

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 22nd October, 2002.

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.355

GOVERNMENT DIVESTURE FROM PARASTATALS

Mr. Speaker: Mr. Gatabaki not here? The Question is dropped.

(Question dropped)

Next Question, Capt. Ntwiga!

Question No.534

PAYMENT OF COMPENSATION TO MR. M'MUGA

Capt. Ntwiga asked the Minister for Agriculture:-

- (a) if he is aware that a banana plantation belonging to a Mr. Andriano Njoka M'Muga, valued at Kshs40,986, was destroyed in 1998, during the creation of Nyayo Tea Zone Belt around Mt. Kenya Region;
- (b) if he is further aware that a ministerial letter TN/CROP/12 Vol.I/38 dated 30th April, 1999, accepted liability; and,
- (c) when the Ministry will compensate the farmer.

Mr. Speaker: Where is the Minister? We will come back to the Question.

Next Question, Dr. Ochuodho!

Question 525

SALE OF KR ASSETS

Dr. Ochuodho asked the Minister for Transport and Communications:-

- (a) if he could table a list of

all assets of the Kenya Railways Corporation disposed of over the past six years, showing their description, title, amount and buyer; and,

- (b) how the money raised in (a) above has been used.

The Assistant Minister for Transport and Communications (Mr. Keah): Mr. Speaker, Sir, I beg to reply.

(a) I wish to table the list of all the assets of the Kenya Railways Corporation disposed of over the past six years. The list shows the description, title, amount and buyer of the assets.

(b) The money received amounted to Kshs1,785,327,500 and was utilized to fund the 1994 to 1988 Retrenchment Programme, and to settle outstanding debts owing to various creditors of the corporation.

(Mr. Keah laid the document on the Table)

Dr. Ochuodho: Mr. Speaker, Sir, I have not received a written reply. I know I may require to scrutinise it further. But nonetheless, when the Assistant Minister says that all the assets they have sold over the past six years are worth Kshs1 billion, is he convinced that the Kenya Railways Corporation got the best price that they should have for those assets they sold?

Mr. Keah: To the best of my knowledge and belief, yes.

Mr. Anyona: Mr. Speaker, Sir, could the Assistant Minister give us a quick breakdown of these assets, and also tell us how much of it is houses and land?

Mr. Keah: Mr. Speaker, Sir, it would be difficult for me to read from this list. I wish I could show you, but it shows clearly what is land and what is not land. If the hon. Members would study this, they would see the same.

I beg your indulgence to have a look at this because the block numbers and the property numbers also are given on the list, whether it is unsurveyed or surveyed plot. So, all the information is in this list.

Mr. Speaker: Very well! You can table it.

Mr. Keah: I have already tabled it, Mr. Speaker, Sir.

Dr. Ochuodho: Mr. Speaker, Sir, in view of the fact that this is just being tabled now and I have not personally seen it, could I request that the Question be deferred to tomorrow?

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

(Question deferred)

Next Question, Mr. Omamba!

Question No.466

TERMINAL DUES FOR MR. OWITI

Mr. Speaker: Mr. Omamba not here? The Question is dropped.

(Question dropped)

Next Question, Ms. Karua!

Question No.502

FUNDING OF KIAUMBI WATER PROJECT

Mr. Speaker: Ms. Karua not here? The Question is dropped.

(Question dropped)

Next Question, Mr. Anyona!

Question No.314

PROVISION OF WATER TO MADARAKA ESTATE

Mr. Anyona asked the Minister for Local Government:-

(a) if he is aware that since the National Housing Corporation (NHC) took over the collection of rent and the management of Madaraka Estate from Nairobi City Council, the residents are suffering from serious shortage of water in their flats;

(b) between the NHC and the Nairobi City Council, whose responsibility is it to supply water to the residents; and,

(c) if he will ensure that the NHC and or, the Nairobi City Council fulfils and meets the legal and contractual obligation and responsibility of supplying water to the residents of the estate.

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

(a) I am not aware that since the NHC took over the collection of rent and management of Madaraka Estate from Nairobi City Council, the residents are suffering from serious shortage of water in their flats.

(b) It is the responsibility of Nairobi City Council to supply water to city residents upon payment.

(c) I have directed the Nairobi City Council to ensure that the residents of Madaraka Estate and other areas who may be experiencing water shortages are regularly supplied with water.

Mr. Anyona: I do not know whether the answer that the Assistant Minister has just given is the same, because the answer I have is not signed. In accordance with the rules of the House, the Minister is supposed to sign 15 copies and send some to the Clerk of the National Assembly. I have an answer here by Minister Kenyatta which is not signed. But I think we would take what he has read as being the answer even though it is not signed.

The Assistant Minister says that he is not aware, which means he has not investigated the matter. But if he wants to insist that there is water in Madaraka Estate, among other estates, I live in Block MF.25. There is also Block MF.26. They are all together, 48 blocks of 12 residents each. Could he give me a list of the meters for blocks MF.25 and 26 as evidence that there is water and a meter? There is no water.

Mr. Kiangoi: Mr. Speaker, Sir, I did not insist that there is water. I said that it had not been brought to my attention until this Question came up. Generally, Nairobi City has been experiencing a water shortage, and that is the problem that is pertaining at Madaraka Estate.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that he is not aware of the problem, and yet this Question was raised a year ago? Has he investigated and found out whether there is water or no water? How can an Assistant Minister come to this House and tell us that he is not aware, and yet it is something which he could have even checked yesterday? Madaraka Estate is only three kilometres away from the city centre!

Mr. Speaker: That is only an argument! What is your response, Mr. Kiangoi?

Mr. Kiangoi: Mr. Speaker, Sir, there are actually water shortages in the City, but that is not a permanent occurrence. The area around Madaraka Estate may have experienced water shortage at one time or another, but that is not a permanent situation on the ground.

Mr. Gatabaki: Mr. Speaker, Sir, could the Assistant Minister tell the House why, virtually in every urban area in Kenya, starting from the City of Nairobi, there is a serious crisis in the supply of water? Is it that the urban councils under his Ministry are unable to supply more than half of the water needs of urban Kenyans?

Mr. Kiangoi: Mr. Speaker, Sir, it is not true that all urban centres in Kenya have been having water shortages. In any case, I would like to say that local authorities in those areas which the hon. Member might be having in mind might not necessarily be the water undertakers.

Mr. Muchiri: Mr. Speaker, Sir, there seems to be a dispute here as to whether the Madaraka residents have water meters or they do not have water meters. If they do not have the water meters, and yet Madaraka Estate was built over 20 years ago, who has been paying for that water for those years, putting into consideration that the Nairobi City Council is in a financial problem and it needs money?

Mr. Kiangoi: Mr. Speaker, Sir, I do not think that has been alleged. The Assistant Minister has admitted that there is perennial water shortage in Nairobi, and we have got three million residents, and Madaraka Estate is just an example of the estates facing frequent water shortages in Nairobi. Could the Assistant Minister tell this House what plans he has to increase the water supply in Nairobi for the future?

Mr. Kiangoi: Mr. Speaker, Sir, the problem of water shortage, though not perennial as the hon. Member has alleged, is being addressed by Government. Last year, the Government, in partnership with the World Bank, commissioned studies to make recommendations on how the private sector can be encouraged to participate more in the provision and management of water services in the City of Nairobi under the framework of the Private Sector Participation (PRSP). We, as a Government, intend to address that problem so that we ensure that the City residents get water.

Mr. Speaker: Order! Mr. N. Nyagah, you look very agitated!

Mr. N. Nyagah: Mr. Speaker, Sir, I have been on a trip to South Africa, Argentina and the world over, because of the water problem in Nairobi. Is the Assistant Minister in order to mislead this House and the nation at large, that the World Bank has commissioned a group of consultants to look at the management of water when this was done ten years ago, and has died a natural death? When was this commissioning done, and when was it signed, other than ten years ago, and yet there is nothing new?

I am a Member of the Nairobi City Commission which looks after water management.

Mr. Kiangoi: Mr. Speaker, Sir, I did not say that the World Bank has commissioned a group of individuals. I said that the Government, in partnership with the World Bank, in 2001, commissioned a study.

Mr. Anyona: Mr. Speaker, Sir, it is quite clear from the Assistant Minister's answer, and at least he is being honest, that he has no idea of the water situation in Madaraka Estate and the rest of Nairobi. There are two issues here: The first issue is that there is no water and the second issue is that, even if there is water, there are no meters in the flats. Could I ask this Assistant Minister - because this has been a long-running problem - to undertake to the House that he will make a special trip to Madaraka Estate, with the knowledge of the residents, so that they can show him that there is no water?

Mr. Kiangoi: Mr. Speaker, Sir, indeed, as I have said in part "b" of the answer, although we may not necessarily go there, I have directed the Nairobi City Council to ensure that the residents of Madaraka Estate get water. That will be done together with all the other measures which will be put in place, including the putting up of water meters.

Mr. Speaker: For the second time, Capt. Ntwiga's Question!

Question No.534

PAYMENT OF COMPENSATION TO MR. M'MUGA

Capt. Ntwiga asked the Minister for Agriculture:-

- (a) if he is aware that a banana plantation belonging to a Mr. Andriano Njoka M'Muga valued at Kshs40,986 was destroyed during the creation of Nyayo Tea Zone Belt around Mt. Kenya Region;
- (b) if he is further aware that a Ministerial letter TN/CROP/12 Vol.I/38 dated 30th April, 1999 accepted liability; and,
- (c) when the Ministry will compensate the farmer.

Mr. Speaker: Where is the Minister for Agriculture? Capt. Ntwiga, what do I do now?

Capt. Ntwiga: Mr. Speaker, Sir, you could defer it to the next Parliament.

Mr. Speaker: What are you saying? You want me to defer it to the next Parliament?

Capt. Ntwiga: Mr. Speaker, Sir, I have asked this Question severally since we opened this Parliament without getting an answer. So, you could defer it to the next Parliament.

Mr. Speaker: I do sympathise with your desperation in this matter. You have my full sympathy. I wish I could do better, but I will keep on trying. The Question is deferred to Thursday. I think that is better than deferring it to the next Parliament.

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

SHOOTING OF MR. NDIRANGU

Mr. Gitonga: Mr. 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. Dominic Ndirangu of Nyanduma Location, ID/No.0561064, was on 4th September, 2002, at about 4.30 p.m., shot and seriously wounded by a contingent of police officers from Kigumo Police Station?

(b) Could he inform the House the circumstances that led to the shooting?

(c) Why was Mr. Ndirangu denied P3 forms when he reported the matter at the Kiambu Police Station?

Mr. Speaker: Mr. Haji, is that your Question?

The Minister of State, Office of the President (Mr. Haji): No, Mr. Speaker, Sir.

Mr. Speaker: Whose is it?

The Minister of State, Office of the President (Mr. Haji): It is Mr. Sunkuli's Question.

Mr. Speaker: Where are the Assistant Ministers? What do I do, Mr. Gitonga?

Mr. Gitonga: Mr. Sunkuli is not here, but Mr. Haji is present. Can he not take charge of that Question? If anything happens now and Parliament is dissolved, that means this Question will remain unanswered.

Mr. Speaker: You know, hon. Members have been saying for the last two weeks that this Parliament will be dissolved and this has not happened. We are still here. Can you still have faith that we will be here?

Mr. Gitonga: Could you then ask Mr. Haji to answer this Question?

Mr. Speaker: What if it does not fall under his portfolio? This Question has to do with internal security and not personnel management.

Mr. Gitonga: Could I, therefore, request that the Question be answered tomorrow?

Mr. Speaker: I will defer the Question to Thursday because the Order Paper for tomorrow is already out.
(*Question deferred*)

Mr. Gatabaki: On a point of order, Mr. Speaker, Sir. We always get advice from you regarding the conduct of the Government. You know very well about the concept of collective responsibility; there cannot be a vacuum in the Government. Any Minister can stand to answer Questions regarding the Government, and that is what our government will offer. When I am not here, Messrs. N. Nyagah or Gitonga will stand and answer any Question. Could Mr. Speaker request this Government to honour the concept of collective responsibility, if they do not want to be defeated overwhelmingly by this side?

Mr. Speaker: I suppose you have stated very properly the principle of collective responsibility. I do hope that the Front Bench has taken note of that. I hope this will not occur again.

Next Question!

DEPLOYMENT OF PRISONERS ON
OFFICERS' HOLDINGS

Mr. Muchiri: Mr. Speaker, Sir, I beg to ask the Minister for Home Affairs, the following Question by Private Notice.

(a) Is the Minister aware that prisoners at Kamiti Prison are being made to work on prison officers' small holdings within Kamiti Prison farm on daily basis in tattered clothes?

(b) What action is he taking to stop this trend and also provide uniform to the prisoners?

The Minister for Home Affairs (Mr. Samoei): Mr. Speaker, Sir, I beg to reply.

(a) Kamiti Prison farming activities are divided into portions where different crops are planted and taken care of by prisoners as a process of training and rehabilitating them. The various small holdings do not belong to prison officers or warders, but are part of Kamiti Prison farm that is sub-divided as explained above.

(b) As you are already aware, the Commissioner of Prisons had announced earlier that the Prisons Department is in the process of changing prisoners' uniforms into a new type. This process is still ongoing, but it is not possible to clothe the over 40,000 prisoners within all our prisons at once.

I, however, report here that Kamiti Prison, Nairobi West Prison, Langata Women's Prison, Jamhuri Prison and Nairobi Short Sentence (Industrial Area) Prison have already been supplied with new uniforms. The process of issuing new uniforms to the rest of the prisons in the country is ongoing.

Mr. Muchiri: Mr. Speaker, Sir, I am surprised by the Minister's reply. I am the Member of Parliament for Kasarani where Kamiti Prison is located. For your information, the portion of land that those prisoners cultivate belongs to the prison officers. Could the Minister be kind enough to accompany me to Mr. Gituma's home where the prisoners have been working for the past one year? Mr. Gituma lives in Kasarani Constituency.

Mr. Samoei: Mr. Speaker, Sir, I would be very glad to receive any factual information to support the allegations being made by the Member of Parliament, and I will take appropriate action. To the best of my knowledge, the practice of prisoners working in areas that are not designated by law stopped way back, and we are not about to go back to that practice.

Mrs. Ngilu: Thank you, Mr. Speaker, Sir.

(*KANU Members applauded as Mrs. Ngilu asked her question from the Government Side*)

Mr. Speaker, Sir, I am just here because I will be here automatically in the next two months. A prison is supposed to be a place where prisoners are rehabilitated and given time to reflect on what they did in preparation for the time they will be released. However, we have noted that when prisoners are taken in, they are punished further instead of being rehabilitated to make them better people. Will this Government ever do anything to change themselves within the short time they are in power, so that they can do what is expected of them by prisoners?

Mr. Samoei: Mr. Speaker, Sir, we are implementing the plans that we have to improve not only the living conditions in our prisons, but also the look of our prisoners. The farms I have mentioned were put in place to ensure that we rehabilitate our prisoners so that they can come out better personalities. We have a ten-year plan to rehabilitate

prisoners. We have no plans whatsoever, to change course in the next two months because we are very sure that we will be there to implement those plans.

Mr. Imanyara: The Minister said that he appreciates getting information. I live behind the DC's residence and I can tell you that there are at least 20 prisoners working on DC Okello's farm on daily basis. They farm and take care of goats in the DC's residence, which is contrary to provisions of the Prisons Act. Is the Minister telling us that he is not aware of this? If so, I can provide him with sufficient information regarding DC Okello to warrant action being taken against him for breaching prison regulations. As I talk to you now, there are prisoners in his compound in Meru, which is next to the house of the OCPD, Meru.

Mr. Samoei: Mr. Speaker, Sir, I said I am willing and ready to take any factual information. I did not say I would take just any information or allegations. If I could have proof of what the hon. Member is alleging, I will take action.

Mr. N. Nyagah: Mr. Speaker, Sir, would it not be right for the Minister to investigate the information that the hon. Members are giving to him so that he can establish for himself whether prisoners work in officers' homes or not, because this is the norm? Could the Minister confirm or deny that when Mr. Gatabaki was in prison in his *kinyasa*, he did not work in the farm of the officer in charge of Kamiti Prison?

Mr. Samoei: Mr. Speaker, Sir, Mr. Gatabaki can actually confirm to this House that he was treated very well while he was in our custody. He came out a better person than when he went there.

Mr. Gatabaki: Mr. Speaker, Sir, while I appreciate the fact that I was the first person to wear the new uniforms, I would like to state that Kamiti Maximum Security Prison is not fit for human beings. I thank God for the prayers of Kenyans because that is the reason I am alive today. Whoever goes to Kamiti Prison dies there. Could the Minister confirm to this House that Kamiti Maximum Prison, which is supposed to contain 60,000 inmates, has more than three times that number of inmates?

Mr. Samoei: Mr. Speaker, Sir, I am afraid that the information being given by the hon. Member is false because the total number of prisoners who are in custody is about 40,000. So, it is not possible for us to have 60,000 prisoners in Kamiti Prison. On that basis, I do not wish to reply to that question. However, you will agree with me that Mr. Gatabaki looks better now than he did before he went to Kamiti Prison.

Mr. Mutahi: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead this House because only last year, I asked a similar Question regarding Sunshine Secondary School on Langata Road? There were prisoners working there. The Minister who answered that Question said that he was going to take action. Now, it is two years and no action has been taken! The prisoners are still being used to work in that secondary school. Is he in order to mislead this House that action is going to be taken?

Mr. Samoei: Mr. Speaker, Sir, I cannot answer for whoever was there then! But I can confirm that prisoners only work in areas that are designated by law. With reference to Sunshine Secondary School, we have a prison immediately next door and the hon. Member might want to check whether the prisoners were actually in that school or they were in the prison's farm that is next to Sunshine Secondary School!

Mr. Muchiri: Mr. Speaker, Sir, last year, Members of Parliament from Nairobi wanted to visit the Industrial Area Prison, Langata Women Prison, and Kamiti Maximum Prison to check the conditions of the prisons. Why were they prevented from going there, and it is me who authored the letter? Why did they not reply to my letter?

Mr. Samoei: Mr. Speaker, Sir, Mr. Muchiri can write to me any day and I will give them authority to visit the prisons, if that is their wish.

LEAVE ALLOWANCE FOR PCK EMPLOYEES

(**Mr. Muiruri**) to ask the Minister for Transport and Communications:-

- (a) Is the Minister aware that the management of the Postal Corporation of Kenya has denied its employees leave allowance?
- (b) What action is he taking to rectify the anomaly?

Mr. Speaker: Is Mr. Muiruri still not here? His Question is dropped.

(Question dropped)

Let us move on to the next Question!

KBC'S INCREASE OF CASUAL ANNOUNCEMENT CHARGES

Mr. Khamasi: Mr. Speaker, Sir, I beg to ask the Minister for Information and Tourism the following Question by Private Notice.

Could the Minister explain why the Kenya Broadcasting Corporation (KBC) has decided to increase casual announcement charges by over 700 per cent?

The Assistant Minister for Information and Tourism (Dr. Wamukoya): Mr. Speaker, Sir, I beg to reply.

The KBC has not increased rates for any of its various categories of announcements since 15th June, 2000. Before 15th June, 2000, the VAT was 15 per cent and that was increased to 18 per cent after the Budget of 2000/2001. Consequently, the KBC increased the rates by 3 per cent, from 15 per cent to 18 per cent, due to that budgetary provision.

Mr. Khamasi: Mr. Speaker, Sir, probably, the Assistant Minister has not used that facility for the last two months or so, or he uses it free of charge and he does not pay! But for us who pay, an advertisement for a word has been increased from a mere Kshs45 to something like Kshs400. Any announcement of political nature has been increased by that amount. Could the Assistant Minister tell us whether he is up-to-date with what is going on, particularly in branches like Kakamega, where I found out that situation? Could he tell us whether he is in touch with what is going on across the country with regard to the KBC?

Dr. Wamukoya: Mr. Speaker, Sir, the hon. Member has correctly talked about an announcement of political nature. The announcements are categorised in three classes. There is casual advertisement under which announcements of political nature fall. Then there are casual announcements which are of welfare nature. Finally, there are funeral announcements which are for bereavement. The charges are different.

Mr. Ndicho: Mr. Speaker, Sir, Kenyans are the most exploited people by that corporation---

An hon. Member: By the KANU Government!

Mr. Ndicho: Mr. Speaker, Sir, what is wrong with these characters? I am saying that Kenyans are the most exploited by that corporation. I do not know what role the Communications Commission of Kenya (CCK) plays because it is not regulating that corporation at all. They are increasing the charges after waking up every morning! Today, Kenyans are paying Kshs100 to Kencell for a Kshs600 card, and Kshs200 for the Kshs1,200 card. What is the Assistant Minister doing to ensure that there is total regulation for people who provide both radio and mobile phone services? That is because they are increasing the charges every other morning, as they wake up from their wives' bedrooms! Could the Assistant Minister ensure that they are stopped and Kenyans are not exploited?

Mr. Kihoro: On a point of order, Mr. Speaker, Sir. Is it in order for Mr. Ndicho to talk about Ministers and their bedroom matters in this House? That is, indeed, what he has said, and he should be required to withdraw that statement.

Mr. Ndicho: Mr. Speaker, Sir, I never said Ministers! I think Mr. Kihoro was asleep! I never talked about Ministers. I said the people running that corporation and not Ministers. What is wrong with you?

Mr. Nyanja: On a point of order, Mr. Speaker, Sir. Mr. Ndicho referred to Members from the Opposition and asked: "What is wrong with these characters?" We have no characters and there is no drama in this House! Since he went to KANU, he is not thinking right! That is what Eng. Toro talked about last week! How can he call hon. Members "characters"?

Mr. Ndicho: Mr. Speaker, Sir, this is the last week and Mr. Nyanja has just come from nowhere in the last days of this Parliament. He is now talking, so that the people of Limuru can hear [**Mr. Ndicho**] that he is around! I am tickling him so that he can speak, so that the people of Limuru can know there is a guy called Mr. Nyanja, who has always been a Member of this House!

Mr. Speaker: Order, hon. Members! Could we keep characters and guys out of this House? We only have hon. Members and not characters and guys!

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. He has not answered my question!

Mr. Speaker: Mr. Assistant Minister, what are you doing?

Dr. Wamukoya: Mr. Speaker, Sir, the corporation is well regulated by the CCK, and everything is charged within the regulated rates. There is no exploitation as stated.

Dr. Kituyi: Mr. Speaker, Sir, could the Assistant Minister explain to this House why an announcement that: "I am going to have a meeting", at which money might be given out, is not an advertisement, but an announcement that: "I am going to have a meeting", is an advertisement?

Dr. Wamukoya: Mr. Speaker, Sir, I did not get the two categories of announcements.

Dr. Kituyi: Mr. Speaker, Sir, the hon. Assistant Minister has said that when you are making an announcement about a meeting, it is considered as a casual advertisement, but when you are announcing a Harambee, it is of a welfare nature. Could he explain to this House why an announcement that I will hold a meeting where I might

give away some money is not an advertisement, but an announcement that I am going to meet people even if we discuss welfare problems without giving away money is called an "advertisement"?

Dr. Wamukoya: Mr. Speaker, Sir, it is within the confines of the employees of the Kenya Broadcasting Corporation (KBC) to decide whether what you want to announce is an advertisement which falls under campaigns, nominations and elections, or it falls under a welfare matter concerning the welfare of the society.

Mr. Khamasi: Mr. Speaker, Sir, the Assistant Minister is aware that occasionally, the KBC refuses to air certain announcements from certain quarters. I have in mind the recent announcement which Mr. Gumo wanted to make about the meeting for Rainbow Alliance and the NAK. The KBC authorities literally refused to accept the announcement. Could the Assistant Minister explain to this House where authority has got to come from before these announcements are made?

Dr. Wamukoya: Mr. Speaker, Sir, first, I am not aware of that allegation. But there is no authority required for one to make such announcements. One should go there, and the KBC employees have enough authority to decide what to do for you as far as announcements are concerned.

Mr. Khamasi: On a point of Order, Mr. Speaker, Sir. Now that the Assistant Minister has known this, would I be in order to ask him to find out which officer literally refused to air that announcement, and take the necessary disciplinary action?

Dr. Wamukoya: Mr. Speaker, Sir, I am saying that I do not think that an employee of the KBC would refuse to make a legitimate announcement. I do not think they would discriminate against an announcement because it has come from the Rainbow Alliance, KANU or somebody else.

OPENING OF MUKURWE-INI SUB-DISTRICT
HOSPITAL MORTUARY

Mr. Mutahi: Mr. Speaker, Sir, I beg to ask the Minister for Public Health the following Question by Private Notice.

(a) Is the Minister aware that Mukurwe-ini Sub-District Hospital mortuary was completed and equipped in February, 2002, and has not been opened to date?

(b) Why has the mortuary not been opened?

(c) What urgent measures is he taking to have this mortuary opened without further delay?

The Minister for Medical Services (Mr. Mohamed): Mr. Speaker, Sir, I would like to request the Chair to give me more time in order to come up with an appropriate answer because the one I have is not satisfactory.

Hon. Members: But Parliament will be dissolved soon!

The Minister for Medical Services (Mr. Mohamed): Mr. Speaker, Sir, I would like to be given more time in order to come up with a satisfactory answer, whether Parliament will be dissolved soon or not.

Mr. Speaker: Mr. Mutahi, what is your reaction?

Mr. Mutahi: Mr. Speaker, Sir, my reaction is very simple because I have a copy of the written answer, which is signed by the Minister. Unfortunately, this matter is very serious. This is a mortuary which was completed one year ago, and yet my people are still suffering.

Mr. Speaker: He probably wants to give you the right answer! Should he answer this Question on Thursday?

Mr. Mutahi: Mr. Speaker, Sir, how did the Minister know that this is not the right answer?

Mr. Speaker: Order! In all fairness, if you want the Minister to give you the correct answer, maybe, you should oblige. Of what benefit will it [**Mr. Speaker**] be for him to read out the copy of the written answer you have if he is not satisfied with it?

Mr. Wamae: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Minister to refuse to answer this Question? The people from the hon. Member's constituency cause congestion at the Karatina Hospital mortuary because Mukurwe-ini Sub-District Hospital mortuary has not been opened, and we get a lot of problems.

The Minister for Medical Services (Mr. Mohamed): Mr. Speaker, Sir, I have not refused to answer this Question, but I want to give the hon. Member a proper answer.

Mr. N. Nyagah: On a point of order, Mr. Speaker, Sir. We just want to understand where we are coming from and where we are going. The Minister, who is my colleague in the Ministry of Health, has signed the copy of the written answer which he has given to Mr. Mutahi. Could he tell this House the part of the answer he does not agree with so that we do not take a lot of time on this Question? If he does this, we will have many Questions for other hon. Members on the Order Paper on Thursday.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. This is the simplest Question that has ever been asked in

this Parliament. The mortuary is complete and fitted with everything. The hon. Member wants to ask a very simple question. This is a standard one question. Why can this mortuary not be opened, and yet it is complete and fitted with everything? This is not a long story. The answer could be that electricity and water have not been connected.

(Mrs. Ngilu was applauded as she entered the Chamber)

Mr. Speaker, Sir, please save, the time of this Parliament by looking at the Question. Part "b" of the Question asks why the mortuary has not been opened. I can even answer this Question, if I was given an opportunity.

(Laughter)

Mr. Speaker: Ordinarily, Mr. Mohamed does reply to his Questions seriously. It is not everyday he comes to this House to ask to be given more time. I sit here and listen. So, you had better be accommodative.

Mr. Mutahi: Mr. Speaker, Sir, I oblige.

Mr. Speaker: Mr. Minister, can you answer this Question tomorrow or on Thursday?

The Minister for Medical Services (Mr. Mohamed): Mr. Speaker, Sir, I will reply on Thursday.

Mr. Gatabaki: On a point of order, Mr. Speaker, Sir. Is it in order for Mr. Ndicho to keep harassing Ministers or His Excellency the President, considering that he joined the ruling party yesterday?

Mr. Speaker: Has he?

Hon. Members: Yes!

Mr. Mutahi: Mr. Speaker, Sir, I would like to inform the hon. Minister, through you, that I know where the keys of this mortuary are. My people suffer everyday by spending an average of about Kshs20,000 on mortuary services and transport. Could I be allowed to go and open this mortuary? This is because what is remaining is for this facility to be opened.

Mr. Speaker: Order! If you know where the keys are, help the Minister to answer the Question on Thursday. I can facilitate your moving from where you are seated to the other side of the House very safely!

That marks the end of Question Time!

POINT OF ORDER

LOSS OF LIVES

Mr. Munyao: On a point of order, Mr. Speaker, Sir. This is the third week since I requested the Minister of State, Office of the President, in charge of Internal Security, to make a Ministerial Statement concerning loss of lives in Kakamega when the President was there. Four people were killed, while 40 were injured. Mr. Sunkuli has since promised that he would make a Ministerial Statement and I am wondering when he is going to do that. Even last week he was ready to make the Ministerial Statement. The same thing is happening now, wherever the President goes. For example, during the graduation ceremony at Maseno University, four lives were lost. What is actually happening?

(Dr. Anangwe stood up in his place)

An hon. Member: What does Dr. Anangwe know?

The Assistant Minister, Office of the President (Dr. Anangwe): Mr. Speaker, Sir, the Ministerial Statement is ready. We were ready to make it last week, but we were not given an opportunity to do so. We did not anticipate that Mr. Munyao would come up with this request now. We are ready to make the Ministerial Statement tomorrow.

MINISTERIAL STATEMENT

EMPLOYMENT OF MEDICAL OFFICERS

The Minister for Medical Services (Mr. Mohamed): Mr. Speaker, Sir, I would like to make a Ministerial Statement which was requested by the hon. Member of Parliament for Dagoretti, Mrs. Mugo, regarding employment of newly qualified medical officers; interns.

A total of 162 medical students, including 126 graduates in medicine, 12 in dentistry, 24 in pharmacy, from

both the University of Nairobi and Moi University, applied for Government employment. The Government recognises that the medical graduates have to do internship before being registered to practise their disciplines, an undertaking which the Government is ready to facilitate. In the meantime, I would like to assure the graduates who have applied for employment that their applications are under consideration and the Government intends to employ them before the end of the year.

Mr. N. Nyagah: Mr. Speaker, Sir, I would like to have some clarification from the Minister, basically on two things: One, why the Permanent Secretary and the Director of Medical Services have continuously told these young men and women to go and work in hospitals for free, yet they are not getting any form of accommodation in terms of housing, which they cannot get on their own? The students have raised issues pertaining to this internship; the fact that they will not be allowed to practise in Kenya as the laws so require; and why the Minister wants them to be considered as Fourth Formers, because that is the category in which they can get employment? Is the Government willing to allow these doctors to start practising their internship, and the hours in which they will use be considered in the final analysis, before being accepted to actually practise in Kenya?

The Minister for Medical Services (Mr. Mohamed): Mr. Speaker, Sir, it is not true that the Permanent Secretary and the Director of Medical Services did tell the graduate doctors to go and work in hospitals free of charge. They were told to wait for employment, over which they have been given the assurance. They will be employed and be paid that money.

Mr. Wamae: On a point of order, Mr. Speaker, Sir. I am surprised by the Minister's response. What hon. N. Nyagah has said is correct! I have a relative who has a letter saying that he should go and do the internship at Kenyatta National Hospital for free! What would Minister say about that?

The Minister for Medical Services (Mr. Mohamed): I am not aware of that note, Mr. Speaker, Sir.

POINTS OF ORDER

LOWERING OF SUGAR-CANE PRICES

Mr. Ochilo-Ayacko: On a point of order, Mr. Speaker, Sir. I rise on point of order to seek a Ministerial Statement from the Ministry of Agriculture and Rural Development. This House passed a legislation known as the Sugar Act, and in that legislation, the pricing of sugar-cane is the sole prerogative of the Kenya Sugar Board (KSB). We have learnt from the print media that the Managing Director of Chemelil Sugar Company has unilaterally lowered sugar-cane prices, affecting the farmers who are supplying sugar-cane. We would like to know on whose authority this Managing Director is acting. We would also like to know what the Ministry is doing to remedy this situation because that particular factory will be closed if transactions are not resumed?

(Applause)

BIASED TREATMENT OF EMPLOYEES IN KENYA BREWERIES LIMITED

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. I stand to seek a Ministerial Statement from the Minister for Trade and Industry on why the management of Kenya Breweries Limited is giving preferential treatment between the white people and the Africans in that company, where the white people have refused to share the pension scheme with African workers, including senior management staff in that company. They are insisting that there must be two schemes of services between the whites and the Africans. The Minister must tell us whether this country is reverting back to colonialism, where there was colour-bar and differences between the white people and Africans working under the same company. We are not going to tolerate that discrimination, and the Minister must tell us why this Government is allowing those people to behave as if we are in their continent?

COMMUNICATION FROM THE CHAIR

AMENDMENTS TO ELECTION RULES AND THE FINANCE BILL

Mr. Speaker: Order, hon. Members! This is just to bring to your attention that there are certain amendments to the Election Rules, which have been brought by the Attorney-General rather late, and we are unable to slot them in the Supplementary Order Paper. But I have instructed the Clerk to circulate those intended amendments by the Attorney-General to all hon. Members. I hope you have them now; if you do not, they will be available at the Bar. I hope you do have them now.

Secondly, there are also amendments to the Finance Bill, which we received from the Minister for Finance, again, late. The Supplementary Order Paper will be forthcoming in the course of the day; I hope before we reach the Finance Bill. At the time when we shall deal with the Finance Bill, there will be a Supplementary Order Paper containing the amendments that have been proposed by the Minister and those that have also been received by me and approved from other hon. Members. So, I hope hon. Members do understand the intended amendments to the Election Rules by the Attorney-General which are being circulated or have been circulated, and should be circulated. The Supplementary Order Paper containing amendments to the Finance Bill will be forthcoming in a short while.

Mr. Muite: Mr. Speaker, Sir, given the importance of the Election Rules, is it not more appropriate that, perhaps, hon. Members should have adequate time to read the amendments the Attorney-General is suggesting so that we debate them tomorrow?

Mr. Speaker: Have you got a copy?

Mr. Muite: Yes, I have just got a copy, but we should debate them tomorrow, rather than get them now and we debate them now without hon. Members having had the opportunity---

Mr. Speaker: The debate is continuous! There will be a Committee of the whole House; you will have all the time! You will read it now, we will go to Committee and go through them rule by rule, including those amendments!

Mr. Muite: Mr. Speaker, Sir, the Attorney-General is very good in putting "commas" in the wrong places and fullstops in---

Mr. Speaker: Just put a fullstop before the comma!

(Laughter)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I am glad that, indeed, hon. Muite was here when the debate on Election Rules continued last Thursday, and the amendments that are contained in the Supplementary Order Paper have not come out of the Attorney-General's head; they have come out of what appeared to be a consensus during the debate. They came from hon. Members themselves. They are just meant to articulate what hon. Members themselves have suggested.

Mr. Speaker: Very well. That is actually what the debate is all about; listen to your colleagues and take their points into account! I suppose that is what the Attorney-General is doing.

Next Order!

MOTION

THAT MR. SPEAKER DO NOW LEAVE THE CHAIR

Adoption of National Assembly and
Presidential Elections Regulations, 2002.

THAT, this House adopts the draft National Assembly and Presidential Elections (Registration of Electors) Regulations, 2002, and The Presidential and Parliamentary Elections (Amendment) Regulations, 2002, laid on the Table of the House on Thursday, 8th August, 2002.

(The Attorney-General on 17.10.2002)

(Resumption of Debate interrupted on 17.10.2002)

Mr. Speaker: Who was on the Floor?

An hon. Member: Mr. Haji!

Mr. Speaker: Mr. Haji, the Floor is yours!

The Minister of State, Office of the President (Mr. Haji): Mr. Speaker, Sir, from the outset, I would like to support the Motion with few amendments.

I have been a returning officer for many years, and I can say with confidence that throughout my time as a returning officer, I have not had any petition against all the elections that I have supervised. It will be recalled that I was the first returning officer to be sent to Bondo to supervise elections in an area outside my jurisdiction. I was also sent to Kitale to supervise a by-election, and the late hon. Muliro said a lot of pleasant words about my ability to conduct elections in a fair manner.

Mr. Speaker, Sir, I have reservations on Section 18, Regulation 31(1) on the assisted voter. Regulation 18(31)(4) says:-

"No person shall assist more than one elector to vote under this regulation."

Mr. Speaker, Sir, this in effect means that every illiterate voter will be required to come with somebody to assist him to vote. This is impossible. We know that in most parts of this country, the number of people who cannot read and write is so big. If they will be required to look for different people to assist them to vote, then elections will go on endlessly, even for months. I would like to suggest that this section be scrapped. It should be left to illiterate voters to ask anybody at the polling station to help them. I know all presidential, parliamentary and civic candidates will have their agents. Therefore, I think the illiterate voters should be allowed to choose from those agents who will help them to vote.

Mr. Speaker, Sir, I have also a lot of reservations on the question of counting votes at the polling station. I know that in remote parts of this country, it will not be a good idea to count votes at the polling station because these polling stations are far apart. Secondly, there is no electricity in most parts of this country. In most occasions, there are no suitable buildings in which the counting of votes can take place. I would like us to retain the previous method whereby all votes from all polling stations are counted at a designated counting hall.

Regulation 41 says that results be put in figures. Figures can be tampered with. I would like to suggest that a column to show results in words be included so that people making those returns will not interfere with the correct position. Therefore, I suggest that results be shown in both figures and words.

I have also some reservation on Section 25(2). It says:- "The presiding officer shall mark every ballot paper which he counted but whose validity has been disputed or questioned by a candidate or an agent with the word "disputed" but such ballot papers shall be treated as valid for the suppose of the declaration of election results at the polling station."

Mr. Speaker, Sir, we know that there are some elderly people who are not very steady in marking the ballot papers. I think so long as there is a clear indication that the voter wanted to vote for a certain candidate, those ballot papers should be treated as valid. They should not be treated as invalid merely because the voter marked outside the square box.

Mr. Speaker, Sir, the other issue over which I have some reservation is the question of the presiding officer deciding on the validity of a ballot paper without necessarily consulting either the agents or even candidates. I think this should not be left to the presiding officer alone because it will result in many election petitions which will not be very healthy in many cases.

Mr. Speaker, Sir, with those few observations, I beg to support.

Mr. Kihoro: Mr. Speaker, Sir, thank you for giving me the opportunity to contribute to the Presidential and Parliamentary Elections (Amendment) Regulations.

Since Independence, we have had eight general elections in this country. But they have been conducted in a very partisan manner. If I may so, there is no other commodity each hon. Member should be more willing to purchase or buy in this House than the rules that will safeguard his or her interest as an hon. Member of Parliament.

The 1997 general election produced so many petitions. However, these petitions were not heard in any fair or objective manner. Of the nine petitions which were filed by the end of January, 1998, only one succeeded. That petition was against a former Member of Parliament, Mr. Njoka Mutani. It was filed by an hon. Member of this House today. All the other petitions were lost. The most important petition that was lost was the one which was filed by Mr. Kibaki against President Daniel Toroitich arap Moi. That was Petition No.1 of 1998, but it was not heard at all. After nearly one year of deliberation, and after we spent more than Kshs100,000 as deposit on the application, it was not heard. Why was it not heard? According to the Judge who decided the matter in the High Court, he felt that an election petition had to be served personally on the respondent. A petitioner had to serve a petition directly and personally on the respondent. That was contrary to the regulations. The regulations, as they stand today, and even without the amendments proposed by the Attorney-General, provide for service of an election petition through the *Kenya Gazette*. I know the petition against President Moi was served through the *Kenya Gazette* on 29th January, 1998. After a lot of efforts and deliberations, that matter was thrown out by the High Court on the ground that Mr. Kibaki should have served the petition directly or in person. That is not possible. My worry is that the violation of this regulation in this case was subsequently imitated by other courts. There was a petition against Mr. Maitha at the Coast Province. There was another petition filed by Mr. Njuki against Manyara in Nakuru. The petitions against Messrs. Maitha and Manyara were immediately determined on the basis that they were not directly served on them. So, it is not good to have this kind of regulation, where justice depends on the length of the foot of the person involved. Even in our long standing law of equity, equity should not depend on the foot of the Chancellor involved. That is a very important point. I can foresee a situation where we may have a petition after the forthcoming general election, where a

technicality may be cited, and all the rules and regulations we are debating will be of no consequence.

We have witnessed many irregularities in the electoral process. According to the law as it is now, in case of a dispute about a vote, the presiding officer will decide on the matter. If by the end of the day an agreement is not reached, he can declare somebody a winner. That person will remain the winner until you successfully petition his election. However, according to the current rules, you cannot petition somebody without serving him with the petition notice directly. Once one is irregularly declared the winner of a parliamentary election, he only needs to go into hiding for 28 days to avoid being served directly with the petition notice. If that person resurfaces after that period of time, he cannot be served.

Equally, the winner of the next presidential election might be declared the winner even before the results of the poll are out. One of the rules that we have empowers the Electoral Commission of Kenya (ECK) to declare somebody a winner even before all the votes have been counted. That happened during the 1997 general election. In that year, the ECK announced the winner of the presidential election on 4th January, 1998, even though the results for Garsen, Galole, Bura, Lagdera, Fafi, Ijara, Wajir West, Wajir South and Mutito Constituencies had not been received. These are too many constituencies. So, the ECK declared President Moi the winner of the presidential election even before nine out of the 210 constituencies had posted their results. Subsequently, the election was petitioned, but did not go far. That is one of the things the Attorney-General should explain today.

How can somebody who cannot access the courts get justice? We know that the rules have already been violated. Rules have been put in place which provide that unless one serves a person with the petition notice directly, the petition will be determined. You may serve a Member of Parliament, or a councillor, with the petition notice. If one is declared the winner of the presidential election, until you serve him directly with the petition notice, you are deemed not to have served him with the petition notice. If you do not do that, the petition will not proceed. That is contrary to justice. A notice in the *Kenya Gazette* has always been accepted as a fair and reasonable medium through which an individual can be served with the notice. However, when it came to the petition against President Moi's election, all the laws were thrown to the dogs.

I have dwelt on this point for long because I believe that it is a very important issue. We should, therefore, have a clear-cut way of petitioning somebody who has been declared the winner, so as to guarantee justice to the electors who may have cast the majority votes. We should have a clear-cut way as to how this can be done, especially in respect of the High Court decision that until you serve a person personally, you are deemed not to have served that person. That is what the Attorney-General should explain. Suppose I am declared the President and then, for 28 days, I hide inside State House, and come out thereafter? Really, there is nothing which can be done, but I will have defrauded the 10.6 million voters, who may have wanted to elect somebody else.

Mr. Temporary Deputy Speaker, Sir, the election rules should have provided for the separation of the presidential election from the parliamentary election. It will cost more to run separate presidential and parliamentary elections, but some countries have done it. Only recently, the people of Zimbabwe conducted their parliamentary elections on a particular day; six months later, it held the presidential election. In a country like Kenya, where literacy is increasing, that is something which should be explored. There is a proposal to have ballot boxes of different colours for the three types of elections. This may have been prompted by the realisation that in previous elections, the electors were overburdened by the need to make three decisions simultaneously while in the polling booths.

Therefore, I intend to introduce an amendment to these Rules. I am aware that the next elections are only two months away. So, that may be too soon to demand that we have the presidential, parliamentary and civic elections held on different days.

(Loud consultations)

Mr. Speaker, Sir, if hon. Members consult in low tones, it will also be possible for me to lower my voice. With this kind of loud consultations---

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

Mr. Kihoro: Mr. Speaker, Sir, I thank you for your intervention. I can now also lower my voice.

Mr. Speaker, Sir, another important question is going into the elections when we have already been told that close to 500,000 Kenyans have been registered as voters more than once. I do not know how many of these people have now been struck off the voters register. One of the election regulations is very clear, that if one is registered more than once, he has committed an offence. There must be away of detecting multi-registration to avoid being told later that so many people have registered more than once. We do not know what will happen on the election day. Once the problem of multi-registration is dealt with, the ECK can then concentrate on preparing for the coming elections. You will recall that in the last elections, President Moi won by only 500,000 votes. So, the double registration that has taken place in respect of some Kenyans is more than enough to fraudulently determine the winner of the next

presidential election. Only one vote is enough to change the tide in an election. In the narrowest election in Zanzibar in 1964, the winner triumphed by only one vote. So, one vote is enough to determine the fate of a Government. Even in the 1992 elections, somewhere in Malindi, somebody won a parliamentary election with a majority of only one vote. So, you realise that even a difference of one vote is important in an election. What if 500,000 out of the 10.5 million registered voters are registered twice?

Mr. Speaker, Sir, announcing a winner before the results are compiled should not be allowed to be part of the laws in this country. As soon as we have a scenario where a person is declared a winner before the results have been compiled, then that is nugatory to why we have regulations and election rules. It is very important that every vote be counted. We also have the 25 per cent rule: A presidential candidate must acquire 25 per cent of the votes in five of Kenya's eight provinces. Out of the nine constituencies that I have mentioned, seven of them are from the North Eastern Province where we have 13 constituencies. In 1997, we ended up having North Eastern Province counting votes in favour of a presidential candidate, when already seven constituencies had not compiled and handed in their results.

Mr. Speaker: You are repeating the same thing over and over!

Mr. Kihoro: Mr. Speaker, Sir, I am hoping that the Attorney-General is taking notes so that he will not evade this matter.

Let me go to the issue of the election ballots. This is a totally new point. I understand that a contract has already been signed with Messrs Smith and Wiseman of Eastbourne, East Sussex, United Kingdom, in respect of printing the election material. This issue came up in the newspapers last year. The contract was signed nearly two years before the event, and it was important after the confusion that arose in the 1997 general election. We do not want that confusion to arise again. There were allegations that, that company released some samples of election ballots. These samples were used at the Government Printer to print identical ballot papers in this country. I know that we have sufficient technical ability in this country to print ballot papers. It is only during the last two general elections when ballot papers have been printed outside the country. The high quality Government Printer, according to allegations that were made, duplicated the ballot papers that were found all over the country. It is important that the contract be reviewed. It is important that election material in this country is printed in this country and could be done by the Electoral Commission of Kenya (ECK), which, as time has gone by, has become more and more independent.

Mr. Speaker, Sir, there is an aspect I would want to raise about the regulations as proposed. In Clause 3, which has proposed to amend Regulation 6, the Attorney-General has proposed to insert the following amendment:-

"There could be a polling station, not only on a designated vehicle or vehicles, but also on a vessel or vessels".

I wonder why the amendment should make provision for there to be voting on a vessel. It is proper for the Attorney-General to explain to this House why he would want to have a designated vessel as a polling station or vessels as polling stations. Who could be voting on board the vessel which may be moored about five miles in the Kenyan maritime frontier at the Coast or even in Lake Victoria? Why should he want to have that as a registered polling station? That provision should be deleted. I understand why there should be a polling station on a vehicle or in a designated building, but not on a vessel. So, the Attorney-General should explain why voting on board a vessel should be provided for.

The issue of provincial sponsorships of candidates undermines from time to time the equality of the votes in this country. Why would you want to say that a candidate must get a provincial distribution of the nominees? All votes are equal. If I can raise the required 1,000 votes, provided the voters are on the voters register, why would you want to know where they come from? Let us make the regulations as fair as possible. A lot of technicalities and de-generalisation of the vote does not, at the end of the day, result in fairness in our elections. Every vote should be equal to every other vote.

With those few remarks, I beg to support.

Mr. Musila: Mr. Speaker, Sir, I stand to support this Motion. It is a very important Motion because we are heading towards the general election. May I take this opportunity to congratulate Mr. Mwai Kibaki, who has been nominated as the National Rainbow Coalition presidential candidate.

[Speaker left the Chair]

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

Let me say on the outset that Kenyans have confidence in the ECK; more so, when it is headed by a man of integrity, Mr. Kivuitu. But I want to urge the Commission to ensure that this time round, the coming general election is

free and fair. The general election should be devoid of any rigging. I say this because like Mr. Haji, I have also supervised elections in the past, and I know that the practice of rigging elections has been taking place. I hope that this will be a free and fair general election. May I make an appeal to the Commission through the Chair that it considers this time round printing ballot papers in colour. I say this for obvious reasons. In most countries, for the purpose of identifying symbols, it is important that ballot papers are printed in colour, so that voters are able to identify their symbols easily. This will also assist voters in our society where the level of illiteracy is very high. This is a matter that I am asking the Commission to consider very seriously.

Mr. Temporary Deputy Speaker, Sir, in order to have a free and fair general election, we must create a level playing ground for all candidates. At the moment, the Government is involved in using State resources to campaign for its presidential candidate. This is happening and we have seen even ambulances, for example, for Mwingi District Hospital, being used to transport people to Nakuru, Kabarak and other places for campaign rallies. We have seen police helicopters being used for campaign purposes. Perhaps, we must introduce a regulation at the Committee Stage to ensure that the State does not use State machinery to campaign for a particular candidate, whether presidential, parliamentary or civic. I am saying this with a lot of bitterness because public officers have already taken sides. The provincial administration is busily occupied at this time campaigning for particular candidates and particularly the Government-sponsored candidates.

Mr. Temporary Deputy Speaker, Sir, may I request the Attorney-General, through you to ensure that from today henceforth, public officers are divorced from political campaigns that they have already engaged themselves in. I think it is not late to put a stop to this practice which is under way. If this continues, mechanisms and regulations must be put in place to punish those officers who are doing that.

Mr. Temporary Deputy Speaker, Sir, there is already a voter buying exercise going on in the countryside. The KANU machinery is already busy buying votes. In my constituency, for example, they have discovered that the only way they can win is to reduce the number of votes cast by buying votes and throwing them away. Two weeks ago in Mwingi Town, we found 20 voters cards in a dustbin. They most probably had been bought and then dumped there. I am sure this practice is going on throughout the country. This is being done to ensure that some people do not vote because they are being deprived of their cards. I believe the Electoral Commission will ensure that those voters who would have lost their cards either after their cards being bought or being lost accidentally, will have the right to vote even if they will not have electors' cards, so long as their names are in the electoral roll.

Mr. Temporary Deputy Speaker, Sir, one rider that we must put to this because we know this could be one reason why the Government could make sure that people voted even if they have no voter's cards, is to ensure that anyone who has no voters card and whose name is in the register, votes but only does so after all the agents have agreed, identified him properly and they have known that he is the right person. This is absolutely necessary because unless we do this, we will deny some voters their rights to vote.

Mr. Temporary Deputy Speaker, Sir, we know that this has been said that: "You can always vote so long as your name is in the register and you have an identity card." However, this information appears not to have been going down to the presiding officers because we hear of some presiding officers refusing voters the right to vote simply because they have no voters' cards. So, we hope that this time round the Electoral Commission will ensure that the information and regulations we are going to make today are clearly understood by all the presiding officers. This is very important because we know some people have been turned away and their chance to vote taken away because they do not have the voter's card.

Mr. Temporary Deputy Speaker, Sir, finally, I have a very serious matter that I want to raise here. There has been an unusual movement of refugees from Kakuma and Dadaab camps. Word is going round that already some refugees have been registered to vote in the forthcoming elections. I say this because I live in an area which has been a transit point for refugees being transported from Dadaab. They spend nights at Mwingi and then they are brought to Nairobi. We understand that these refugees are coming to Nairobi, getting identity cards in some places and then they are being registered as voters. I hope I am wrong.

Mr. Temporary Deputy Speaker, Sir, I would like to challenge the Commission through you to confirm or deny this very serious allegation that already refugees have been registered as voters for the sole purpose of ensuring that the Government side wins in the coming elections. I said: "I hope I am wrong", but I am told this is happening and if not, may the Government take the earliest opportunity to tell us why these unusual movements of refugees in lorries and buses from Kakuma and Dadaab are taking place. May I also challenge the United Nations Commissioner for Refugees to tell us why these refugees are being moved in their thousands.

Mr. Keynan: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. retired former provincial commissioner to cast aspersions on the residents of North Eastern Province while he knows very well that there is a distinction between a refugee and a Kenyan? Could he substantiate his remarks because that is an insult?

Mr. Musila: Mr. Temporary Deputy Speaker, Sir, throughout my contribution, I never talked about North Eastern Province. The refugees in Dadaab are not from North Eastern Province. So, you can excuse the hon. Member's ignorance.

Mr. Keynan: On a point of order, Mr. Temporary Deputy Speaker, Sir. If I got it right, and I understand English, could hon. Musila--

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Keynan! Keep quiet, Mr. Keynan! Proceed, Mr. Musila!

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

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Keynan! I ruled you out of order. I listened to hon. Musila very carefully and he did not cast any aspersions on any person or people from the North Eastern Province. I was listening.

Mr. Musila: Thank you, Mr Temporary Deputy Speaker, Sir. Hon. Keynan is a good friend and I do not understand why he is trying to interrupt my contribution.

Mr. M.A. Galgalo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Since we have not heard of refugees being registered as voters anywhere, could the hon. Member substantiate his remarks that refugees have been registered as voters and in which polling stations?

Mr. Musila: Mr. Temporary Deputy Speaker, Sir, I asked the Attorney-General to confirm or deny. What is wrong with this gentleman? I asked the Attorney-General through the Chair to confirm or deny. So, how can I be in a position to know? In any case, in what capacity is hon. M.A. Galgalo challenging me since he is not a Minister or the Attorney-General?

Mr. Temporary Deputy Speaker, Sir, I apologise for raising my voice. Actually I was ending my contribution were it not for hon. Keynan interfering. I would like to once again challenge the United Nations High Commissioner for Refugees under whose jurisdiction these refugees I am referring to fall, to confirm or deny and tell us why there has been this unusual movement of refugees. I also challenge the Attorney-General to confirm or deny that refugees are not being registered as voters in order to vote for KANU. I will be very happy if I get either a confirmation or a denial.

With these remarks, I beg to support.

Mr. Murungi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Motion. First of all, let me say that I support this Motion; that is, the Draft National Assembly and Presidential Elections Regulations (Registration of Electors), and the Presidential and Parliamentary Elections (Amendment) Regulations, which have been prepared by the Electoral Commission of Kenya (ECK) and the Office of the Attorney-General. I think that they are going to enhance good electoral governance in this country. Many Kenyans know that elections in this country is a game of chance, that even if you win, you are not sure whether you are going to be declared the winner. We think that these rules, especially counting of the votes at the polling stations, is going to help reduce the uncertainty that accompanies the electoral process after voting.

Mr. Temporary Deputy Speaker, Sir, coming specifically to the rules; the amendments which have just been distributed to the House, on Regulation 9, we are not satisfied with the new Paragraph 2A which reads:

"Notwithstanding Paragraph 2E, if two nomination papers are presented in which the same political party appears to have nominated different candidates, a returning officer may investigate the matter and determine which nomination paper to hold invalid."

We think it is dangerous for a returning officer to be left to make this momentous political decision. We would like the rules to be amended to read that, "in such a situation, the returning officer shall require the political party to determine which nomination paper is valid". So, if--

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform my learned friend that, on that particular clause, we have just agreed on the text. We shall be providing the exact text of what should come there.

Mr. Murungi: I wish to thank the Attorney-General for that information. But what we are saying is that the decision should rest with the political party and not the returning officer as to which nomination paper is valid.

Mr. Temporary Deputy Speaker, Sir, I would like to move on to Rule No.19B which relates to the interruption of the nomination process. On page 6, Rule No.19B says:

"Where the proceedings for or in connection with the nomination in a constituency are interrupted or obstructed by riots, open violence, floods or other natural catastrophes, the proceedings... a repeat of the nomination can be done."

We feel that these categories are restricted because in the past, we have seen cases where candidates have been prevented from presenting their nomination papers, first, through open violence as stated in the rules. But there is another category where a candidate can be prevented from presenting his or her nomination papers through fraud or

trickery. I have a case in mind where one of the former Members of Parliament could not present his nomination papers because his identity card and the voter's card were stolen from him the night before in a lodging where he went to sleep. His opponents had organised a game of trickery so that the man was made so drunk that these documents were removed from him and he had no papers to present the following day. There was no time for him to get certified copies. So, I would like the rules to take into account such an exception and permit a person like that who has a genuine case to present his nomination papers even if the days for presenting nomination papers are over. So, in addition to open violence, floods and others, I would like to include "trickery" or "fraud".

Mr. Temporary Deputy Speaker, Sir, with regard to Regulation No.24, this is the rule which tries to fix a radius determining the jurisdiction of the presiding officer or a police officer. It states:

"This shall not be limited to areas immediately covering the polling station, but shall also encompass a radius of 400 metres from the centre of the polling station."

This enlarged area is very good because, when we were in the Tigania West by-election, we found people seated under trees immediately outside the polling station and dishing out Kshs20 to Kshs50 to the people who were coming to vote and telling them the candidate who they should vote for. So, the election offences were being committed within the sight of the presiding officers and the police officers. But when we talked to the police officers and the presiding officers, they told us that their jurisdiction ended where the rope was. I think this is a good rule because it covers a broad area. But what is going to happen now is that these same illegalities will be committed 500 metres from the centre of the polling station. People will be sitting under trees a bit further from the polling station and distributing money and bribing voters and the police officers will be saying that is beyond their jurisdiction because it is more than 400 metres away. Whereas the presiding officer might not be able to move from the polling station, we should not limit the jurisdiction of the police officers. The police officers should be able to handle electoral crimes even if they happen beyond the 400 metres radius.

Mr. Temporary Deputy Speaker, Sir, I would suggest to the Attorney-General to consider removing police officers from polling stations. Let us just have presiding officers, and then the police officers should have jurisdiction to deal with events which happen in any place within the constituency. Let us not limit it to 400 metres.

Mr. Temporary Deputy Speaker, Sir, with regard to Regulation 29 on page 8, we are very happy that voting procedures have now been simplified; that a person can now vote by placing a cross, a tick, a dot, or even write the initials or any other mark to your preferred candidate. During the last elections, some of the voters who wrote my name on the ballot papers for avoidance of doubt got those ballot papers declared invalid. So, if the voters were now to write the name of the candidate under these new rules, those ballot papers will not be declared invalid.

Although the voting is by secret ballot, what is secret is the choice of the candidate---

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, there is so much excitement in the House. Could we have some order?

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! The hon. Member is asking you to lend him your ears. If you are consulting, please, consult in lower tones so that he can make his contribution.

Mr. Murungi: Thank you, Mr. Temporary Deputy Speaker, Sir. We are also very happy that the meaning of secret ballot has now been properly explained by these rules. What this means now is that, what is secret, is the choice or the marking of the ballot paper in favour of the candidate of your choice. But the putting of the ballot paper in the box is not a secret affair. The rules now say, that whereas you mark the ballot paper in secret, the ballot paper is going to be inserted in the box in public, in the presence of the presiding officer and the agent. What this means is that, those old tricks that we used to have of somebody carrying pre-marked ballot papers in gumboots and overcoats and staffing ten ballot papers at the same time in the same slot will be eliminated, because the agents will be able to see how many ballot papers you are inserting in the box. We are very happy with that rule. That offence of ballot stuffing is going to be reduced considerably.

Mr. Temporary Deputy Speaker, Sir, on page 13, there is a clause which deals with the counting at polling stations. I know there has been a lot of concern by many people in this country, who have been saying that we should not disturb the method of counting that we have been having because counting at the polling stations is going to open a Pandora's box and new methods of rigging elections. I have participated in elections in other countries as an observer; I was a Commonwealth observer in Sierra Leone in 1996. I was also one of the Commonwealth observer team members in South Africa in 1999, during the election of Thabo Mbeki, and in both of those countries, votes were counted at the polling stations and there were no problems. It was a very easy process, because we were counting not more than 1,000 votes. What happened was that, immediately after the voting is finished, the presiding officers become Counting Officers, and then they count each of the ballot papers one by one, and show the ballot papers to the public around there. After the count, all the votes are announced to the audience immediately at the polling station so that they know

which candidate has won in that polling station. Then declarations as to who has won are signed by the presiding officers and the clerks. What is transported to a centralised counting place are not the ballot boxes, but the forms. This is what these rules are going to do. We are very happy that the Electoral Commission has been able to learn from experience elsewhere. It is very difficult to rig that kind of election, because by the time the counting closes, the members will know who won in that particular polling station, and *wananchi* themselves can compile the results. They do not have to wait for a returning officer to compile the results.

The only dangerous area I see, and I would like the Attorney-General to listen, is that the voting has to end by 5.00 p.m., because there is nothing more dangerous in a remote area, somewhere for us to count the ballot papers at night. Even two or three youths can come and throw stones there, and the entire process is interrupted. We have to be very careful about this. For this year's election, let the polling stations open at 6.00 a.m., as usual, but they must close early. All the voting has to be finished by 5.00 a.m., and the counting starts. We expect all the counting to end before it is dark, by 6.00 p.m. That way, we can eliminate possibilities of rigging this election through violence, instability or cheating. I would strongly recommend to the Attorney-General, that when we come to the Committee Stage, this rule should be amended so that the time of the counting begins at 5.00 p.m.

Mr. Temporary Deputy Speaker, Sir, I would also like to comment on Rule No.7, on page 14. I find this rule dangerous. It reads that:-

"The absence of a candidate or an agent at the signing of a declaration form or the announcement of results under paragraph (ii) shall not in itself invalidate the results announced".

What we are saying here is that, at the polling station the candidate was not there, the agent was not there and no announcement was made at the polling station, and then we are told to say that those elections are valid. It is very dangerous to accept this rule to be in the books, because it is going to be the strategy to be used to rig the elections. I would advocate that we delete Rule No.7 in total, because Rule No.6 takes care of the situation where there is a candidate who has refused to sign the declaration or where there is an agent who has refused to sign. We must make it mandatory for the result to be announced at the polling station. Otherwise, if the results are not announced, then we should declare that there was no counting at that station, and recounting should be done. So, I would go for deleting Rule No.7.

Mr. Temporary Deputy Speaker, Sir, regarding the counting of the presidential votes, this is a very tricky situation because the presidential votes have never really been counted in this country, all the way since 1963. What has been happening is that, there is a returning officer somewhere in Garissa or Marsabit who makes a telephone call to Mr. Kivuitu and his group who are seated at KICC and he says: This is the returning officer this is and that constituency, and the presidential votes are so many, and our agents are recording what the returning officer has said. What we count at KICC are telephone calls. These votes have never actually been counted. The ballot papers for the presidential elections have never been counted by anybody. The closest we came to it is when we filed a petition against President Moi in the last elections, and we asked for a recount of the votes, but the High Court found a way of making it impossible for us to have that recount. So, this is the first time we are going to actually count the presidential votes. After we count at the constituency level, and the agents sign, all those declarations will be brought to the Electoral Commission headquarters, and the presidential candidates' agents will be there, so that when the tallies come, they will be able to say how many votes were, for example, from Kisumu and Mombasa, and we shall be able to cross-check.

*(The Attorney-General (Mr. Wako)
moved to the Civil Service Bench)*

Mr. Temporary Deputy Speaker, Sir, these rules are not clear to me, and I would like the Attorney-General to be orderly, because we are making very important contributions, and the man is just walking around. I would like to repeat this for the benefit of the Attorney-General: That we want the presidential votes to be counted, because they have never been counted in this country. What we would like him to confirm in these rules, is that, after the votes have been counted and tallied at the constituency counting stations, all those declarations are physically transported to the Electoral Commission offices, and that the Electoral Commission sits with the agents of all the candidates so that they see, for example, that this is a declaration from South Imenti or Kisumu rural, and then they compile and tie together all those votes, and that no announcement is made until all those tallies have come in. The rule should be very clear about that.

Mr. Temporary Deputy Speaker, Sir, on page 18, Form 16(a), they say the results of the presidential election at the constituency level are provisional and are to be confirmed by the Electoral Commission. There is really nothing wrong with that, but the Electoral Commission should not be given a chance to tamper with the presidential votes which have already been counted at the constituency level. Their job should be to just add up those votes and not to

change them. I think we should look at this wording in Form 16(a) which says that the results of the presidential election in the constituency should be provisional. They are not provisional. The Electoral Commission should not go beyond the counting which has been done at the constituency level.

On page 19, Rule 28(c) provides that the Electoral Commission may declare a candidate elected as President before all the constituencies have declared their results if in its opinion the results that have not been received will not make a difference to the winner on the basis of Section 5 of the Constitution. The question I would like to put to the Electoral Commission is this: Why the rush? Votes in my constituency were counted for four days. Why can you not wait until all the results from the various constituencies are in before we declare any person a winner? I would recommend that we delete regulation 40(c) on page 19 and say that all the results from all the constituencies will be in and counted before the Electoral Commission declares any person as winner of the election. This opens another loophole because it says; "in the opinion of the Commission." The Commission can form this opinion after counting votes from only half of the constituencies. So, we should not leave this loophole. Let us have all the results in before the candidate is declared to have won.

Lastly, we should look at the entire electoral environment within which these rules are being implemented, and especially who will implement them. In this country, we have problems at the Electoral Commission. Every time before the election, there is a change in the Electoral Commission. We introduce new commissioners who know nothing about elections. Right now, as we speak, the term of ten commissioners currently in office will expire at the end of this month. So, it will be a very dangerous situation if we appoint ten new commissioners just a few days before the election because the elections will have come and passed before they even know what is happening. We have also seen a situation where the Chairman of the Electoral Commission is changed one or two months before the elections. This is what happened to my friend Kivuitu, who was appointed close to election time, in 1997.

We are pleading with the President this time that we do not have any change at the Electoral Commission. Let the commissioners who are there take us through this election. They can be changed afterwards, but we need them for this election. We know that Mr. Kivuitu's term is about to come to an end. He does not particularly like me, but neither do I. We are asking that Mr. Kivuitu be around to continue running this election. Let him take us through this election because it is better the devil we know. Changing the chairman or the commissioners of the Electoral Commission now will be tantamount to rigging the elections. We are pleading with the President to extend Mr. Kivuitu's term so that he can be there when these elections are held. We are also asking him to extend the commissioners' terms. Let no commissioner, whether from KANU or the Opposition, be replaced before this general election.

We expect very high standards from the commissioners. We are not giving them a list to go and rig us out. We hope that the commissioners will use the knowledge gained in the seminars they have gone through and their experience in observing elections in other countries, to ensure that we have a very good election this particular time.

Mr. Parpai: On a point of information, Mr. Temporary Deputy Speaker, Sir. I wanted to inform Mr. Murungi that the chairman and the commissioners of the Commission whose terms of service he wants the President to extend, were the ones involved in extending the election date by one day to enable them rig the current Government in. What assurance do we have that this time round they will not extend the election date by 48 hours?

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, I am sure the chairman of the Commission is hearing the concerns of hon. Members. We do not want the election date to be extended. If we decide that the election will be held on a certain date, do not tell us that the planes went to Eldoret and others to Machakos and took the ballot papers to the wrong place. We want the election to be held within the date and time that this House will have set. We also know that the decision to extend the election day was not actually made by the Commission. We understand that some important telephone calls were made, but we do not know whether that is true or not. We want the Electoral Commission to be in control of the election.

We also want the Electoral Commission to enforce the electoral rules seriously. This House has passed a law which says that the KBC should give equal coverage to various political opinion holders and candidates. The KBC has become a mouthpiece of President Moi and his project. We have been restraining our people from holding demonstrations against the KBC staff because we know the decisions are not being made there. We were very happy when we heard the Electoral Commission say the other day that they would take the KBC to court for breaching the KBC Act. We would like the Electoral Commission not to merely talk, but to be action-oriented. If they say they are taking the KBC to court, why have they not done so already? We want a level playing field during this election.

So far, I would like to thank the police because in the past, by now, there would a lot of tear gas against Rainbow or NAK rallies on instructions from a politician somewhere who has never been a policeman for even one day. We would like to encourage the police to maintain the neutrality that we have seen them demonstrate in the rallies so far, until the end of the election. The police are poorly paid and we have said that we will look into their salaries and buy them better uniforms. So, they should assist the process that will also benefit them, among other Kenyans. We have also said that our courts should be more serious especially in handling election petitions.

Mr. Temporary Deputy Speaker, Sir, there is no point of filing an election petition and then, it is not heard for four years, so that an illegal Member of Parliament earns salaries while he or she is illegally representing the people, and the truly elected people's representative does not see the doors of this House. We had said that election petitions should all be disposed of within 90 days. That was sabotaged somewhere along the line and we hope that law is going to be obeyed at this particular time; that, election petitions are going to be given priority.

Mr. Temporary Deputy Speaker, Sir, finally, we in National Alliance of Kenya (NAK) have said that we want voting in Kenya to be made compulsory by law. If you go to polling stations around Nairobi, you will find a long queue of people outside the polling stations. If you ask them: "Why are you not getting inside?" They say they are waiting for *kitu kidogo na wanangoja kuchotewa*, so that they can go in and vote. We would like voting to be compulsory, so that it is the duty of every adult Kenyan to take himself or herself to the polling station. As to the decisions which they make when they are there, it is their own business. But if voting is made compulsory, it is going to cut off all that nonsense of voters waiting to be bought, so that they can go and exercise their democratic rights. We would like the Electoral Commission of Kenya (ECK)---

I was part of those who drafted the changes in the Constitution in 1997 and gave the ECK the duty to conduct voter education in this country. So far, we have not seen much voter education being carried out by the ECK. What do we mean by voter education? The voter education should be able to explain to the *mwananchi* that he is not doing a favour to the candidate by voting for the candidate; that the *mwananchi* is exercising his fundamental constitutional right, that he is choosing a Government which will determine the future for himself, his family and his children. People should not be bribed to go and determine their own future. People should not be bribed to put a good governance in place. So, we would like the ECK to educate Kenyans on the meaning of the right to vote. In other countries, people have died fighting for those rights. Even in a military dictatorship like Nigeria and other countries where people have not voted for many years, they know what those rights mean because they have not been given the opportunity to exercise them. So, it is very painful to see the *wananchi* not voting because they have not been given Kshs20. We want the law to make it compulsory. That is the law in Brazil. In Brazil, if you do not go to vote, it is a criminal offence and you can be jailed. So, we also want people who are not exercising that fundamental right to vote to go to jail in Kenya.

With those few remarks, I beg to support this Motion.

Mrs. Sinyo: Mr. Temporary Deputy Speaker, Sir, I rise to add my voice to those who have supported this Motion. I would want it recorded that I begin from a very disadvantaged premise. When you, Mr. Temporary Deputy Speaker, Sir, announced here that you are bringing in a Supplementary Order Paper from the Attorney-General, I wondered whether that does not amount to discrimination when you have not considered one of your own hon. Members, not having the privilege to peruse through the Supplementary Order Paper in the House. So, coupled with the disadvantage that I have been out of the country when the Motion was being debated last week, I really just stand to raise one pertinent point.

The regulations for elections are one thing that each and every citizen of Kenya values invaluablely. I want the Attorney-General, as a human rights lawyer, to remember that through the years that he inaugurated the task force for the disabled, he has been a friend of the disabled. I am sure it is through the lobbying of the people with disabilities, the Commission and the Attorney-General, that a rule which has been referred to here, over which I am talking from hearsay, pertaining to the change of regulation to mark signs or writings on the voter's card, being a new regulation in this year's elections, I want to say clearly that, that has been a result--- That is because for the years that we have had our Independence, people with disabilities have not been able to participate fairly in any elections. This year round, we went out of our way to lobby and make sure that we get a chance. That is because the only human right that one can exercise voluntarily is to vote. I want to say that all years round, those who have been ruling this country, have ruled minus the votes of the disabled people. They have not voted for the one they wanted to rule them. So, with this new change in the rules, I want to assure the House that we are going to have room where people with disabilities; even those without hands, would make marks. Those who do not have assistants will be able to improvise a way in their voter's card in advance to enable them to participate.

Pertaining to the rule that in the booth, only an individual who is at the voting station should be there to assist the voters, I want to declare in the House that emphasis has been made here that it is the illiterate who are being helped in the booths. But it has to be very clear that many of the voters of my calibre, who are deaf and blind must exercise their legal right of having a person of their choice. That rule should remain as it is. We should not go to the old provision, whereby we allowed the presiding officer and political agents to come in to help you in the booth. It is very important, since voting is a secret matter, that each and every individual who needs assistance out of will, should use those at the site. But if you go to the polling station with your helper, irrespective of whom they should be, you should be allowed. So, I want to appeal to the Attorney-General, out of his standing and appreciation, as to how the amendments have been brought to the House, to give the 4 million people with disabilities a chance to vote. The rule

that a helper should be a person of your own choice must remain. It does not have to be the presiding officers.

Mr. Temporary Deputy Speaker, Sir, the forthcoming general elections are unique, and as witnessed in the past weeks and days, we know people are craving to have one thing they have yearned for, for the last 40 years; to vote fairly, justly and for the one they want to lead and rule them. So, as I wind up, I want to support the Motion with the understanding that my colleagues here have highlighted the issues that I would have wanted to highlight. If I had got this Supplementary Order Paper in advance---

I want again to reiterate that I have experienced discrimination of the highest cadre in this House for the years that I have been here, when the Chair takes advantage of such crucial issues like elections and brings a Supplementary Order Paper, depriving me of the opportunity to be able to read in advance and contribute effectively.

With those few remarks, I support the Motion.

The Assistant Minister, Office of the President (Dr. Anangwe): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my contribution. I would like to say that these regulations are the ground rules for the forthcoming electoral contest. It is one thing to emphasize that the rules must be fair, but it is another when it comes to implementation. Let us always not assume that because the rules have been formulated and they are fair, when they reach the implementation stage, they will be effective or will be implemented as intended.

Indeed, we are talking of a situation where the Electoral Commission of Kenya (ECK) is overstretched in terms of personnel and resources, and many times it has got to rely on temporary staff recruited purposely for that particular exercise. In that particular case, the ECK has not developed an organisation with civil servants who have been inducted, trained and cultured in the organisation of elections. These officials are recruited casually and on a temporary basis. In that regard, no matter what the ECK may wish to achieve, it has to depend on staff whose loyalty, working methods and orientation, it does not know. The Commission has to interact with them within a short spell of time through training. That does not suffice. To create a corp of officers who are committed and loyal to whatever organisation or ethos you belong to, you need time.

So, sometimes, we blame the ECK for not having performed, or for certain flaws having been committed out there, but we should also understand that they rely on staff whom they have very limited control over in terms of loyalty, commitment and induction to the culture of voting. Indeed, that is the case. Many of the flaws which have been committed in the past elections, of course, the ECK has to take responsibility. But they were being perpetrated by officials in the field arising out of very many circumstances. The first circumstance is that they tend to be biased. When the officials are being recruited, the ECK may not be aware of this. It has been known in the past that certain categories of public officials have taken a stand as an entity against, for example, one party as opposed to another. When they get an opportunity to be recruited, indeed, that is the time they vent their anger during the voting exercise and perpetrate certain malpractices.

In addition, during the recruitment exercise of some of these officials, the ECK may give guidelines from the headquarters which should be followed, but sometimes we get complaints as hon. Members of Parliament. For instance, during recruitment of presiding officers, recommendation of returning officers and appointment of clerks, we get complaints that district coordinators ask for kickbacks and bribes in order for these cadre of officers to be recruited. In the process, you get all sorts of people who are not committed to a free and fair election process. This has to be addressed with all sorts of measures being put in place. I would like to propose that in order to avoid this bias and corrupt processes of recruiting presiding officers, clerks and returning officers--- I know that, that particular responsibility has been bestowed on the district co-ordinator. Each day, we have some lessons to learn and let us improve on this. Instead of bestowing this particular responsibility on the district co-ordinator of the ECK, these officers should be encouraged to constitute panels to recruit presiding officers and clerks so that the recruitment exercise is not left on the whims of the individual district co-ordinator. If there is a panel composed of technical officers or whichever officers, at least, the district co-ordinator will be hard-put to recruit people in a very corrupt manner. Many times these complaints reach the hon. Members of Parliament. The constituents tell the MPs that they applied to be recruited as presiding officers or clerks, but the district co-ordinator asked for something which they did not have. They ask *Mheshimiwa* to give them something so that they can give the district co-ordinator. Such kind of situations can be obviated if there is a recruitment panel in place. I would like to propose that in the panels which will recruit presiding officers, returning officers and the clerks, it is fair that the candidates are represented in order for them to see what is happening. We are not saying that they should determine. They should be able to say that this man is an activist and, therefore, he should not be recruited. He is obviously for so-and-so. If he is given the opportunity, we know, he will not perform the job which he is required to do. That panel would, indeed, help to moderate and do away with situations where the wrong presiding officers, clerks and returning officers would be appointed.

Given that sometimes these biases have got to do with the locality from which certain cadres of staff come from, I am sure that it is practicable for the ECK to consider having a pool of officers, be they presiding officers, clerks

or returning officers, on regional basis. From this pool, let them be free to redeploy them away from places where they were registered as voters, where they were born or from those constituencies in which they have an interest. This would ensure that they are fair to the voters and the candidates over whom they are superintending the election process. In other words, if we are going to create a pool of clerks and presiding officers, all you could do is to recruit some officers, for instance, from Shinyalu, Malava, Butere and Matungu. Where these officers will be deployed should be a secret between the ECK and the district co-ordinators so that these particular clerks or presiding officers do not necessarily work in the constituencies where they come from. When they are deployed in a constituency in which they have no interest, it becomes a lot easier for them to operate fairly and without bias.

Mr. Temporary Deputy Speaker, Sir, the second issue which I would like to raise arises from the experience of 1997. This is in connection with the ballot papers. I saw some of the spoiled ballot papers and the marks which had been made on them. This arose out of confusion on the part of the voters. Indeed, in 1997, the ballot paper was very intimidating in the sense that in an attempt to ensure that it was security proof, the design of that particular ballot paper had many lines running vertically and others running horizontally. From my experience, I witnessed many ballot papers being spoiled because voters did not know the right box to put the relevant mark. I would like to propose that the ballot paper be simplified. Indeed, the security element should be catered for, but let it be a plain paper, and it is obvious where the mark should be put. This was not the case in the 1997 ballot papers. The 1997 ballot papers had many lines. One could see that in an attempt to decipher which was the right box to put the "X" mark, the voters ended up putting the mark in the wrong places and many returning officers rejected them because they were outside the right box. So, let the ballot paper be simplified and possibly be in one colour. You could still ensure that there is security without complicating the ballot paper. The 1997 ballot paper looked like a bank note and many voters got confused and in the process, they made mistakes.

A provision has been made in these regulations that the presiding officer and the policemen have jurisdiction in a radius of 400 meters, but when it comes to implementation, the presiding officer will be highly hampered.

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

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

In the 1997 General Elections, there were more polling stations in my constituency than the number of police officers manning them. The experience we had during that General Elections showed that the police force spread itself thinly; one or two police officers in a polling station. Given that kind of situation, there was a tendency for police officers to go and sit within the polling station with the Presiding Officer. The area outside the building was like a jungle and, indeed, many malpractices were perpetrated. Therefore, if one is going to recommend and increase the radius of responsibility for the Presiding Officer, we should consider the provision of more personnel. I suggest that, if need be, the Electoral Commission of Kenya (ECK) may as well consider recruiting temporary guards whom it can pay directly, of course, having vetted, trained and inducted them appropriately on what needs to be done, so that they can enforce this particular provision to control the area within a radius of 400 metres.

Mr. Temporary Deputy Speaker, Sir, there is another provision which says that counting should be done at the polling stations. This provision is okay because it will make transportation of ballot papers to a central place an easy solution, and the counting can take a shorter time. From the experience we have had in the past, we all know that sometimes it can take up to four days counting ballot papers. From my personal experience, I had to sit in the counting hall without going out. This is not a predicament of one person, but many others. This was done in order to ensure that counting is done effectively. During that particular period, there is always a lot of anxiety within the constituency and outside the counting hall. I hope this particular provision will make it possible for ballot papers to be counted easily and quickly so that results could be released within a short period of time.

Mr. Temporary Deputy Speaker, Sir, it has been provided that the Presiding Officer may make certain inquiries when a voter comes and he is being assisted. The requirement is that, that particular assistance fulfils the provision of the law. That is fine. But, if we are going to make these inquiries for each case of a person being assisted, the polling station may as well be crowded. So, my suggestion would be that, probably, it would suffice when a voter comes with somebody to assist him or her. These many queries should be cut down so that the process of voting can flow smoothly and quickly.

Regulation 22(3) prescribes that a candidate or his agents shall have a right to dispute the inclusion in the counting of ballot papers or object the rejection of a ballot paper. The issue of whether to accept or reject a ballot paper or a vote by a Presiding Officer is highly contentious, particularly where competition is very close and tight. A

candidate and his agents will try to maximize as possible, by arguing out, as he can possibly do, to have as many ballot papers cast in his favour. In order to avoid a situation where there is so much bickering which can sometimes explode into violence within the counting hall, or even within the polling station, because of lack of agreement on what constitutes a spoiled ballot paper. May I suggest that, given the experience we have had in the kind of irregularities and invalidity of ballot papers, let us prescribe upfront; let the ECK say what constitutes a spoiled paper so that we do not leave it to the discretion of the Presiding Officer to say "this is a valid vote and this other one is not", particularly when the Presiding Officer may have a tendency to be biased.

The other provision that I would have reservations about is Regulation 24 which restricts the recount of votes to not more than twice. Now, this is a bit complicated! Supposing the first count goes in favour of one candidate and the second recount goes to the other one; and we are saying a recount should be done not more than twice. What about if there are more than four or five candidates, and in each recount the result tends to change so much so that who won the last recount is different from the one who won in the second recount and from the one who won in the third recount? Let us be open minded and not fore close our minds. In so far as and in as much as the candidates would wish a recount to be made to their satisfaction, let us not fore-close a room for more recounts. In any case, from our experience, when the recounts are conducted, it reaches a situation where candidates tend to agree that the recount reflects the reality as it were.

Mr. Temporary Deputy Speaker, Sir, Regulation 27 relates to what the Returning Officer may consider when he is making a tally. During this particular tally, it is stated here that he will begin to tally the results as he receives them from polling stations. Thereafter, he may wish to reconsider to examine the ballot papers marked "rejected". If he makes a tally prior to examining the rejected ballot papers and the tally comes out that, candidate "A" got so many votes and candidate "B" got so many votes, so, the obvious winner will be one of the candidates. Now, he begins to examine the rejected ballot papers from the polling stations, he will have in his mind the results of the tally and, therefore, he will tend to be biased, particularly if he knows that by working on the rejected ballot papers, he may end up influencing the ultimate result in favour of a candidate of his preference. So, he begins to re-examine the rejected ballot papers in a biased manner. He would say in his mind, "this one is okay" - because it is a vote for candidate "X" - "this one is wrong", and in the process, he may end up altering the results. In this case, my suggestion would be that, the examination and acceptance or rejection of the rejected ballot papers by the Returning Officer should be done before the tallying exercise begins in order to avoid bias, so that when he is making a decision of the rejected ballot papers from the polling station, he does not have the result nor the tally in mind. He does not have any idea on who is going to win in his mind, he just makes a decision as fairly as he could possibly do. Finally, on the issue of a mark, I am glad that, at least, we are being told the mark on the ballot paper need not be an "X" or a cross; it can be any other mark.

During the 1992 General Elections, many votes were rejected because voters had put different marks other than the cross. Some had signed, while others had put all sorts of marks. I am glad this section says so long as it is an indicative mark showing the preference of the voter, it will be accepted. May I also say that it need not be one mark. Sometimes, voters in order to re-emphasize that they are voting for So-and-so vehemently, may put one, two or three marks. Let that not be construed to mean spoiled ballot papers. It happened during 1997 General Election. There were many ballot boxes; some big, while others were small. There was a tendency for a candidate to ensure that one of the boxes carried his marks. So, the voters marked the right box not just once, but even thrice. The Returning Officer rejected those ballot papers on those grounds.

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

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I beg to support the Presidential and Parliamentary Elections (Amendment) Regulations before us. I think it is extremely important that the Electoral Commission of Kenya (ECK) proceeds with rules and regulations that are transparent and clear so that the ECK can manage the elections competently and well. In the same vein, I would like to support my friend and colleague, Mr. Murungi, for appealing for the present personnel in the ECK to continue with their work simply because if we change them at this hour, it will be very difficult to get people who know the ropes.

Mr. Temporary Deputy Speaker, Sir, I remember in 1997, after the IPPG reforms, the political parties appointed the new Commissioners. This was done in a very noble spirit. It was the first time political parties were allowed to have a say in the appointment of Commissioners to ECK. This was a very important land mark in our political history. But I remember precisely, because the Commissioners were new, they hardly knew the ropes of what to do at the ECK, quite often many things which could have been corrected were not corrected. Of course, the Commissioners had the powers, but they could not exercise them as a result of inexperience.

In particular, I remember that officials of the ECK in Kisumu Rural Constituency were changed a week or so before the election. All returning and presiding officers who had been there were suddenly transferred elsewhere and new ones brought to the constituency. These new officials had hardly any time to be trained and to get acquainted with the constituency. I was told from very reliable sources that the main reason for doing that was to get *KANU-damu* as

election officials in Kisumu Rural Constituency for purposes of aiding and abetting a rigging scheme. I remember meeting in various polling stations, people who I knew very well were incompetent and also, as Amin used to say, partisan to the KANU candidate and to the KANU world view. They were manning the polling stations and running the affairs of the ECK for the purposes of serving the incumbent regime and candidates sponsored by the incumbent regime. I remember being told that they were then taken to Kisumu a week before election and lectured by the Provincial Commissioner on what they were supposed to do.

Mr. Temporary Deputy Speaker, Sir, these are some of the practices we want to eliminate from the ECK this coming general election. Indeed, in South Africa, the Electoral Commission is called the Independent Electoral Commission (IEC). The word "independent" is important. We have been emphasising the word "independent" Electoral Commission because it has to be independent of all contesting forces. It must be independent of the Opposition, the ruling party and foreign masters. So, that "independence" must be seen not just in personnel and their integrity, but also in the manner in which the elections are run. It must be seen in the way the ECK officials exercise integrity, independence and a good sense of judgement on the ground. That is extremely important. We, in Parliament, are supporting these rules and regulations precisely because we expect this "independence" to be exercised prior to and during the election time. There is nothing more disappointing to political parties and candidates than when they know the polling stations are manned by people who will not listen to them, despite the existence of strict laws and procedures. When you say, from a point of knowledge, that something is being done that needs the attention of the Independent Electoral Commission, but nothing is done, it is very disappointing. So, it is extremely important to understand this.

Secondly, during the 1997 General Election, voting was carried on up to the second day. As far as we can remember, this was illegally and unconstitutionally done. Indeed, the whole purpose of counting votes at the polling stations is to ensure that all voting is done on the polling day without illegal extensions. I would like to point out to the ECK that there is no need to specify in law when voting will start when, in the final analysis, ballot boxes arrive at polling stations well after voting was supposed to begin. This does not only introduce a lot of anxiety among voters, but it breaks the law. We are now making these rules and regulations way ahead of the election day. There is absolutely no reason, in this day and age, for ballot boxes, the election officials, materials for voting and all paraphernalia which goes with the voting exercise to arrive at a polling station after polling is supposed to have already started. That is an election offence. The ECK will not offer us any explanation whatsoever when we pass these rules and regulations well ahead of time. We are even saying that they should retain their jobs because they have experience so that they can conduct elections fairly and properly. Finally, excuses invoking rains and weather are tantamount to admitting that the ECK is composed of witch-doctors rather than Commissioners. The Commissioners know it rains in Kenya. They also know that our roads are bad and vehicles can break down. These are matters which they should take care of ahead of time. Political parties and *wananchi* of Kenya will not excuse the ECK arriving at the polling station late. There is nothing in the electoral exercise that takes account of the weather, witch-doctors, or prayer. Therefore, no amount of excuses will convince Kenyans. We want the ECK to take their responsibility seriously and understand that election takes place on one day, in five years, and that day is very important. It is like the coming of Jesus Christ. If Commissioners have read the Bible, they must be part of those five wise women and not part of those five foolish girls who were never ready when Christ arrived.

Ms. Karua: Those were men!

Prof. Anyang'-Nyong'o: Ms. Karua says they were men! The Commissioners must be part of--

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker. Ms. Karua says they were men. I do not agree with her. But is the hon. Member in order to refer to "old women" as "girls" when the Bible says they were "maidens"?

The Temporary Deputy Speaker (Mr. Musila): Mr. Attorney-General, is that a point of order or information?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, any other hon. Member could be very knowledgeable on the Bible. So, mine was a point of order; he should have quoted the Bible correctly.

The Temporary Deputy Speaker (Mr. Musila): Professor, you may continue.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, probably, the Attorney-General still reads a version of the Bible which was written in archaic English. With the publication of the revised edition of the Bible, its previous version is no longer in use. So, I excuse him for not being update in his reading of the Bible since he became the Attorney-General

What is important is to realise that Kenyans have suffered for too long because the Electoral Commission of Kenya (ECK) has not been managing the elections properly. One thing which is extremely important is to ensure that the election day is properly managed. If we say that the elections should begin at 6.00 a.m., the first person to obey that law is the ECK and its agents. If we say that exercise should end at 5.00 p.m., it must end at that time, unless within the

same Act that empowers the ECK there is a clause which provides for unforeseen circumstances. One thing which we are not going to tolerate is the voting exercise not beginning on time, and materials and equipment not being available at polling stations in time, and not being there properly.

It has been extremely exasperating for voters to have ballot papers with the signs of the candidates and the parties not appearing clearly and properly on them. During the last general election, the sign for the Social Democratic Party was the clock or the watch. On the ballot papers, this sign was so tiny that even with my spectacles on, I could hardly say that it was a true representation of the watch or the clock. I would like to advise the ECK that when political parties submit their party symbols to it, they should be subjected to rigorous tests by artists and designers, so as to advise political parties whether or not the symbol chosen can appear clearly without any prejudice to the condition of sight of voters, whether they have cataracts, wear spectacles, have quint eyes, one eye, or they are partially blind.

The ECK must understand that these are the conditions of voters in the rural areas and elsewhere. So, while printing party signs on ballot papers, the ECK must be alive to the conditions of the voters. The fact that a voter is an invalid with one eye, or has a quint eye, or wears spectacles like myself, should not be an excuse for the ECK to print a sign which he cannot recognise. It is, therefore, extremely important that while in the run up to the elections, it is the responsibility of the ECK to give proper advice to political parties on symbols; this should be done professionally, transparently and without any bias whatsoever.

Mr. Temporary Deputy Speaker, Sir, another thing which is important is the expertise of the officials of the ECK manning polling stations. It is important for the ECK to appoint officials who understand the laws and regulations regarding elections, so that in the event that an agent of a political party, or an observer raises an issue, the interpretation of the official of the ECK official is based on law, and not on guesswork or prejudice. In the past, this aspect was not emphasised because the Opposition, and *wananchi* in general, assumed that the officials of the ECK at polling stations were KANU agents. So, whatever the officials said, agents of opposition candidates and *wananchi* opposed them because they believed that the officials were trying to trick them. It is, therefore, important that this mentality of the ECK officials regarding themselves as agents of the ruling party is completely done away with. This mentality should be completely gotten rid of from the officials of the ECK. We want the officials of the ECK - be they returning officers or presiding officers - to be user-friendly persons who know the law about the elections, and who are ready to interpret that law independently and responsibly.

During the last elections in Uganda, voting was carried out in open fields in the villages. Ballot boxes were displayed in the open as everybody watched. So, there was nothing mysterious about the exercise. The ballot boxes were lifted as everybody saw. When the voting started, the process was transparent. We should not put too much mystery in the polling exercise. The reason as to why polling agents insist on the boxes being lifted so as to be seen to be empty is for that exercise to be conducted properly. There is no need of undertaking the exercise inside a room, where only two people are, when the voters, who would also like to confirm that the ballot boxes were empty at the beginning of the exercise, are locked out.

So, in this regard, I suggest that even if we must vote inside a classroom, the ballot boxes must be lifted upside-down outside the classroom, in the full view of the voters, so that the mystery about the ballot boxes can be done away with. We should do away with the tradition of lifting ballot boxes inside the polling rooms, in the presence of a few poll officials and agents. Let us be transparent and user-friendly, and show the voters that there is no mystery about ballot boxes. They should be given a chance to confirm that they are empty before the start of the polls exercise.

Mr. Temporary Deputy Speaker, Sir, quite often, the majority of our voters are women. In the villages, women shoulder a lot of responsibilities. Quite often, they are the ones who arrive first at the polling stations. Let us give the women a chance to vote first. I know that men will complain but, surely, let us be fair. The women have to go back home; they handle a lot of responsibilities for the men. Men can wait up to 1.00 p.m. and vote only for them to go home and find that their wives have not arrived home. So, when their wives arrive home from the polling stations, the men beat them up because they have not made a meal for them. Really, that is being unfair to women. So, if men want to have their meals at 1.00 p.m., they should let the women vote first, so that when the men go home, they can have their meals. This is where I would like the presiding officers to have the discretion of giving priority to women to vote first before men vote, so that the women can go home and do other things. That is my proposal; the aspect is not contained in law. However, from experience, I believe that it would be fairer for women to vote first and go home. The men can vote later. Since we have increased the polling stations, and since the votes are going to be counted at the polling stations, this may not change much in terms of time spent by men at polling stations.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Since we are trying to amend the rules, and Prof. Anyang'-Nyong'o says that women should vote first, and men later, could he propose the changes he would like made to the rules, and say what time of the day men should start voting?

The Temporary Deputy Speaker (Mr. Musila): Mr. Munyasia, that is not a point of order! You merely wanted to make a contribution. So, you are out of order.

Professor, proceed!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I believe that the ECK will know how to handle that aspect. I am sure that this can be done without much ado.

Finally, if the votes are going to be counted at the polling stations, security will be very important. The ruling party, which is now under siege, may be tempted to behave like a dying donkey or horse and introduce an element of insecurity, particularly in remote areas. Parts of my constituency are pretty remote. Let us, ahead of time, ensure that we have security.

Mr. Temporary Deputy Speaker, Sir, I am particularly worried about security, particularly when counting begins in the various polling stations. It could be a complete tragedy if the first time we count votes at polling stations, there are rumours all over the Republic that violence occurred in polling stations, ballot boxes were stolen, some people were beaten up and ballot papers were burnt down. We would have engaged ourselves in an exercise in futility. Let us, very much ahead of time, take care of security and ensure that as we go to the coming general election, particularly during counting of votes, there is proper security and when the votes are counted and are announced at the polling station, the true figures will be the ones that will finally be tallied at the constituency level for the presidential and parliamentary elections.

With those few remarks, I beg to support.

Mr. Angwenyi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to this important Motion, which affects my welfare, the welfare of all hon. Members of this House and the welfare of those who might make it in future to this House. Kenya is a multiparty nation. It has chosen to be a multiparty nation so that it can nurture and promote democracy. Since 1991, we have made stunning improvements in our electoral laws. These improvements have conferred upon the people of Kenya a sense of democracy. In the last few days, I have noticed that a number of Kenyans, especially leaders, have gone astray from the tenets of democracy. Democracy must be seen to be practised in political parties, political alliances and in the election of leaders in this country. As you have noticed, we are running away from practising democracy to nominate and elect our leaders. We are running away even further from where KANU is. I am a KANU hon. Member of Parliament, who is termed a "rebel" because I have always fought for democracy to be practised and be seen to be practised.

In KANU, democracy is practised, but sometimes, it is not seen to be practised because sometimes we nominate our leaders by acclamation. But I was recently shocked when Opposition hon. Members, who are supposed to be progressive and following the tenets of democracy, went into a room and said that they had nominated a presidential candidate for the rest of Kenyans without regard to the norms and the organs of the various parties. I hope we will realise the mistake we are making and practise democracy. Kenyans will not stand by and watch the path of democracy being destroyed. If we destroy democracy in our political parties, it will be difficult for us to practise it in the general election.

If we follow wrong ways in selecting our candidates, it will be difficult for us to have a fair and free general election.

Mr. Temporary Deputy Speaker, Sir, let me now touch on the Electoral Commission of Kenya (ECK). The term of service for most of the Commissioners has expired.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard Mr. Angwenyi criticising the nomination of the Opposition presidential candidate. Would I be in order to ask him to tell the House who nominated Mr. Nyachae as the Peoples Coalition presidential candidate.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, Mr. Nyachae was nominated by FORD(P) delegates on 8th December, 2001 in Limuru. I want to know which organ of any party nominated Mr. Kibaki as the Opposition's presidential candidate. Be that as it may---

Mr. Murungi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Angwenyi, whom we know is a very educated person, to mislead Kenyans that you cannot practise democracy within a room? This Parliament operates in a room. Is he saying that there is no democracy here?

The Temporary Deputy Speaker (Mr. Musila): Order, Mr. Angwenyi! This House will not be turned into a place to debate nomination rules. We are here debating the Motion which is very clear. Therefore, you must refrain from discussing party politics and let us discuss the regulations which are before us.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, we are discussing these regulations to ensure that Kenyans conduct democratic elections. If you do not conduct democratic nominations, it will be difficult to conduct democratic elections. I am saying that we must try to nurture and promote the tenets of democracy in all our political affairs.

I want to commend the ECK. First, I want to commend the ECK for bringing up these regulations. The Commission wants to even up the playing ground and ensure that we will have a free and fair general election. We cannot achieve the objective of having free and fair elections if we do not re-appoint the Commissioners whose term of

office has come to an end. The Commissioners are conversant with the electoral process in this country. They are experienced in election matters. They also know the pitfalls and the difficulties we face in our elections. So, I am urging our beloved President to re-appoint all those Commissioners whose term of office has expired so that they can continue being in office. In fact, that should be a farewell gift from the President to the Commissioners, who conducted a very fair general election and the President was elected last time. They should remain in office to ensure that we have a free and fair general election.

I would like to urge the ECK to recruit members of its staff transparently. As you all know, the ECK is one institution in this country that recruits thousands of employees, even if for a short period, without being transparent. The returning officers, the co-ordinators and other officers should be recruited transparently. That will enhance the democratic process in our elections. I would urge the Government to fund the ECK adequately. I note that the ECK has been given an inadequate amount of money. I am not sure that, that amount of money is enough for the Commission to conduct an effective general election. I would urge the Attorney-General to seek adequate funds from the Minister for Finance for the Electoral Commission of Kenya (ECK) so that they are comfortable in their conduct of elections and there are no impediments that would stop the election personnel from conducting fair and free elections.

Mr. Temporary Deputy Speaker, Sir, the registration of voters in this country is wanting because there are a lot of people who are not able to register because we have tied up the registration of voters with the issuance of identity cards. I thought that, among these rules, there would be a rule requiring a person to produce a birth certificate, baptismal card, a school leaving certificate or to be identified by his or her chief or assistant chief because it has become very difficult for one to be registered as a voter. In my own constituency, I have more than 20,000 young people who were not able to get identity cards and, therefore, they could not register as voters. These people have been disenfranchised not because the ECK does not want to register them, but because you have introduced this rule that they must have identity cards before they can be registered.

Mr. Temporary Deputy Speaker, Sir, if this Parliament is going to exist until February, then I would urge the ECK to seek some funds and start registering voters for another month or two months or introduce the continuous registration of voters in this country. As you mature, you should be free to go to an electoral commissioner or an electoral officer to register that you can become a voter. I believe that about 18 million Kenyans are eligible to vote if they could all get identity cards. So, if we have only registered 11 million people, there are 7 million people we have been left out there not because of their own fault nor is it the fault of the Electoral Commission of Kenya, but it is because of the fault of our Election Act which says that they must produce identity cards.

Mr. Temporary Deputy Speaker, Sir, I want to touch on the issue of ensuring that every voter is able to vote. There are certain areas where the polling stations are far apart from each other. These are places where the invalids, the aged and the physically handicapped may find it difficult to travel long distances to reach polling stations. Some of these polling stations have very many registered voters and sometimes when an invalid is able to reach that polling station, he or she may spend the whole day there before voting. So, I would urge the ECK to again increase the number of polling stations in view of the high number of people who have been registered in each ward and especially in Kitutu-Chache to enable our people to reach the polling stations and exercise their right to vote.

Mr. Temporary Deputy Speaker, Sir, the people who are recruited as officers of the ECK should be people of integrity and if anyone of them makes a deliberate mistake, he or she should be punished severely. I am talking about this because I witnessed an actual incident in South Mugirango, about two years ago, where a polling officer was seen marking ballot papers on behalf of a particular candidate without the consent of the voters themselves. This man was caught red-handed, but no action was taken against him. He was not taken to court nor was he punished and that put a black mark on the performance of the ECK.

Mr. Temporary Deputy Speaker, Sir, in the same area again at the same time, a person who was not an officer of the ECK or an agent of any candidate or not a voter in that station, because in fact, he did not come from that constituency, went to a polling station and beat up a lady officer of the ECK. The ECK threatened to take him to court but nothing has been done up to date and I would like the ECK to take up that matter to give us an example so that other people do not commit similar offences in future.

Mr. Temporary Deputy Speaker, Sir, somebody alluded to the area of voter education. I believe that the ECK should be given adequate funds to carry out voter education for a month in every ward in this country so that people can know their rights, what to do, where they should vote and what to expect from the voting.

*[The Temporary Deputy Speaker
(Mr. Musila) left the Chair]*

[Mr. Speaker resumed the Chair]

Mr. Speaker, Sir, I want to commend the police. They have played their part above God. I think the police force in Kenya has now been democratised. Their minds have been democratised such that they do not commit those mistakes because they used to harass voters at the polling stations and candidates when they were campaigning. So, we should commend them and probably ask the Office of the President to give them some increments in their salaries to encourage them. The ECK should pay them some small extra allowances for the good work they are doing in the electoral process.

Mr. Speaker, Sir, we have seen some malpractices in our elections. One of the malpractices is violence which I have referred to. This includes violence witnessed at the polling stations, political rallies, meet-the-people tours of various candidates and everywhere. Those cases of violence should be taken seriously and the culprits should be apprehended and punished severely so that we have peaceful and fair elections. There are also cases of corruption where people pay voters to go and vote. They pay them in various ways either directly or sometimes indirectly by conducting Harambees during the electioneering period. I think that should be punished. Harambees should be stopped during the official campaign period. If you conduct a Harambee then you should be held responsible and disqualified from running for a public office. In other countries, if you are found bribing a voter or acting in a way that you are likely to compromise a voter, you are disqualified from [Mr. Angwenyi] running for a public office and even your party might be disqualified from running for a public office. We need to have these type of sanctions in our electoral laws.

Mr. Speaker, Sir, the other malpractice we have witnessed in Kenya, which is a notorious one, is the way Kenya Broadcasting Corporation (KBC) conducts itself. I believe the KBC should be put under the management of the ECK now that the campaign period has started so that they can give every person an equal chance to express his or her views so that people in every constituency can decide whether a person is worth electing or not. KBC seems to be giving some skewed coverage to certain candidates either for civic, parliamentary or presidential elections.

Mr. Speaker, Sir, KBC being a public institution, should be put under the management of the ECK to ensure that they give fair coverage to every candidate who wants to run for a public office in this country. Maybe, the Electoral Commission of Kenya (ECK) should approach the media and ask them not to be biased by promoting a particular section or person. There should be free and fair coverage for every candidate.

I know that sometimes certain media houses may have their own bias, but they can express that in their editorials. But on the matter of coverage, they should be fair to every candidate.

Mr. Speaker, Sir, sometimes if a candidate is dissatisfied with the results of an election, it might be difficult to make an appeal. We have made the process of petitions very costly. The other day, I saw somebody who lost an election and lodged an appeal. He lost that petition and his home is going to be auctioned because we have made the cost of petitions prohibitive. I know we want to limit frivolous petitions, but I believe we should look at this and see where we can strike a balance. We should also make it possible to serve petitions through newspapers. It should be an option for the aggrieved party.

Mr. Speaker, Sir, the course of law should be expeditious. They should expedite the process of determining petitions so that, within six months after the elections, all the cases are disposed of so that we have proper Members in Parliament.

Mr. Speaker, Sir, with those few remarks, I wish every hon. Member here, who is democratic, to come back after the elections which we are facing in another two months.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. I think most of us have already contributed to this Motion.

Hon. Members: No! No!

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

Mr. Speaker: Order! Order! He has a right to say whatever he wants and I will decide. What are you saying, Mr. Ndicho?

Mr. Ndicho: Mr. Speaker, Sir, I do not know why, whenever I stand up, Mr. Mwenje thinks that the people of Juja should not be heard in this House. However, I was saying that most of us have expressed a lot of views on this Motion, and given that we have another important matter after this, I would like to call upon the Mover to reply.

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

Mr. Speaker: Order, hon. Members! Order! I am almost tempted to do that, but I will give one more

chance to the Opposition side. Mr. Ndicho, you will renew your application in the course of his speech.

Mr. Ndicho: What?

Mr. Speaker: You can renew your application. Mr. Ndicho, I thought you are a law student?

Mr. Ndicho: Mr. Speaker, Sir---

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

Mr. Speaker: Very well! Now, you will sit down!

Mr. Mwenje: On a point of order, Mr. Speaker, Sir. I appreciate your ruling, but this is the second time somebody has woken up to say that we have spoken enough. But this is about the rules of elections and we need to be heard---

(Mr. Mwenje stood up in his place)

Mr. Speaker: Order! Will you sit down, Mr. Mwenje? There is actually no talking without an end. Somehow, a matter must come to an end one way or the other. You also know that everything is decided by the House and not the Chair. If you feel so strong, like in this case, whatever decision will be taken, you vote against it. That is how the business of this House is run. It is not run on points of order. In any case, I have not acceded to his application at this stage. What is worrying you? Are there interested, hon. Members?

Mr. Mutiso: Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice to this Motion, which I think is timely. I take this opportunity, first of all, to thank the Electoral Commission of Kenya (ECK) for having done a good job of bringing up regulations which will govern the forthcoming general elections.

Mr. Speaker, Sir, without repeating what my previous colleagues have said, I would like to make a few comments with regard to the electors register as contained in Part III, page 3 of the draft regulations. I believe that to have a transparent process, the registration of electors should be above board. I believe that the registration exercise should also be controlled to the extent that corruption or fraud should not be seen to be done during the registration of electors.

Under Part IV, page 5; application for new registration, I support the suggestion that registration of voters should be a continuous exercise. I also propose that the divisional headquarters in the various constituencies should be designated to be the official areas where electors who have not registered can register. In other words, we should have defined places for registration.

Mr. Speaker, Sir, I would also like to comment on the issue of the presiding officers and registration officers as far as their duty is concerned. Regulation 4(2) states:-

"A person who fails to carry out his duties as required under paragraph (1) is guilty of an offence and is liable on conviction to a fine not exceeding Kshs2,000."

I think this penalty is not stiff enough to deter any officer from inducing voters not to register. I feel and submit that this penalty should be enhanced.

I wish also to make some brief comments on election and dependency on foreign experts. I was amazed this afternoon to see the hon. Attorney-General bring amendments to the Presidential and Parliamentary Elections Draft Regulations which were prepared by legislative consultants who are foreign based. I believe that this country after acquiring Independence, and developing its human resource for more than 40 years, has qualified professionals who can handle legislative matters. Therefore, it is a shame for our honourable Attorney-General to give such consultancy to foreign experts. Mark Scaponwisky is a legislative drafting consultant, and I do not even think that he is more competent than our local lawyers. I request the hon. Attorney-General to consider our lawyers who have been trained locally and give them a chance to add their input to this important process of legislative drafting.

Mr. Speaker, Sir, I would like to make my final comment, that---

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Before Mr. Mutiso makes his final comment, he has brought to my attention something very important, that in fact, these amendments were not made by the Attorney-General. They were made by somebody from Poland or some other place. Is it in order for this Parliament to pass law that has not been drafted by the Attorney-General?

Mr. Speaker: It has been done by a person from where?

Mr. Ndicho: Mr. Speaker, Sir, the name sounds Spanish - Scakowski. This could be a brother or sister of Monica.

Mr. Speaker: For who, Mr. Ndicho?

Mr. Ndicho: Mr. Speaker, Sir, we have never seen anything like this in the Bills that the Attorney-General has been bringing to this House. He always signs them himself. We should not have some Polish person doing it in Poland and then brings it here on behalf of the Attorney-General.

Mr. Speaker: Order, Mr. Ndicho! You may think that he or she is Polish, but could probably be a Kenyan!

Mr. Ndicho: Mr. Speaker, Sir, we have never seen any Bill done here on behalf of the Attorney-General. I would like to ask hon. Members to reject these rules unless the Attorney-General brings these laws himself.

Mr. Speaker, Sir, this is an anomaly, and next time we could see Monica Lewinsky bringing her consultations for the Attorney-General. We must reject these rules.

Mr. Gitonga: On a point of order, Mr. Speaker, Sir. Would I be in order to ask the Attorney-General to clarify this issue, because these allegations are serious; that this draft was not done by the Attorney-General?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as it is very clear from the letter that was attached, the heading is from the Attorney-General's Chambers, and the notice is being given by the Attorney-General, who is me. It states:-

"Notice is made that the Attorney-General intends to move the following amendments".

Mark Scakowski is the Legislative Drafting Consultant for the Attorney-General. This is perfectly normal. In fact, all the amendments that we normally bring to the Clerk's office are normally signed by people from my Legislative Drafting Department.

Mr. Speaker: I think the Attorney-General's position is right. This writer, Mark Scakowski is a conveyor of the intention of the Attorney-General to the Clerk of the National Assembly. What normally happens is that, after the Clerk has received the Attorney-General's intention or any other Minister's intention, and after my consent, then it would be published in a Supplementary Order Paper. I also raised the circulation of this because the Order Paper was late. So, take it from me that this Mark Scakowski is only a conveyor of the thoughts and intentions of the Attorney-General to the Clerk of the National Assembly. So, it is properly before us.

Mr. Ochilo-Ayacko: On a point of order, Mr. Speaker, Sir. I know that there are Private Members Bills. If for some reason I brought a Bill that is signed by my wife as a conveyor of my intentions, would it operate *mutatis mutandis* to the Attorney-General?

Mr. Speaker: Order! Ordinarily, your wife is entitled to do everything on your behalf; domestic and not official. Now this legal draftsman for the Attorney-General, conveys on behalf of the Attorney-General, officially, legal issues. This is what he has done. So, there is a world of difference between the legal draftsman and a wife who is not a draftsman or draftswoman. So, you can understand. It is very clear like daylight.

Mr. Ochilo-Ayacko: On a point of order, Mr. Speaker, Sir. This is a very important issue, and I just referred to my wife in passing. Does a private Member have a right to introduce an amendment in this House that is signed by a person other than the private Member? I think this is a point of principle.

Mr. Speaker: You convey to the Clerk your intentions to do so, and once it is brought to the Speaker it is approved and then it comes here.

Proceed, Mr. Mutiso!

Mr. Mutiso: Mr. Speaker, Sir, I did not raise that issue to the effect that it is contravening the law, but it was just a point of clarification. I think my intention was not to question the process, but the rationale in having a foreign consultant when we have local consultants who can be able to do the same job. Is it prudent for the Attorney-General to give the same job to foreign experts.

Mr. Speaker, Sir, my last point pertains to the presiding officers, police officers and returning officers who are involved directly in the electoral process. It is a cardinal principle that every vote counts. Because of the geographical location of where these personalities come from, these officers are not given a chance to vote during the election time. I would like to request the Attorney-General to consider bringing an amendment to this House, so as to have all officials of the Electoral Commission; the Presiding Officer, the returning officer and all other officers who are involved in the official duties of the elections to be given an opportunity to cast their vote. I would suggest to the Electoral Commission that, since we have a definite number of polling stations - in this case I am informed that we have 20,000 polling stations in the entire country, and it is likely that we may have seven officials presiding over an election per polling station, that gives a total of 140,000 voters who are not going to take part in the electoral process. I would like to urge the Attorney-General to bring an amendment, as soon as possible, so that we can have these officers participating in elections. You would imagine what would happen if a candidate from the Super Alliance would be defeated by less than 100 votes. This would be a confusion and dilemma. You will remember what happened in the just concluded United States of America elections when we had a tussle between Al Gore and George Bush in the State of Florida, just because the counting process was flawed electronically. Some of the officials of the Senate were not able to have their votes transferred to elect their leader. The entire country and the entire world, even up to date

questions the credibility of the United States President because certain votes were not taken into account.

Mr. Speaker, Sir, as a last comment, I would suggest that all the serial numbers for the Presidential, Parliamentary and civic ballot papers be published to ensure accountability of the electoral process.

With those few remarks, I beg to support.

Mr. Speaker: Shall we listen to Mr. Mwenje, and then we can scrutinise the rules in Committee?

Mr. Mwenje: Thank you, Mr. Speaker, Sir. I will be very brief and precise, so that we can move quickly.

The first issue I would like to comment on is that by now the Electoral Commission should have noted that some voters cards were not covered by plastic covers and must have been messed up by now. There was a big shortage of the plastic covers from the Electoral Commission, we appealed to them, but to date, they have never been supplied. I think it is important that in future, we should have enough plastic covers. Even today, we have so many loose cards which do not have plastic covers. They should look into this issue before we come to election time.

The other issue is what happened in 1997. The election period was extended by two days, and there was somebody going round to announce that the election had been extended. I hope the Electoral Commission will note that there should never be any extension of days for election. Once the election days have elapsed the exercise should be stopped and nobody should extend it for another day. This was giving rise to rigging and this trend is dangerous. I hope the Electoral Commission will make sure that this is not repeated in the coming election.

Regulation 18 talks about the agent. I do not agree with that rule because if you allow a person to assist a voter, there will be the likelihood of bribery going on inside the voting chamber.

As we have always done, all agents should be called to witness---

(Loud consultations)

Mr. Speaker: Order, hon. Members! At the very beginning of this debate, I did request hon. Members to give special attention to these rules because they are the primary consumers. It does appear to me that although we have had some lengthy discussions about this, we are now having very loud consultations and we cannot follow what is going on. It is good that we give hon. Members a hearing so that we know what they think about these rules.

Proceed, Mr. Mwenje.

Mr. Mwenje: Mr. Speaker, Sir, it is very important that all the agents are called to witness what that voter in particular wants and who he wants to vote for. If you allow only one person into the voting chamber, there is the likelihood of the voter being compromised. Anything can happen inside the voting chamber. You might find one agent assisting so many voters and that might increase the chances of bribery within that chamber. All the agents should assist the voters instead of only one agent.

There is also the question of seals. Up to now, I still believe that candidates should be allowed to have their own seals. I do not believe that the seal from the Electoral Commission is good enough. If it is tampered with, I will have no way of proving that. It is important that a candidate be allowed to put his own seal so that when it comes to actual counting, you are able to check and see whether anybody has interfered with your seal. Since each candidate knows their own mark, they will be able to know whether it has been tampered with. We need to rectify that and allow candidates to put their own seals on the ballot boxes. This is quite important.

The voting process starts from afar. In future, we must tell a retiring President never to get involved in elections. He should retire honourably and go home to live comfortably. Today we are witnessing a scenario whereby a retiring President has become the chief campaigner of a particular person. This is serious and it should not be allowed to happen again. I hope the Electoral Commission will tell the President that he is not supposed to campaign. He should retire in peace so that he can maintain his honour. He should not become a chief campaigner of anybody in this country. This should never be allowed to happen now or in future. A retiring President should retain his dignity, therefore, he should never get involved in any election process at all.

Mr. Speaker, Sir, the issue of rigging is the one that has caused all these rules to be put in place. Up to now, there are so many loopholes that lead to rigging. There are people who still believe that rigging will still take place during this election because there have been cases of rigging in the last two elections. The Electoral Commission and the Attorney-General should ensure that rigging is avoided at all costs even if it means deploying security forces. Kenyans must be given what they are demanding, that is fairness. They should be allowed to elect their own President and Members of Parliament. We cannot afford to have rigging taking place any more. It is important that we tell Kenyans that if they spot anyone trying to rig, he should be removed completely from the voting area. Instant justice should be meted out on any individual who tries to rig elections because we can no longer trust police officers. I have seen this happen, when one time I told a police officer: "You can see that, that person is bribing somebody there", and then he told me: "Go and set your field there and start bribing others from the other corner." The police officers have also become agents of rigging. The Electoral Commission should assure Kenyans that there will be no rigging at all during this election.

Despite the IPPG resolutions, we have witnessed the Attorney-General allowing "illegal meetings" to take place. As far as we are concerned, there is nothing like an "illegal meeting". I have even been taken to court for convening an "illegal meeting", a charge which does not exist anyway. It is time the Attorney-General retrained the police so that they can understand that there is no charge like "convening an illegal meeting". You only require to inform the police if it is a meeting being convened by an unregistered political party or in a case where there is likely to be chaos. I do not see why we are required to seek permits for meetings which are peaceful because these permits are meaningless. You are only required to inform the police if you anticipate any problem. If the police want to break any meeting, they will later claim that it was an illegal meeting. I am surprised that, to date, the Attorney-General has allowed people to be taken to court on charges of convening and attending an illegal meeting, when we know that such a charge does not exist.

I trust and hope that during this coming elections, the Attorney-General will advise all those concerned that we should never hear of anyone being charged with convening or attending an illegal meeting. I hope that the Attorney-General will dismiss those cases which are already before the court through *nolle prosequi*.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. I am surprised that you have allowed Mr. Mwenje to address this House as if he is addressing a meeting somewhere in Kayole. Whatever he is talking about is not contained in these rules. You can see that he has exhausted the discussion concerning these rules. In view of that, can I now renew my application that the Mover be now called upon to reply?

Mr. Speaker: Order! First of all, the hon. Member is not addressing a meeting in Kayole. He is addressing the House properly. Mr. Mwenje, you have done well; you have addressed the House. Even if you talk about Kayole, that is the area you represent. It is fairly alright. On Mr. Ndicho's application, I will allow hon. Members to go to Committee and I will accede to that request.

(Question, that the Mover be now called upon to reply, put and negatived)

Mr. Mwenje: Thank you, Mr. Speaker, Sir. That shows the strength of the NAK and the Rainbow Alliance!

Mr. Speaker: Order! If you become repetitive or irrelevant, I will cut you short immediately!

(Loud consultations)

Order! For the benefit of the House, we will not allow any repetition of any points already made by other Members. So, you have only to address new issues.

Mr. Mwenje: Mr. Speaker, Sir, as I said, I am going point by point. There is no way I can be irrelevant because I am going point by point. I have read and re-read this Motion and I know exactly what is contained in the Motion. Unfortunately, Mr. Ndicho has become more KANU than KANU itself! So, what I was saying was that we need to be careful, particularly in bribing! I thought the ECK---

Mr. Kiunjuri: On a point of order, Mr. Speaker, Sir. I want to alert you, maybe, it has escaped your attention, that the hon. Member is a Backbencher and he is addressing the House from the Dispatch Box. Is he in order? You reprimanded me for doing that! You ordered me to move away from the Dispatch Box and address the House from the benches!

Mr. Speaker: Could you move back!

Mr. Mwenje: Mr. Speaker, Sir, it appears Mr. Kiunjuri is not aware that I am the new Minister for Lands!

Mr. Speaker: Order! Proceed and go back!

Mr. Mwenje: Mr. Speaker, Sir, for convenience, I will just finish! But I am the new Minister for Lands!

Mr. Speaker: Go back!

Mr. Mwenje: Mr. Speaker, Sir, what I was saying is that, after all, it is only two months left for me to become the official Minister for Lands in Mr. Kibaki's government! What we are, therefore, saying is that bribery is likely to be done. We have seen it happening. We have seen some areas, even though it is refuted, where they try to take maize to some drought-stricken areas during the elections. So, we hope the Government will not try to distribute maize at this particular time. I have talked about bribery that is practised on voting days.

Mr. Sungu: On a point of order, Mr. Speaker, Sir. Is the Member in order to claim to be the Minister for Lands when we know what is happening in Kayole and where he lives? He might get all the land allocated to his own people!

Mr. Speaker: Order, hon. Members! You know the Speaker allows Members the greatest amount of

pleasure. If you do derive pleasure by calling yourself a Minister, please, by all means, go ahead!

Mr. Mwenje: Mr. Speaker, Sir, thank you. Sometimes you really make Solomon's rulings! We must also talk about the Press here. The other day, the Electoral Commission of Kenya (ECK) threatened to take the Kenya Broadcasting Corporation (KBC) to court! We are yet to see what happened! That is because the KBC is funded by the public. The first rigging that is done is done by the Press. So many areas are not covered by the Press, except the KBC. The KBC, which is funded by the taxpayers, is only propagating one party called KANU. On the ECK, we are asking the Attorney-General to take steps to make sure that the KBC remains neutral. The KBC should propagate policies of the Opposition and the ruling party. If the ECK will not take any action, we need to be told, so that an individual can take---

Mr. Nyanja: On a point of information, Mr. Speaker, Sir. I want to inform the new Minister for Lands and Settlement that the KBC is a toothless bulldog. It is barking just to be heard and barking dogs do not bite!

Mr. Speaker: Order, hon. Members! I do not know whether we are really communicating in this issue! We have a lot of consultations. But, Mr. Nyanja, last time I said in this House: "Keep dogs out of this House!"

Proceed, Mr. Mwenje!

Mr. Mwenje: Mr. Speaker, Sir, I hope he will not bring one in the end! Since Kenyans would like to know who they are voting for, I would like to appeal to the ECK to organise debates for the presidential candidates, like it happens in other parts of the world, so that Kenyans can compare the candidates that have been offered by various parties, so that they can know--- Sometimes they leave it to private entrepreneurs to organise it. But I thought it should be the duty of the ECK to give facilities to all Kenyans, particularly to the candidates, so that we can know who they are, how they reply to various issues and what they intend to do for the country. But, up to now, we have not seen it happening.

I feel it is important to have debates on television and radio, so that we can hear what they intend to do.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Do you realise that Mr. Kiunjuri is very poorly dressed? He has no shirt! He is in a pullover and then he has put on a very funny thing purporting to be--- He is very poorly dressed!

Mr. Speaker: Order! Mr. Kiunjuri, could you face the Chair?

(Mr. Kiunjuri faced the Chair)

Mr. Kiunjuri, that is a sweat shirt, a thing that an honourable Member should never wear in this House! I now order you to move out of this Chamber, go and dress properly! You must now leave!

(Mr. Kiunjuri withdrew from the Chamber)

Order, hon. Members! As that hon. Member leaves, I do appeal to this House that we come to this Chamber in proper attire. I see all myriad ways of dressing coming to this House now! Next time, we will get some attire that will not be describable! So, could we, please, remain decently dressed like everybody else, like Mr. Sungu!

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. We are going to be surprised next week because I understand there are some men here who are going to be dressed in dresses! That is because you allowed women to dress in trousers. There is going to be a surprise next week!

Mr. Speaker: Order! Mr. Angwenyi, I only have hon. Members who are male and female. Mr. Angwenyi, I will not take that odious problem of checking out who is male and who is female! If you choose to do that, that is your problem!

Mr. Shidiye: On a point of order, Mr. Speaker, Sir. Could he substantiate? Are there some aphrodites in this House? That is because we cannot understand what he means! That is a very deep literature!

Mr. Speaker: Order! I wish the Question was carried! I think what all this tells me is that the Members have really discussed enough of this Motion and you are just distracting.

Proceed, Mr. Mwenje!

Mr. Mwenje: Mr. Speaker, Sir, I will be very short and say that I would like to mention--- I have seen it in practice that, sometimes, you find an irregularity on the spot and there is even a Commissioner nearby. But when you alert him that, that is happening, they do not take any interest. They seem to leave whoever is the presiding officer, or even the returning officer to handle it and yet, we have empowered the ECK and the Commissioners to watch things happening and say: "We are helpless!" That becomes a very serious question where a Commissioner is watching an irregularity and nothing happens, even after you have told him to try and rectify that problem. We hope that, in future, they will take responsibility and where there is an irregularity, they will be able to rectify.

Finally, I would like to take this opportunity to congratulate Mr. Kibaki who, today, has been nominated---

Mr. Speaker: Order, Mr. Mwenje! Whatever you have said is absolutely irrelevant!

Mr. Gatabaki: On a point of order, Mr. Speaker, Sir. Is it in order for Mr. Mwenje to impute improper motives on the conduct of the Electoral Commission of Kenya (ECK) Commissioners when he knows very well that previously, they have been acting on behalf of the President of Kenya, and from now onwards, they will be acting democratically?

Mr. Speaker: Mr. Gatabaki, what are you saying?

(Laughter)

Mr. Gatabaki: Mr. Speaker, Sir, we have heard Mr. Mwenje say that the ECK Commissioners are part and parcel of rigging the elections in this country. That is what Mr. Mwenje is talking about. I am asking: Is it in order for him to impute improper motives on those distinguished servants when we know very well that no person other than the President is responsible for their conduct?

Mr. Speaker: Mr. Mwenje, have you heard what Mr. Gatabaki has said?

Mr. Mwenje: Yes, Mr. Speaker, Sir.

Mr. Speaker: Will you take note of that?

Mr. Mwenje: Mr. Speaker, Sir, Mr. Gatabaki did not get me right. I am sorry.

Mr. Speaker: Mr. Mwenje, I did not tell you to say sorry. I asked you to take note of those sentiments and abide by them.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. If it is true that Mr. Mwenje said that the officers of the ECK are involved in these malpractices during the elections, should he really get away with it without apologising and withdrawing those remarks? This is because if this goes into the records, it will be used in future.

Mr. Speaker: Mr. Mwenje, what did you say actually, because I did not follow?

Mr. Mwenje: Mr. Speaker, Sir, I will repeat and you can look at the HANSARD to see what I have said. I said that I have witnessed a case where there were irregularities and a Commissioner would be around, but if you ask him to assist, he would tell you that he does not have the power at that time to tell the presiding officer what to do. I am not condemning them, neither am I saying that they are wrong, but I am saying that they do not have the power and they need to be given power to rectify a situation on the spot.

Mr. Speaker: Very well! You can sit down now!

The Assistant Minister for Transport and Communications (Mr. Keah): Mr. Speaker, Sir, I have two points which I would like to make and they relate to assisted voters. On assisted voters, what will happen is that one member will have a group of 20 or 30 people and assist them to vote in a particular way. This one will violate rights of individuals to vote for the candidates that they want. These people will be made to vote for those candidates they do not want to vote for. I can see a danger in the manner in which this clause has been written. Voting should be left to individuals. I also foresee, wives, for example, voting the way the husbands want and vice-versa without any freedom being given to them. Wives will vote according to the whims of their husbands fearing that if they do not, when they go home, they will be beaten. The second point I find a little bit odd to me is on Regulation 35(A) - preparation for the counting of the votes. After votes have been counted, a form will be signed on the spot and an announcement made. If an agent refuses to sign, there is a provision mandating the presiding officer to take note of that. There is also a problem on the transportation of votes from distant polling stations to the centre of the constituency. I would like the Attorney-General and the---

The Assistant Minister, Office of the President (Mr. Maundu): On a point of order, Mr. Speaker, Sir. The hon. Member, of course, is not bringing in any new ideas on this debate. I think it is an opportune time that the Mover be called upon to reply.

(Question, that the Mover be now called upon to reply, put and agreed to)

(Several hon. Members stood up in their places)

Mr. Speaker: Order! It is the right of hon. Members to demand a Division.

(Several hon. Members stood up in their places)

Order! Sit down all of you! Sit down first! By the way, that is not how you call for a Division! You should stand up and claim a Division!

(Several hon. Members stood up)

in their places)

Hon. Members: We want a Division!

Mr. Speaker: Order! If you want a Division, you will be counted and if you meet the required number, we will go through the rigmarole as usual and democracy will work. So, even if you decide that we stay here until midnight or tomorrow, I am available. Proceed! Do you meet the required number? Can you count?

(Loud consultations)

Order, hon. Members! I am informed that those hon. Members claiming a Division have attained the requisite number under Standing Order No.53. Therefore, I will order for a Division. I now order that the Division Bell be rung for five minutes.

(The Division Bell was rung)

DIVISION

(Question put and the House divided)

(Question defeated by 68 votes to 55)

AYES: Messrs. Affey; Dr. Anangwe, Messrs. Biwott, Mr. Githiomi; Dr. Godana, Messrs. Haji, Jirongo, Kalweo, Kamolleh, Keah; Col. Kiluta, Messrs. Kimani, Kimkung, Kirui, Kitur, Kochalle, Kosgey, Lagat, Lotodo, Maina, Maisz; Eng. Manga, Messrs. Maore, Marrirmoi, Maundu, Mbitiru, Mkala, Mohamed, Mohamud, Morogo W.C., Muchilwa, Mudavadi, Mugalla, Mukangu, Muturi, Mwenda, Nassir, Ndambuki, Ndichu, Ng'eny, Ngutu, Njuki, Capt. Ntwiga; Messrs. Nyenze, Obure, Okemo, Omamo, Poghisiso, Sambu, Sasura, Shaaban, Shambaro, Sudi, Sunkuli, and Dr. Wamukoya.

Tellers of the Ayes: Messrs. Capt. Ntwiga and Mwenje

NOES: Messrs. Achola, Anyang-Nyong'o (Prof.), Ayoki, Gatabaki, Gitonga, Imanyara, Kaindi, Kamanda, Kamau, Kamotho, Karauri, Karua, Kathangu, Katuku, Keriri, Khamasi, Khaniri, Kibaki, Kihoro, Kiunjuri, Kombo, Kones, Kulundu, Kuria, Masakhalia, Mboko, Muchiri, Munyasia, Munyao, Munyes, Muithia, Muite, Munyes, Murungaru, Murungi, Musila, Mutahi, Mutiso, Mwalulu, Mwangi P.K., Mwenje, Mwiraria, Nderitu, Ndwiga, Ngure, Ntimama, Nyagah N., Nyang'wara, Nyanja, Obwocha, Ochilo-Ayacko, Odoyo, Ojode, Omamba, Omingo, Onyango, Opore, Otita, Otula, Parpai, Sankori, Shitanda, Sungu, Eng. Toro, Messrs. Waithaka, Wambua, Wanjala, Wehliye and Dr. Wekesa.

Tellers of the Noes: Messrs. Keriri and Shaaban

Mr. Speaker: Hon. Members, the Question has been negatived. So, we will continue with the debate on the Motion.

(Debate on the Motion resumed)

Mr. Keah was on the Floor. So, could he continue?

(Loud consultations)

Order! Order! Those wishing to withdraw from the Chamber should do so quietly.

Mr. Munyasia: On a point of order, Mr. Speaker, Sir. Before the Division, you ordered Mr. Kiunjuri to withdraw from the Chamber in order to go and dress properly. He has now come back. Would I be in order to request that he clears with you first?

Mr. Speaker: Order! Mr. Kiunjuri was not disorderly! He was only improperly dressed. Having dressed properly, he is now properly in the House.

Mr. Kiunjuri: On a point order, Mr. Speaker, Sir. You can see that I am now the most smartly-dressed hon. Member in the House.

Having said that, is it in order for Mr. Ndicho to continue harassing me just because I have refused to support the "project"?

Capt. Ntwiga: On a point of order, Mr. Speaker, Sir. Mr. Kiunjuri has made reference to a "project", which I do not seem to understand. Would I be in order to request that he gives a better term for that "project"?

Mr. Speaker: Order! Order! Mr. Kiunjuri, you had been sent away for not being properly dressed. That was a very simple matter; you went away and came back. The harder bit is being sent away because of being disorderly. So,

I prefer that you remain on the right side of the law.

Could we now stop all this and proceed with the debate?

The Assistant Minister for Transport and Communications (Mr. Kea): Mr. Speaker, Sir, before I was interrupted, I was drawing the attention of the Attorney-General and that of the Electoral Commission of Kenya to the issue of assisted voters. I found this clause inappropriate. Some women may not vote according to their wish; they may be directed by their husbands to vote for candidates of their husbands' choice.

Mr. Speaker, Sir, I can also foresee a situation where some voters will pretend to be in need of assistance simply because they have been bribed to vote for a particular candidate. Such people can be herded together and then led into the polling booths, one by one, and made to pretend that they need assistance, so as to ensure that they vote for the person who had bribed them. I find this very offensive, and hope that the ECK will come up with a mechanism to ensure that it is not encouraged.

Finally, I urge the ECK to ensure that polling clerks for specific areas are recruited from those particular areas, so as to ensure that fraud does not take place. Election officials who do not come from the local areas are likely to condone cheating, and that is a major concern to some of us.

Mr. Speaker, Sir, the other point that I wanted to emphasise on is in relation to the counting of the votes. I believe that this is an improvement from the practice of carrying ballot boxes to the headquarters of the constituency. But we still have the problem of distance. The results have to be transmitted from the polling stations to the constituency headquarters, where all the votes are supposed to be added up. The distance and the time taken to take the results from the polling stations to the constituency headquarters provides an opportunity for rigging.

(Mr. ole Ntimama consulted loudly)

Mr. Speaker: Who is it in that corner? Who is that clapping his hands in the House?

*(Mr. ole Ntimama stood up
in his place)*

Order Mr. ole Ntimama! Maybe, Mr. ole Ntimama has found himself in a very unfamiliar territory and forgotten that he is in the House. Now, Mr. ole Ntimama, you are in the House and you must keep order!

Proceed Mr. Assistant Minister!

The Assistant Minister for Transport and Communications (Mr. Keah): Mr. Speaker, Sir, the distance from the polling stations to the constituency headquarters can provide an opportunity to defalcate or alter the results. I would like the Commission to ensure that this does not take place.

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

Mr. Mboko: Thank you, Mr. Speaker, Sir, for giving me an opportunity to highlight the role of the electoral regulations.

First, there is a regulation which talks about disturbances during the nomination exercise. The regulation provides that excessive disturbance will force the returning officer to postpone the date of nomination. This is a very dangerous regulation because disturbance could be caused intentionally to delay the nomination process. The ECK must ensure that disturbance is not intentionally caused at polling stations. We have had instances where the number of votes announced at the polling station do not tally with the votes announced by the ECK. For example, during the 1997 general election, it was announced at Kibwezi that 6,500 votes had been cast for His Excellency the President, but when the returning officer announced the votes from Nairobi, he increased the votes by 3,000 votes. The number of votes cast for each candidate must be announced at the polling station and not outside a hall at the constituency as has been the practice. The moment the returning officer announces the results and makes a mistake, it requires the losing candidate to petition the election. The ECK should have communication facilities in various polling stations. In 1997, a KANU councillor won in Mwala Constituency, but he was not gazetted. A losing councillor was gazetted and nothing could be done. The ECK must put its feet down and ensure that the coming general election is free and fair.

Mr. Temporary Deputy Speaker, Sir, there is a regulation which has proposed that inpatients in various hospitals be given an opportunity to vote in their constituencies. How will the ECK manage to carry out this exercise in areas such as Kibwezi Constituency, which has well over 126 polling stations? Does this mean that the ECK will carry all the voters registers to the hospitals to ensure that all the inpatients cast their votes? How will this be done? This will be prone to rigging because you do not know how many patients are in a particular hospital.

Mr. Temporary Deputy Speaker, Sir, there is a regulation on counting the votes after the election. The regulation requires that a certain form should be filled by the agents of a particular candidate. The presiding officer will sign his part and the forms will be put in a central area. Who will determine which form came from which polling station? The presiding officer can come up with his form and sign it in a bid to rig a certain candidate in.

During the last general election, the ballot box intended for votes cast for presidential candidates and the

ballot box intended for the votes cast for parliamentary candidates were interchanged. Votes cast for presidential candidates were put in the ballot box intended for votes cast for parliamentary candidates and *vice-versa*. All these votes were rejected. The mistake was not committed by the voters but by the officers of the ECK who were manning those polling stations. Presidential, parliamentary and civic aspirants have no control over the arrangement of the ballot boxes. So, as long as the ballot boxes are put in the same room, whether votes cast for a presidential candidate are put in the box for parliamentary votes, they should be accepted as valid votes.

The ECK must also commit itself to repair damaged polling stations. During any election, the ECK goes to local primary schools and destroys them. When the elections are over, the Commission does not repair the schools. I want to call upon the ECK to allow voting to be done in open places and not in inside rooms. During the last general election, we were put in a very awkward position by the ECK. The Commission extended the voting period by one day. We want to know, from the Attorney-General, whether the voting period is one or two days. We should know this in advance in order to prepare our people. Extending the voting period also provides an opportunity to rig the elections.

With those few remarks, I beg to support.

Mr. Ndicho: Bw. Spika, ninataka kuchukua nafasi hii kuchangia Hoja hii ambayo ni ya muhimu sana kwa sababu inahusu uchaguzi ambao sisi sote tunangojea. Kutoka mwaka wa 1992 hadi hadi mwaka wa 1997 na sasa tuko nafasi ya tatu---

Dr. Kituyi: Jambo la nidhamu, Bw. Spika. Angalau inawezekana na inafahamika ya kwamba Mbunge yeyote ana fursa na haki ya kuchangia kwa Hoja au Mswada wakati wowote mbele ya Bunge, lakini vipi Mhe. Stephen Ndicho ambaye alisema hakuna mtu anayetaka kuchangia Hoja hii anataka tuvunje Hoja sasa anatoka wapi anataka kutueleza.

Mr. Speaker: Order! I think one thing which has been clear in the past; was that a Member who has spoken is not allowed to move a closure to a Motion. I think in the same vein, any Member who has moved a closure will not be heard. Bw. Ndicho, si umetosheka?

Mr. Ndicho: Hapana, Bw. Spika!. Jambo la nidhamu, Bw. Spika.

Mr. Speaker: I have taken it away from you!

Proceed, Mr. Affey! Just a moment. Jambo la nidhamu yako ni nini?

Mr. Ndicho: Bw. Spika, si eti kwamba sikutaka kuchangia Hoja hii. Lakini hata ukisikiliza yale ambayo yamezungumzwa na Wabunge, ni mambo ya kurudiwa tu. Hata mimi natakaa kuyarudia tuu kwa sababu wamekataa tufunge majadiliano. Basi tuyarudie mpaka Yesu arudi!

Mr. Speaker: Order! I will not allow repetitions. In fact, I will ask the Clerks-at-the table to bring to my attention any hon. Member who repeats what another Member has said in this debate previously. That would be repetition.

Mr. Speaker, Sir, I think what we need to do in this House, in all seriousness, is to address those rules to improve upon what is there and, if possible, to increase or subtract from there. So, can we now have an hon. Member who is not convinced that we have completed this debate, but contribute only on new ideas? Mr. Affey, I give you the Floor!

Mr. Ndicho: Mr. Nyanja!

Mr. Speaker: Mr. Nyanja what? What have you got to do with Mr. Nyanja?

Proceed, Mr. Affey!

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey); Thank you, Mr Speaker, Sir. I also wish to take this opportunity to---

(Loud consultations)

Mr. Speaker: Order! I need to hear the hon. Member.

Proceed!

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Mr. Speaker, Sir, thank you very much for giving me this opportunity to contribute to the Motion on elections rules.

First, I would like to congratulate the Chairman of the ECK for the manner in which he has handled the elections. I have read the rules---

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. In the same vein again, if a Member voted against the continuation of the debate, can he then continue to contribute to the same?

Mr. Speaker: No! Who voted against the continuation of debate?

Mr. Ndicho: Mr. Speaker, Sir, hon. Affey and I voted against it.

Mr. Speaker: You voted against it?

Mr. Ndicho: Yes, Mr. Speaker, Sir. Kwa hivyo, ningetaka kile kilichotendeka kwangu kitendeka kwa kila Mbunge.

Mr. Speaker: Order! That was a different thing. That was a Motion whether or not the Mover should now

be called upon to reply.

Proceed, Mr. Affey!

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Mr. Speaker, Sir, I have read the rules and even though I support them, they have been done in a manner that suggests that there is uniformity of terrain and voter awareness in this country. There is no uniformity. What is good in one part of this country might not necessarily be good in another part of this country. I have a particular problem due to the fact that we have to count our votes at the polling stations. It is envisaged in these rules that the counting will be done in schools, other institutions and enclosures.

Mr. Speaker, Sir, we come from certain parts of this country where half of the polling stations are located near dam sites and boreholes where there are no permanent structures and, therefore, if you have to count these votes in dam sites, you risk at times the possibility of allowing rigging to take place because you may find yourself in a very unique climatic conditions in case it rains.

Supposing you close the polling stations at six o'clock and then it begins to rain and the polling station is located near a dam site in an open space between two trees and there is no electricity and those gadgets that are carried by the ECK fail to function and then some politicians upon sensing that they are likely to lose become mischievous to the extent of hiring bandits and thugs? Therefore, the danger is that you might not be able to have counting done when everybody is sober, all the agents are attentive and where conditions are not necessarily conducive.

Mr. Speaker, Sir, I would like to suggest that even if these rules favour urban settlements and cities, we must have a set of rules that can be able to satisfy the unique environmental conditions of certain parts of this country.

Mr. Speaker, Sir, I come from a constituency with 24,000 voters and half of them are pastoralists who move from one point to the other. I was happy to see that you have conditions being taken care of for pastoral groups in this country. I just hope that, that includes the movement of polling stations from point "A" to point "B" in consultation with the candidates because you can have a polling station located at a dam site and then it becomes impossible to access that dam site during the electioneering period. Therefore, I think it is important that we agree, as candidates or between political parties, that we should be free to move these polling stations to proper places.

Mr. Speaker, Sir, I also want to congratulate the ECK for the first time for trying to simplify the voting pattern. Initially, it was an "X" but now a dot or even a thumb sign can do the trick. Any indication of a voter trying to show his or her preference can do. I am not disappointed because quite a number of our people are not educated and they are able now to use whatever method is necessary to be able to vote.

Mr. Speaker, Sir, thirdly, I would like to appeal to the ECK to educate the Kenyan voter because this country has known one presidential candidate winning the elections for 24 years; who is President Moi. Quite a number of voters, when they go to the polling station, might hesitate to vote for any other candidate unless they are sufficiently educated by the political parties and the ECK.

I would have been happier if the ECK, in fact, participated in that education to an extent that they do inform the voters that the alterative of President Moi is mhe. Uhuru Kenyatta so that, at least, the voters who have known to vote for Moi do understand that the voting patterns have changed and now, they have a new candidate.

Mr. Ndwiga: On a point of order, Mr. Speaker, Sir. My good friend, Mr. Affey, admits he is a pastoralist and sometimes he does not get news in time. Now that he is in town I am wondering whether he has not heard that the incoming President is not President Moi but honourable Mwai Kibaki.

Mr. Speaker: That is actually not a point of order!

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Mr. Speaker, Sir, that is a point of misinformation.

Mr. Speaker: Order. Mr. Ndwiga! Next time you want to inform Member, please stand on a point of information. Do not mislead the House otherwise you will see the back of that door.

Proceed!

Mr. Speaker: Proceed, Mr. Affey!

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Mr. Speaker, Sir, I would like to sum up by saying that voters must be educated adequately about these rules because they are important and they guarantee fair play. As I conclude, I would only want to appeal to the Commission to consider the unique circumstances of North Eastern Province, especially where the polling stations are located. Most of these polling stations are located very far away from centres of settlement. They are completely in the interior. I think they said that they will provide certain materials, like tents or pressure lamps. So, all attempts must be made to make sure that this process becomes fair and transparent.

Thank you, Mr. Speaker, Sir, for giving me this opportunity.

Mr. Karauri: Thank you very much, Mr. Speaker, Sir, for according me an opportunity to contribute to this

Motion. I do agree with the rules that have been set, but there is a lot missing. For instance, I would have liked to see in the rules what would happen in the event that after closing the polling station, there is commotion and that the votes cannot be counted. There should be a rule indicating what should happen then. I also wish to ask the Electoral Commission of Kenya (ECK) to transfer the so-called district co-ordinators from their own districts to other districts. A co-ordinator who was born in a particular district has political interest and he or she may wish to favour one candidate against another. Because they have authority to do a lot of things at the election time, they should be transferred to other areas where they will not be partisan. Even the method of recruiting those co-ordinators in the districts is not always transparent. In certain areas, co-ordinators are picked because they are affiliated or they are friends or voters of a powerful Minister in that district. Because those powerful people who assisted them to be employed as co-ordinators will be vying for elections, the natural thing is that they support their godfathers who enabled them to be employed. The same case goes to the constituency and divisional co-ordinators. There are certain areas where I have never understood how recruitment takes place. Sometimes we find ourselves faced with only people who do not like us qualifying to be co-ordinators, and not one of them who is on our side is recruited even as a presiding officer. I wish to plead with the ECK to ensure that these people are paid well so that they can serve outside their districts. In the interest of fair play, presiding officers should also not come from their constituency, because they have interest and they are voters in that constituency. They are the people supervising the election in the polling stations and it would be good if they went to areas where they do not have partisan interest.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I have looked at these rules and I have seen that there are certain things that are not provided for. Maybe, they are in the law governing the elections. For example, the opening and closing of a session are not particularly provided for in these rules. I hope that this is in the Act itself. If it is not there, we would like these things to be clear. I wish this House would give the ECK powers over the police during the polling day so that they can arrest, prosecute and declare whether a candidate has been fairly or unfairly elected. A situation where you have to file a petition in court is not fair. The money you pay as deposit and to engage lawyers is too much. If on the election day you are not treated fairly, you may not be able to raise enough money to file a petition. We would like the Electoral Commission to have powers to do certain things and determine whether an election in a certain constituency has been conducted fairly or unfairly. There has been malpractice in the past, because of the fear of the Government in place. When Parliament is dissolved even today, you will hear people in the KANU Government say: "Stay in Government". This is a way of misleading the electorate. The Government of the day will be the Government that will be voted in, and not the Government which is going out. The electorate are misled that they should stay in Government. We would like the electorate to be educated that the Government they are voting in is the Government of the day, and not the Government that is expiring.

The Minister of State, Office of the President (Mr. Sunkuli): On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Manyara): Order! Mr. Karauri, would you like to be informed?

Mr. Karauri: Mr. Temporary Deputy Speaker, Sir, I do not want any information.

Even if it takes time, we would like to include everything in the rules that will make this election free and fair. In the election rules, there are no qualifications for presiding officers and how they will be recruited. We have left it to the Electoral Commission to recruit them. We would like them to be very fair in recruiting these people. They should set their own standards, and we will accept them. But they should not recruit on the basis of, for example, Mr. Karauri being a Minister from a certain district tells them the people to be recruited. I hope Mr. Kivuitu is listening.

Mr. Temporary Deputy Speaker, Sir, I do not know whether other people might have suffered the same fate as mine, but I do not think there is anybody who has suffered more than I have. I have had my votes counted in another constituency. The co-ordinator was asking people whether they were intending to vote for Mr. Karauri and then they were disqualified. I hope this is not going to be the case any more. That is why I support counting at the polling stations. We know it is going to be difficult, because the stations are many. We also know it is going to be difficult because if there is a problem in one of the polling stations, what would be the means for the candidate and the Electoral Commission to reach that polling station immediately for them to ensure fair play? They should be given sufficient money to be able to fly in a helicopter to an area where there is a problem. The means of communications for the Electoral Commission should be improved. All the returning officers should be provided with mobile telephones so that if a problem occurs, it can be resolved immediately and fast.

With those few remarks, I beg to support.

Mr. Mwiraria: Thank you, Mr. Temporary Deputy Speaker, Sir. I just want to address one issue. The regulations are good, but does the Electoral Commission of Kenya have the powers to implement them? Let me give a few examples of the reasons why I am asking this question. We have a regulation to the effect that the Provincial Administration should keep off the election exercise altogether. As we speak here, in Eastern Province, it is officers of the Provincial Administration who are organising KANU elections in the province. In Meru Central the PC has appointed two people in each constituency. They go to her every week for handouts and to report. I do not want to mention the names of innocent people, but I can give you the names of the two people from North Imenti. What is even more worrying is that the candidates who are standing on the KANU ticket are having DOs transferred if they do not listen to them. A case in point is the transfer of the DO, Timau, as a result of complaints from the candidate for North Imenti on a KANU ticket.

It is even distressing to note that chiefs are summoned to meetings and threatened with sacking unless they work for particular candidates. The question I am putting to the Electoral Commission, through the Attorney-General, is this: What can the Commission do to implement that very clear regulation that civil servants should keep off the elections? My other point - and I want to underscore it - is that during the 1997 elections, I sat at the Railway Club. When votes were counted thrice, the same candidate won all the three countings. The returning officer went outside, came back and announced that the three time loser had won. According to the law which exists today, the only recourse the loser had was to wait for a petition. Nothing could be more unfair than this. My request is that we amend the regulations to give the Commission power, where there is such a complaint to check the votes and ascertain who has really won. When you have an unfair and corrupt system, which says what you want is the seat and not the votes, then the Commission is really left without powers. I would expect an amendment to that rule to make sure that if there is a dispute, the returning officer cannot use his or her position to declare the wrong candidate the winner. When that happens, it is obviously unfair, but nothing can be done about it until people resort to petitions.

Mr. Temporary Deputy Speaker, Sir, the other area where, I think, the Electoral Commission of Kenya (ECK) needs powers for implementing the regulations is in the control of the police force. There are rules which, for instance, stop people from taking party symbols to the polling stations. But what happens is that you find a school has been declared a polling station. The returning officer puts a white robe around the building where the polling will take place. The rest of the school area is not part of the polling station. Then, what happens? You will find people who come there with cash to buy votes. We go and report that, that is happening and the returning officers says: "What can I do? You see what you can do!" The ECK cannot be that helpless to a point where crimes are committed within their sight and they do not do anything!

The other thing which happens is that you have an election and in the same compound, you find people holding cockerels and singing KANU songs, and the returning officer is not prepared to do anything! Surely, why do we have rules and regulations, unless they can be implemented?

Mr. Temporary Deputy Speaker, Sir, in the same vein, we register voters in polling stations and during the 1997 elections, candidates polled more than 100 per cent of the registered voters. Where did the extra votes come from? What did the ECK do to correct that anomaly? Should we not give them powers, so that where somebody polls more votes than the registered ones, they nullify that election, at least, in that polling station? Those are the questions that I want to leave with the ECK and the Attorney-General.

Mr. Temporary Deputy Speaker, Sir, I thought I should bring to the attention of the House the fact that, it is good having rules and regulations. But they are completely useless, unless they are implemented. What I am pleading for is that we must give the ECK teeth to be able to implement the rules and regulations. I would, for instance, like them to be in control of the policemen who help in controlling the polling stations. I would like the returning officers, presiding officers and other officers of the ECK to be in charge; to be the ones who can say: "Yes, there are people bribing voters there! Go and arrest them!" Otherwise, these rules are of no use!

With those few remarks, I beg to support.

The Minister of State, Office of the President (Mr. Nassir): Bw. Naibu Spika wa Muda, nimeshukuru kwa kunipatia nafasi hii ili niseme machache kuhusu Hoja hii. Nimewasikiza Wabunge wakitoa maoni yao na nimefahamu kwamba wanafikiria sana. Kama maoni yao yangekuwa mabaya, hayangetolewa hapa. Wamesema mengi kuhusu maofisa wa Electoral Commission of Kenya (ECK) na baadhi ya wakuu wa wilaya.

Ningependa kusema kwamba Mwenyekiti wa ECK ana ujuzi. Alikuwa Mbunge na anafahamu taabu zilizomo hapa nchini. Pia, ni vizuri tuwapatie pesa zinazotosha kwa sababu wakati wa uchaguzi mkuu karani wa ECK wanafanya kazi nyingi sana. Wakati mwingine inawabidi kufanya kazi kutoka asubuhi hadi usiku. Wakati wa uchaguzi mkuu uliopita niliwapatia malazi karani wa ECK kwa siku mbili. Mpinzani wangu aliamuru kuhesabiwa tena kwa kura na tulilazimika kuzihesabu kwa muda wa siku tatu. Ingekuwa bora sana kama ECK ingewapatia wafanyakazi wake pesa za kutosha.

Nimesikia Mbunge mmoja akisema kwamba KANU inahusika katika wizi wa kura. Ningependa kuuliza vile inahusika. Kila mara mambo yakiwa mabaya ni ya KANU na si ya Upinzani. Upinzani unasema kwamba tumefanya makosa---

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Mr. Nassir in order to address hon. Members on this side of the House directly instead of speaking through the Chair?

The Minister of State, Office of the President (Mr. Nassir): Bw. Naibu Spika wa Muda, mtu akizungumza ni lazima atazame mbele. Ilikuwa bahati mbaya kwamba yeye alikuwa amekaa mbele yangu lakini mimi sikuwa na nia ya kuelekeza yale ambayo nimeongea kwake. Ninasema hivi kwa sababu Bw. Munyasia ni rafiki yangu na tunajuana sana.

Ningependa kuwashauri watu wasibabaike. Mbunge ambaye amewafanyia watu wake kazi nzuri atachaguliwa tena, lakini yule ambaye hajawatumikia watu wake vizuri, hata akijiunga na chama kingine, hatachaguliwa. Pengine atashinda kukiwa na chama cha Biblia. Lakini kama atajiunga na chama cha kisiasa, hatashinda katika uchaguzi.

Ningependa kuwaomba Wabunge wenzangu wasaidiane ili tusaidie Serikali yetu. Sijui ni kwa nini Bunge hili halijavunjwa ili tuanze kampeni. Watu wameongea mambo mengi na dawa yake ni kwenda uwanjani.

Bw. Naibu Spika wa Muda, kwa hayo machache, ninaunga mkono.

Mr. Omingo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this Motion. The hon. Member who has just been contributing perhaps is a beneficiary of the "short-cut" because some of them won the elections by a margin of five votes. Nonetheless, the previous Member talked about election co-ordinators and I would like to emphasize on that and add one or two issues.

Some of the ECK co-ordinators are of questionable integrity. Their educational background is almost nil, while some of them have criminal records. How they are recruited to serve in these positions is questionable. I would like to plead with the ECK Chairman to look into specific cases, particularly in Gucha District. We should remove some of those officials because they have vested personal interests in some districts. I would like to propose that these officials are removed during the voting day because they serve particular interests. If the ECK Chairman would lend me his ears, we would like to give a dossier to prove a case in point that some of the ECK co-ordinators are of questionable integrity.

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate to interrupt the hon. Member because of his eloquence. But he has said that many of the ECK officers are criminals because they have got criminal records. These are serious allegations where free and fair elections are involved. When such an issue is brought to the House, and it is fundamental---

Mr. Temporary Deputy Speaker, Sir, would the hon. Member substantiate so that in the next election, we will not have an officer who has got a criminal record?

The Temporary Deputy Speaker (Mr. Imanyara): I heard him say that he will present the dossier to the Chairman of the ECK.

Mr. Omingo: Mr. Temporary Deputy Speaker, Sir, I wish the Chairman of the Electoral Commission of Kenya (ECK) listens to me because he may not have known about the information which I have to present to him today. If it could be of use, through the Chair, I would like to assist him to polish up as we are nearing the general elections. Indeed, some of the ECK co-ordinators have questionable integrity. I am saying this in reference to Gucha District.

Mr. Temporary Deputy Speaker, Sir, I commend the Chairman of the ECK for being a little independent than the previous Chairman. In the past, they have been listening to telephone calls from "the powers that be"! I commend the Chairman, Mr. Kivuitu, for being a little independent, and we want him to soldier on and inscribe his name in the Kenyan map. We need to move---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Omingo, are you saying "a little independent" or "a little more independent"?

Mr. Omingo: A little more independent than the previous Chairman because most of the previous chairmen of the Commission have had to receive directions from State House, to be specific, and they do the whims of their bosses.

Mr. Temporary Deputy Speaker, Sir, in the past, a the DO was constitutional office of declaring an hon. Member in this House. Nowadays, it is done by some mediocre DO out there who did not even know the inside of a classroom. He was promoted through merit not favouritism. These days, he declares a candidate a winner, even when he is a loser and he comes to sit in this House for five years. Somebody petitions the election results in the High Court, spending a lot of money and nothing is done. The Chairman of the ECK needs to have those powers to declare a candidate a winner and not some of the people out there who use influence because they have some vested interest in whatever they do.

Mr. Temporary Deputy Speaker, Sir, indeed, we need fair and free general elections. General elections cannot be free and fair when the District Commissioners are partisan. The District Commissioners have sworn and some of them have said that they are going to participate in politics because the Opposition is threatening their position upon taking power. So, they would work 24 hours a day to ensure that the Opposition does not sit in this House as Government. Therefore, we are pleading with the Chairman of the ECK to push away the Provincial Administration from the electioneering process because, I think, they are already partisan. As a matter of fact, in the Regulations and Code of Conduct of the Civil Service, the Provincial Administration officers are not supposed to participate in politics. But they are openly participating in politics even in the eyes of the ECK and nothing is being done.

Mr. Temporary Deputy Speaker, Sir, I was elected into this House in January, 2001, and the experience I had is, indeed, very fresh in my mind. What happened during the by-election in South Mugirango is a shame to the ECK. In one polling station, a presiding officer, who was drunk, allowed people to vote for the people who are living and are in the register, the death, those on journeys and the sick in hospital. What does that mean? He cast votes more than the registered voters. I passed that information to the ECK and nothing was done. A case in point is Kenyoro Polling Station in South Mugirango; there was 110 per cent voting which was a primitive act. The Chairman of the ECK needs to stand up to be counted. Let him take courage so that he can "take lunch or breakfast on the nose of a lion," like Mr. Kwach said. Let him take courage and do the right things that he is supposed to do to be of integrity and good standing.

Mr. Temporary Deputy Speaker, Sir, a time of registering voters ends at a particular time. Believe me, in South Mugirango, Nyamarambe Division, registration of voters went up to 12.30 p.m., during the election day. This issue was raised and the ECK knew about it, but nothing was done. By the way, I should have won by a bigger margin than I did, bigger than 0.1 per cent of some of the hon. Members sitting here today. However, I was rigged out, but by the grace of God, I am in here to make some laws and, perhaps, improve the electioneering process, through the able ECK Chairman.

Mr. Temporary Deputy Speaker, Sir, facilities at the polling stations are questionable! After 6.00 p.m. in the night, there is no sufficient light to facilitate the counting of ballot papers. I do not know what measures the ECK is putting in place to provide lights, security and the imaginary commotion which may lead to a recount or a repeat of the polls because a particular party or an individual is losing. We urge the ECK to come up with some specific guidelines on how to provide the infrastructure and the facilities required to complete the process.

Some distances between polling stations are quite long. Some people, beyond the age of 50 years, find it hard to walk long distances. I did make an application for the increase of polling stations, through the ECK Chairman, who is here in this House. I believe I am going to---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, hon. Members! Mr. Omingo, you will have a balance of 18 minutes to continue with your contribution tomorrow. On that note, it is now time for the interruption of the business of the House. This House, therefore, stands adjourned until tomorrow, Wednesday, 23rd October, 2002, at 9.00 a.m.

The House rose at 8.00 p.m.