of Government Act, which was enacted in 1917 and they have always known which Secretary does what work. Equally in Great Britain, citizens know which Secretary does which work and here the Minister must minister. He must be a Minister with a responsibility and a clearly set out mandate. Ministers, should not occupy offices only and avoid responsibility to Kenyans 38 years after Independence.

The first Government that was set up by the late President Kenyatta, the then Prime Minister of Kenya, in 1963 had only 15 Ministers. We have seen in this country the elasticity of Government that can go up to 30 Ministers. This is twice the number of Ministers that were there at Independence. This is an "inflation" in the Government. Why should that be the practice? It is important that we go back to that practice, where we had 15 identifiable Ministries. We should make sure that a Minister remains a Minister and there are no Assistant Ministers without responsibilities. It is important that, that practice where we had 15 Ministries, is revived.

I have the HANSARD prepared on 7th June, 1963, clearly setting out the 15 Ministries by the then Prime Minister, the late Jomo Kenyatta, and then we had a Ministry of Panafrican Affairs. This was a whole Ministry because the Government then was interested in panafrican affairs and African unity. Today, the Government is interested in majimbo. We have to go back to this concept. That is what the Europeans and Americans are doing. They are expanding their spheres of influence and establishing governments, a central authority that can do the job. In 1963 the late President Jomo Kenyatta and the then Vice-President, the late Oginga Odinga, set up a credible Government which was respected and recognised by the people of Kenya and also internationally. They were thinking about the freedom of the African from the Cape to Cairo. Today, we find dissipated situations that are being fitted into the Government where even a peripheral Ministry becomes so important and an issue of celebration.

Mr. Deputy Speaker, Sir, my concern is the citizen of this country; a citizen who believes in good governance and pays taxes to have the Government in place to serve him. Because of the confusion that has occurred because of not establishing the Ministries of the Government, you will find that in every sphere of Kenyan life, there has been a marked decline even in the standards of living. Literacy, nutrition, health and life expectancy levels in this country have declined. It is important for the people of this country to be told in a very responsible and accountable way why this has become so. A country that used to enjoy 90 per cent literacy rate and had eradicated adult illiteracy because all adults were literate, very shortly will have to embark again on educating adults who are illiterate. This is the failure that has occurred. The cumulative effect amounts to what we have today, a situation where all these aspects that measure human development have actually declined. It is important that we establish the Ministries of the Government so that also our people will be happy.

Mr. Deputy Speaker, Sir, it is important for us to establish offices of the Ministers of the Government of Kenya pursuant to an Act. Of course, our people will be very happy to be told that the Government is not capable of

doing everything. The Government can say so and people accept that the Government cannot do everything at the same time. But what can be done surely, should be done. That should not be stopped because we even play poker with the Government. That should stop! Let us establish the Ministries of the Government under an Act at this time. The elaboration that will be entrenched in the forthcoming Constitution, will confirm that this House has an obligation to do; to establish the Ministries of the Government.

Ministries that are going to be identified by the Kenyans should have designated responsibilities and the people of this country will know exactly where the Government is. It should not be an invisible Government, but a visible Government to our people, properly identified with responsibilities. What can be done should be done and what cannot be done should be put aside because it is not possible to do what is impossible. But that should come from properly directed Ministries and also the Office of the President. Why should we have a heavily-loaded Office of the President, running everything from security to agriculture, when there are no experts do that job?

Mr. Speaker, Sir, I know that Ministers who are in this House will never tell the President the truth---
With those remarks, I beg to second the Motion.

(Question proposed)

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I rise to oppose this Motion. The official responder for the Government is the Office of the President and, therefore, I am merely contributing to the debate.

First of all, I want to assure this House that the Government, since Independence, has acted constitutionally in appointing the Cabinet and that Section 16 of the Constitution has not been violated at any one time. This is one of those sections in the Constitution which have remained the same since 1964, when Kenya became a Republic, whereas other sections have changed from time to time. We have had very many amendments to the Constitution, but Section 16 has remained the same.

Mr. Deputy Speaker, Sir, a close reading of Section 16 of the Constitution will show that the Presidents have acted constitutionally in forming their Cabinets since 1964, during every subsequent formation of the Cabinet, following the numerous general elections that we have had since 1964, 1969, 1974 and so on.

Let me touch on the issue of interpretation of Section 16 first, before I can come to the general issue. Section 16 of the Constitution says the following:-

"There shall be such offices of the Ministers of the Government of Kenya."

It is mandatory that we must have offices of the Ministers of the Government of Kenya, as may be established by Parliament.

Mr. Deputy Speaker, Sir, the word that is important here is the word "may". It says:- "may be established by Parliament". Parliament "may" or Parliament "may not" establish the offices of the Ministers. It is discretionary and not mandatory! Therefore, somebody should come here and say that "Parliament must---" It is not so! All that the Constitution does is to give Parliament a discretion on whether or not to establish the offices of the Ministers.

Dr. Ochuodho: On a point of order, Mr. Deputy Speaker, Sir. I cannot claim to know English as much as the learned friend does. But, perhaps, could he enlighten us as to who gives Parliament that discretion? It is Parliament which decides, but not somebody else to decide!

Mr. Deputy Speaker: Order! That is not a point of order! Mr. Attorney-General, you should not respond to that remark. Just proceed!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, Parliament may or may not do it. If it does so, then when the President is setting up his Cabinet, he must make reference to the law that has been enacted by Parliament in that regard. But if it does not do so, then the President will do it. In other words, what Section 16 of the Constitution is saying is that there are two institutions that can establish the offices of the Ministers; either through an Act of Parliament or the President. Where there is an Act of Parliament, then the President, in setting up his Cabinet must, of course, take into account the provisions of the Act. Where there is no Act of Parliament, then the President can do it.

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. Of course we are not in a court of law, but is it in order for the Attorney-General, who should be the chief legal advisor to the Government, to mislead this House by omitting vital words in that Section when referring to the President? Why is he omitting the words, "or subject to any provisions made by Parliament and by the President?" Why is the Attorney-General omitting those words? Where are the provisions made by Parliament authorizing the President to nominate or pick the number of Ministries?

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, this is exactly what I am saying. Let the hon. Member listen very carefully because we have wasted time of this House in a number of occasions in spite of the opinion I gave to the Association of the Professional Societies of East Africa, of which he is a member. Let him listen carefully. What I am saying is this: The words "subject to any provisions made by Parliament, by the President", simply means that, where Parliament has exercised its discretion to make the law on this issue, then the President, of course, in setting up the Cabinet, is subject to the provisions made by Parliament. Where Parliament in its discretion makes the law on this issue, then the President, of course, must be subject to the provisions made by Parliament. That is all it

means! But where Parliament has not done so, the President has a right to do so. The Presidents have exercised this right properly throughout history from 1963. That is the first one.

Secondly, I am also opposing this Motion on the grounds that it has been brought to the House too late. A Bill will only be useful if it is brought when the Government is about to be constituted. Now, we know that it is an intention that the Constitution of Kenya Review process---

Mr. Munyasia: On a point of order, Mr. Deputy Speaker, Sir. The Attorney-General has just said that it is up to Parliament to exercise a discretion. Is he in order now to mislead this House that the discretion has a time limit and that Parliament is now bringing the Bill too late, when Parliament wants to exercise its discretion?

Mr. Deputy Speaker: Order! That is a question and not a point of order!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, that is a question and it inspires me to say that, in the exercise of its discretion, Parliament must have regard for the issue of time. When is it relevant that this law must be put in place realising that it has not been put in place since Independence? That is the first one. Secondly, when we know as a fact that it is the intention of this House, in enacting the Constitution of Kenya Review Act, the next election will be done under the ideal constitutional dispensation. This House has enacted that legislation. I would like to say that in that legislation, this House has stated that even if we do not have a new Constitution, the Commission can recommend interim amendments to the Constitution. Therefore, the likelihood of having the next election under the new constitutional dispensation is very high. This is the case, and yet, this very section that the Mover of the Motion wants to implement may not, in fact, be in existence at the time the new Government is being formed after the next general election. So, Parliament has a right to ask, in the exercise of its, discretion: "Is it really necessary that we have this Bill right now when the likelihood of it not being implemented is very high?" This is because the next election will be carried out under a new constitutional dispensation when this section will not be in existence. So, in that discretion, that is a key issue to be determined. I am saying that in the exercise of this discretion, that was a key matter that must be taken into account. If this matter will be taken into account then this Motion should not be supported.

Mr. Deputy Speaker, Sir, the truth of the matter is that the appointment of Cabinet Ministers and so on anywhere in the world--- The practice is that it is really an executive function. This is because a government is elected on a programme which has been identified by the people, and depending on that programme, the Government may want its structures and formation of the Cabinet to be such that it reflects the programme under which it was elected. This may differ from one country to another.

For example, if you take the case of the United States of America (USA), it is now being said that because of the 11th September bombing, the Central Bureau of Investigation (CIA) Director should be a full Cabinet Minister. A number of governments in the USA have made that office either a Cabinet office or below a Cabinet office. But because of the circumstances that prevail in the USA today, there is a talk that the CIA Director should be made a Cabinet Minister.

In this country, as my learned friend said, at one time, when we emphasised Pan African issues, we had the Pan African Minister. In other words, the point I am trying to make is that the structure, the number and how the Government should be organised differs from time to time depending on the priorities of the Government at any given time. Those priorities are determined by the people through the vote in the general election. They will say that because this party has this manifesto, we will elect its members. Therefore, the Cabinet reflects the priorities of programmes that the Government wants to enforce. So, this is something that changes from time to time.

Mr. Deputy Speaker, Sir, I beg to oppose the Motion.

Mr. Anyona: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to contribute to this vexatious issue. I think the point that we should focus on is the meaning of the provision of Section 16(1) of the Constitution. The Attorney-General has attempted to give that definition and meaning. I am not quite sure that he has not destroyed his case. This is because if he argues, and that may well be the case, that the matter is discretionary; that Parliament can choose to exercise that discretion or not to exercise it, that is very well. But if Parliament so decides now to exercise that discretion, what right does he have to stop it from doing so?

(Applause)

If we proceed that way, we shall get lost. This is not a question of semantics, but this is a question of establishing the correct constitutional order to avoid confusion and many cobwebs that exist in this Constitution.

In the first place, why did the founders of this Constitution make a provision in the Constitution that Parliament would have a discretion, or between Parliament and the President, they would share that discretion? There must have been a reason. You could not put something in the Constitution without a reason. Because that discretion has not been properly exercised, it has caused this kind of confusion. I do not think that we would like to compound that confusion by beginning to create new semantics. I think the best thing that should be done here is to decide that there is a discretion. I do not think that it will be right now to take away that discretion. In fact, we cannot wait until we amend the Constitution. So, their discretion exists, and it will exist as long as this Constitution is in operation, or until it is

changed under the new constitutional order.

Mr. Deputy Speaker, I would have thought that the right way to proceed would be either to accept this Motion so that a Bill is brought before the House, or the Attorney-General offers to bring a Bill to this House. That will make sense. Let us not lead our people into unnecessary conflicts and confrontations. Every time my brother, "TR" who is seated here--- "TR" is the Minister for Energy.

(Mr. Raila smiled)

That was the code we used in order to communicate when we were in detention.

An hon. Member: With who?

Mr. Anyona: With him, Mr. Deputy Speaker, Sir. Every time he talks about confrontational politics, I understand what he means. This is because we are coming from confrontation and we want to create harmony and understanding. Sometimes when Mr. Raila gets flak for saying that, I sympathise with him because I do understand what he means. So, let us, or the Government, not create confrontation on this issue. The Constitution is there; Parliament is there; the President is there and there should be no confrontation. Let us not go into the past now. Whether the Government or the Cabinet was established constitutionally in the past or not, let us not go into that because we shall create a serious constitutional problem.

In any case, we, as Parliament and not as individuals, had that responsibility to deal with that problem at the right time. I will not be interested much in what the Attorney-General was trying to argue; that the Governments have been established constitutionally all along. I do not know and I do not care! But I think we should do it right from now on. In fact, the Chair and some of us in a sub-committee of the Committee of the House were pondering over this issue. So, it is not that we were oblivious of this matter. I am not quite sure whether the Ministries of the Government now or in the past, were set up under Section 16 or Section 24. I do not know. I think the discretion that is in Section 16 is possibly being exercised in Section 24, where the Constitution gives the President the authority to establish offices of the Government of Kenya, and I suppose a Ministry is an office. So, when the Attorney-General argues that "shall establish Ministries of the Government of Kenya", maybe, he is right. That is as far as it goes; that they would be Ministers of the Kenya Government, but they would be set up under Section 24. You can see the extent of the confusion in this matter.

Mr. Deputy Speaker, Sir, I do want to suggest that we reach an amicable way of doing these things. There is a review coming and in the review, one of the things we did set up is that it must look at the organs of Government, and the Ministries are organs of Government. If we want to argue that for that reason we should not duplicate or undercut the reform process, I would buy that argument. But I think it is an argument that we have to sell to the whole House so that it is a matter that will be passed by consensus rather than seek to win or defeat.

Mr. Deputy Speaker, Sir, we have a big problem in this country. We have serious issues like this which come before the House but there is no machinery to harmonise them. If the Attorney-General, or the Government or somebody, had bothered to get together with Mr. Muite and other Members of the House who are particularly interested in serious issues of this kind, we may well have been able to agree on how to proceed on this issue. We wait until the matter comes to the Floor of the House and then we want to play hide-and-seek. In my view, to defeat this Motion would be wrong. To pass it just for the sake of passing it, given the fact that the review process is coming, also defeats the purpose. It merely exposes this Parliament as a Parliament that acts not even on the spur of the moment, because this would mean that there is something that is urgent and we were not expecting it and you act decisively. It means that really this Parliament and this Government are totally asleep. We must not use this Parliament when we wake up from our deep sleep to create confusion in the country. Personally, I am in serious dilemma because I see merit in both ways. I see merit in setting up the offices. One of the problems we have today is that, you can wake up any morning and decide to set up any number of Ministries to please the "boys" and the "girls" at the expense of the country. I am not saying that, that is what President Moi and President Kenyatta have done but it can happen. You can have an Amin who decides to give everybody something to be busy with. So there is some case also in a country like ours for some balance. There may well be a case that in future we agree on how to set up these Ministries in the best interest of the country. That time may not be now, because we are in a dilemma. There is a lacuna which was created and it is now creating problems. Very soon the Commission may be complaining that we gave them a job to do and we are trying to do it for them. Then, they will say they are not independent.

Mr. Deputy Speaker, Sir, I do not know quite frankly. I cannot suggest we defeat or pass this Motion. But I do want to caution that in future, particularly the Leader of Government Business should take interest in creating consensus on matters of this kind.

With those few remarks, I beg to support.

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Mr. Deputy Speaker, Sir, I wish to oppose this Motion based on a number of issues. First, I think the Mover of the Motion has lost faith in the current Constitution of Kenya Review Commission, which I think the rest of this country has a lot of faith

that it will give us a complete and thorough Constitution. I think some of these issues may be able to come up at that particular time.

Mr. Deputy Speaker, Sir, I also want to agree entirely with what the Attorney-General said and in particular the timing. This is October and next year, we will go to the general election. I am asking as Mr. Anyona asked; "Why create confusion now? If, as it is, assumed Parliament has been in a deep slumber since Independence, then we can afford a few more months of being asleep and then we wake up finally and properly. But that is not my point. When you look at Section 16, as the Attorney-General said, it means that Parliament has not exercised that discretion. There is no harm in not exercising the discretion. Where there is harm is where you are mandated to do something and you do not do it. I think that was the argument by the Attorney-General. If there is any confusion arising in the minds of Members, then that confusion is catered for by Section 24 which Mr. Anyona alluded to where it says that, such appointments are vested in the Presidency. I do not see any argument there. I actually see a very rational way of thinking. If the Mover talks about this Motion being based on lack of constitutionalism, that the Constitution was not followed, we are saying that the constitutional provisions were followed. "Any appointments subject to the Constitution and any other written law", there was no written law that was brought up by Parliament. The Constitution was not violated. So, let us talk about the merits of identifying the offices of the Cabinet.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. This is such an important matter that we must not confuse ourselves. I read the Motion and it does not talk about the Mover losing confidence in the Constitution. If he made such a remark in his contribution, that is not the Motion.

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Mr. Deputy Speaker, Sir, could you protect me from unnecessary arguments? I was not reading the Motion. I said that when the Mover was making his submission, it appeared like he had lost faith in the Constitution. The rest of this country has confidence that we are going to come up with a very good Constitution.

Mr. Deputy Speaker: The Mover is merely saying that Parliament has not exercised its discretion. How does Parliament exercise this discretion? By either the Government bringing a Bill or a Member bringing a Bill.

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Thank you, Mr. Deputy Speaker, Sir. Unlike Mr. Anyona who is in a dilemma, I have the courage of my conviction that we do not have the time to do it. We have an opportunity that we can now be able to factor all these things and do a good job. So I would like to appeal to Members to defeat this Motion because it has no merit in terms of the timing. It has no merit on the basis of the arguments that are being advanced by the Mover. We swore to protect the Constitution and we are protecting it. Let us not bring any more amendments.

Mr. Deputy Speaker, Sir, it is important that we talk about constitutionalism. But in this country, we would not agree on constitutionalism. Apart from, maybe, the Presidency where the powers are vested, the rest of this country lacks proper understanding of constitutionalism. I think we have an opportunity again with the Constitution of Kenya Review Commission to make sure, through civic education and other aspects in which the new Constitution could be communicated to our people, that they understand it. Then we would be able to create that culture of constitutionalism and nurture it so that we have citizens who are enlightened and have officeholders who understand their constitutional obligations.

I think the other important issue which may be motivating this Motion is that of an interim Constitution or Government of national unity. In countries where we had to get those assemblies, it was because there was no proper functioning government. But our Government has been elected over time and, as the Attorney-General has said, and I have reason to believe him, this particular section of the Constitution has never been amended since 1964 when we became a Republic. I think that is already a telling point; that this section has been working and has never been interfered with. I think we should have an attitude of give-and-take. We cannot tie the hands of our President because he will not be able to respond effectively to crisis. For example, when there is terrorism in a country like America, the President of USA, George Bush, can appoint a new Minister in charge of home security. Personally, I feel that if we enact a law which will limit the number of Cabinet Ministers to be appointed to the Government, it would not serve this country. We need to have provision depending on the circumstances and the issues of the day in order for us to accommodate the interests of all people in the Government. If you look at our Government, you will see that we have accommodated everybody. In a country countries like Singapore, if a certain section of the people does not vote for the Government of the day, they do not get any development funds or services. The Chair will agree with me that, that does not obtain in this particular Republic. I think this Government has been able to bring everybody on board, whether they vote for the Opposition or Government. I think that is the way it should be because we all pay taxes.

Mr. Deputy Speaker, Sir, if our friends on the other side of the House would emulate the example of NDP and join the Government, we can provide for all of you.

Mr. Deputy Speaker, Sir, with those few words, I beg to oppose.

Mr. Imanyara: Mr. Deputy Speaker, Sir, I would like to support this Motion. Listening to the Attorney-General oppose this Motion, I am not surprised that this country has been latching from one constitutional crisis to another. It is obvious that the Attorney-General himself does not believe in the cause that he is defending in this House

for the simple reason that, if you read Section 16 of our Constitution, it is as clear as the daylight. The fact that there has been no law setting out the number of Ministries, does not bar this Parliament from exercising its constitutional obligation to make laws.

Mr. Deputy Speaker, Sir, the starting point is this; our system of Government is divided into three arms. There is the Legislative arm which is ourselves. There is the Executive arm and the Judiciary. The functions of this House to make laws are subject only to the Constitution. It does not matter if it was one day or one hour before election. If we feel that there is need to correct a mistake that has taken place in this country within 40 years of Independence, we should not be cowed from saying that the mistake has been made and it is time to correct it. The Constitution says this, and I do not need to read it in part in order to obfuscate the real intention and meaning. It says:-

"There shall be such offices of Ministers of the Government of Kenya as may be established by Parliament or subject to any provisions made by Parliament or by the President."

Mr. Deputy Speaker, Sir, it is very clear that the law has been made by this Parliament to create Ministries. And if it has not been made, then Parliament must act in accordance with the provision made by this Parliament. The Attorney-General has not set out any such provision except to say that the present Government appoints Ministers. But there is no defence to say that there has been a mistake over the years or point out those provisions in our law that the President has invoked in order to create Ministries. The truth of the matter is that there are none. Where there have been mistakes, let us correct them. Everybody knows that this country has been a one-party country for a very long time. And it is only since 1992 that we have been exercising a democratic form of Government or a multiparty form of Government. We know that we are still dismantling the one-party institutions of this country. Since 1992, we have not succeeded, but we are making progress. This Motion seeks to advance that progress that we have been making since 1992.

The argument relating to the Constitution of Kenya Review Commission and the work that is going on currently within the Constitution, does not answer the purpose of this Motion. For one, even in that law that we created in this House, there is a provision. So let us not be told that this thing has been overtaken by events because the next general election will be held under the new Constitution. There is a provision in that Act for the Commissioners to come to this House and tell us that they are not able to complete the work within the time stipulated. Therefore, we may very well find ourselves going to an election with an existing Constitution. If that is the case, what is the harm in pointing out that where there is no provision, we, in the exercise of our constitutional prerogative, we can ensure that the mandate that we were given when this Constitution was made to create law is being followed to the letter? Let us look at what is the purpose and aim of the law. Nobody is fighting the Government for the sake of it. So, let there be no fear that this Bill is intended to curtail powers of the President to create Ministries. No! We are saying, let this House give leave and if you feel that there maybe a time when there will be need to create Ministries, then make provision in that law that creates the offices of Ministers. When time comes to pass that Bill, let that Act have provisions detailing circumstances under which a President may invoke provisions in the law to create a new office. That is what is happening in the USA and United Kingdom. I think it is not right for the Attorney-General to stand up here and tell us that in USA they are seeking to create the office of the CIA into a Cabinet rank. The American Constitution permits it, but ours does not. We are saying the time has come for us to lay the foundation of a constitutional form of Government. When we talk about the limitation of powers of the presidency, we are not directing criticism at a particular person in the Office of the President. We are doing it for the country's future and posterity. It is only right that where there is a lacuna or a vacuum, we correct it now. What we are doing by introducing this Motion is what we were supposed to have done in 1963 or 1964. The fact that it was not done between 1964 and 2001, does not bar us from us from exercising that mandate that we have; to create and set up a law that sets out the functions of the Office of the President and Ministries. It can also help the President when he can point out at the law and say: "Look, I cannot give both of you Ministries because the Constitution permits me to only appoint 15 Ministers instead of 30." Now the pressure is so great on the President. Every time he has to create a Ministry because people want to be included in the Government.

If we establish a pattern of rule of law for this country, we will make progress because the people of this country want a Government that functions and not one that comprises of 100 Ministers who do not do any work, but follow the President from point "a" to "b" instead of being in the House to do the business of the House.

Mr. Deputy Speaker, Sir, we cannot forget that even the collective responsibility of Government Ministers is a constitutional obligation. When you abdicate your responsibility in this House in order to be in a particular place, what you are doing is that you are not pleasing the President but you are abdicating a constitutional obligation in the House because under the Constitution there is a collective responsibility on the part of every Government Minister and Assistant Minister to this House.

So, we are saying that time has come for this country to be governed in accordance with the traditions that are crafted in a way that anybody can look at Kenya and say; "Kenya is has constitutional Government". In Kenya people follow the law. One great Chief Justice Madan once asked: "What is the use of having a Constitution if it is not followed by people?." We are saying the tradition of this Eighth Parliament has been to correct the wrongs that were not corrected over a period of 30 years. It is right and proper for hon. Members of Parliament to stand up without

political party distinction and say: "Yes, there has been a mistake that has been characterised over a period of time when we did not follow the provision of Section 16 and let us give leave to this House to introduce a Bill that will set out Ministries." In no way are we suggesting that those Ministers be limited. The time will come when we can debate that.

With those few words, I support this Motion and I urge my colleagues on the other side to support it.

The Assistant Minister for Local Government (Mr. Hashim): Asante sana, Bw. Naibu Spika, kwa kunipa fursa ya kutoa maoni yangu juu ya Mswada huu. Kwanza kabisa, ningependa kusema kwamba haifai tujadili Mswada huu wakati huu kwa sababu hivi sasa kuna Kamati ya kurebikisha Katiba ya nchi hii. Kwa hivyo, House Business Committee haingekubali Mswada huu ujadiliwe hapa Bungeni. Maoni ya watu kuhusu Katiba yataletwa hapa Bungeni ili yajadiliwe. Kwa hivyo, tukianza kurekebisha Katiba, tutakuwa tunafanya mambo kinyume cha Standing Orders.

[Mr. Deputy Speaker left the Chair]

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

Bw. Naibu Spika wa Muda, kulingana na Katiba na kanuni za nchi hii, Serikali hii inaundwa na Rais. Na ni yeye tu aliyepewa mamlaka na watu ili aweze kuunda Serikali. Hata ingawa Kifungu 16 cha Katiba kinasema kwamba, Bunge linaweza kutenga viti vya Mawaziri, hakijapeana uwezo rasmi, bali ni uwezo nusu nusu.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that what the Motion is seeking is an amendment to the Constitution, when actually, all it is seeking is merely that an Act of Parliament be passed in order to give effect to an already existing provision of the Constitution?

The Assistant Minister for Local Government (Mr. Hashim): Bw. Naibu Spika wa Muda, jambo ninalosema ni kwamba, ni kinyume kwa desturi za Bunge kujadili Mswada ambao utajadiliwa baadaye. Hivi sasa kuna Tume ambayo imeundwa ya kurekebisha Katiba ya nchi hii. Tume hiyo italeta maoni yake Bungeni ili tujadili. Kwa hivyo, ilikuwa ni makosa Mswada huu kuletwa hapa Bungeni hivi sasa kwa sababu Mswada utaletwa Bungeni kujadili masuala hayo. Hayo ndiyo ninayotaribu kuthibitisha.

Bw. Naibu Spika wa Muda, kama nilivyotangulia kusema, kuna hitilafu nyingi sana katika vifungu vya Sheria, lakini uwezo wa utawala wa nchi hii kuangalia rasilmali za nchi hii na kuunda Serikali uko kwa Rais. Kifungu 16 cha Katiba kinasema kwamba, "Bunge linaweza", hakijasema kwamba "Bunge ni lazima...". Kwa hivyo uwezo mkubwa wa kuunda Serikali bado uko kwa Rais. Miongoni mwa hatua kubwa ya kuunda Serikali ni kuchagua Mawaziri. Kwa hivyo, sioni kama kuna haja ya Bunge kuchukua uwezo huo. Itakuwa ni hatari ikiwa Bunge litakuwa na uwezo huo kwa sababu kufuatana na Katiba ya nchi hii, chama kilicho na nguvu - na Rais aliyechaguliwa - ndicho huunda Serikali. Katika Bunge kuna waheshimiwa Wabunge wa vyama vingi na kuna wakati ambao Rais wa nchi anaweza kuwa na Wabunge wachache Bungeni, na Wabunge hao hawawezi kutumia uwezo wao kumzuia Rais kufanya jambo lolote. Kwa hivyo, mimi ninaonelea kwamba haifai Bunge kuwa na uwezo huo. Hiyo ndiyo sababu uwezo uliopewa Bunge haukupewa kirasmi.

Bw. Naibu Spika wa Muda, ni lazima tuangalie maslahi ya leo na ya kesho. Haifai tutumie nafasi zetu katika Bunge kuchanganya watu. Mbunge yeyote ana haki ya kuleta Mswada hapa Bungeni ili ujadiliwe bila ya kuwachanganya watu. Wananchi watakuwa na wasiwasi kwamba tangu 1963, Serikali hii imekuwa na dosari kwa sababu uwezo wa kuunda Wizara ni wa Bunge, ilhali si kweli, kama alivyosema Mkuu wa Sheria. Kwa hivyo, mambo kama haya ni lazima yaangaliwe kwa makini kwa sababu huenda yakaleta tofauti nyingi katika nchi.

Bw. Naibu Spika wa Muda, isitoshe, kokote katika nchi za madola Serikali inayotawala ndiyo inayounda Baraza la Mawaziri. Kwa mfano, Canada, Ubelgiji na Australia hufanya hivyo. Juzi, nchi ya Ubelgiji iliongeza viti vya Baraza la Mawaziri kutoka 24 hadi 50, na Bunge halikuwa na uwezo wa kufanya marekebisho yoyote; hata kule Canada vile vile. Nchi ya Uganda pia ilifanya hivyo juzi. Ni kwa nini nchi ya Kenya itengewe nambari ya Mawaziri na Bunge? Mimi ninaonelea kwamba hii ni kuingilia utawala wa Serikali.

Bw. Naibu Spika wa Muda, kama nilivyosema, hivi sasa kuna Tume ya kurekebisha Katiba ya nchi hii. Ni lazima Tume hiyo izingatie maswala ambayo yataweza kuwawezesha wananchi wa nchi hii kupata maslahi yao. Ikiwa tumeunda Tume hiyo, ni makosa kuchukua uwezo wao na kujadili marekebisho ya Katiba. Muda wa Bunge hili uliobakia ni mchache sana na haifai kuwa na marekebisho makubwa kama haya kwa Katiba yetu, ambayo yanaweza kutatanisha. Kwa wakati huu inafaa tuwe tunajadili muundo wa Serikali itakayokuja na kuhakikisha kwamba kila mwananchi amepata haki yake. Mfumo wa Serikali ya majimbo ndio mfumo bora kwa wananchi wote wa Kenya. Tusielewe mfumo wa majimbo kumaanisha kwamba makabila fulani yatafukuzwa kutoka maeneo fulani. Huu ni mfumo ambao utahakikisha kwamba rasilmali za nchi zinawafikia wananchi wote. Hivi sasa, maeneo fulani yemetajirika sana kuliko maeneo mengine. Wananchi wa nchi hii katika maeneo mengine wanalipa madeni ya Serikali kwa huduma ambayo hawapati kwa sababu pesa hizo zimetengewa ukarabati wa barabara mahali pengine, ama kusaidia mradi fulani mahali fulani. Watu wa Lamu na wengine kutoka sehemu nyingine wanalipa madeni ambayo hayakuwafaidi. Inafaa kila

mtu alipe deni ambalo limemfaidi. Tukiwa na mfumo huo, tutahakikisha kwamba haki na usawa umetendeka.

Bw. Naibu Spika wa Muda, watu wa Mkoa wa Pwani wamedhulumika sana kwa sababu ya mfumo ulioko hivi sasa. Kwa hivyo, hatusemi ya kwamba watu wasiotoka Mkoa wa Pwani waondolewe kule; tunasema kwamba kila mtu apewe haki yake. Hivi sasa jambo muhimu kwa Wabunge, kama viongozi wa wananchi, ni kuangalia usawa na maswala ambayo yatawaunganisha Wakenya. Tusitengwe na hisia zetu wakati tunapopigia kura Mswada huu. Isiwe ni kwa sababu fulani ni wa chama fulani, kwa sababu Serikali inayotawala na yoyote itakayotawala iwe na uwezo wa kutawala.

Kwa hayo machache, ninapinga Mswada huu.

Mr. Munyasia: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to add my voice also, to this particular Motion. If you look around, you will see that the Front Bench is filled, instead of the Cabinet Ministers being elsewhere, despite the fact that they were not here during Question Time. You will just begin feeling that they have come to kill the Motion.

No one is proposing a constitutional amendment. If it was a constitutional amendment-- If it were so, I would also equally have said that let it wait for Prof. Ghai's Commission. The Motion seeks merely to give effect to a constitutional provision that was put in this Constitution in 1962. Up to now, it has not been changed. I do not know whether the Ministers are fearing that we are going to suggest that there be only 15 Ministers. This Motion does not talk about the number. When the time comes to propose the number of Ministers, since it will be by simple majority, it will be an ordinary Bill. It will not be a constitutional Bill. You can use your numbers to increase the number of Ministries to be established to even 30, if you so wish. But all we are asking is that this House be empowered to set out structures so that the President can only fill the vacancies by appointing people who will occupy those structures.

It has had to happen in the past; that the President could even frustrate Ministers by removing several responsibilities from them until they remain with hollow shells. At one time, the Vice-President and Minister for Home Affairs, Heritage and Sports had almost everything taken from him until all he was doing was to come and wait for a cup of tea, read newspapers and, maybe, wait for a call asking him to go to the airport and meet a certain dignitary who was visiting the country. This is what we want to avoid; that, this Parliament sets out the structures. If the President appoints you to a particular Ministry, then, you will be in charge of those areas that this Parliament has specified.

So, what is it that our colleagues are frightened of? There is absolutely nothing. We are saying that we must be in control. It happened that the President, from the 1980s, was creating districts and even trying to set up boundaries. The Attorney-General has admitted that, that was wrong, but because we did not come in and claim that, that was our right, the situation has not changed. I understand, as I am speaking, the one-man Commission that was established to look into the boundary of an illegal Teso District might be ready with its findings, and soon, parts of Bungoma District are going to be hived off and be added onto that new district. If it is the role of Parliament to take care of these issues, Parliament must be jealous of its responsibilities. That is what we are doing. It is a discretionary matter. We want to exercise our discretion, and I do not see anything wrong with Parliament going ahead to do that.

I just wanted to add my voice to that, and I end there.

The Assistant Minister for Transport and Communications (Mr. Keah): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me five minutes to contribute to the Motion. At the outset, I would like to say the following: First, it is always constructive to review the organs that manage our country, and they require constant review. In that respect, I would have no problems in reviewing and implementing what this Motion seeks to achieve. However, we do have a provision in our Constitution that has, for the last 38 years, worked and even if it has flaws, it has certainly worked. I also want to go further to say that at this point in time, we have a mechanism for constructively reviewing this particular organ of managing our country. This time, it is being provided by the constitutional review process and in it, we will rectify what has not been operating effectively over the last 38 years. Because of these factors, I believe the Motion is, therefore, ill-timed and cannot be implemented even if it passes, because pretty soon, we will have a constitutional review process, which will thoroughly look into Part 2 of the Constitution, Sections 16 to 22. Therefore, for that reason alone, we will be, in my view, jumping the gun.

To that extent, I want to oppose this Motion so that we can wait for the effective timing and many of us will be making proposals to go in so far as this Motion is seeking to achieve.

I can cite a number of flaws of this Motion which we have been observing in so far as the implementation of Part 2 of the Constitution, which touches on this Motion, is concerned. For example, we will have a lot of things to say about Assistant Ministers and Government Ministers. We will say so at that particular time, but for now, let the matter rest there. Let us wait for the constitutional review process to kick off.

I beg to oppose.

The Temporary Deputy Speaker (Mr. Muturi): It is time for the Official Government Responder.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, I beg to respond. In the first place, the Government has taken the advice of the Attorney-General on this matter and it has been very well thought out. I want to say here that the Government has at all times been persuaded by the advice given to it by the Attorney-General. After every election that has been carried out, the President of Kenya, since 1964, has named his Government comprising of a number of Cabinet Ministers, as well as Assistant Ministers and other officers

subordinate to him.

Mr. Temporary Deputy Speaker, Sir, as soon as the President has named his Government, he issues a circular to all and the public that is published, that clearly states what each Ministry and Minister is supposed to do. That has been very clear to the public. There is no question of saying that the public does not know which Ministry does what. Indeed, the circulars which have been issued out by the President and his office do, in fact, state the physical location of a new Ministry. There is no question of saying that the people do not know where the Government is. The people do know where the Government is. The Cabinet, as soon as it has been formed, is sworn in and it does sit regularly and does conduct the affairs of Government in accordance with the normal practice of any Cabinet around the world. In forming his Government, the President, and I am talking about Kenya which has had two Presidents, has been appointing his Cabinet in accordance with the Constitution of this country.

I am not going to disagree with those who say that Section 16 states what they think it states because even to me, Section 16 is not necessarily very clear in what it is saying. But there is one part of the Constitution that is crystal clear, and that is Section 24 of the Constitution of Kenya. It fills whatever gap Section 16 may have left out.

It states as follows:-

"Subject to this Constitution and any other law, the powers of constituting and abolishing offices for the Republic of Kenya, of making appointments to any such office and terminating such appointments shall vest in the President."

Mr. Temporary Deputy Speaker, Sir, that is why I would like to plead with hon. Munyasia that this is a constitutional issue. There is one part of the Constitution that does not seem to be clear, and that is the part that the hon. Mover wants to rely upon. But there is also one part which is absolutely clear and that is the part that the Government has relied on. I would like to persuade the hon. Members that this is not the only time that ambiguity has been detected in our Constitution. The hon. lawyers in this House know that at one point in our history, the case of Mr. Stephen Muriithi had to be taken to court for interpretation, to know who ought to actually abolish and hire and fire civil servants of Kenya. This is because one part of the Constitution which I have just read out says that the power is absolutely vested in the President. Another part says he shares that power with the Public Service Commission. As a lawyer, the Chair knows how that case was interpreted.

Mr. Temporary Deputy Speaker, Sir, it may be that we need to determine our Ministries now. That may be the desired point. But I wish to beg for patience, now that we have the grand opportunity of re-writing our Constitution. If we want for certain that Parliament should determine the offices of Ministers of Government, let the new Constitution say so and let it be crystal clear. When hon. Anyona talks about "sleeping" for almost 38 years, I am reminded of the story of Rip Van Winkle who went into a slumber for 20 years and woke up when he was no longer a young man. I know that as soon as hon. Muite wakes up, he must no longer think that he is a young man. That is why as we go into amending the Constitution and create a Constitution for a new generation, it is important that we do not act hastily.

We are the same Members of Parliament who have said this House alone cannot re-write the Constitution without listening to the people of Kenya. Why can Prof. Ghai not put this question to the people of Kenya, as to who they actually want to determine the Ministries and the Ministers of Government? The Constitution we have today was written by the generation of our founding fathers. They understood this to mean that the President shall appoint Ministers and create offices of Ministers. That is how they immediately implemented the Constitution which they had formed. After we have woken up many years later, to realise that there are some commas and full stops that our founding fathers did not put, I do not think the right thing to do is to say this is the time. I do not understand those who say the time has come for us to correct this mistake. I think the time has come, but this thing is in the hands of Prof. Ghai.

The hon. Member for Kabete has done absolutely well to wake us up from this slumber. Let him wait until the day when Prof. Ghai's Commission will visit Kabete Constituency. He should put his desires to the Commission. I am sure many other people will agree with him. But if we do it now, we will be jumping the gun.

Mr. Temporary Deputy Speaker, Sir, we should not say that even the Government which was formed in 1964 had the Ministry of Pan-African Affairs. We want to ask the people of Kenya whether they actually want a Minister for Pan-African Affairs. Of what relevance will that be, many years after Kwame Nkrumah abandoned the idea of Pan-Africanism? Is Pan-Africanism a reality 40 years down the line? There was no Ministry of East African Affairs in those days. Today, the Ministry of East African Affairs is, perhaps, one of the many important Ministries that we have. That is what we need today. So, I would like---

Mr. Munyasia: On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform the Minister that Kwame Nkrumah is dead. He died before he abandoned the idea of Pan-Africanism.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, the hon. Member can credit me because I know a bit of history. I know, indeed, when Kwame Nkrumah died. We visited his grave and I know that he is dead. His idea of Pan-Africanism ought to be replaced, perhaps, by a Ministry of globalisation! This ".com" generation has forgotten about the ideas which Pan-Africanism was founded on. I am just responding to matters which were raised by one hon. Member, that we need the Ministry of Pan-African Affairs. I know

that many people would like us to---

Mr. Kihoro: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to allude to the fact that Pan-Africanism is a dead concept when the Europeans are pushing for the idea of Pan-Europeanism while North Americans are pushing for a free trade area thereafter?

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, I did not know that he was a European!

(Laughter)

Mr. Temporary Deputy Speaker, Sir, I would like to plead with hon. Members, and with a lot respect, to the Mover of this Motion, that the time of this Motion has not yet come. I wish to urge this hon. House to reject it.

With those remarks, I beg to oppose.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, with your permission, may I donate three minutes of my time to hon. Dr. Ochuodho.

Dr. Ochuodho: Mr. Temporary Deputy Speaker, Sir, it is very interesting that even as we are talking here, a number of hon. Members from the other side of the House are saying that we should wait for Prof. Ghai to complete his work.

Mr. Temporary Deputy Speaker, Sir, as I was scanning through the weekly programme of Parliamentary Business, there are six Government pending Constitutional Bills. I hope they will also wait for Prof. Ghai to complete his work before they bring to this House those Constitutional Bills. I do not agree with the premise that having appointed the Ghai Commission, Parliament has abrogated its responsibility to legislate. I am hoping that on that basis, the Government will not have any grounds at all to block what hon. Muite is proposing.

Mr. Temporary Deputy Speaker, Sir, despite clarifications by a number of hon. Members from this side of the House, some hon. Members on the other side of the House are making a mistake. We are not calling for a constitutional amendment here. This Motion seeks to introduce an Act of Parliament on Government structure. Currently, there are certain Ministries that are overloaded, while others are ill-defined. Recently, a Committee of this House wanted to summon the Communications Commission of Kenya. We did not know whether to invite them through the Ministry of Transport and Communications, or through the Ministry of Information and Tourism. If we had a relevant Bill passed by this House, such confusion could not arise. We would not be in a situation where every lucrative activity in this country is taken to the Office of the President. Today, the *Jua Kali* Sector and the AIDS Control Council are under the Office of the President. If we had the Bill which hon. Muite is proposing, such confusion and problems would not arise. It is in this regard that I support this Bill.

Mr. Temporary Deputy Speaker, Sir, I must thank hon. Muite for allowing me to use part of his time.

With those remarks, I beg to support.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, clearly, there is not any other constitutional provision for the creation of Ministries and fixing the number of Ministries outside Section 16 of the Constitution. There is no power or constitutional provision, other than Section 16. So, if we want to look at the law that provides for the creation and fixing of the number of Ministries, we should look at Section 16 and not Section 24. The marginal note on Section 16 is: "Ministers of Government of Kenya". It is in part two of our Constitution that is headed "Ministers and the Cabinet".

So, Section 24 that Mr. ole Sunkuli is relying on is to be found in part three of our Constitution. Part three talks about executive powers. So, Section 24 gives the President powers to create offices in the Public Service Commission. But in terms of creating the Ministries and determining how many Ministries should be there, we are regulated constitutionally by Section 16.

It is a matter of great tragedy that the Attorney-General should put forward an interpretation of Section 16 that is totally untenable. Section 16 is as clear as daylight and it says:

"There shall be such offices - the word used is "shall" - of Ministers."

You read the whole section in order to see the purpose, objective and meaning. You do not take one word out of context. "There shall be such offices of Ministers as may be established by Parliament." That means that the only legal or constitutional Ministries that there can be are those which are created or fixed by Parliament. Alternatively, such Ministries can be created by the President if this Parliament gives him power through an Act of Parliament. That would empower him, give him authority and enable him to fix the number of Ministries. There is no other way in which the number of Ministries can be fixed or created in this country. It is not right for the Attorney-General to say that because Parliament has failed to exercise its discretion, the President can appoint Ministers! Appointed pursuant to what constitutional provisions? He can only do so if there is an Act of Parliament enacted by this House, giving him authority to create those Ministries. He cannot say that Parliament has not exercised its discretion.

In fact, on a correct reading of Section 16, it is not a matter of discretion. It is an obligation! The Attorney-General and Mr. ole Sunkuli know, because they are lawyers, that the meaning of a word depends on the context in which it is used. The word "may" in the Constitution is to be read together with the word "shall". There shall be such

Ministers as may be fixed by Parliament. That means that the word "may" in that context, is obligatory because of the use of the word "shall". There is no other legal authority or basis for creating Ministries.

Perhaps, because of that incorrect untenable legal advice which the Government has accepted from the Attorney-General, that actually shows the great need, in the new constitutional dispensation, for this nation to separate the functions of the Office of the Attorney-General. That office should be headed by an Attorney-General who is a civil servant, and who can, perhaps, give the correct advice. There should also be a Ministry of Justice which can have a Minister of Justice, who can be a political appointee, so that each incoming Government can have its own Minister of Justice, but the Kenyan public, including the Government of the day, can be given objective legal advice by the Attorney-General, who will then not be influenced by political considerations.

Mr. Temporary Deputy Speaker, Sir, as Mr. Munyasia said, one can see the Front Bench filling in, presumably to vote against this Motion. History will be the judge. We, on this side of the House, have acquitted ourselves on the oath of office, which we took to defend the Constitution. Any person voting against this Motion will, in my view, perhaps not be acting in compliance with the oath of office to defend the Constitution. We have acquitted ourselves and our conscience is clear. We have lived to our oath of office and we want the Constitution to be respected by this House fixing the number of Ministries, in order to avoid the current situation, where one individual is able to say: "I have reduced the Ministries to 15" and then proceeds simultaneously, to crowd three or four Ministers in one Ministry. If leave was to be granted, this House would enact a Bill in which it would provide the number of Ministries and set them up. Each Ministry will have one Minister and one Deputy Minister, so that we do not over-burden the already over-burdened taxpayers by paying salaries of 33 Ministers, with three of them crowded in one Ministry!

Mr. Temporary Deputy Speaker, Sir, it is quite clear that if leave is not granted, we will continue as a country, National Assembly and the Government, to act in breach of Section 16 of the Constitution. There can be no doubt on the mind of anyone, who has ever attended a law lecture, that in the absence of this Parliament having created and fixed the number of Ministries; or in the absence of this Parliament having enacted a law to authorise and permit the President to fix the number of Ministries - there can be no doubt at all - that all the current Ministries are created illegally and unconstitutionally. That will remain in history. So, I do urge the hon. Members on the other side of the House to reconsider whatever instructions they may have been given and vote according to their conscience, so that we discharge our duty to the Constitution. It is not just with regard to the Ministries where we find the President juggling around for tribal balance, since each tribe must have a Minister. Those are the problems that we want to save the President from indulging in. This country can very adequately be served by 15 Ministries.

We now have situations where even for Judges of the High Court and the Court of Appeal, you get a particular community going to the President to say: "We do not have a judge as a community. We have brought our son or a daughter. We want him or her to be appointed!"

The Temporary Deputy Speaker (Mr. Muturi): Just a minute, Mr. Muite! Mr. Gitonga, I am informed that you are carrying some apparatus that may be offensive. Could you, kindly, surrender them at the gate?

Mr. Gitonga: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not appear to know what you are talking about!

The Temporary Deputy Speaker (Mr. Muturi): It is reported that you are carrying a bag!

Mr. Gitonga: Oh! I thought that this bag is allowed! It is not a bag!

(Mr. Gitonga withdrew from the Chamber)

The Minister of State, Office of the President (Mr. ole Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Muite has made a very serious allegation that judges are appointed on tribal grounds, and that a delegation went to ask for that! Could he withdraw that statement?

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I was saying that one of the reasons why Parliament should exercise its powers by fixing the number of Ministries is to avoid a situation where the President of the day feels obliged to ensure that there is a Cabinet Minister from every ethnic community in this country. I went ahead and said that it is true that delegations from particular communities go to the President to say that they do not have a judge of the high court, and ask that a judge be appointed from their community, including the Taveta. They go there, and I am saying that it is not right. Let us act nationally as Kenyans, to work for the best interests of the country.

The Minister of State, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Could Mr. Muite tell us when the Tavetas have ever gone to ask for a judge from their tribe? This is a very outrageous statement on something that has never happened.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, there was a delegation from Central Province that went to say that Central Province is under-represented in the number of judges, which is a fact. It is not just Central Province that sent a delegation to the President, but other communities also go to him.

Mr. Temporary Deputy Speaker, Sir, I would urge that we vote in favour of this Motion.

(Question put and negatived)

DIVISION

Hon. Members: No! Division!

The Temporary Deputy Speaker (Mr. Muturi): Ring the Division Bell.

(The Division Bell was rung)

Mr. Shidiye: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Members who are demanding for a Division were not inside the House. Therefore, I think it is very wrong to call for a Division. We have defeated them hands down. They must accept the decision!

The Temporary Deputy Speaker (Mr. Muturi): The bell is already ringing.

Hon. Members, let the doors be locked and the bar be drawn as required by Standing Order No.55(1).

The tellers for the Ayes are Eng. Toro and Mr. Kiminza. The tellers for the Noes are Mr. Katuku and Mr. Sajjad.

I now direct that the Ayes move to the lobby to my right and the Noes to the lobby to my left and those that do not wish to vote register with the Clerk-at-the-Table here. Thank you.

(Question put and the House divided)

The Temporary Deputy Speaker (Mr. Muturi): Order! Order, hon. Members! Any hon. Member who has not voted and desires to do so is advised to move quickly into lobbies and do so. Otherwise, the doors are going to be locked.

(Question negatived by 62 to 25)

AYES: Messrs. Anyona, Donde, Galgalo M.M., Gitonga, Imanyara, Kamanda, Kamau, Katuku, Kihoro, Kiunjuri, Kombo, Maore, Muchiri, Munyasia, Muite, Mwakiringo, Mwangi P.G., Ndwiga, Nyagah N., Nyangwara, Dr. Ochuodho, Messrs. Omingo, Parpai, Eng. Toro and Mr. Wanjala.

Tellers of the Ayes: Mr. Kiminza and Eng. Toro.

NOES: Mr. Affey, Dr. Anangwe, Messrs. Ayoki, Badawy, Biwott, Chanzu, Choge, Ethuro, Dr. Galgalo, Messrs. Hashim, Haji, Kajwang, Kalulu, Kalweo, Kamolleh, Kamotho, Keah, Khaniri, Kiminza, Kimkung, Kirui, Kitur, Konchale, Kosgey, Koske, Madoka, Maizs, Eng. Manga, Messrs. Marrirmoi, Mbela, Mkala, Morogo E., Morogo W., Moroto, Mudavadi, Mwachai, Ndambuki, Ngala, Ng'eny, Ngutu, Ntimama, Ntutu, Nyagah J., Nyenze, Dr. Oburu, Messrs. Ochilo-Ayacko, Odongo, Ojode, Okemo, Prof. Ongeru, Dr. Otula, Eng. Rotich, Messrs. Sajjad, Sambu, Sang', Shaaban, Shidiye, Sudi, Sungu, Sunkuli, Dr. Wako, Dr. Wamukoya

Tellers of the Noes: Messrs. Sajjad and Katuku.

ESTABLISHMENT OF HEROES FUND

Dr. Ochuodho: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, in view of the continued suffering of the country's founding fathers, this House urges the Government to establish a Heroes Fund to cater for the basic needs and well-being of the heroes and heroines and their immediate families.

Mr. Temporary Deputy Speaker, Sir, I will later call upon Mr. Omingo to second this Motion. The reason why I thought it may be useful to bring this Motion before Parliament is that I have followed the sad lives of some of the forefathers of this country, who worked so hard. They rejected themselves and some of them offered not even to be compromised, for the sake of this country. I have in mind people such as the late Dedan Kimathi, hon. Achieng-Oneko, Mr. Bildad Kaggia and several others who suffered so much for this country, but have long been forgotten.

Sometime last year, it came to the attention of the nation that Mr. Bildad Kaggia was admitted at Kenyatta Hospital and had difficulties in settling the hospital bill at the time. A number of us visited him in hospital. It was interesting to realise that even in his old age, Mr. Kaggia is still a very inspired person. Some of us tried even to buy milk or fruits for him. It was so inspiring and motivating to learn that Mr. Kaggia did not even want to receive a penny from anyone. Indeed, those Members of Parliament who visited him had to use the nurses even to give him juices. I want to use the example of Mr. Kaggia because if one asked me what kind of a politician I would want to be, I would tell him that I would be more proud to be like Mr. Kaggia rather than many other colleagues who are reaping the benefits of the fruits of freedom, while those people who fought for freedom are not benefitting from it.

Mr. Temporary Deputy Speaker, Sir, Mr. Kaggia was discharged from Kenyatta National Hospital and about three months later, his wife died. Again, a group of us, Members of Parliament here, went for the burial in Kandara of the late wife of Mr. Kaggia. As we are talking here today, Mr. Kaggia is languishing in abject poverty. He could die any time. I am glad that this Motion has come to this House before Mr. Kaggia dies. I want to appeal to my colleagues, especially on the other side, that when we are talking of heroes and heroines of this country, one day some of them may receive that title of heroes and heroines. I am hoping that they will not oppose this Motion just for the sake of it because I think it is in the interest of this country. It is such a shame that we see some of our heroes suffering and we are doing little about it.

One may ask why I have brought this Motion at this late time. My view is that two wrongs do not make a right. I want to appeal to those on the other side to support this Motion. I will also be mentioning examples of some people who were key leaders of the ruling party, KANU. They played a very important role. Some of them are dead, but their families exist. Others are still living, for example, hon. Robert Matano, but some of them are forgotten. It is in this regard that I will appeal to both sides of the House to support this Motion, so that they practise the spirit that they talk about of give and take, they should not only take; but should also give.

Mr. Temporary Deputy Speaker, Sir, I also have in mind people like hon. Achieng-Oneko. He is long forgotten. He lives somewhere down there along Lake Victoria also in abject poverty. He does not complain or beg, but he fought so hard for this country. He was detained for the sake of this country. He was this country's first Minister for Information and Broadcasting. I keep waiting for a day when the Minister in charge of communications would pay a courtesy call on hon. Achieng-Oneko. But, of course, we seem to forget our heroes much sooner than it takes them to leave the limelight.

I do not have in mind only politicians. There are also heroes of this country who have made a mark in other decent ways. There are people who have made a mark in academics, drama, art and music. There are many Kenyans who have made a mark in this country, but are long forgotten. For example, we had the late Mpaayei Tombo. Some of us may not remember him, but I remember him from my primary school days. We used to have a song which went: "Tombo, Tombo, the young Maasai". He was the first Maasai to go to Makerere University. I was saddened to learn today that Mr. Tombo died two months ago and none of us knew about it. Nobody in this country knew that Mr. Tombo died two months ago. If it was somebody else, maybe, one of the Ministers; for example hon. Sunkuli on the other side or hon. Ntimama, obviously, this would have been big news.

The Minister of State, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. This is with a light touch, but is the hon. Member in order to wish us dead? But I also wish to inform him that Mr. Mpaayei has a good and solid family.

Dr. Ochuodho: Mr. Temporary Deputy Speaker, Sir, I hope that hon. Sunkuli will support this Motion. I thank God that he is not the President, and so I will not be guilty of anything for imagining his death.

The point I am making is that there are many people who should qualify to be considered heroes of this country, but they are long forgotten. The fact that Kenyans have long forgotten about the late Tombo is very unfortunate. One day, our children and grandchildren will ask us why we forgot our history.

Recently, the Departmental Committee on Energy, Communications and Public Works visited the Australian Parliament and several other Parliaments such as the Singaporean Parliament. We found out that these Parliaments have a rich history and they are preserving it. What are we doing to preserve our history? We will sooner rather than later forget those people who made a mark in this country. It is in this regard that I am appealing to the House to support this Motion and establish a heroes fund.

I have in mind people like Mr. Munyao Kisoi. Again, this is the man who hoisted the Kenyan flag on Mount Kenya, but we forgot about him until recently. Had he not been detained at Kenyatta National Hospital, some of us would never have known about him, especially the so-called "dot com generation". I dare say, with a light touch, that there are some people who talk of "dot.com" here and when I ask them what their e-mail addresses are, they do not even have them. Some of them want to look for information and when you tell them to check the website, they ask you where that website is, yet they call themselves the "dot.com generation". Many of us in the "dot com generation" may not have known about Mr. Munyao Kisoi despite the very important role that he played for this country until he was detained at the Kenyatta National Hospital.

I must thank Ambassador Pamela Mboya who bailed out Mr. Munyao. But should we not feel ashamed, especially those on the other side? Some of us are reaping the benefits of the work of those freedom fighters. Why do we forget about them so fast? Would you feel good if you made a mark in this country and were forgotten so fast?

I also have in mind the late Dedan Kimathi who, for all intents and purposes, remains a prisoner at Kamiti Maximum Prison. The body is buried there. Sometime last year, I brought a Question to this House trying to find out what the Government intended to do in order to have the late Marshall Dedan Kimathi given a befitting burial. The Minister in charge said that nobody has ever asked, as required by the Public Health Act, for the body of the late Dedan Kimathi so that he could be given a befitting burial. Indeed, we got together with the family of the late Dedan Kimathi and wrote to the Minister for Public Health. About eight months later, we have not got any positive response. Is this

how we want to treat our heroes? I would have felt very happy even if Members of Parliament were asked to contribute towards the wellbeing of people such as the family of the late Dedan Kimathi. This would make sense. But why do we need to do that when, of course, Kenyans pay taxes? It is in this regard that I am calling for the establishment of a heroes fund, so that we do not very easily forget our heroes and their families. It normally takes a lot of sacrifice to be a true nationalist, that the late Dedan Kimathi and others were.

Mr. Temporary Deputy Speaker, Sir, one may ask how we will finance such a fund if it is established. Such a fund should be financed from the Consolidated Fund and managed by an independent accreditation board. Although I have mentioned a few Kenyans, there are many Kenyans in this category. Some of them may not have been leaders, but ordinary Kenyans, men and women who fought during the Mau Mau battle. How many of them have we forgotten? We have forgotten about them. I must say that although I have mentioned men only, there are also heroines who have made significant contributions to the wellbeing of this country. I have in mind people such as Mrs. Wambui Otieno, who is ailing and could die in her Karen home any time. She fought along with others and made a contribution during the freedom struggle. She was even detained. Some of the former detainees are now on the other side, but the moment they get to the other side they very quickly forget about their other colleagues on this side. It is in this regard that I want to appeal to hon. Members to support this Motion.

If this Motion is passed as it is, I hope the Government will move ahead to implement it so that we do not encounter the kind of problems that we face when coming to Parliament, like meeting hon. Paul Ngei begging here and sometimes even on the streets. I hope this can bring to an end that kind of embarrassing situation. Hon. Ngei may be the wrong example to use in advocating for the establishment of a heroes fund. But I have other people, as I have mentioned, besides hon. Ngei.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Did the Chair hear hon. Dr. Ochuodho say that hon. Ngei begs on the streets? I have never seen him begging on the streets and it is a very unkind remark! Could the hon. Member be asked to withdraw that particular bit of the allegation, that hon. Ngei begs on the street?

Dr. Ochuodho: Mr. Temporary Deputy Speaker, Sir, for the sake of peace, I am happy to withdraw that remark. I happened to have been the secretary of Paul Ngei's Intervention Committee that helped him. I would have been happier if, at that moment, hon. Munyasia had chipped in to assist when we solicited support from him. If he sympathised with hon. Ngei, we would have gone a step further and even made a little more contribution, but Mr. Ngei still needs help, and I want to extend that appeal to others like my colleague to help him. If there is a way that he can be helped, he does not have to go and literally beg on the streets. But you can see that this is somebody who needs to be assisted. We need to get to that level. That is the premise I am trying to advance. I think the onus is upon the Government to take care of those people who made a mark in this country's history.

Mr. Temporary Deputy Speaker, Sir, I am aware of the Presidential awards. With regard to these recognitions and awards like the EBS, *et cetera*, I do not even know what they mean. But who are the people that we recognise by awarding these awards? What does one achieve by being appointed a Minister? What is there to be recognised, especially when there is no criteria for being appointed a Minister? Any of us, being a Member here, qualifies to be a Minister. But is that enough achievement to make one to be recognised? It is in this regard that I want to laud one great Kenyan, Bishop Cardinal Maurice Otunga, I hope God will give him a little more time to live. I am aware that he did refuse to go and take a Presidential award that he was being offered because we have made a mockery of these awards. You find Mulu Mutisya has got an award and almost everybody on the other side of the Front Bench. What have they done that the late Dedan Kimathi did not do to make him a prisoner? What have they done that the late J.M. Kariuki did not do? What have they done that Titus Adungosi, who was a student leader at the University of Nairobi. He was my "president" and I was his "minister" for education. Mr. Titus Adungosi died in prison. What have these guys done that those guys did not do? So, it is in that regard that I also have in mind people like Bishop Cardinal Maurice Otunga, when we are talking of heroes funds. These are the kind of Kenyans that I have in mind. I am not limiting myself just to politicians.

Mr. Temporary Deputy Speaker, Sir, I cannot deny that fact; I have politicians like the late J.M. Kariuki in mind. This is somebody who had lived lavishly. He would have agreed to be appointed Minister; he would have grabbed wealth also, and today, his family could have been one of the richest families, I would want to believe. But he denied himself and he died. Of course, we were cheated by Members from the other side of the House, and sections of the media advanced the theory that J.M. Kariuki was in another country; somewhere in Zambia, whilst the body of J.M. Kariuki was already rotting in Ngong Forest.

Mr. Temporary Deputy Speaker, Sir, who amongst us here has visited the late J.M. Kariuki's family? Who amongst us here knows what happened to Tom Mboya's family or Dr. Robert Ouko's family? They were Cabinet Ministers! The fate that befell them may befall some of our colleagues one day, if we do not act now.

Mr. Temporary Deputy Speaker, Sir, it is in that regard that I want to make an appeal to both sides of the House to support the Motion. I must also take issue with homeguards who are the main beneficiaries. I remember several years ago, at one point, those on the Opposition side were making noise that "it is not yet Uhuru". The late

Jaramogi Oginga Odinga was one of those politicians. But the late hon. Oloitipitip- may the Lord rest his soul in peace - asked: "What fruits of Independence are you talking about, when we are already reaping the fruits of Independence? If I can afford to spend Kshs2 million on my child's wedding, is that not fruits of Independence?" By the way, at one time we learned that he had about 66 children and grandchildren. If he was going to spend Kshs2 million at that time, which is 15 years ago, on the wedding of each child, we are talking about Kshs132 million. But what did the late Oloitipitip do for this country that makes him reap the benefits of *matunda ya uhuru* that other people did not do for this country? I have in mind people like Prof. Thomas R. Odhiambo of renown repute. He started the ICIPE. He made a major contribution for this country in his fight against the bad and good insects. Which scientist does not know about him?

The Minister of State, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. I am sorry that the hon. Member is really being tribalistic. This is because he has dismissed the achievements of the late Oloitipitip just because they are not similar to those of his tribesman that he has quoted.

Dr. Ochuodho: Mr. Temporary Deputy Speaker, Sir, Kenyans know who, between Mr. ole Sunkuli and Dr. Ochuodho, is a nationalist. I started with the late Tombo Mpaayei who was not a Luo. He was the first Maasai who joined Makerere University. I recognise him as a nationalist who deserves to be a hero, but not my good friend who is here. Maybe, some days to come, he will probably benefit that title.

Prof. Odhiambo made a mark in this country. How many scientists--- We have political professors, and some of them are even in this House. They call themselves professors of this and that, but they are political professors. Many professors are outside this House, but if you go to any of them, you will find that they respect Prof. Odhiambo. But where is he? The guy has resigned. He was kicked out of the ICIPE because we could not support him. History has been written and the scientists, our children and great grandchildren will remember him. I have in mind people like the late Masinde Muliro. Who can dispute the role he played for this country? The merger is the main thing today, but had it not been for people like the late Muliro, the late Ronald Ngala--- These are great Kenyans who made a mark. There would have been nothing to talk about had it not been for these people. It is in this regard that I would like to appeal, especially to those people who support the merger concept, to remember some of these people. This is because if they do not do that, they will also be forgotten when the time comes. So, it is important for those people who support the merger process to remember these heroes.

I wanted to say that we should not limit ourselves to politics. Think of the scientists and the sports people. I have in mind somebody like Mr. Kipchoge Keino, who has put this country on the world map. But, fortunately, Mr. Keino, has somehow got a way to survive. But many sportsmen and women and footballers have made a mark for this country, but they are forgotten easily. Why do we not establish a fund which will either assist the heroes who are anguishing in poverty, if they are still alive, or assist their families if they are dead?

I also have in mind people like Prof. Wangari Mathai. We know the fight she has been mounting with regard to preserving the environment. I want to be non-partisan. I am not just speaking about people who are considered to be in the Opposition because this should be non-partisan. It goes beyond our political inclination. We should accept that there are some people on this side of the House who have made a mark. There are also some people on the other side of the House who have made a good mark, and that is why I had in mind Mr. Robert Matano. He was one of the first Treasurers of the ruling party, or the only party at that time. He was even elected the Secretary-General at an appropriate time, but where is he? The other day, when some media people visited him, they found that he was languishing in poverty down there at Coast. My colleagues, especially on the other side of the House, seem to forget that the same fate that has befallen these people may befall them some days to come.

I also have in mind people like the late Enock Magara. This is somebody who lost his life for standing for the truth. We were told that no stone would be left unturned so that we get to know how these people died. If the late Magara could have lived longer, he could have done bigger things than he did. I have in mind the late Mr. George Kapten and others. I am not saying that all of them should be considered as heroes. This is why I propose that there should be an independent accreditation board which will decide--- There will be criteria that will be used to decide that such and such a person merits to be a hero or a heroine. Once we agree that this and that person merits to be a hero, we can support him so that he can lead a good life that befits the roles that he played for this country.

Mr. Temporary Deputy Speaker, Sir, with those many words, I beg to Move, and request, with your permission, Mr. Omingo to second this Motion.

Mr. Omingo: Thank you, Mr. Temporary Deputy Speaker, Sir, for availing me this chance to second this very important Motion. If you see your fellow slave being put in a shallow grave, you should know the same fate awaits you. With that background, I want to give my contribution.

We are looking at people who made this country what it is today and people who put a mark that we still remember, only that we too often forget because we are comfortable for now.

Mr. Kitonga: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am getting a bit disturbed by what is happening on that side. Could we get an explanation from the Deputy Leader of Government Business on why the Ministers and Members on the KANU side are not here? This is pathetic and shameful to the whole Republic of Kenya. Could they tell us whether they have resigned?

The Temporary Deputy Speaker (Mr. Muturi): That is not a point of order, Mr. Kitonga!

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, I do not know what the hon. Member is doing procedurally. Is he asking us to count the Members who are here? I am here to respond on behalf of the Government, according to the regulations. I do not know whom he wants to see here. Is there a particular Minister he wants here?

The Temporary Deputy Speaker (Mr. Muturi): Proceed, Mr. Omingo!

Mr. Omingo: Thank you, Mr. Temporary Deputy Speaker, Sir. I started by saying that if you see your fellow slave being buried in a shallow grave, for sure, the same fate awaits you. All of us who are growing now; the young turks, and I can see them all over there, we are also going to grow old. If you want something done for your family when you are not there, because nobody will be there permanently; please, let us support this Motion. These are people whom without them, we would not be what we are today. Without these people, this tree would not have been what it is for this particular nation. These people sacrificed for the benefit of this nation. I do remember one great Kisii man called Otenyo. He was the first one to rebel against the white man and he speared him to death. But we know nothing about him. We are saying that he realised and identified the potential of an enemy and did what he did. I am not saying that he should be remembered for what he did, but he left a mark in terms of liberation of this nation.

We have great sportsmen. If Kenyans were to be honoured wherever they are when they win a race and get a medal, I am sure we would be having Kenyan flags all over the world. This is a recognition that we require. Nationalistic acts like ---Mr. Muniyao hoisted the flag of this Republic and most of us did not know him until he was detained. This is very unfortunate. I am in support of the proposal that we require a special body to appoint these people. We need people with substantive contribution to this nation, not those who shout, "*Wapende wasipende*". We need to put in place a particular criteria to have our people recognised. It is in this particular regard that people are inspired to do acts that defend and portray our country very positively. But if people are going to sacrifice their lives and at the end of the day, we do not remember that they exist; their families suffer, this kills the morale of patriotism and submission in the best interest of us all.

Mr. Temporary Deputy Speaker, Sir, beneficiaries of the struggle for Independence are people who never did anything, including most of us who are sitting here today. Because of that benefit, that is the more reason why each one of us should support this Motion. Then, we also recognise them because of their contribution. Some of us would never be in Parliament today were it not for the brave acts of multiparty proponents. The person I have in mind is Mr. Kenneth Njindo Matiba, the first people to tell the Government that there is a different alternative view to thinking. If it were not for that, perhaps, I would not be in Parliament today in the Opposition. I am sure the "alternative view" in that context would receive negative reception on the other side of the House. But it is also positive because we are pointing a figure at what is wrong. It is important that we recognise them.

Mr. Temporary Deputy Speaker, Sir, the only unfortunate thing in this country is the culture of grabbing. So long as I am in a position of influence, where I can afford to grab a few plots and drive a few nice Mercedes Benz cars, I do not care about what happens to those people who struggled for this country. The culture is so dirty. Today, it does not matter how much money you receive. So long as there is Kshs10 billion here and your footprints are all stained in blood, you are a hero. That is not the culture we are trying to encourage. Let us separate what is right and let us be able to identify ourselves in terms of serving society and appreciating the people who created this environment.

Mr. Temporary Deputy Speaker, Sir, looking at some brave acts that have been exhibited, we have the example of the late John Robert Ouko. He was a great man who portrayed a picture of defending the people of this nation to the international community. Dr. Ouko stood up for this country. And for the first time, there was a repeat of broadcast abroad. It cost his life, but I believe his spirit lives on.

I am also looking at the case of those people who have given this nation a good image in terms of music. I am looking at people like Sukuma Bin Ongaro and Fadhili Williams of the famous *Malaika* song. This song has been sang left, right and centre. Even Miriam Makeba sang the same song. But it originated from Sukuma Bin Ongaro. Do you remember what happened to his family and himself? I wish you would hear it. There is need to recognise our people.

We should also honour our elites, for example, Prof. Ali Mazrui, a renown scholar. We want to encourage our children to go to school to be like Prof. Ali Mazrui. But if Prof. Mazrui, at the end of the day, is a pauper out there, what encouragement will they get? If people are not recognised, can we give our children the moral value to even struggle? That is why you find that most of them are engaging in drugs. After all, going to college or school no longer makes sense to them. Let us not reward people because of shouting "*wapende wasipende*" and then you give them medals like the EBS.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not know whether the hon. Member is talking about recognising Kenyans or non-Kenyans. This is because Prof. Ali Mazrui is not a Kenyan citizen. He is an American citizen now. Does he still insist that we should set a fund for non-Kenyans?

Mr. Omingo: Mr. Temporary Deputy Speaker, Sir, Prof. Ali Mazrui is now an American citizen, but he was born here.

Mr. Temporary Deputy Speaker, Sir, I think I need your protection because the hon. Member wants to distract

me from the real things. I would like to recall the late Masinde Muliro, the great man who was behind the formation of the original FORD. He is supposed to be recognised. I know most of our Ministers today are more polished than they could have been in a single-party system. Whether the hon. Member is saying yes or no, that is the truth. Because of that kind of checks and balances, they are more refined. I know hon. Mudavadi will do some things with a lot of caution I am not saying he does wrong things more often, but if he has to do something, he will have to rethink his stand. The late Masinde Muliro was a great man of this nation. We need to recognise such people and probably support them if we can. Mr. Bildad Kaggia is among the freedom fighters living today. It is sad that they are living in abject poverty. The truth of the matter is that the land they fought for is all in the hands of other people. It is a shame that some people have 5,000 acres. We should not even waste money awarding people. Like in this year's Budget, we allocated the Office of the President Kshs17.4 million for presidential awards. Again, it is only those who are very close to the system that are given these awards. It also depends on how much you shout that you are "x", "y" or "z" damu. That is the problem we have in this country. We should set up a fund to reward those people who sacrificed for this country. A young turk, for example, Mr. Sunkuli, will be an old man tomorrow. A young turk of today should not forget where he is heading, because we will all get old. And sometimes misfortunes befall us. I am not suggesting that you will have misfortunes, but I am saying that anything can happen. So, you should do to somebody what you would like done to you also. I believe the focused and right thinking Kenyans who have the interest of Kenyans at heart and value life and the various contributions to this nation will stand firm and support this Motion.

Mr. Temporary Deputy Speaker, Sir, I will conclude with the first statement I made, that if you see a fellow slave being buried in a shallow grave, for sure, the same fate awaits you. With those few remarks, I beg to second the Motion.

(Question proposed)

The Minister for Roads and Public Works (Mr. W. Morogo): Mr. Temporary Deputy Speaker, Sir, I stand to oppose the Motion.

In so doing, I must make myself clear, not that I have disrespect for those people who worked hard for this country, but because I think the Motion is not very definite in its intentions and who it is referring to.

Mr. Temporary Deputy Speaker, Sir, when we talk of "founding fathers", who is a "founding father"? Everybody can argue that he is in one way or another a "founding father". This means that even if we set a fund, we can never have an end to it. Everybody will claim a stake in it. So, this is a very ambiguous Motion, and in my view, it is something very dangerous to set, because we may start something that we may not manage at all. I think there are better things we can do to reward those people who, perhaps, fought for our Independence. When one does anything for a country, like those founding fathers did, they did not do it for a reward. We should not start anything whereby somebody does something to expect a reward later. We should do whatever we do for the good of this country and for posterity of generations to come. I am sure the founding fathers of this country are very satisfied that whatever they did, at least, they can see a country that has grown from what it was at the time to what it is today. We are in an independent country where everybody today enjoys his or her freedom to do what he or she wants, free from interference. I think we should encourage our people---

Dr. Ochuodho: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead Kenyans that the Constitution provides for freedom of assembly and yet when Mrs. Ngilu held a rally in Mombasa, police beat her up? Is that what he means by freedom of assembly?

The Minister for Roads and Public Works (Mr. W. Morogo): Mr. Temporary Deputy Speaker, Sir, there is a law in this country. I am not saying that anybody can do things freely, even from the perspective of the law. The law will always prevail. If you go against the law, the law will catch you. The law must be respected. That is not the kind of freedom that I am talking about, and I am sure the hon. Member understands me very clearly. We should find out how we can have a better country, for the present and future generations.

Mr. Temporary Deputy Speaker, Sir, we should encourage everybody to work very hard; to work towards a better Kenya, but not to expect a reward for that. In any case, I think it is more rewarding and fulfilling to see people enjoying what you have done for them, rather than getting paid for it. It is more fulfilling, in my view, that everyone does what he or she wants for this country and not to expect any reward thereof. I know that it is a very difficult thing to do, and I know that it is very difficult to say that this is the limit for the founding fathers. It is also very difficult to say that this is a limit for the heroes. This is because if we are talking of a hero, everyone is a hero in one way or another. This is because when we attained our Independence, we were talking of about seven million people. Today, we are talking about 30 million people. Even those people who have helped in increasing the population of this country are heroes because they have given us one of the very valuable resources that the country needs. It is a very difficult thing to be able to define a hero or a founding father. That is why I am saying that this Motion may not be good enough, but it is good for us to respect those people who did something for the country. It is good that we recognise what they did and I,

for one, will always have respect for them because what they did was a good thing. Some of us are enjoying the fruits of the hard work of such people. I think the Motion should not be approved by the House because we shall be simply opening up something which we may not be able to handle in the time to come.

With those few remarks, I beg to oppose the Motion.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Muturi): Order, 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.