

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 13th March, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:

The Report of the Constituencies Fund Committee on the approval of Mr. Boniface Lukhale Khorobei as a member of the Constituencies Development Fund Board.

(By Mr. Ethuro)

Abstract of Accounts of the Town Council of Ukwala for the four-year period ended 30th June, 2007 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the Town Council of Nambale for the three-year period ended 30th June, 2007 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the County Council of Turkana for the three-year period ended 30th June, 2007 and the Certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of the County Council of Isiolo for the years ended 30th June, 2005, 2006, 2007 and 2008 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State
for Defence (Maj-Gen.Nkaisserry) on behalf of the Deputy
Prime Minister and Minister for Local Government)*

Annual Report of the Kenya National Trading Corporation Limited for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for Defence
(Maj-Gen.Nkaisserry) on behalf of
the Minister for Industrialization)*

Financial Statement of the Kenya Roads Board for the year ended 30th June, 2011 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for Defence
(Maj-Gen.Nkaisserry) on behalf of the Minister for Roads)*

Financial Statement of the County Council of Thika for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State
for Defence (Maj-Gen.Nkaisserry) on behalf of the Deputy
Prime Minister and Minister for Local Government)*

Annual Report and Financial Statement of the Kenya Sugar Board for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for Defence
(Maj-Gen.Nkaisserry) on behalf of
the Minister for Agriculture)*

Financial Statement of the Kenya Medical Practitioners and Dentists Board for the year ended 30th June, 2011 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for Defence
(Maj-Gen.Nkaisserry) on behalf of the
Minister for Medical Services)*

Abstract of Accounts for the Town Council of Luanda for the year ended 30th June, 2007 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State
for Defence (Maj-Gen.Nkaisserry) on behalf of the Deputy
Prime Minister and Minister for Local Government)*

NOTICE OF MOTION

ADOPTION OF REPORT ON APPROVAL OF
MR. BONIFACE L. KHOROBEI AS CDFB MEMBER

Mr. Ethuro: Mr. Speaker, Sir, I beg to give notice of the following Motion:

THAT, this house adopts the Report of the Constituencies Fund Committee on the approval of Mr. Boniface Likhale Khorobei as a member of the Constituencies Development Fund Board laid on the Table of the House today, Tuesday, 13th March, 2012.

Mr. Speaker: Next Order!

QUESTIONS BY PRIVATE NOTICE

ARREST OF DIRECTORS OF M/S SYNERGY INDUSTRIAL CREDIT

Mr. Kapondi: Mr. Speaker, Sir, I beg to ask the Minister for State for Provincial Administration and Internal Security the following Question by Private Notice:-

(a) Can the Minister confirm that the Criminal Investigation Department (CID) investigated the Directors of M/S Synergy Industrial Credit Ltd on suspicion of money laundering and found evidence of the crime in October 2011?

(b) When will the said Directors be arrested and charged in court for the serious crime?

Mr. Speaker, Sir, this Question came up in December, 2011 and the hon. Minister answered it, but he was supposed to bring to the House a report to confirm whether this particular company is involved in money laundering activities.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, according to the records held by the police, the CID did not investigate the directors of Synergy Industrial Credit Limited on suspicion of money laundering in October, 2011 as alleged.

(b) This does not arise as there were no investigations conducted on any allegations touching on the directors of this company.

Thank you, Mr. Speaker, Sir.

Mr. Kapondi: Mr. Speaker, Sir, I think I have no further question. Perhaps, he can table in this House whatever he has in form of a report.

Mr. Ojode: Mr. Speaker, Sir, I do not have a report in the form of a booklet, but I have a written report which actually says that there was nothing linking them with money laundering.

Mr. Speaker: Do you have it in the House now?

Mr. Ojode: No, Mr. Speaker, Sir.

Mr. Speaker: But certainly you have a report and that is your word.

Mr. Ojode: Mr. Speaker, Sir, it is just a written statement which I consider to be a report that says in part that there is nothing linking the directors with any money laundering.

Mr. Speaker: Who is the author of the statement?

Mr. Ojode: Mr. Speaker, Sir, the CID Director.

Mr. Speaker: Very well! Can you avail a copy of it to the hon. Member for Mt. Elgon and then table it in the House at your earliest convenience, preferably tomorrow morning. The Question will not even appear on the Order Paper, but you may table the statement tomorrow morning.

Mr. Ojode: That is okay, Mr. Speaker, Sir.

Thank you.

(Mr. C. Kilonzo stood in his place)

Mr. Speaker: The Member for Mt. Elgon has said that he has no further questions. The Member for Yatta, would we not really let it rest there? Optimal use of time!

Yes, the Member for Yatta!

DISMISSAL OF POLICE OFFICERS

Mr. C. Kilonzo: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice:-

(a) Under what circumstances were police officers, CPL Peter Thaine Koome (No.76078), PC Benjamin Kipruto Chumba (No.85263), PC Charles Agwingi Ambogo (No.64417) and Andrew Lomosi Budembeshe (No.66637), who investigated mobile phone and digital accessories counterfeiting by Ms Banlon Kenya Ltd., dismissed from service in December 2011?

(b) What charges were preferred against the Director, Mr. Yang Zhihong (a Chinese National) and under what circumstances was he released from custody?

(c) Can the Minister confirm or deny that Police Force Procedures were violated in dismissal of the four officers?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, you will bear with me because it is a lengthy answer. However, I will try my level best to summarise it.

I beg to reply.

(a) The above named ex-police officers were all stationed at Cyber Crime Unit, CID Headquarters, Investigations Branch. On 31st October, 2011, a report of counterfeiting of mobile phones was received at the CID Headquarters Complaints Section. The matter was thereafter referred to ex-CPL Peter Koome and ex-PC Andrew Budembeshe for commencement of investigations.

On 1st December, 2012, CPL Peter Koome, PC Benjamin Chumba, PC Andrew Budembeshe and PC Charles Ambogo all proceeded to the Central Business District Commerce House and conducted a search in the business premises of one Zhihong Yang, a Chinese national. The search was conducted at about 3.00 p.m. and the following items were recovered from the premises of the Chinese:-

1. 226 stickers of mobile numbers of Bangon Model, 5130
2. Empty cases of Kingston memory cards
3. Mobile phone case covers
4. Mobile phone keypads
5. Mobile phone LCDs
6. Rechargeable batteries for mobile phones
7. MP4 players which had no serial numbers
8. Assorted cash invoices
9. NHIF Card which belonged to Lucy Wanjiru Ndung'u with Serial No.1549756 with a man's photo
10. Memory card stickers.

Mr. Speaker, Sir, between 3.00 p.m. and 4.30 p.m. the same day the officers escorted the suspect to Central Police Station and later to the CID Headquarters together with the recovered exhibits. It had been alleged that while at the Chinese office, the officers failed to properly introduce themselves. As a result an employee of the arrested Chinese proceeded to Central Police Station where he reported that his employer had been picked by persons not known to the employees.

The matter was thereafter referred to the Criminal Intelligence Unit at the CID Headquarters and at about 9.00 p.m. the Chinese was eventually located at the CID Headquarters Cyber Crime Unit offices. He was in company of the four officers and a civilian by the name George who was later identified as a commercial police informer. Further inquiries revealed that

the officers used a motor-vehicle belonging to the informer to ferry the suspect to the CID Headquarters.

After inquiry, it was established that the suspect had been in the custody of the officers from 3.00 p.m. to 9.00 p.m. Throughout this period, they had neither booked the suspect in police cells nor informed their superiors about the arrest of the foreigner. In view of the suspicious conduct of the police officers, the Chinese national was released and asked to be reporting to the police pending the conclusion of investigations. In the meantime, all the four police officers were dealt with in orderly room proceedings for being guilty of an act prejudicial to good order and discipline by failing to report to their superiors the arrest of a foreign national.

It is a requirement under the Police Force Standing Orders, Cap.49 Section 17 that in the event of an arrest of any foreigner, his or her nearest Commonwealth or consular offices should be informed immediately through Police Headquarters who will immediately notify the Ministry of Foreign Affairs.

On conclusion of the orderly room proceedings, the officers were found guilty as charged and convicted accordingly. They were later sentenced to dismissal from the Kenya Police Service with effect from 3rd December, 2011.

Mr. Speaker, Sir, on 28th February, 2012, we received a preliminary report prepared by Global IPR Enforcement Due Diligence from the Anti-Counterfeit Agency revealing that some of the Nokia accessories recovered from the Chinese national such as keypads and earpieces are not produced by Nokia.

As regards the other recovered exhibits, we have contacted the intellectual property rights owners through the Executive Director of the Anti-Counterfeit Agency and we are still awaiting the analysis report.

- (a) The Chinese national has been charged with the following of offences and a warrant of arrest is in force.
 - (i) Counterfeiting trademarks contrary to Section 381.
 - (ii) Engaging in business without authority contrary to Section 12(a) of the Immigration Amendment Act, Cap.172 LOK as read with Sub-section (f) of the Act.

We have confirmed from the Director of Immigration Services that the Chinese suspect left the country on 12th February, 2012.

- (b) I wish to confirm that while dismissing the four officers, the Police Force Procedures were not violated. All the four police officers were properly notified of the intended proceedings in addition to all the other procedures in disciplinary proceedings under Cap.20 of the Force Standing Orders being equally followed. This includes the notification of the right of appeal against the dismissal to the Commissioner of Police within seven days from the day of receipt of the dismissal letters.

Thank you, Mr. Speaker, Sir.

Mr. C. Kilonzo: Mr. Speaker, Sir, this is a matter within the police force. Four officers from Serious Crime Unit were investigating a matter of counterfeit mobile phones and accessories and when they arrested a key player; a Chinese national, who was in the country on a tourist visa but was trading here, were accused--- After arresting this Chinese and taking him to the Criminal Investigation Department (CID) through Central Police Station, they were accused of kidnapping the man. The charge that they are being charged with is that they did not inform their seniors. The document of proceedings, which I have from the police force, the immediate officer, SP Peter Mungai, confirmed that he was aware and they were working

under him. These officers were dismissed within days. Then the Chinese was facilitated to escape the country. My question to the Assistant Minister is, now that the matter is before him, there is a court order which says that the officers should be reinstated, why has the CID Director refused to comply with the Court Order?

Mr. Speaker, Sir---

Mr. Speaker: Order, hon. Member! You must rest it there for the time being?

Mr. Ojode: Mr. Speaker, Sir, I am yet to peruse the court order that he is talking about. The dossier which I have here does not contain court orders. So, it would be prudent for me to check whether they are admissible or not. The issue of kidnapping, yes, Mr. Mumo, the SP claims that he received a report of kidnap from a Mr. Waweru who was an accountant through the phone but not through police channels. It seems that there are some documents which I do not have in my possession.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Let him finish then I will give you a chance, hon. Member for Yatta!

Mr. Ojode: Mr. Speaker, Sir, the alleged kidnap victim did not mention any relationship with the reportee of the kidnap. The information we got first was that the Chinese was kidnapped. So, the charges were for kidnap but they were later on changed. I would request---

Mr. Speaker: Order, Mr. Ojode! Hon. Member for Yatta, I would like you to table the documents which you have, including the court order and the other documents that the Assistant Minister does not have.

Mr. C. Kilonzo: Mr. Speaker, Sir, I wish to table the two court orders which clearly show impunity within the police force. The first court order is reinstating the four officers. The second court order directs a Mr. Siro, who I believe works in the State Law to write to the Director of CID and also copy to the court the same. Failure to that, they are at liberty to sue the Government for contempt of court proceedings.

Mr. Speaker: Just table them and I would like the Assistant Minister to have a look at them. In the meantime, we will take other supplementary questions.

(Mr. C. Kilonzo laid the documents on the Table)

Mr. Imanyara: Mr. Speaker, Sir, it is quite clear from the Minister's own answer in this House that this were police officers who were performing their work very diligently. There was entry in the Occurrence Book (OB) and these people were in police custody. The documents that have been tabled by the hon. Member for Yatta show that these were diligent police officers who have been punished for doing what they were employed to do. Could the Assistant Minister assure this House that he will take steps against this so called, "senior officers" who engineered removal of police officers who were doing their work in accordance with the law and ensure that the court orders are immediately followed and that Peter Koome, Benjamin Kipchumba, Charles Ambogo and Andrew Budembeshe are not only reinstated but promoted and given an award for dutiful conduct?

Mr. Ojode: Mr. Speaker, Sir, if indeed, it is true that the facts which are being laid here are true, then I will have to take some action. I will definitely take action on the senior officers.

Mr. Speaker: Order! Mr. Ojode, I find these two documents admissible. They are dated and they bear the rubber stamp of the respective courts. Perhaps you want to acquaint yourself with them and you have the Attorney-General not very far from you. Maybe you can get some help from him.

Mr. Lekuton: Mr. Speaker, Sir, the question of counterfeits is very serious because it constraints the business clout of legitimate dealers in this country and also denies the Government huge tax revenue. I would like the Assistant Minister to inform this House what has been achieved since the enactment of the laws prohibiting importation of counterfeits.

Mr. Ojode: Mr. Speaker, Sir, the law on counterfeit items is very clear. I would request my colleague to allow me to go through some of the documents which have been put here. If it is true that the counterfeited items were confiscated and no action was taken, I want to say in this House that somebody must answer for it.

Mr. Litole: Mr. Speaker, Sir, it is indeed a sad day in the police force if people are just sacked like that. I want to ask the Assistant Minister how the Chinese man got out of Kenya and who facilitated his exist? The Assistant Minister has not told us that.

Mr. Ojode: Mr. Speaker, Sir, as you are aware, the Immigration Department is not under my watch. I would not know how he left the county. I only deal with issues of security.

Mr. Ogindo: On a point of order, Mr. Speaker, Sir. This was a criminal in custody of the police. Could the Assistant Minister clarify how he left the police station?

Mr. Ojode: Mr. Speaker, Sir, upon realizing that there was no evidence to show that he was involved in the counterfeit items, he was supposed to report to the police after he had been bonded. Later on, we were told that he left the country on 12th February, 2012.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Obviously, the Assistant Minister is misleading the House. Charges had been prepared by the four officers and their supervisors gave the go-ahead to take this particular Chinese to court. That is where the untouchable came in. The officers were dismissed within 48 hours. I table the document showing that charges had been prepared. I also want to table more documents.

Mr. Speaker: Order, hon. Member for Yatta! Just a minute! Do not get upset. I am just concerned over the manner in which you are prosecuting your point of order. You are a seasoned Member of this House now and you can do it better than that.

Mr. C. Kilonzo: Mr. Speaker, Sir, is the Minister in order to mislead the House that the police had found no charges preferred on this particular fellow but when the officers were preparing the charges what was pending was to take the Chinese to police cells? I wish to table the charge that had been prepared by the police officers to show that the Assistant Minister is misleading the House.

(Mr. C. Kilonzo laid the documents on the Table)

Mr. Speaker: Please do so. The finding as to whether he is misleading the House is my preserve and not for you. Mr. Ojode, you will want to look at those documents as well.

In the meantime, we will listen to the hon. Member for Gichugu.

Ms. Karua: Mr. Speaker, Sir, from the Assistant Minister's answer it would appear that the main charge against the four officers is that from 3.00 p.m. when they engaged in investigating this Chinese national, they took him to the police station at night notwithstanding the fact that they had to verify very many forms and other accessories. If the officers are being charged and have been dismissed for that lapse of time, what about the officer who released the Chinese national when there was *prima facie* evidence that he had committed a crime? Who is that officer and has action been taken against him, if indeed, what was done to the officers was right?

Mr. Ojode: Mr. Speaker, Sir, the report which I have indicates that the Chinese was bonded to appear the next day to the police station for him to be taken to court. When he was supposed to report, he never did so. I tend to think that he disappeared before he was taken to court.

Mr. Kutuny: On a point of order, Mr. Speaker, Sir. It appears that the Minister is lost in the whole thing and has half-baked information that the concerned Government institutions in his Ministry have given him. Would it be in order for me to request that the Minister be given enough time to bring a substantial answer to the House and the matter be referred to the Committee of Parliament?

Mr. Speaker: Order! Mr. Ojode, you have to respond to the point of order raised by the hon. Member for Yatta. I am satisfied that the first document which is a copy of a charge sheet is admissible because it is signed by the officer in charge of Muthaiga Police Station and there is a date on the document. There is a police case file number. The only thing that is not in this document is the court case number because the matter did not get to court. So, I am satisfied that it is a copy of a charge sheet. With respect to the second document, hon. Member for Yatta, I am not satisfied. It is not signed and does not have a rubber stamp but the first one is valid.

Mr. Ojode, would you like to respond to that?

Mr. Ojode: Mr. Speaker, Sir, it looks like the documents are real.

Mr. Speaker: I have already admitted them. So just deal with them.

Mr. Ojode: Mr. Speaker, Sir, what I was saying is that the Chinese man was never taken to court because he never reported back to the police station as he had been told. The second issue raised by Mr. Kuttuny, because there is some evidence to show that there is a lot to this issue, I do not mind a Committee of the House investigating the matter and reporting to the House.

Mr. Speaker: Order, Mr. Ojode! Before we get to the Committee, the way you have responded to various questions that have been raised by hon. Members so far, I have the impression that you are not fully prepared to answer this Question. So, I want to give you time to come and give a satisfactory answer to the House. I do not know how long you need. The Committee is a different stage altogether. I think you can find information.

Dr. Nuh: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Member for Bura!

Mr. Ojode: Mr. Speaker, Sir, the reason why I was agreeing with Mr. Kuttuny is because if I am the Assistant Minister in charge of internal security, then I should have all the documents instead of being ambushed by court orders in the House. That means that there are a number of papers which I do not have or I am not privy to and yet the Questioner has. The only thing I need to do is to check whether those court orders form part of the Question that we are handling.

Mr. Speaker: What is it, the hon. Member for Yatta?

Mr. C. Kilonzo: Mr. Speaker, Sir, I want to agree with the Assistant Minister who saw me and told me that he feels that the Police Force is intentionally withholding information from him purely because I seem to have more information than he can possibly imagine.

Mr. Speaker, Sir, I really plead that this matter be referred directly to the Committee because as far as the Assistant Minister is concerned, he is not able to get any other information from the Police Force. This is something which he has confirmed.

Mr. Speaker: Order! From where I seat, the position has always been this; that when a Question is raised, the Government is obligated to supply information. It is under duty to answer!

So, when we defer a Question and take it to a Committee, it is like we are giving the Government time to supply information which, otherwise, it has!

(Applause)

It will not be in the interest of this House nor the country to delay matters by referring them to a Committee over information which the Government, otherwise, ought to have and is expected to have!

(Applause)

So, Mr. Assistant Minister, you will have to indicate to the House how long you require to give a satisfactory answer.

Mr. Ojode: Mr. Speaker, Sir, it appears as if the documents are there. The only problem is that they did not supply me with the documents. We can defer the Question to Thursday so that I can---

Mr. Speaker: Thursday, this week?

Mr. Ojode: Thursday, this week, Mr. Speaker, Sir.

Mr. Speaker: Very well!

Mr. Olago: On a point of order, Mr. Speaker, Sir. I am glad the House appreciates the gravity of this issue. But ordinarily, in a matter such as this where a foreign national is under investigation and is released, some security is provided by that suspect and most of the time it is a passport.

(Applause)

As the Assistant Minister prepares the answer, can we look at what type of security was provided to the police when this man was released and what happened to that security?

Mr. Speaker: Fair enough!

(Dr. Nuh stood up in his place)

The Member for Bura, is it on the same aspect?

Dr. Nuh: Thank you, Mr. Speaker, Sir. It is on the same aspect.

Mr. Speaker: Very well! Mr. Assistant Minister, on Thursday, you come with a comprehensive answer.

Mr. Ojode: Mr. Speaker, Sir, I seek the indulgence of the Chair to allow me to do this on Tuesday because of what the hon. Member has added. This is because I have to ask the Immigration Department to give us the details.

Hon. Members: No! No!

Mr. Speaker: Mr. Assistant Minister, this is a Question by Private Notice. If the Government puts into play its full machinery as it has at its disposal, why can you not get information on a case like this within even 24 hours? You oversee the police force, Mr. Assistant Minister! Are you saying that our police force is so inefficient that it cannot check a case in 24 hours?

Mr. Ojode: No, Mr. Speaker, Sir. The police force is very efficient. I will give it a trial on Thursday. I will answer the Question on Thursday.

Mr. Speaker: Yes, otherwise, that would put to question our capacity and ability.

(Mr. Njuguna stood up in his place)

The hon. Member for Lari, do you want to raise an issue on this?

Mr. Njuguna: Thank you, Mr. Speaker, Sir. It is a small point. Since the Assistant Minister has admitted that the four senior officers were unfairly dismissed, could he, therefore, prepare to make sure that as he prepares the response for this House, he also makes sure that the four officers are immediately reinstated?

Mr. Speaker: The Question is deferred to Thursday, this week! Mr. Assistant Minister, come prepared to cover all those issues. You appreciate the gravity of the matter, no doubt.

Mr. Ojode: I will, Mr. Speaker, Sir.

Mr. Speaker: Yes, the Member for Kisumu Town West!

ACCIDENTS AT MAMBOLEO JUNCTION IN KISUMU

Mr. Olago Aluoch: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice:-

(a) What are the circumstances surrounding the accident that occurred at Mamboleo Junction in Kisumu on 3rd February, 2012 in which 26 people died?

(b) When should police road blocks be mounted and be made permanent features at particular spots under the Police Act and Force Standing Orders?

(c) What disciplinary or court action will the Ministry take against police officers who were involved in the accident at the road block?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I beg to reply.

(a) Mr. Speaker, Sir, on 3rd February, 2012, at about 8.30 p.m., a motor vehicle registration No.KBE 252L, a Mercedes Benz Actros lorry was heading to Kisumu from Kakamega direction when the brakes failed while descending Kiboswa/Mamboleo Hill towards the Mamboleo Junction, where a police road block had been erected. The driver lost control of the truck and rammed into motor vehicle registration No.KAU 581C, a Toyota *matatu* which was heading to Kisumu City. The lorry then hit, head-on, another *matatu* registration No.KBN 178K as it headed towards Kakamega from Kisumu City. The truck then knocked down two motor cycles registration Nos.KMCA 037Q and KMCB 396K before coming to a stop.

Following the accident, 25 people died on the spot while one more person died while undergoing treatment at the New Nyanza General Hospital. The police moved to the scene and investigations commenced immediately and all the bodies were removed to New Nyanza Provincial General Hospital Mortuary for post mortem. The accident vehicles were towed to the police station for inspection and a police accident case file No.IARF No.2/2012 was opened, which was later forwarded to the Director of Public Prosecutions for perusal and advice.

Mr. Speaker, Sir, the Kenya Police Act, Cap.84 of the Laws of Kenya stipulates in Section 26(1) as follows:-

“Notwithstanding the provisions of any other law in force, any gazetted officer or inspector or any police officer in charge of a police station may, if he considers it

necessary to do for the maintenance and preservation of law and order or for the prevention or detection of crime or for the apprehension of offenders, erect or cause to be erected barriers in or across any road or street or in any public place in such manner as he may think fit.”

Under the circumstances, the Police Act supersedes the provisions of the Force Standing Orders, which itself is a creation of the very Act. The reason for the erection of the road block is the prevalent crime levels within and along the section of the road. The barrier was and is not a permanent feature, as erection of such road blocks is dictated by prevailing crime and circumstances which also dictate the period it should remain in place.

(c) Pursuant to the accident, a Case File IARF No.2/2012 was opened and the same was forwarded to the DPP for perusal and advice. Appropriate action will be taken once the same is received from the DPP.

Thank you, Mr. Speaker, Sir.

Mr. Olago: Mr. Speaker, Sir, the last incident that this Question refers to of 3rd February, this year, is the last in a litany of accidents at this spot on this road. Many Kenyans have lost their lives on this road and the most well known one is Mr. Owino Misiany, the late musician.

Mr. Speaker, Sir, this road is very safe, generally. From Coptic Corner to Kondele is a very safe road. What makes it unsafe is the police barrier. Under these circumstances, since the Assistant Minister says that the barrier is not a permanent feature--- When I am in the constituency, I use this road, at least twice, a day; in the morning and in the evening, and I know that the barrier is a permanent feature. But even if it is not a permanent feature, why is it not possible for the police to co-ordinate with the Ministry of Roads so that on this stretch of the road, bumps are erected to reduce the speed of vehicles so that no more lives are lost?

Mr. Ojode: Mr. Speaker, Sir, we will liaise with the Ministry of Roads to make sure that they erect some bumps. Otherwise, that barrier is not permanent. I want to vouch because I normally use that road also. We only erect the barrier spikes as and when need arises.

(Mr. Olago stood up in his place)

Mr. Speaker: Order, the Member for Kisumu Town West! Get some help from your colleagues!

Mr. Outa: Thank you, Mr. Speaker, Sir. We have seen a number of lives lost on this road, including the one of Owino Misiany, who died on the same spot. While the Assistant Minister is still trying to dialogue with their partner, the Ministry of Roads, could he kindly order his police officers to temporarily vacate the place? This is because the accident occurs here because his officers always compete whenever they see the 14-seater *matatus* coming from Kakamega or Kisumu. They will stop them without even checking the dangers on this road. Could the Assistant Minister temporarily tell the police officers, as he still consults with the Ministry of Roads, to vacate the place?

Mr. Ojode: Mr. Speaker, Sir, I want to assure this House that the road block will be erected as and when need arises. There is no way we can remove the road block because safety is a priority for this country. If we get some information that there are some thugs or a vehicle is stolen from those sides of Kakamega or from Kisumu, we must erect road blocks. This is because maybe the hon. Member can lose a vehicle tomorrow, and that vehicle will be taken all the way to Kakamega or Bungoma using the same road. I must erect those road blocks!

Mr. Midiwo: Thank you, Mr. Speaker, Sir. Let me thank the Assistant Minister for saying that he will liaise with the Ministry of Roads to erect bumps.

Mr. Speaker, Sir, very many people have died in that particular spot or road block. I want to ask the Assistant Minister to tell this House; on the Kisumu-Busia Road, the Kisumu-Homa Bay Road and the Kisumu-Migori Road, how many road blocks should people expect now that from Kisumu to Siaya, we have almost 20 road blocks and the police only stop Nissan *matatus*? What is the Government policy on the road blocks?

Mr. Ojode: Mr. Speaker, Sir, road blocks are erected for reasons which are known. Those road blocks are for purposes of bringing law and order and, again, for those thugs who operate within that area.

Mr. Speaker, Sir, just as I have mentioned here, I will liaise with the Ministry of Roads, at least, to have bumps erected within that area. However, the road blocks will be erected as and when necessary. Mark my words!

Mr. Speaker: Hon. Olago, ask the last question!

Dr. Nuh: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order, the Member for Bura!

Mr. Olago: Mr. Speaker, Sir, I did say that the road block on this stretch is a permanent feature while Hon. Ojode says that it is not. Between me and him, I think I have more authority to say what I said because I have seen it with my own eyes. It is believed by the people that this road block is erected here more or less permanently for purposes of collecting bribes from *matatus* plying the Kakamega and Mamboleo routes. Has the Assistant Minister addressed his mind to that part; that the police could be erecting these road blocks only for purposes of collecting bribes?

Mr. Ojode: Mr. Speaker, Sir, this is the first time I am hearing that some police officers are taking bribes.

Hon. Members: No!

Mr. Speaker: Order, hon. Members! Let us hear the Assistant Minister!

Mr. Ojode: Yes.

Dr. Nuh: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order, the Member for Bura! Mr. Assistant Minister, do you want information from the hon. Member for Bura?

Mr. Ojode: No, Mr. Speaker, Sir. I have got a lot of information. The giver of the bribe and the taker of the bribe, both are committing a crime. As they keep on talking about police officers taking bribes, if I do not have any evidence, that in itself is speculation. We can arrest somebody for speculating. We need to know who is this that bribes the police officers rather than rely on rumours! Within the police officers, we have name tags and numbers. Why can I not get the names of those who are taking bribes? At the same time, I will also need the names of those who are giving bribes so that I can arrest both of them.

Mr. Speaker: Fair enough, Assistant Minister!

Next Question by the Member for Keiyo South!

SUPPLY OF SUBSIDIZED FERTILIZER TO FARMERS

Mr. Kiptanui: Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Can the Minister assure the House that there will be sufficient supply of subsidized fertilizer to farmers during the current planting season?

(b) Could the Minister indicate the volumes in tonnage available and state where the commodity can be purchased by farmers?

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Speaker, Sir, I beg to reply but before I do that I had a similar Ministerial Statement to make. I intend to also issue the Ministerial Statement as I answer the Question.

Mr. Speaker: Assistant Minister, will you please endeavour to incorporate the contents of your Statement in the answers that you give to the Question so that we do not do things separately?

The Assistant Minister for Agriculture (Mr. Ndambuki): I will do that, Mr. Speaker, Sir.

Mr. Speaker, Sir, I beg to reply.

The Government has adequate supply of subsidized fertilizer available for the current planting season for the farmers to purchase. The country's subsidized fertilizer stock for the long rains in 2012 is 27,500 metric tonnes of DAP for planting and 5,000 metric tonnes for CAN for top dressing which is accessible at the National Cereal and Produce Board (NCPB) depots.

Mr. Speaker, Sir, even before the Government imported the 32,000 metric tonnes we had 6,000 bags of 50 kilogrammes of DAP and 145,000 bags of CAN in store. The requirement for this season is 271,000 metric tonnes. We have all that and we will be selling the fertilizer at Kshs2, 500 for DAP and 1,600 for CAN. This is available at the NCPB depots all over the country. By yesterday we had moved over 25,000 bags to the north rift and 1,000 bags to Kajiado. We have more than 100 lorries moving; they are on the road delivering all those fertilizers to various areas.

Mr. Speaker, Sir, just for the sake of Members, the North Rift Region requires 54,997 metric tonnes for planting. For top dressing, they need 28,633 metric tonnes. South Rift requires 29,612 metric tonnes for planting and 15,471 metric tonnes for top dressing. Western Province requires 36,718 metric tonnes for planting and 17,957 metric tonnes for top dressing. Nyanza requires 17,959 metric tonnes for planting and 14,250 metric tonnes for top dressing. Central requires 14,250 metric tonnes for planting and 7,445 metric tonnes for top dressing. Eastern Province requires 21,375 metric tonnes for planting and 11,161 metric tonnes for top dressing. Coast requires 3,562 metric tonnes for planting and 1,861 for top dressing. North Eastern Province requires 891 metric tonnes for planting and 465 for top dressing.

That is what is required at this time and I can assure this House that we have the fertilizer. It is only that we had a problem; we should have delivered this but the NCPB was taken to court and the case was just determined on Wednesday last week. That is why we are now moving the fertilizer a bit late. I ask the Members to keep a follow up of their areas and if there is no fertilizer they can let us know. I assure them that before the end of this week, every NCPB depot will have fertilizer for sale.

Mr. Kiptanui: Mr. Speaker, Sir, indeed, it is very clear that the Assistant Minister has confirmed that the fertilizer is not available and it will be available by the end of the week, if I heard your answer well. You have said that much of it is being transported as we talk now. My question is; to prove that the fertilizer will be available, could the Assistant Minister table a list of all the depots in the country where fertilizer can be purchased by farmers and indicate the stocks available in each of these depots countrywide?

Mr. Ndambuki: Mr. Speaker, Sir, the depots are known in Kenya and that is where the fertilizer is going to be. It is going to be distributed according to the requirement of the areas. That is being done. I did not say at any time that the fertilizer is not available. I said it is available. If you go to North Rift now, you will find that we have more than 25,000 bags which were delivered over the weekend. More is going to be delivered and is being delivered as we speak.

Mr. Mureithi: Mr. Speaker, Sir, whereas we appreciate that the Assistant Minister has brought to us some fertilizer, I would want them to tell us the precautions they are taking to avoid the stockists coming and taking all the fertilizer, putting it in their stores and then finally selling to farmers at exorbitant prices as we experienced in the last delivery?

Mr. Ndambuki: Mr. Speaker, Sir, for any farmer to access fertilizer he has also to get a letter from the District Agricultural Officer to ascertain that the person is a farmer and that is the only time he will buy the subsidized fertilizer.

Mrs. Leshomo: Bw. Spika tunataka kujua mbegu iko wapi. Kuna watu wanahitaji mbegu na sio *fertilizer*.

Mr. Ndambuki: Mr. Speaker, Sir, a week ago, the Ministry distributed 726 metric tonnes of high value seeds. This was taken to 117 districts which cost the Government Kshs125 million. Now, these seeds are being distributed by the DAO all over the 117 districts. They can be found there.

Mr. Chanzu: Mr. Speaker, Sir, may be the Assistant Minister is not aware. This fertilizer issue and maize has a lot of exploitation. Right now in a place like Vihiga where they are supposed to sell at Kshs2, 500 they are selling for Kshs4, 700. What are you doing to ensure that these small scale farmers--- Because it is not a matter of someone coming with a letter; everybody wants to feed in this country. People are being exploited. Those who are planting one acre or half an acre are paying Kshs4, 700 for fertilizer, what are you doing to save these people? I think there has been fertilizer available and what Mr. Mureithi is asking is what is happening? You do not give the people and give to some few people who sell at a higher price because they cannot get to the NCPB one. What are you doing to protect the small farmers from that?

Mr. Ndambuki: Mr. Speaker, Sir, for fertilizer which is being sold at Kshs4, 000 it is not being sold at the NCPB depots. This is a market going price for---

Mr. Chanzu: On a point of order, Mr. Speaker, Sir. This is something that is being stage managed. That is because we want fertilizer to be available so that farmers can get it. He should not say that fertilizer is fertilizer. We want to know when he will stop that case and make the fertilizer available to all, just like the hon. Member has asked. He has asked about the depots where the fertilizer is stored. We have to stop the people who are exploiting farmers. It has happened in the sugar industry before. For example, Mumias Sugar Company (MSC)---

Mr. Speaker: Order, Mr. Chanzu! Stick within relevance!

Mr. Chanzu: Okay. Answer that one!

(Laughter)

Mr. Ndambuki: Mr. Speaker, Sir, I would really like to know where the fertilizer is being sold by National Cereals and Produce Board (NCPB) because they have instructions. What happens is that they sell one bag, bring us the receipt and we pay them the element that the Government is meeting. I do not see how anybody could sell that fertilizer, which is supposed to be subsidized by the Government, at Kshs4,000. I would like to have that evidence and we will

take action. Let me get that evidence and we will deal with it. If you have evidence - and I am asking all hon. Members - that it is being sold at Kshs4,000, please just bring it to me and action will be taken.

(Mr. Chanzu consulted loudly)

Mr. Speaker: Order, Mr. Chanzu!

Mr. Mwangi: Mr. Speaker, Sir, the Assistant Minister has described the types of fertilizers that the Ministry is going to provide. We have observed that he is supplying DAP and CAN. Some of the areas require different types of fertilizer. Would he confirm that for some parts of central Kenya that require double phosphate fertilizers, 23230 and 17170, it will be made available, especially in Kiharu?

Mr. Ndambuki: Mr. Chanzu, just after this, I will call the District Agricultural Officer (DAO) there and check whether he is paying Kshs4,000, and we will deal with it. On the question by Mr. Mwangi---

Mr. Mwangi: On a point of order, Mr. Speaker, Sir. Could you urge the Assistant Minister to answer me instead of addressing the other hon. Member directly?

Mr. Speaker: Order! The Assistant Minister addresses the House and not individual hon. Members when he is answering a Question.

Proceed, Mr. Ndambuki!

Mr. Ndambuki: Mr. Speaker, Sir, I know that farmers in the hon. Member's area use NPK1717 and NPK2323. That is available and if he goes to his nearest depot, he will find it there at a very subsidized price.

(Mr. Kombo stood up in his place)

Mr. Speaker: Mr. Kombo! I almost said Member for Webuye, but you do not represent Webuye now.

Mr. Kombo: That is okay, Mr. Speaker, Sir. I heard the Assistant Minister categorically say that there is fertilizer in the North Rift. I want to tell him that, as of this morning, there was no fertilizer in Kitale and he can check that. So, I want him to tell the House why there is that crisis. Do they not have a plan? They know when the planting season is coming! So should the farmers be left in a situation where they are always in a state of crisis fighting to find fertilizer? In fact, during the reign of Mr. Samoei, there was always fertilizer on time. What has gone wrong?

Mr. Ndambuki: Mr. Speaker, Sir, I can assure the hon. Member that there is fertilizer in Kitale now. The only thing is that it is not enough. I am saying that it is going to be there before the end of this week because it is being delivered on a daily basis. We have hired enough lorries to deliver it. I said that the delay came about because we were taken to court and we had to wait until the case was sorted out.

Mr. Kutuny: Bw. Spika nimemsikiza Waziri Msaidizi akisema kwamba wana takriban tani 27,500 za mbolea ya kupanda mazao, na takriban tani 5,000 ya mbolea ya kunyunyuzia. Niruhusu niseme hivi: Tani 27,500 ni magunia 500,050. Itashoea hekari 200,050 ilhali wakulima wana zaidi ya hekari 4,000,000 na wanahitaji zaidi ya magunia ya mbolea milioni kumi ya kupandia. Mbolea aina ya CAN ni gunia 100,000 ilhali hio ni kama hekari 75,000. Wakulima wana hekari 4,000,000 na wanahitaji magunia milioni sita. Hii ni kumaanisha kwamba kuna

upungufu wa mbolea. Je, ni kwa sababu wamekosa pesa ya kuagiza mbolea ya kutosha ama kuna uzembe katika Wizara, ama kuna watu wanaotaka kutumia Wizara kujitajirisha?

(Applause)

Ama pia kuna watu wanaoungana na watapeli wanaoitwa MEA Ltd? Wakiendelea na kasumba yao, sisi tutawaambia wakulima wakatae kununua mbolea yao.

Mr. Speaker: Nidhamu, Bw. Kutuny! Bw. Ndambuki, jibu!

Mr. Ndambuki: Mr. Speaker, Sir, I only talked about 27,000 DAP fertilizer which we brought in. But before that, we had DAP fertilizer for planting in various stores. What we did not want to do is to shift from one area to another. But now, the 5,000 bags we have now, we are delivering to the areas where there was no DAP. We are giving the areas which are expected to be planting now a priority. That is exactly what we are doing. We are going to give our farmers enough fertilizer to do their farming.

Mr. Speaker: Order, Mr. Ndambuki! Are you in conspiracy with anybody, individual or company to bring about an artificial shortage so that such a company can enrich themselves? You have been asked that question!

(Applause)

Mr. Ndambuki: Mr. Speaker, Sir, I am surprised! The hon. Member should substantiate and table such information. That is because I am not aware of anything like that.

Mr. Speaker: Order, Mr. Ndambuki! Will you then ensure that you supervise the distribution of that fertilizer?

Mr. Ndambuki: I will do so, Mr. Speaker, Sir.

Mr. Kiptanui: Mr. Speaker, Sir, could the Assistant Minister tell us what long term measures he has put in place to ensure that, in future, fertilizer is made available to farmers well in advance before the planting season begins?

Mr. Ndambuki: Mr. Speaker, Sir, if it was not the case that was filed by one of the suppliers of fertilizer, the fertilizer would have been there even three weeks before people started preparing for planting. So, what I can assure the House is that we will advance---

Mr. James Maina Kamau: On a point of order, Mr. Speaker, Sir. The Assistant Minister had mentioned that the price of the fertilizer will be maintained at Kshs2,500. Could he confirm to the House that that price is going to be maintained across the country without any additions?

Mr. Ndambuki: Mr. Speaker, Sir, the price is Kshs2,500 for DAP and Kshs1,600 for CAN. That price should prevail until the Government advises otherwise. But that is the price.

Mr. Speaker: Fair enough, Mr. Ndambuki! Will you please supervise the distribution? Can you confirm that you will do so?

Mr. Ndambuki: Mr. Speaker, Sir, I will do so!

ORAL ANSWERS TO QUESTIONS

Question No.1334

DISTRIBUTION OF MONEY AWARDED TO
M/S PAN AFRICAN BUILDERS

Mr. Keter asked the Minister for Labour:-

(a) whether he could state how Kshs.662,993,980.06 awarded by Milimani Commercial Court to M/s Pan Africa Builders & Contractors Ltd. vide HCC No. 701 of 2005 was paid out, indicating the respective recipients, the reasons for the payments and the amount paid; and,

(b) why the lawyers who acted for the company in the suit were by-passed in the settlement.

Mr. Keter: Mr. Speaker, Sir, I asked this Question on Tuesday. It was deferred to last Thursday and you will remember that I raised it. When the Minister went through the answer, I had requested for some documents before I ask any questions and, up to now, I want to let you know that I do not have the sub-contracts of those three companies.

Mr. Speaker: Minister for Labour! Just give a response to the concern by the hon. Member first. That is because you were supposed to furnish him with certain documents.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Speaker, Sir, it is true that the matter looks very complicated and I have talked to hon. Keter. We intend to sort it out. First of all, one of the documents I was requesting was that I wanted to find out whether these companies are registered.

Mr. Speaker: Mr. Assistant Minister, do you want more time? How long? This is because this Question has appeared on the Order Paper four times, and the HANSARD record is not very kind to your Ministry, unfortunately.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Speaker, Sir, let me beg you to hand over this matter to the relevant departmental committee, because it is a very complex matter and the hon. Member knows it.

Mr. Speaker: Order, Assistant Minister! You must have been in the House when I gave directions to the Minister of State for Provincial Administration and Internal Security. You are, as a matter of course, expected to have information. We will now not transform House committees into organs that go to search for information in your Ministry. It will not be the right approach. That is not the reason the House is there for. So, please, indicate when you can come with full information, including supplying documents to hon. Keter and for other questions that may be raised.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Speaker, Sir, indeed, I have tried my level best. First of all, I have gone to the Registrar of Companies to find out if these companies are registered and they are not, but they were paid. So, if it is giving me more time, then give me about two weeks; but I would have been happy if the Departmental Committee on Labour and Social Welfare investigated this matter in detail. All the same, if you give me two weeks, I will be able to come with the documents.

Mr. Speaker: Order! Assistant Minister, will you just resume your seat for a moment? If a company is not registered and a payment has been made to it, that will mean that there is something criminal about that payment. So, why would you not then ensure that necessary action is taken by having the persons who were actually paid arrested and, possibly, prosecuted? To me, it looks straightforward, unless you want to run away from it.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Speaker, Sir, indeed, it is a straightforward matter. I have just gotten the letter from the Registrar of Companies today confirming that the companies are not registered. So, let me contact the relevant agencies like the Kenya Anti-Corruption Commission (KAAC), so that they can take up the matter.

Mr. Speaker: Yes, that is what you should do. Hon. Keter, will you permit two weeks?

Mr. Keter: Mr. Speaker, Sir, as you have rightly said, I asked this Question in September last year. It has been there and the companies are there. They were paid a lot of money. This was a project for Kshs1.9 billion. I have also endeavoured to write to the Registrar of Companies, and truly those companies are not there, but they are in the answer which the Assistant Minister has given me. One of the companies, Speedwing Limited was paid Kshs121 million, but the answer is still the same. So, even if he is given two weeks, I do not think we will get any answer, because the Question has been lying with the National Social Security Fund (NSSF) for all those months.

Mr. Speaker: Order, Mr. Keter! The Assistant Minister has said that if he is given two weeks, he will ensure that he will get full information, including investigation, possible arrests and preferring of charges against any suspects. That is what he has said; to me, that is satisfactory for the time being.

Mr. Keter: Okay; I agree with that, Mr. Speaker, Sir.

Mr. Speaker: Very well. It is so directed.

(Question deferred)

Mr. Speaker: Next Question by Dr. Nuh.

Question No.1459

DELAY IN PAYMENT OF WORK INJURY
BENEFITS TO ASSISTANT CHIEFS

Dr. Nuh asked the Minister for Finance:-

(a) why the Ministry has not paid work injury benefits to Assistant Chiefs Yusuf Dabasa Abajilia (P/No. 1996076332) and Abdi Galicha Abakuna (P/No. 1996120204), who were injured while on duty on 30th December, 2008; and,

(b) when they will be paid.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry of Finance had already paid injury compensation of Kshs234,488 to Abdi Kabicha Abakuna and Kshs234,488 to Yusuf Dabasa Abajilia. They were paid on 6th December, 2010 and 8th December 2010 to their bank accounts respectively. In view of the answer to (a) part (b) does not arise.

Dr. Nuh: Mr. Speaker, Sir, I have two letters which I wish to table. One is dated 8th December 2010 from the Director of Occupational Safety and Health Services which states that: "The purpose of this letter is to demand a further Kshs52,000"; it gives a statement of the work injury benefits for Abdi Galicha Abakuna at Kshs840,663. The second letter from the same Director dated 12th October 2010 puts the work injury benefits due to Yusuf Dabasa Abajilia at Kshs933,753. If that is the case and these are letters from the Ministry of Labour on the assessment of injury benefits that should be conferred upon these two occupants, could the Minister inform the House the basis upon which the payments of Kshs234,000 were made by his Ministry?

(Dr. Nuh laid the documents on the Table)

Mr. Githae: Mr. Speaker, Sir, the basis is very clear. This payment was made under the Group Personal Accident Policy and under the Civil Servants Code of Regulations. The injured person is paid a percentage of the total injury. The medical board that was constituted by the Director of Medical Services assessed their permanent injuries at 30 per cent. So, the calculation is very simple. It is 30 per cent of their basic pay which was 12,000 for 60 months; that was how we arrived at the figure.

Mr. Olago: Mr. Speaker, Sir, this accident happened on 30th December 2008. Payment was not effected until 6th December, 2010, presumably when the matter came up. Could the Minister inform the House why it always takes so long before payments are paid either to the deceased civil servants or to those who have retired?

Mr. Githae: Mr. Speaker, Sir, you realize that the Ministry of Finance is simply the underwriter. We must be informed by the employer; the employer in this case was the Office of the President, which referred to us this case on 23rd March 2010; that was after two years. So, you can say that the Ministry of Finance really worked very hard because it took them less than eight months to pay. So, really the mistake was of the employer, which took too long before advising the Treasury.

Dr. Nuh: Mr. Speaker, Sir, with all due respect, the Minister has not answered my question, but I do not want to interject into his answer. There is a letter here from the Ministry of Finance dated 5th September 2011 and I want to read the last paragraph. It is addressed to the Director of Occupational Health and Safety Services. It says:

“Kindly and urgently address the above issues to enable us process the injury claims, compensation to the claimants and death claims to the Public Trustee as per the Work Injury Benefits Act No.13 of 2007.” It also says: “Attached, please find a list of claims for ease of reference.” The attached list bears the names of Yusuf Dabasa Abajilia and Abdi Galicha Abakuna. It is on the basis of which I asked the first question. If the Minister assessed the claim at Kshs234,000 and the Director of Occupational Health and Safety Services has put the benefits at Kshs933,840. Which of the two figures should we go by?

Mr. Githae: Mr. Speaker, Sir, we have observed a very sad behaviour where civil servants are making claims under the Group Personal Accident Cover, the Work Injury Benefits Act and also under the Pensions Act.

As a matter of policy, what has been decided is that you can only claim under one benefit. So, for these two Assistant Chiefs - I am sorry for their injury - they claimed under the Group Personal Accident Cover. You cannot be paid under both of them. So, it is for the person to decide. They opted for the Group Personal Accident Cover and that is what they have been paid, and rightly so.

Dr. Nuh: On a point of order, Mr. Speaker, Sir. I am not aware that the Assistant Chiefs claimed under the Group Personal Accident Cover, unless the Ministry decided to do that, because the Group Personal Accident Cover has a lower amount than the one that is being canvassed for by the Ministry of Labour.

Could the Minister table any evidence to prove that they did claim on both sides and show which part of the law he is referring to?

Mr. Githae: Mr. Speaker, Sir, as I said, we are just simply the paymasters. We are just underwriters. It is the employer who chooses on behalf of employees to claim under the Group Personal Accident Cover. This is what normally happens. But I can understand from the point of

view of the employer. At this time, I think some two law firms had gone to court seeking an injunction to stop the implementation of the Work Injury Benefits Act. I think this is the time it was decided that instead of waiting until the court case was over, they would pay under the Group Personal Accident Cover.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. The copies that we have, where the Ministry of Finance is writing to the Directorate of Occupational Health and Safety Services, it is basically on the same issue; the Work Injury Benefits Act No.13 of 2007, where the amounts that were calculated by the Directorate are higher than what the Ministry of Finance paid, when the same Ministry asked for the payments to be calculated under the same law. Why did he elect to pay another one and not the one he had actually requested?

(Dr. Nuh stood up in his place)

Mr. Speaker: Order, Member for Bura!

Mr. Githae: Mr. Speaker, Sir, I have clearly said that at this time, the Law Society of Kenya had gone to court seeking an injunction to stop the implementation of the Work Injury Benefits Act. That case is still there.

Mr. Speaker, Sir, therefore, instead of waiting until the matter was settled, I think we should commend Treasury for opting for a solution to compensate them under the Group Personal Accident Cover. We are saying that you cannot benefit under the three Acts. It is for the person to choose under which Act they want to benefit. If you seek compensation under the Work Injury Benefits Act, there is a rider; it must be while at the place of work. That is when it becomes applicable.

Mr. Speaker, Sir, in my view, the decision taken was the right one because this was not at the place of work.

Dr. Nuh: On a point of order, Mr. Speaker, Sir. Unless the Minister is not privy to where the accident happened; these chiefs were on a call of duty and they were going to attend a meeting which had been called by hon. Prof. Saitoti, the Minister of State for Provincial Administration and Internal Security. The accident happened on their way to the meeting. So, when the Minister says that the accident did not happen in the place of work, what is the basis of him determining what the place of work is, when they were on their way to a meeting called by Prof. Saitoti?

Mr. Githae: Mr. Speaker, Sir, the benefits payable under the Work Injury Benefits Act are payable only while at the place of work. We are not saying they were not on duty. They were on duty and that is why it was opted to pay them under the Group Personal Accident Cover because this was an accident. It happened that the vehicle rolled and they were badly injured.

Mr. Speaker, Sir, therefore, as I said, since this has already been done, we have told civil servants to elect under which Act to seek compensation. But once you seek compensation under one, you cannot be paid on another one.

Question No. 1219

ILLEGAL ALLOCATION OF PLOT
AT GATIMU SHOPPING CENTRE

Mr. Mureithi asked the Deputy Prime Minister and Minister for Local Government:-

(a) whether he is aware that the Government had set aside a plot of land for a community market center at Gatimu shopping center, and,

(b) whether he is also aware that despite availability of Kshs. 200,000 from the CDF kitty for fencing and building of a toilet on the plot, the project has stalled due to illegal allocation of the plot.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I wish to seek the indulgence of the House so that I can deal with this Question more appropriately next week on Tuesday, because I need to make some verifications on the ground.

Mr. Speaker, Sir, I have shared this concern with the hon. Member of Parliament. So, I seek the concurrence of the House for me to answer this Question next week.

Mr. Mureithi: Mr. Speaker, Sir, I have spoken with the Deputy Prime Minister and Minister for Local Government and we have agreed that he will send officers to the ground to establish who these officers who took the plots are, considering that my predecessor had already given Kshs200,000 to the market. I have agreed that this be laid on the table of the House at your own direction.

Mr. Speaker: Very well! I will defer the Question by generally leaving it in abeyance until I receive an update from both of you that you are ready to proceed.

(Question deferred)

Member for Kamkunji!

Question No. 1340

NON-COLLECTION OF GARBAGE BY NCC

Mr. Hassan asked the Deputy Prime Minister and Minister for Local Government:-

(a) whether he is aware of the failure by the Nairobi City Council to provide basic services such as garbage collection;

(b) whether he is also aware that garbage has piled up in many areas of Kamukunji posing a threat to the health and well being of both residents and visitors, and,

(c) what action he is taking to ensure that the Nairobi City Council collects garbage timely and improves the sanitation situation in the constituency.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I wish to again apologize and seek the indulgence of the House, because again, I need to get further information to be able to do justice to this Question and I have also spoken to the Member. I seek indulgence to answer this Question on Thursday this week so that I can respond more appropriately.

Mr. Speaker: Member for Kamkunji, do I have your concurrence?

Mr. Hassan: Mr. Speaker, Sir, I have no objection to the Minister's request.

Mr. Speaker: Very well, it so directed to appear on the Order Paper on Thursday this week.

(Question deferred)

Member for Turkana Central!

Question No. 1109

LIST OF ACCOUNTING/ENGINEERING STAFF
WORKING IN GOVERNMENT

Mr. Ethuro asked the Minister of State for Public Service:-

(a) whether he could table a list of names and designations of all persons working for the Government in accounts and engineering-related departments in all Government Ministries and state Corporations,

(b) whether he could clarify whether they are qualified to be members of the Institute of Certified Public Accountants of Kenya (ICPAK) and the Institution of Engineers of Kenya (IEK) respectively, indicating their professional numbers and standing; and,

(c) what steps the Government is taking to professionalize the public service, including the County Governments when they are established.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Speaker, Sir, I beg to reply.

(a) The list of names and designations of all persons working for the Government in accounts and engineering-related departments in all Government Ministries and State corporations is hereby attached; appendices A and B respectively and I lay these documents on the Table of the House.

(Maj. Sugow laid the documents on the Table)

(b) The details of officers working in the Civil Service and State corporations, who are members of ICPAK and IEK are hereby attached as appendices D and E and I hereby lay those documents on the Table.

(Maj. Sugow laid the documents on the Table)

(c) The Government is implementing a raft of measures to professionalize the public service. I seek your indulgence so that I read a few of some of the steps, because this is an elaborate Question. Officers are encouraged to join their respective professional organizations. Plans are underway for the Government to start paying the annual subscription fees for the organizations. Membership to the professional bodies has been incorporated in the various schemes of service through sponsorship of staff for courses leading to qualifications in their respective professional fields.

The Government is in the process of setting up a revolving fund from which officers can access training funds and pay back in installments. No interest will be charged on this.

Improvement of terms and conditions of service so as to attract and retain qualified personnel in the service. This includes improved remuneration, introduction of medical insurance scheme and contributory pension scheme.

Four, the Government is currently working on a “high fliers” scheme of service, which will motivate the civil servants to improve their performance.

The national values and principles in governance stipulated in the Constitution have been incorporated in the human resources regulations as well. Training of public service officers is based on identifying training needs and relevance to career progression. Recruitment in the public service is open to all qualified Kenyans in both the public and the private sector. The introduction of the Public Service Recognition and Award Scheme is to encourage innovativeness and creativity in the Civil Service. Sensitization of all officers on corruption eradication in the public service is aimed at instilling ethical values and practices in public service.

(b) The Government has, deliberately, developed specific training programmes such as senior management, strategic leadership development programmes and policy formulation for all senior officers in the public service. On the institutionalization of performance appraisal system in the public service, all officers regardless of their levels are required to set targets and are evaluated at the end of an appraisal period. This system has resulted in improved performance. The Government has introduced a policy requirement to train all officers for, at least, five days annually which has resulted in improved service delivery.

Thank you, Mr. Speaker, Sir.

Mr. Ethuro: Mr. Speaker, Sir, you will appreciate that the Assistant Minister has given me volumes which I requested for. I, therefore, needed a bit of time. If you also took note, part “b” of the Question was for the Assistant Minister to clarify whether he is convinced that those professionals are actually of good standing in terms of their professional bodies.

Mr. Speaker: Do you want to be given time so that we can save on time?

Mr. Ethuro: Mr. Speaker, Sir that will be my request. If I am granted, I will be more than happy.

Mr. Speaker: Mr. Assistant Minister, will you be available on Thursday?

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Speaker, Sir, Tuesday will be more convenient to me because on Thursday, I will be engaged in other businesses in the afternoon.

Mr. Speaker: And Wednesday?

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Speaker, Sir, Tuesday or Wednesday, next week?

Mr. Speaker: This week Mr. Assistant Minister because there are certain things which could happen this week and we do not want the Question to be deferred to---

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Tomorrow afternoon, Mr. Speaker, Sir.

Mr. Speaker: The Member for Turkana Central, will you be ready tomorrow afternoon?

Mr. Ethuro: Mr. Speaker, Sir, I will be ready any time this evening. My request will be tomorrow morning because I may not be available in the afternoon. Since I am the one who requested for time, I think the onus is on my part and not on the Assistant Minister.

Mr. Speaker: Order! The Member for Turkana Central, it is for me to determine the most convenient time for the House. So, the choice is between tomorrow afternoon and Tuesday, next week. Are you able to agree?

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Speaker, Sir, tomorrow morning, I will be involved in other official business. I request for tomorrow afternoon. I am comfortable with tomorrow afternoon.

Mr. Speaker: The Member for Turkana, can you adjust?

Mr. Ethuro: Mr. Speaker, Sir, I can only adjust to Tuesday, next week.

Mr. Speaker: Very well! It is so directed!

(Question deferred)

Mr. Speaker: Yes, the Member for Kasipul Kabondo!

Question No.1397

EXPANSION OF ATEMO WATER PROJECT

Mr. Magwanga asked the Minister for Water and Irrigation:-

(a) what steps the Ministry is taking to expand the Atemo Water Project in Kasipul Kabondo Constituency and also to ensure its completion; and,

(b) what measures the Ministry is taking to complete the remaining phases of the project and ensuring supply of sufficient clean water in the constituency.

Mr. Speaker: Hon. Members, I have communication from the Minister to the effect that both she and the Assistant Minister will not be available to answer this Question today. They are out of the country on official Government Business. I received the communication well in time last week. So, I will defer this Question to Tuesday, next week.

Mr. Magwanga: Thank you Mr. Speaker, Sir. Most obliged.

(Question deferred)

Question No.1204

ILLEGAL ALLOCATION OF LAND AT MUKURU KWA REUBEN

Ms. Karua asked the Minister for Lands:-

(a) whether he is aware that Government land numbers LR. 209/10219 and LR 209/10220, situated in Mukuru kwa Reuben and meant for a community school, police post and dispensary, were illegally consolidated and issued to an individual as LR. 209/11887;

(b) whether he is also aware that the said land has been used to secure a loan; and,

(c) what measures he will take to ensure the said parcel of land reverts to the community.

The Assistant Minister for Lands (Mr. Rai): Mr. Speaker, Sir, I seek the guidance of the House because I would like to answer this Question on Tuesday. The answer that I am holding is not adequate because the information I am getting from the Questioner is that there are

some public utilities on the ground and I would like to go there on a fact-finding mission on Friday.

Ms. Karua: Mr. Speaker, Sir, I have no objection to that and I am willing to share documents with the Assistant Minister to show that a school exists. Some of them are photographs which I have already given him. However, I would have been happier if we did it on Thursday, this week. However, I will not contest the date.

Mr. Speaker: Is Tuesday, next week good for you, Mr. Assistant Minister?

The Assistant Minister for Lands (Mr. Rai): Much obliged, Mr. Speaker, Sir.

Mr. Speaker: Very well! It is so directed!

(Question deferred)

STATEMENTS

Mr. Speaker: Is there any Statement for delivery today? The Acting Minister for Finance, do you have a Statement?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I have three Statements.

Mr. Speaker: We can only do one at a time. So, try and prioritize so that we take the most urgent today. The rest can come later in the week. You can do two tomorrow morning.

STATUS OF FINANCE BILL 2011

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, on 16th February, 2011, the Member for Gwassi, hon. John Mbadi sought a Ministerial Statement from the Minister for Finance on the outstanding Finance Bill, 2011. In particular, he wanted the Minister to provide clarification on the way forward on the outstanding Bill. I wish to respond as follows:-

As hon. Members are aware, the Finance Bill, 2011 is still pending before this House. The House Business Committee is yet to introduce the matter before the House for resolution. The Bill has been outstanding because of the new clauses introduced. Order No.266 required further consultations with the relevant Ministries and respective Parliamentary Departmental Committees as they would have far-reaching social and economic consequences to the economy in addition to contradicting Government policy, stands on economic liberalization, international and regional obligations including agreements entered into with some of our development and multilateral partners.

It is also important to know that apart from those reasons, other matters touching on the Capital Markets (Amendment) Bill, 2011 and the Central Depository (Amendment) Bill, 2011 were submitted through separate Bills and passed leaving the Finance Bill, 2011 strictly for the proposed amendments relating to taxes and taxation.

I would also like to indicate that there are ongoing efforts to address the concerns about the high lending rates. Indeed, arising from the consultations with the Kenya Bankers Association, an agreement has been reached on a raft of measures on restructuring loans in a regime of high interest rates covering five key areas of concern namely; one, lengthening loan repayment period, capping the interest rates, capping the maximum interest in the loan

repayment amount to not more than 20 per cent, absorption of costs by banks and no further interest rise in spite of the recent 150 business point increase and future rise in Central Bank rate.

Mr. Speaker, Sir, I would like to refer hon. Members to the Press Statement by the Kenya Bankers Association issued on 13th December, 2011, on the above undertaking. Those measures are expected to go a long way to address the current short-term problem of high interest rates. Going forward and with the easing of inflation and firming of the exchange rate, we expect the lending rate to ease significantly in the very near future. Indeed, we have seen interest rates on Government Paper begin to fall in the recent auction on Treasury Bills. We, therefore, expect lending rates to follow suit sooner or later.

Mr. Speaker, Sir, as we continue engaging stakeholders on the best way to deal with the current challenges which have led to high interest rates, I would like to urge hon. Members to consider passing the Finance Bill, 2011, when brought before the House for debate and without amendment to the Banking Act that proposes capping of interest rates charged by the banks. I would also like to add that since this Statement was prepared, the Ministry is now ready to proceed with the Bill and we have asked the House Business Committee to prioritize the Finance Bill for passing by this House.

Thank you, Mr. Speaker, Sir.

Mr. Mbadi: Mr. Speaker, Sir, first of all, I think it would be good to correct for record purposes, that I sought this Statement on 16th February, 2012 and not 2011, as the Minister said.

Mr. Speaker, Sir, it is very clear that the Minister has not addressed the issues that I raised in my request for the Statement. Rather, he has gone ahead to delve into matters that I did not ask for, including the interest rates and what they are doing. My request for the Statement was very specific. I asked: Now that the Finance Bill has not been introduced before the House, what are the economic effects that the failure by this Parliament to pass the Finance Bill would have on our economy? I need clarification based on the Minister's own Statement on 8th June, 2011, when he was reading the Budget Speech for 2011/2012. He did say:-

“Mr. Speaker, Sir, I now turn to further caring and cushioning our people against high commodity prices. In addition to policy and expenditure measures that I have earlier mentioned which are aimed at improving the welfare of our people, I have proposed additional tax measures to cushion our economy and the people of Kenya against high commodity prices.”

Mr. Speaker, Sir, the Minister made it very clear that the tax measures he was proposing were going to cushion our people against higher prices and improve their welfare and the economy at large. So, I want the Minister to address the country and tell us now that we have not passed the Finance Bill, what are the effects on the economy?

Mr. Speaker, Sir, finally, could the Minister confirm to the country, through this House, whether there are illegal taxes that the Government is levying on the people of Kenya with effect from January, 2012? That is because the provisional order to tax based on the new rates lapsed on 31st December, 2011. The Minister had proposed a number of taxes including on cigarettes and Withholding Tax moving from 5 per cent to 10 per cent. Could the Minister tell us what the Government is doing now? Are you collecting at the new rates, in which case then you are taxing Kenyans illegally or you are taxing at the old rates?

Mr. Mungatana: Mr. Speaker, Sir, I want to make a follow up on the second bit of what hon. Mbadi has raised. In the event that the Minister will confirm that they are actually levying illegal taxes for failure to pass the Finance Bill, what arrangements has he made to refund Kenyans the taxes that they have levied, and that are not covered by law?

Mr. Midiwo: Mr. Speaker, Sir, I also want wish to follow up on the submission by hon. Mbadi. I want to hear the views of the Minister in respect to Chapter 415, which is the provisional Collection of Taxes and Duties Act, which requires that any orders given for provisional collection of taxes by the Minister expire after four months, in which case, any taxes which have been collected from taxpayers since 31st December are illegal taxes. Also, because the taxes were not regularized, the law says that the taxes collected from 1st July, are also illegal. That is Chapter 415 of our laws.

Mr. Njuguna: Mr. Speaker, Sir, with the commitment being given by the new acting Minister in this Ministry, could he inform this House when he is going to commit the Finance Bill to the relevant Departmental Committee, so that serious issues are addressed for the good of this country?

Mr. Speaker: Minister, your responses now!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I think the clarifications sought by the Members for Gwassi, Garsen and Lari are basically on the same issue.

Mr. Speaker, Sir, first of all, the Bill is before this House. In fact, it was supposed to go to the Committee stage, but the Minister sought approval to defer it, so as to look into the two main amendments that were being proposed. So, for that one, I have asked the House Business Committee to prioritize the Finance Bill, so that it can come to this House and then we pass it.

Mr. Speaker, Sir, following that, it means that, that Bill has not been rejected by this House. What has happened, under the provisional Collection of Taxes and Duties Act, is that it is only the additional taxes and duties that have been affected. But the Bill has not been rejected by this House, and once it is prioritized by the House Business Committee and comes to this House next week or even this week, we are ready. Once we pass it, then all the taxes collected will have been ratified.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to anticipate that this House is actually going to pass those Bills? He keeps saying “once the House passes,” yet the question is: The Bill has not been passed and so, what are the effects? Suppose the House does not pass those Bills when they come to the House next week, what are the repercussions?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I was actually going to that.

Mr. Speaker, Sir, also *vice-versa*, the House has not rejected the Finance Bill. Therefore, let us cross that bridge when we reach there. What I am saying is that once the Bill comes to this House and is passed, in effect it will have ratified all the additional taxes and duties that have been levied. If it does not, then the issue will arise---

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to evade answering the issue which I raised which says: The provisional order which the law gives you is up to 31st December, 2011. So, from January up to date, what are we doing? Are you still collecting while waiting for the law to be ratified? If you are doing that, under which law are you doing that?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, what I am saying is that since the Bill is before this House, and it has not been rejected, we have continued the levying of the additional taxes as we wait for the passage of the Bill. It is only after it is rejected that the issue will arise. As of now, it has not arisen.

Dr. Nuh: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead the House that they have been collecting taxes on the basis of the Bill when the Bill has not been passed? What they have been using as the basis for collecting the enhanced taxes was the resolution of this House that allowed them to do so until 31st December, 2011. So, is he in order to evade the question as to what basis or what law they have been using to collect any extra taxes after 31st December, 2011? They should not be anticipating a law that will be passed in this House.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! Minister, the concern there appears to be so specific and, in my understanding, clear that you have continued to collect taxes at an enhanced rate when the law does not permit you to do so. What is your position in that regard?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I think we are saying the same thing. What we are saying is that since we have been authorised by the provisional Collection of Taxes and Duties Act to collect the taxes, we had up to the 31st of December. We all agreed---

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order, hon. Members! I do not think we are going to get very far.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Order, Member for Gwassi! I have seen the point. I have understood it and I believe that the Minister also has understood it.

Minister, I want to give you more time to go and reflect on this matter and come back to the House with a position that you are convinced is valid in law. You must be persuaded, as a good lawyer – I know you are – that what you are saying is valid in law and that it applies; and that what action you have taken is actually permissible in the law that relates to collection of taxes. Do you understand Minister? Come back on Thursday afternoon.

The Minister for Nairobi Metropolitan Development (Mr. Githae): I am much obliged, Mr. Speaker, Sir.

Mr. Speaker: Very well! Hon. Members, we will now take requests for Ministerial Statements, beginning with the Member for Kamkunji.

POINTS OF ORDER

MEASURES TO CURB INSECURITY IN NAIROBI

Mr. Hassan: On a point of order, Mr. Speaker, Sir. I would like to request for a Ministerial Statement from the Ministry of State for Provincial Administration and Internal Security on the alarming state of insecurity in Nairobi and in particular after the events that took place in my constituency last weekend.

I want to know whether the Minister is aware of the rapidly rising cases of armed violence and robberies in the capital city. I also want to know how many armed violent attacks have taken place in Nairobi since October, 2011, outlining the areas of the city that have been affected.

I would want to know how many people have been killed or injured in those attacks, how many of those cases have been resolved and the perpetrators arrested and charged before a court of law, and what contingency measures or security steps the Minister has taken to ensure that Kenyans and other people who live in Nairobi are protected against violent armed attacks, so as to make our capital city a safer place.

Mr. Speaker, Sir, with your indulgence I would also like to send my condolences to the families of the people who lost their lives in the attack of the Machakos Country Bus. I would also like to send my support to the many people who have been injured and the bereaved families. I would like to wish all of those who have been injured a quick recovery.

Thank you, Mr. Speaker, Sir.

(Mr. Imanyara stood up in his place)

Mr. Speaker: On the same matter?

Mr. Imanyara: Yes, Mr. Speaker, Sir.

Mr. Speaker: Proceed.

Mr. Imanyara: Mr. Speaker, Sir, as the Minister prepares to give that Ministerial Statement, could he give the basis upon which he came to the conclusion that the perpetrators of the Machakos grenade blasts were followers of the *Al Shabaab*? If, indeed, he had a basis for coming to that conclusion, what was the reason for the arrest and subsequent release of the suspects after assuring the Kenyan public that they are safe and the Government had moved to arrest the perpetrators?

Mr. Speaker: Assistant Minister, when will you deliver the Ministerial Statement?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, due to the sensitivity of the Ministerial Statement sought, I will try and deliver it this coming Thursday.

Mr. Speaker: Fair enough!

Yes, Member for Kamukunji.

Mr. Hassan: Mr. Speaker, Sir, this is a very urgent matter.

Mr. Speaker: Indeed, it is!

Mr. Hassan: Mr. Speaker, Sir, this is a very important matter of national interest. I would, therefore, urge the Minister to take the issue with the urgency it requires and give the country an answer before that particular date.

Mr. Speaker: Member for Kamukunji, Thursday is not very far. You want this matter done properly. So, I direct that the Assistant Minister delivers the Ministerial Statement on Thursday afternoon.

Yes, Member for Kimilili!

MEASURES TO CONTAIN INSECURITY IN KIMILILI CONSTITUENCY

Dr. Eseli: On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security with regard to the escalating security situation in Kimilili Constituency and the terrible attacks on the Residents of Misanga Village, Ndalu Division, for over two hours on the night of 11th March, 2012 by an armed gang, during which Mr. Humphrey Nakhambi and Richard Wanyonyi Karani – a police

officer and a retired teacher respectively – were shot dead and one Miss Jane Nakhabi, the wife of the deceased police officer; and Messrs Isaac Werunga, Kevin Wachilonga, Andrew Karani and Mr. Matumbai were shot and injured and are currently admitted in various hospitals.

Mr. Speaker, Sir, this terror reign in the constituency has now lasted over six months. I have personally been attacked. Now a police officer has been killed. My own two mothers have received threatening messages. People are living in fear. They are in terror. Could the Minister, in his Ministerial Statement explain why the security situation has continued to deteriorate in the constituency despite assurances that the situation was being contained – assurances which the Assistant Minister has given us with a lot of theatrics in this House.

Mr. Speaker: Order! Order, Member for Kimilili! Can you, please, stick to your request, which I have acquainted myself with and approved? I did not see words like “theatrics” in your request.

Dr. Eseli: Mr. Speaker, Sir, I withdraw that word.

Mr. Speaker: Proceed!

Dr. Eseli: Mr. Speaker, Sir, could the Minister also in his Ministerial Statement explain why the Ministry has not transferred the police officers who have served in the same stations for over three years despite his undertaking in this House to do so?

Could he also explain why it took over two hours for the police officers from Brigadier Police Base and Kimilili Police Station, which are less than two kilometres and four kilometres away from the scene, respectively; to get to the scene of crime? Could he further inform this House when the Ministry will facilitate the Officer Commanding Police Division (OCPD), Bungoma North, to deal with emergencies efficiently and effectively?

Could the Minister further explain the status of the investigations on all the robbery with violence cases that have been reported in the area over the last one year, which have left more than 15 people dead and several others maimed?

Mr. Speaker, Sir, my constituents are living in terror.

Thank you.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I will definitely issue an elaborate Ministerial Statement this coming Thursday.

Mr. Speaker: It is so directed!

Yes, hon. Rachael Shebesh!

Mrs. Shebesh: Mr. Speaker, Sir, I rise under Standing Order No.82 to---

Mr. Speaker: Order! Order, hon. Shabesh! We are on Order No.7, Statements. Are you going to ask for a Ministerial Statement?

Mrs. Shebesh: Mr. Speaker, Sir, I am going to request for a ruling and direction from the Chair.

Mr. Speaker: Then hold your peace for the time being. I want requests for Ministerial Statements.

Yes, Member for Turkana Central.

NOISE POLLUTION BY LIONS EYE HOSPITAL

Mr. Ethuro: Mr. Speaker, Sir, mine is a reminder of repeated requests for a Ministerial Statement from the Minister for Environment and Mineral Resources. This is a reminder on which you directed. So, it is no longer mine. On 7th March, 2012, you directed that the

Ministerial Statement must come today. I sought for it for the first time on 15th June, 2011. Unless the Minister has been compromised, the Ministerial Statement should have come to this House.

Mr. Speaker: What is the subject matter, once again, Member for Turkana Central?

Mr. Ethuro: Mr. Speaker, Sir, it is circumstances under which the Lions Eye Hospital plays loud music at night, thus disturbing the neighbours. The issue is noise pollution.

Mr. Speaker: The Assistant Minister for Environment and Natural Resources, hon. Ramadhan Kajembe!

Yes, Deputy Leader of Government Business!

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, as hon. Members are aware, we had a loss in the Ministry of Environment and Mineral Resources but that notwithstanding, we should get an answer next week.

Mr. Ethuro: On a point of order, Mr. Speaker!

Mr. Speaker: Order! Order, Member for Turkana Central! I know you are going to re-emphasise that this matter goes back to June, 2011.

Mr. Ethuro: Mr. Speaker, Sir, that is correct. I also want to say that the same excuse was given last time and you overruled it. The Deputy Leader of Government Business does not follow the proceedings of the House.

Mr. Speaker: Deputy Leader of Government Business, you know we cannot continue using that as the reason for being unable to transact business.

The Minister for Transport (Mr. Kimunya): Yes, Mr. Speaker, Sir, indeed, I remember the matter is such a long standing one. Therefore, I will prevail upon the Ministry to give us an answer by Thursday this week.

Mr. Speaker: It is so directed! Ensure that the Minister is here to actually give the Statement. If he is not, perhaps, you yourself will want to seize the moment and deliver it.

Mr. Sirat, please, proceed!

CENSUS FOR 2009

Mr. Sirat: Mr. Speaker, Sir, I was expecting a Statement from the Ministry of State for Planning, National Development and Vision 2030.

Mr. Speaker: What did you say, Mr. Sirat?

Mr. Sirat: Mr. Speaker, Sir, I was expecting an answer from the Minister of State for Planning, National Development and Vision 2030.

Mr. Speaker: On which subject, Mr. Sirat?

Mr. Sirat: Mr. Speaker, Sir, regarding the census of 2009.

Mr. Speaker: Yes, that is a matter that we had a firm commitment on, that the Statement would be forthcoming.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I share your frustration. I cannot see the Minister or the Assistant Minister. We had a firm undertaking and I will prevail upon them to bring it tomorrow morning.

DEMOLITION OF BUILDINGS IN EASTLEIGH

Mr. Hassan: Mr. Speaker, Sir, I just want to request an answer on a Ministerial Statement that I requested on demolitions. I see the Attorney-General is seated here. Are we likely to get that answer?

Mr. Speaker: Order, Member for Kamukunji! Attorney-General, you stand reminded.

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, I am grateful. Early in the week I had a private word with the hon. Member and assured him that this Statement is at an advanced stage of preparation. I hope to present it next week.

Mr. Speaker: Next week on Tuesday!

Member for Kamukunji, please, note the Attorney-General is encountering exceptional difficulties with this one but he is assuring us that it will come next Tuesday. I quite understand his position, so, bear with him.

Mr. Hassan: Mr. Speaker, Sir, I wanted to agree with him. We entered this House almost at the same time and I have a lot of empathy for him. I will give him the extra time.

Mr. Speaker: Member for Nyando, proceed!

SUPERIMPOSING OF COURT OF ARMS ON CAMPAIGN MATERIAL

Mr. Outa: Mr. Speaker, Sir, I was expecting a Ministerial Statement from the Attorney-General of Kenya if the Vice-President and Minister for Home Affairs contravened the law by superimposing the court of arms on a campaign material. It is almost one month now since he assured me that he has the answers.

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, this answer is available in the Clerk's office. I brought it about two weeks ago and may be it has not been processed. It is, however, available.

Mr. Speaker: Can you deliver it in the plenary tomorrow morning?

The Attorney-General (Prof. Muigai): Yes, Mr. Speaker, Sir.

Mr. Speaker: Fair enough! Tomorrow morning in the plenary; Attorney-General, please, note it is critical that you are here and you actually deliver it. We have a little more space on Wednesday morning.

That then brings us to the end of Order No.7.

EXPUNGEMENT OF DEBATE ON UK DOSSIER

Mrs. Shebesh: On a point of order, Mr. Speaker, Sir. I thank you for your indulgence. I am asking for a ruling from your Chair on a matter that was discussed in this House on Thursday last week. I want to point out or quote Standing Order No.82 which asks that Members of this House are responsible for their statements; the authenticity and implications of statements that they bring to this House.

Mr. Speaker, Sir, the statement that was tabled in this House on Thursday by Mr. C. Kilonzo which was supposed to be from the British Government has been, with all due respect to Mr. C. Kilonzo, dismissed as a forgery by three different departments if I can mention them; the Minister for Foreign Affairs, the National Security Intelligence Service (NSIS) and the British Government itself. The United Kingdom (UK) Government has categorically stated that the allegations made against the UK in Parliament and I quote:-

“The policy of Her Majesty the Government is not to comment on leaked documents, however, having seen copies of the document in question, we would like to

assure the Ministry of Foreign Affairs that these are not genuine. Evidence of this include both misleading and implausible content and a plethora of spelling and grammatical mistakes”.

Mr. Speaker, Sir, I would like to table that letter that was written by the British Government to the Minister for Foreign Affairs.

(Mrs. Shebesh laid the document on the Table)

I would also like to quote as I ask for your ruling that, looking at the HANSARD and the debate that went on in this House, it is obvious and it has been stated again through the media and through various bodies that we have brought dishonor to this House. Not only did we discuss the person of the presidency of this country but we also discussed the relationship between Kenya and a friendly State. During this statement, there was, of course, a request by the Minister on Standing Order No.79 on the issue of discussion without a Motion but that issue was not canvassed and, of course, that led to what I believe was a debate. I am asking that since these documents are fake and, actually are a laughing stock of Kenyans - This House is standing right now at the point where we are being taken as not capable of looking at documents critically, but, also bringing disrepute to this House either by misusing our privilege or not authenticating documents to the level that this House is expected.

I would therefore ask that the debate that went on, on Thursday, the issues that were canvassed and put on the HANSARD, for the prosperity and integrity of this House, be expunged. If it has been proved that it was a forgery then we cannot allow a discussion on a forgery to remain in the HANSARD of this House. As I said, it touched on the presidency, a friendly country and the Prime Minister. At the end of the day some of the issues that were canvassed by other Members touched on the process of the International Criminal Court (ICC) and how Kenyans should even withdraw from the ICC. Some of the things I was seeing on the HANSARD are positions that are not Government positions, neither of this House.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, Order! Mrs. Shebesh is on a point of order! Have you finished? I heard you say finally.

Mrs. Shebesh: Yes, Mr. Speaker, Sir, I said finally. I can repeat it for you because I want it to be---

Mr. Speaker: You do not have to repeat it.

Mrs. Shebesh: I have finished Mr. Speaker, Sir.

Mr. Speaker: Order! Member for Kisumu Town West, Member for Belgut, Member for Gwassi, Member for Bura and Member for Garsen, you are all out of order! The only one who may be in order is the one who stood after Mrs. Shebesh sat down and it is the hon. Member for Kigumo.

The rest of you are out of order and if you insist, I will take action.

(Mr. Keter consulted loudly)

Order, Mr. Keter! Did you hear what I said? You remained on your feet when Mrs. Shebesh had the Floor. That is disorderly conduct! If you insist, I will take action.

Mr. Keter: I apologize!

Mr. Speaker: Thank you!

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, I find the point of order raised by Mrs. Shebesh to be, indeed, very mischievous. For starters, this Standing Order No.82---

Mr. Speaker: Order, Mr. Jamleck Kamau! Mrs. Shebesh is your colleague; a Member of this House. There is no hon. Member who is bent on mischief. You are imputing improper motive on the part of Mrs. Shebesh; you must withdraw the word "mischievous".

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, I withdraw the word "mischievous" and replace it with "misleading".

Mr. Speaker: That is fine! Carry on!

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, if you read the Standing Order No.82 that says that a Member shall be responsible for the accuracy of any facts which a Member alleges--- If you look at that particular Standing Order, the issue of authenticity comes into question. But the question that we ask ourselves is: At what point should a Member rise on a point of order to challenge the authenticity of that particular document?

Hon. Members: Any time!

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, according to me, the hon. Member should have been here in the House and raised that particular point of order at that point.

(Applause)

Point number two, the Deputy Speaker who was sitting on that particular day ruled that, that document is admissible.

(Applause)

Mrs. Shebesh by rising on a point of order, means that she is trying to challenge the ruling of the Deputy Speaker.

(Mrs. Shebesh stood up in her place)

Mr. Speaker: Order, Mrs. Shebesh! Will you please sit down!

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, indeed, the hon. Member is inviting you to make a ruling on a ruling that was made by your Deputy. At least, six months must lapse before such a ruling comes into effect. But, nevertheless, the arguments that have been raised by Mrs. Shebesh specifically to do with the authenticity of the document--- She says that the document has been found to be fake. The point I am raising here is that the hon. Member relies on the Ministry of Foreign Affairs, the British Government and the National Security Intelligence Service (NSIS). For any one person to think that the UK Government would brand that document to be genuine is taking his or her imaginations just too far.

(Applause)

The first line of defence is to deny! Even hon. Members here are well aware that when somebody is caught with their pants down, the first thing is to deny, deny and deny. Therefore, I would not expect the UK Government, under all circumstances, to say that the document is genuine.

An hon. Member: And the Ministry of Foreign Affairs?

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, I will get to that.

Mr. Speaker: Order! Mr. Jamleck Kamau, just be careful that you stick within what is permissible because you will recollect that the Deputy Speaker, in exercising his duty and properly so, declined discussion of the British Government or its representative in Kenya, unless a substantive Motion was brought.

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, I am only talking about the issue of the authenticity of the document. Only that!

Mr. Speaker: Stick to that!

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, the other reason is that Mrs. Shebesh, in that document that came from the British Government, talks about the fact that the document is full of grammatical mistakes. There is a big difference between written English and spoken English. First of all, majority and many members who are British sometimes are even unable to spell certain words in English. I want to table a document here that I have; a document---

(Mr. Jamleck Irungu Kamau waved a newspaper)

Mr. Speaker: Order! Is that a newspaper?

Mr. Jamleck Irungu Kamau: Yes, Mr. Speaker, Sir.

Mr. Speaker: No, we do not admit that! Please do not!

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, it is pictorial evidence!

Mr. Speaker: Order! Our Standing Orders do not allow you to table such a document.

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, therefore, what I will say is this: I would like to request the hon. Member to table evidence from the NSIS to show that, indeed, this document is fake. What we have right now is only the word of the British Government. But I would want the NSIS to, indeed, tell this House that this document is fake and, therefore, this hon. Member must table a document to prove that the NSIS has certified that document as fake.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! I will allow some interventions here, but we will be restricted to only what is relevant and what the Standing Orders permit. I will not allow this matter to be protracted beyond what is reasonable!

Mr. Midiwo: Mr. Speaker, Sir, I wish to also add my voice to Mrs. Shebesh's request and urge you to do as requested. That is because Mrs. Shebesh has not talked about the admissibility of that document. That was so decided on Thursday when the document was tabled. I know your Deputy is able and he made a call for very right reasons that the document was, indeed, admissible. But the contents of that document, even though my friend Mr. Jamleck would like to make the world believe that even the English could break the English Language, some are so broken that they cannot even be broken by anybody from Gem.

(Laughter)

That is because if an English man was going to write what is in that document, they could have done better. That document, for what it is worth, was all authored and written by somebody who did not and does not mean well for this country. The issues in that document are so heavy and

weighty that whoever wrote that document was being mischievous and wanted to cause chaos. The issue of the ICC is so big; so grave that Kenyans are about to be tried away from this country. But the issues which we see in the so-called prayer meetings find their way in a document and the so-called “dossier” is tabled in this House to purport to show politically that some people in this country have a hand in sending some Kenyans to the ICC. The matter is so grave that we must, as a country and Parliament, rise above and show the way. Kenyans and those gentlemen are accused of mass murder. Some of us are bereaved! Some of us are appalled because Kenyans want to know, eventually, who funded *Mungiki*! I have somebody from my village whose genitals were cut with a *Fanta* bottle. I want to get something to tell Mr. Ndege, whose nine family members were massacred in Naivasha. We are talking of a very grave matter, and playing with it in a way that is not helping our country.

Mr. Speaker, Sir, you must guide this country and this House, so that it is not always politics and cheap politics for that matter. I ask you to expunge the contents of that document.

Mr. Speaker: Order, hon. Members! Those hon. Members who are going to speak on this matter beyond this point must restrict themselves to two minutes, and I will not allow it to be protracted. As soon as I am satisfied that I have captured the diversity of this House, I will curtail it. We will not use this as an excuse to debate a matter which is not properly before the House for debate. There is no Motion.

Hon. George Nyamweya.

Mr. George Nyamweya: Mr. Speaker, Sir, I think, really, whichever way it is; whether it is a fake document or a forgery, it has made its way into the House and has captured the attention of the country, and it is so grave that if it is genuine, then we need to take action. If it is not, it is equally important that we find who could also have taken the trouble to put a whole country in anxiety. So, the answer cannot be expunging what we have debated. It must be allowed to move forward. Perhaps, we should form a select committee, or use the Departmental Committee on Defence and Foreign Relations, to get to the bottom of it. We should have a report which makes sense, is objective and which we can debate. If the findings of the report suggest that it is a forgery, then the House can have some way of dealing with it; to act emotionally on what has arisen will not get us any far.

Mr. Speaker, Sir, so, I would urge you to exercise caution and perhaps let us take the direction I am proposing. Let us investigate it thoroughly and then make some decision after that. Thank you.

Mr. Njuguna: Mr. Deputy Speaker, Sir, I want to be very brief on this issue. I start by saying that we need to be careful with the statement that was issued by the British Government.

Mr. Speaker: Order, Mr. Njuguna! I have already cautioned hon. Members that we are not going to discuss the British Government at this point. So, that is out of order, I am afraid! You may withdraw that part and proceed!

Mr. Njuguna: Mr. Speaker, Sir, I withdraw and apologise. In concluding---

Mr. Speaker: Order! I direct that, that part to do with the British Government and Kapenguria Six be expunged from the records.

(All the debate arising from Mr. Njuguna’s remarks on the British Government and the Kapenguria Six was expunged from the record of the House Proceedings as directed by Mr. Speaker)

Mr. Speaker: Hon. Njuguna, Proceed!

Mr. Njuguna: Mr. Speaker, Sir, in concluding, I wish to say that the very same report or the response that was given was, in my view, not credible; this is because I vividly recall that the same colonial master---

Mr. Speaker: Order, Mr. Njuguna! Even that is not relevant to the matter before the House, and I order you once again to withdraw. I do not see how this thing about colonial master comes in.

Mr. Njuguna: Mr. Speaker, Sir, I withdraw and oblige.

Mr. Speaker: Very well. Hon. Milly Odhiambo-Mabona!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, hon. Rachel Shebesh relied on Standing Orders 82 and 97 and I would want to urge caution when we are dealing with this matter. We are in a year that is very sensitive. I know that sometimes, as politicians, we forget that a lot of Kenyans were murdered or lost their lives; sometimes we speak very carelessly and cause our own people to start killing each other; there is already a lot of violence that has started taking place.

Mr. Speaker, Sir, I want to appeal to all of us, as hon. Members, to remember that there are Kenyans in this country made of flesh and blood and that when they are massacred we remain the same. It is Kenyans who died.

Having said that, I would want to urge that you look at Standing Order No.97(1) (e); if, indeed, as hon. Members we are abusing privileges--- I would want to urge that we take very strict action against hon. Members of Parliament who pit Kenyans against Kenyans.

Mr. Speaker, Sir, very serious issues were raised here; if you look at Standing Order No.97(1)(f), as well, I know that when the hon. Speaker was looking at the document *prima facie*, it appeared authentic; but the British have since said it is not authentic. The NSIS has said it is not authentic. Indeed, if it is not, then it violates Standing Order No.97(1)(e) and (f). I, therefore, want to urge once again that there is a limit to what we can say in politics; let us remember that Kenya should come first.

Mr. Wamalwa: Mr. Speaker, Sir, Standing Order No.82 requires that the matter should have been raised instantly. It is several days after the matter was raised in this House. Since then, a lot of water has gone under the bridge, including the Departmental Committee on Defence and Foreign Relations getting seized of this matter. I am a member of that Committee and we had audience with the Minister for Foreign Affairs. We made it clear to him that we were then seized of the matter and will be requiring him, the Permanent Secretary in his Ministry, the Director-General of NSIS and other relevant members of Government to appear before the Committee to particularly focus on the issue of the authenticity of this document. That is the work of our committee. It looks at the relations between nations and this matter touches on our international relations with the British Government. The Minister indicated that the United Kingdom (UK) Government is taking this matter seriously; in fact, it is sending a Minister here who will be appearing and consulting with leaders.

Mr. Speaker, Sir, we urge patience in this House. Allow the Committee to interrogate this document, to actually have audience with the British official who will be appearing before us and the NSIS. The Minister for Foreign Affairs said that the NSIS has not said the document is fake; the NSIS has urged caution. That is what the Minister said. The Minister himself did not say the document is fake; he said, in fact, he was in the process of interacting with the British

Government. He has met the High Commissioner twice, and he was expecting the Minister on the 20th.

Mr. Speaker, Sir, when we get to the bottom of this matter, our Committee will be reporting back to the House on the authenticity of this document; all the issues being raised before this House are grave matters. They touch on the sovereignty of this nation. They touch on our long good standing relations with the British. I will urge caution and patience to allow our Committee to dispose of the matter. Thank you.

Mr. Mwau: Mr. Speaker, Sir, I would want to refer to the Standing Orders. There should be no discrimination in the application of the Standing Orders, or in their enforcement. On 22nd December, 2010 the Minister of State for Provincial Administration and Internal Security adversely mentioned the name of hon. Members of Parliament, contrary to the Standing Orders, that is without a Motion. There was no issue. Mr. Speaker, Sir, he went further and tabled a document which adversely mentioned myself and other Members of Parliament, making such allegations that they were involved in drug trafficking. Secondly, that I am father in-law to one of the Members of Parliament. Thirdly, hon. Livondo is a Member of this House. That is what that document said. That document, although it had no signature, was admitted by the Chair and it subjected the Members of Parliament to investigation.

The investigations were carried out, but at that time, the NSIS never said anything. They were asleep. Even today, they have never woken up. But when a foreign Government is mentioned, we are up in arms and very quick to say this or that. The Government agencies investigated the allegations by that foreign Government against the hon. Members of this House and the investigation report was tabled before this House.

Mr. Speaker, Sir, the investigation revealed that the allegations about drug trafficking were false, the allegation about the father in-law was false and Mr. Livondo is not a Member of this House. After the report was tabled, I came to this House and at that time, you were on the Chair and I asked the Chair that my name be expunged and the report that was adversely mentioning me be expunged from the records and the Chair said that it thought that it had no authority or power to expunge such a matter.

Similarly, in this particular matter, if we are going to apply the Standing Orders without discrimination of colour, creed or position, or who you are; it should not be the case that when we mention white people, Standing Orders change and when we mention black people, Standing Orders change.

(Applause)

I would expect fairness. If the Chair would rule that this report is expungable, then also that other fake report by that other foreign Government must be expunged.

Thank you.

(Applause)

Mr. Speaker: Order! Order, hon. Mwau! That is not permissible. You cannot, by your contribution, intimidate the Chair. You cannot send a veiled threat to the Speaker. It is not permissible. That, if the Chair will rule, then it must! That, you must withdraw, I am afraid.

Mr. Mwau: Mr. Speaker, Sir, that particular point I withdraw and apologise.
Now further, Mr. Speaker, Sir---

Mr. Speaker: Order! You had just concluded. I want it to rest there, hon. Mwau.

(Several hon. Members stood up in their places)

Order! Order!

Dr. Nuh: On a point of procedure, Mr. Speaker, Sir.

Mr. Speaker: What is your point of procedure, Dr. Nuh?

Dr. Nuh: Mr. Speaker, Sir, I want to refer you to Order No.43, part 15, while I also wanted to contribute on this point of order. But I am constrained by this point of procedure.

Mr. Speaker: Order! Let me hear your point of procedure!

Dr. Nuh: Mr. Speaker, Sir, that is why I am saying I am also constrained to contribute on this matter.

Mr. Speaker: Order! I will not allow you to also--- Just do what you intended to do when you caught my eye!

Dr. Nuh: Mr. Speaker, Sir, Part 15 says:-

“A Question shall not refer to proceedings of a Select Committee before that Committee has made its report to the House”

Mr. Speaker, Sir, the question on which you are asked to rule is a question the Members of the Departmental Committee on Defence and Foreign Relations said is before them. They are executing the matter.

Mr. Speaker, Sir, would I be in order to ask that this matter; since the committee is seized of, we now stop any further deliberation and we await the Select Committee to report to this House and save you the burden of trying to give a ruling on a matter so expansive?

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members!

Hon. Members, I am satisfied that I have heard adequate ventilation on this matter. I permitted more interaction on it because of its magnitude. It is obviously a formidable matter, a matter that is topical and of concern to this country and beyond.

I have heard the point of order as executed by the hon. Rachel Shebesh. I listened to her very patiently and with a lot of understanding. I know she is concerned of a matter that perhaps, has grave implications. But having heard the rest of the Members that have contributed to it; Member for Kigumo, Member for Gem, hon. George Nyamweya, Member for Lari, hon. Millie Odhiambo, Member for Saboti, and finally, the Member for Kilome, I am satisfied that I am reasonably guided. But the matter that I have to deal with is fairly simple and straightforward in my view, on whether or not I should order that matters pertaining to the document that was tabled in this House last week on Thursday should be expunged from the record for the reason that the document that was tabled was not authentic and that it has been proved to be a forgery.

In articulating her arguments, the hon. Rachel Shebesh has had a number of grounds. Firstly, that the document has been found to be a forgery. I am afraid, I am not able to make that finding on the basis of the documents that the hon. Rachel Shebesh has tabled. I also find what she calls as evidence wanting. First, with respect to the document that is supposed to be from the British High Commission, I am afraid just as the hon. Rachel Shebesh argues about authenticity, I do not think she looked at this document. The document has no date. It is not signed. As far as I am concerned; applying the rules of the House, it is of no value.

(Applause)

Without fear or favour, I find this document completely worthless.

With respect to what the hon. Shebesh asserts is evidence by the Minister for Foreign Affairs, I am afraid even that I am unable to accept as the position of the Minister for Foreign Affairs. Yes, I am prepared to respect the assertion of the hon. Rachel Shebesh, but the Minister for Foreign Affairs would best speak for himself. If you had a document in which he has articulated his position, yes, then I would be so guided if you tabled that document. But for the time being, you alone without the Minister confirming the position you are taking, I am afraid, I am not able to admit it. I cannot be guided by it.

With respect to the NSIS, NSIS is a respected organ of the Government of Kenya, of this Government, of our Government and we would like to see what it says. What is before the House now?

Hon. Members: Zero!

Mr. Speaker: Yes, Members have answered it. I cannot be guided by just mere allegations. That is not good enough because we are dealing with a very sensitive and serious matter. Indeed, we must proceed with caution because otherwise, we would hurt this nation. We cannot be a House that thrives on allegations without formulating a basis for the allegations. So, with utmost respect, the hon. Rachel Shebesh, I am unable to find grounding for your assertions. As to whether or not the document is a forgery, really, I cannot say.

(Applause)

I do not have the capacity to determine whether or not a signature, for example, is a signature. From where I stand and from where I sit so often, I cannot determine whether or not a document is a forgery. There are other arms of the Government which can do so and if they did, then the House can be moved appropriately to deal with the document that may have been brought to the House and is a forgery.

As it is now, the House is not properly moved to determine whether or not that document is a forgery. The way to do it would be, for example, by a Motion so that the House is properly seized of the matter, the House goes into it and determines it. The manner in which the House determines a matter is clear. Most of us have been here going into the fifth year and we know how the House pronounces itself on matters. The House does not necessarily pronounce itself on matters by a ruling from the Speaker, especially where facts are before the House. So, hon. Rachel Shebesh, your answer would be, to procedurally bring this matter properly before the House and let the House determine it as you will canvass it.

On the face of it, the Speaker decides whether or not to admit a document on its face value. What are our rules on face value? We have indicated that the document must be dated, signed and/or have a rubber stamp where it is coming from; any given organ. The Deputy Speaker presided over the business of the House on Thursday; I am satisfied that he properly exercised his mind and I am afraid that I cannot order that the documents be expunged from the records. For the moment, I will leave the matter where it is - with the Committee. Let the Committee investigate, prepare its report in terms of Standing Order No.43, properly table its report in the House and procedurally move the House to make a decision. How the House will make a decision is well known. It is documented. We have a practice. On that, I have the

capacity. I have the power to give directions. On this, as at where it is, I am afraid I do not have. I will leave it to the judgment of hon. Members of Parliament, Kenyans and the international community as to what value they want to attach to that document. We have arguments both ways. So, it is up to you. Decide what value you want to attach to the document. If I was submitting in a court, I would have said: "Give that document the weight that it is worth, according to your own conscience and judgment."

Let the matter rest there. I so direct!

Mr. Mbadi: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, I will not revisit that matter! I have given clear directions on that matter.

Mr. Midiwo: On a point of order, Mr. Speaker, Sir. I agree with your ruling but I wanted to point out that somewhere in this document you are also mentioned. So, by way of authenticity, you could tell us something because it is unclear.

Mr. Speaker: Order, hon. Members! I do not think it is fair to attempt to draw the Speaker into authenticity or otherwise of the document. Do not draw the Speaker into it. However, let me say this so that it is clear. The Office of the Speaker is a public office. The Office of the Speaker is visited by all Kenyans, by members of the international community and I receive them in confidence. I will keep whatever I discuss with any Kenyan who sees me in my office or any member of the international community in confidence until directed otherwise.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Yes, on a different matter, Mrs. Odhiambo-Mabona!

Mrs. Odhiambo-Mabona: Mr. Speaker Sir. I just needed your direction especially as a lawyer because these issues will keep coming before you. I agree with you that this document that hon. Shebesh has presented has no date and, therefore, would not be admissible.

Mr. Speaker: It has no date and signature!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I just wanted clarity because there is something you have indicated. When a document has no signature but has a stamp, is it either or is it both? I need clarity for future because this has a British stamp but no signature. So, in future, if you are presenting, should it have a stamp plus a signature?

Mr. Speaker: Ideally, it should have all. It should have a date, a stamp and a signature.

Mrs. Odhiambo-Mabona: If it has a stamp---

Mr. Speaker: Order! Hon. Odhiambo-Mabona, it is possible to make a stamp and purport that it belongs to the British High Commission or for that matter that it even belongs to hon. Odhiambo-Mabona as an advocate or a Commissioner for Oaths. So, how do we know that you are the one who has certified a document which has a stamp which says "hon. Millie Odhiambo"?

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I am satisfied.

Mr. Speaker: I am glad you are satisfied.

(Applause)

Mr. Mbadi: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: On a different matter?

Mr. Mbadi: Yes, Mr. Speaker, Sir. I am just concerned with the Committee. I have a lot of respect for the Departmental Committee on Defence and Foreign Relations and the Chair. However, some of the people, I would say "culprits" sit in that Committee.

Hon. Members: No! No!

Mr. Mbadi: Yes, Mr. Speaker, Sir. The person who brought forgery in this House is hon. C. Kilonzo who sits in that Committee. It should be made clear that he cannot sit and judge himself when he is the master of the forgery.

Mr. Speaker: Order, hon. Members! I will not allow us to play out on the Floor of the House credibility or otherwise of Committees.

(Applause)

As a matter of fact, all Committees of the House are open to the full membership of the House. If a Member has reason to believe that hon. C. Kilonzo will not properly apply himself to the business that is before the Committee, please, attend that Committee and raise your objections in the Committee. The Committee will determine whether or not hon. C. Kilonzo should continue to sit in its proceedings when it is carrying out an inquiry into this matter. That is the proper way to proceed, and I so direct.

Mr. Keter: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! I will not allow further debate on this matter! Order, the Member for Belgut! Everything that has happened in this House, so far, has been serious. I will not allow exemptions.

The Minister for Information and Communications (Mr. Poghismo): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: On the same matter, Mr. Minister? Order! On the same matter, Mr. Minister, I am afraid, I will not take it!

The Minister for Information and Communications (Mr. Poghismo): It is on procedure, Mr. Speaker, Sir.

(Loud consultations)

Mr. Speaker: Order! I will not allow further interaction on this matter!
Next Order!

COMMITTEE OF THE WHOLE HOUSE

Mr. Keter: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Member for Belgut? Note that we are now on Order No.8.

Mr. Keter: It is okay, Mr. Speaker, Sir. You have allowed other Members to talk about this issue. Is it in order for hon. Mbadi to cast aspersions on hon. C. Kilonzo that he presented a forged document, despite your ruling? You had made a ruling that nobody has proved that it is a forged document.

Mr. Speaker: Order! Order! Order, Member for Belgut! I know that you want to tempt me to do what I should not.

(Laughter)

I have given clear directions even on that matter; how a matter of credibility of an hon. Member can be dealt with. Just revisit the HANSARD and you will be fully informed. I do not wish to revisit it!

DEFERMENT OF COMMITTEE OF THE WHOLE HOUSE

THE COUNTY GOVERNMENTS BILL

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I would like to seek the indulgence of the House so that this matter that is supposed to be debated on the County Governments Bill is deferred to tomorrow afternoon, so that some clarification with regard to the Presidential objection or Memorandum can be relooked at, so that when it comes up for discussion, we will have cleared the issue that still needs clarification. So, I would really propose that, with the indulgence of the House, we defer this to tomorrow afternoon.

The Attorney General (Prof. Muigai): Mr. Speaker, Sir, I wish to support the Deputy Prime Minister and Minister for Local Government on that point. We are having some consultations and hope to be ready tomorrow afternoon.

Mr. Speaker, Sir, I second that.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. I rise on a point of order, really, to find out the basis upon which this deferment is being sought and the nature of discussions. That is because I did indicate to the Deputy Prime Minister and Minister for Local Government, and the hon. Attorney General that I will be taking an issue regarding the constitutionality of the President's Memorandum. If that is to clarify those issues, then may I have permission to lay the basis on why this Memorandum is unconstitutional?

Mr. Speaker: Order! Order, Member for Imenti Central! Hon. Members, the Deputy Prime Minister and Minister for Local Government has intimated in his request that this business at Order No.8 be stood down. That is because he requires time to consult with the membership of the House and the Attorney General on the content of the business at Order No.8. I believe from the intimation that I have received from the Deputy Prime Minister and Minister for Local Government, that among other persons, he will want to consult with the Member for Central Imenti on the constitutional aspect that he wishes to raise. I think it is only reasonable that we allow them that time, more so, as the Deputy Prime Minister and Minister for Local Government has been so candid as to indicate that he wants to have further consultations. That is because if that is done properly and fully, it will save this House time. It is possible that the Member for Central Imenti has a valid point which, perhaps, could be addressed away from the plenary.

So, for the convenience of the House, I am inclined to allow that plea and I step down Order No.8 until Thursday afternoon. It is so directed!

(Committee of the Whole House deferred)

Next order!

BILL

Second Reading

THE PUBLIC FINANCIAL MANAGEMENT BILL

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I beg to move that the Public Financial Management Bill (Bill No.11) be now read a Second Time.

Mr. Speaker, Sir, I think it will be important for me to give a brief history of how we have ended up with this very wonderful and fine Bill.

Mr. Ogindo: On a point of order, Mr. Speaker, Sir. I have just heard the Minister call out for Bill No.11. The Order Paper that I am holding is reading “Bill No.7.” I do not know whether we are discussing the same Bill.

Mr. Speaker: Order! Minister, could you just simply clarify that? Please, remain calm Minister!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I said “Bill No.7 be now read a Second Time.”

Mr. Speaker, Sir, it is important that I give a brief history of how we have ended up with this wonderful and fine piece of legislation. Proposals to amend the Public Financial Management Bill started in the year 2006 when Treasury embarked on this exercise. But sometime in 2007, it was decided that we await the new Constitution so that we know what it will provide and, therefore, the matter was held in abeyance.

Mr. Speaker, Sir, after the promulgation of the new Constitution, and in line with its requirements, the Treasury established a taskforce on public financial management. Similarly also, the Deputy Prime Minister and Minister for Local Government established a taskforce on public financial management. The two taskforces proceeded very well with their duties and came up with two different versions of the same Bill. So, the first task was to reconcile and synchronize the two Bills and this was done. The version of the Treasury and that of the Office of the Deputy Prime Minister and Ministry of Local Government were merged. As a result, we have such a fine and wonderful piece of legislation.

Mr. Speaker, Sir, secondly, all the stakeholders were consulted and I have in mind the Commission for the Implementation of the Constitution (CIC). I am glad to inform this House that they have given this Bill a very clean bill of health.

Mr. Speaker, Sir, thirdly, the civil society was also consulted and I am also glad to inform this House that they are extremely very happy with this Bill. The other body that was consulted was the general public and, again, I am happy to inform this House that the general public is extremely happy with this Bill. We also consulted international organizations and they gave their views and input. Again, I am happy to inform this House that the international bodies and organizations are also very happy with this Bill.

Mr. Speaker, Sir, lastly, we consulted the local experts on public financial management. They went through the Bill and they were also very happy with it. Similarly, after the Bill was published, we have received nothing but praise for it. Even the professional accountants are also very happy with this Bill.

Mr. Speaker, Sir, what is the justification for this Bill? Over the past eight years, Kenya has experienced a broad-based economic growth which has resulted in reduction of poverty.

This performance reflects a sound micro-economic and structural policies that have been implemented over that period. In particular, the country has maintained a regime of prudent fiscal policy and there has been significant improvement in public financial management. This has moved the country closer to the Millennium Development Goals (MDGs). Furthermore,

there has been a sharp increase in disbursement of resources to rural areas through the Constituencies Development Fund (CDF) and the Local Authority Transfer Fund (LATF), among others. This has contributed to improving the living conditions of Kenyans in general. Despite this progress, more still needs to be done to lower poverty levels on a sustained basis, and to fully achieve the MDGs.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, an efficient and effective public financial management system is a necessary condition for achieving Vision 2030 and our development objectives. Investors, both foreign and local, require assurance that a country's public financial management system can be relied upon to maintain fiscal discipline, and in particular contain public debt at both the national and county levels. Without a credible public financial management system, our ability to borrow or even attract donor funds will be curtailed. In addition, an effective public financial management system is critical in supporting the mobilisation of resources to be equitably shared between the two levels of government.

The Public Financial Management Bill is firmly anchored in Article 201 of the Constitution and gives effect to principles of public finance as required by that Article. In particular, the Bill provides for openness, accountability, public participation, equitable sharing of resources for an equitable society, ensuring debt sustainability and equitable sharing of the benefits and burdens of public borrowing between the current and future generations.

Further, the Bill provides for prudent and responsible management of public resources as well as for responsible financial management and clear fiscal reporting.

QUORUM

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Speaker, Sir. I regret that there is no quorum in the House.

The Temporary Deputy Speaker (Mr. Imanyara): Indeed, it does appear as if we have no quorum. So, I request that the Division Bell be rung to see whether we can raise the necessary quorum.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, hon. Members! We now have a quorum.

Minister, you may continue!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I have no intention of going through the entire Bill because it is boring, given the fact that it is full of technical language.

However, let me say that the reasons as to why I am saying this is a wonderful piece of legislation is that after going through it, we required comments from the various offices of the Government. The Office of the Prime Minister raised just one issue, which was on the

requirement of the Cabinet Secretary to intervene. The issue of concern was that it should be made a little tighter, so that the Cabinet Secretary can only intervene in county affairs where the situation is critical. Therefore, the compromise agreed upon is that before the Cabinet Secretary can intervene in county affairs, he must seek Cabinet approval. That is the way it was done.

Mr. Temporary Deputy Speaker, Sir, I want to, briefly, go through the Bill. The Bill has nine parts. There is provision for the general applicability to both the national and county governments. Those are parts I, V, VI, VII and VIII. There are provisions specifically applicable to the national Government, which are captured under Parts II and III. There are also provisions specifically applicable to county Governments, which are captured under Part IV.

The salient features of this Bill are that Part I gives powers to the Cabinet Secretary responsible for finance in the case of the national Government, and the Executive Committee Member for Finance in the case of county governments, subject *inter alia*, to approval of Parliament and the county assemblies, respectively, to designate anybody or an entity performing functions assigned to the respective government to be an entity subject to provisions of this Act.

Mr. Temporary Deputy Speaker, Sir, Part II of the Bill provides for parliamentary oversight of national finances, and in particular the responsibilities of the relevant Committees of the National Assembly and the Senate in public finance matters. Hon. Members will now see why I said that this is a very valuable piece of legislation. It preserves the oversight powers of Parliament. "Parliament" includes both the National Assembly and the Senate.

Part III provides for national Government responsibilities with respect to management and control of public finances. This is captured under Clauses 11-16. Clauses 17-24 specifically provide for the responsibility of the National Treasury, or Cabinet Secretary, as the case may be, with regard to constitutional funds, the Contingencies Fund, the Consolidated Fund and the Equalisation Fund, as well as other national public Funds. These clauses also provide for the administration of these funds and impose various report requirements on the persons assigned the responsibility of administering these Funds.

Clauses 46 to 61 provide for the responsibilities of the Cabinet Secretary and the National Government with respect to grants and loans, providing for the conditions in which grants can be received.

Mr. Temporary Deputy Speaker, Sir, clauses 62 to 65 establish the new public debt management office within the national Treasury and provides for specific responsibilities as part of implementing Government debt management.

Clauses 66 to 74 provide for designation, responsibilities and accountability for Accounting Officers in both the National Government and county entities.

Clauses 80 to 85 provide for stringent reporting requirements of the National Treasury and all national Government entities.

Mr. Temporary Deputy Speaker, Sir, clauses 86 to 91 provide additional requirements for State corporations and Government-linked corporations outside the establishing statutes and the State Corporation Act.

Clauses 92 to 1 provide for termination and resolution of operational and financial problems in State organs and public entities. This gives effect to Articles 190 and 225 of the Constitution.

Part IV replicates the provisions of part III with necessary adjustments in order to make provisions in the former part applicable to county governments. We are saying that what is good for the goose is good for the guarder and, therefore, what is good for the National Government is also good for the county Government. They are all at parity.

Mr. Temporary Deputy Speaker, Sir, clauses 102 to 108 provide for the responsibility of the county governments with respect to the public finance and the establishment of county treasuries as well as their functions and responsibilities.

Clauses 109 to 115 provide for the establishment of the County Revenue Fund (CRF) for each county government in accordance with Article 207 of the Constitution.

Clauses 117 and 118 provide for the development and submission of County Fiscal Strategy Paper and the County Budget Review. The procedure given by this Bill is so important as far as the preparation of budgets is concerned; both national and county. Preparation of budgets will start in August, particularly in the county governments, where upon the Executive member in charge of finance will issue a circular to all the departmental heads to prepare their budgets after which he consolidates the budget, take it to the county executive, it is then approved and taken to the County Assembly. Once that is approved, that will be the budget for the county government.

Mr. Temporary Deputy Speaker, Sir, clauses 125 to 134 sets out the stages in the budget process at the county level and assigns overall responsibility for the management of the process.

Clause 137 provides for the establishment of county budget and economic fora as consultative fora in each county to discuss budget and economic matters. We said at the beginning that the main theme in this Bill is transparency and accountability. This, therefore, provides for the general public to give their input into the budget. The Budget henceforth, is not a secret matter for the Cabinet Secretary. It will be open. It will be discussed by the general public. It will be discussed by everybody and it will not be like a secret weapon.

Clauses 147 to 156 provide for the responsibilities and accountability of Accounting Officers in county governments in accordance with Article 126 (1) of the Constitution.

Clauses 169 to 181 contain financial management provisions relating to urban areas and cities. These clauses provide for the dissolution and responsibilities of the Accounting Officers, the financing of urban areas and cities, the criteria of allocating funds to urban areas or cities, the budget process and procedures for borrowing.

Finally, clauses 182 to 186 provide for additional requirements for county corporations and Government linked corporations including the procedures for establishment and dissolution, monitoring of their financial performance and decision of county government investing in county government linked corporations and annual reporting by each county treasurer on county corporations.

Lastly, part V of the Bill contains the inter-governmental fiscal relations provisions of the Bill. These include the provisions on the establishment, purpose and compensation of the inter-government budget and economic council and the process of sharing revenue in accordance with Articles 202, 203, 216 and 217 of the Constitution.

Part VI contains the establishment of Accounting Standard Board and sets out the membership of the Board and the nomination process to the Board. This is a very important body that will be setting standards in the accounting profession.

Part VII contains clauses 186 to 204 of the Bill and it defines the general offences, financial misconduct and other offences under this Act stating their respective penalties. These offences apply to public officers both of the National and county governments and also provides for institutional sanctions in certain circumstances. The Act also places a duty on the Principal Secretary or county officer to report suspected offences under this Act.

Lastly, part 8 contains the miscellaneous provisions of the Bill, including the power of the Cabinet Secretary to make regulations, provisions on public participation, requisite to the

amendments of this Act and the protection of public officers from liability provided they act in good faith.

Clauses 208 of this part also specify the existing Acts that will be repealed. These basically are; the Fiscal Management Act, the Government Financial Management Act, the Internal Loans Act, the Contingencies Fund, the County Emergency Funds and the National Government Loan Guarantee Act.

Lastly, we have the Schedule which sets out the consequential amendments to the interpretation and general provisions of the Act, the Treasury Incorporation Act and the Urban Areas and Cities Act of 2011.

Mr. Temporary Deputy Speaker, Sir, the Second Schedule provides for savings and transitional clauses that shall come into effect upon enactment of the Bill.

Finally, the Public Financial Management Bill is firmly anchored in Article 201 of the Constitution and gives effect to the principles of public finance as enshrined in the Constitution. I will not repeat this because I have already done so.

Lastly, I wish to say as follows; I do not know where this perception that the Treasury is against devolution came from. I want to repeat here in as loud a voice as I can, that the Treasury supports devolution. It will encourage the county governments. It will assist them and co-operate with them. This is a new dawn. The success and failure of this country depends on how the county governments perform and work. It is our responsibility as the national Treasury to support county governments. We will support them, assist them and give them any help they want because we want them to perform.

Secondly, I do not know where this perception came from that the CDF will not be there in the next Budget. I want to assure this House that the CDF Act was provided for by an Act of Parliament and until and unless this Parliament repeals that Act, it will continue to be in existence. I have directed Treasury officials that they must provide for the CDF even in the next Budget until Parliament says otherwise.

Lastly, again, I do not know where this perception came from that with the enactment of the new Constitution, the LATF will also disappear. Again, I want to emphasize and say it as loudly as I can that LATF is founded on an Act of Parliament and until Parliament says otherwise, it will also be provided for.

Lastly, Mr. Temporary Deputy Speaker, Sir, the Cabinet memo that was attached to the Bill was signed by both myself and the Deputy Prime Minister and Minister for Local Government showing that the issues that were between the Treasury and the Ministry of Local Government had been sorted out. As a result, we have come up with a wonderful piece of legislation. This is the best Public Financial Management Bill I have ever come across. You cannot get something better than this. It incorporates the best practices in all the jurisdictions in the universe. Therefore, it is my appeal to hon. Members of this august House to approve it. I would like to request the Deputy Prime Minister and Minister for Local Government to second.

With those few remarks, I beg to move.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, thank you. I beg to second this Bill and indicate that a lot of extensive consultations have taken place because, initially, there were two Bills. There was one which was being generated by the Treasury, and then there was another one which was developed by the taskforce that was dealing with the aspect of devolution. The taskforce on devolution specifically looked at two Bills with regards to finance. One was what you call the Inter-Governmental Fiscal Relations Bill and what you call the County Finance Management

Bill. On deliberation, it was then agreed that rather than have two different pieces of legislation, there should be harmonization of the two Draft Bills. Therefore, the Ministry of Finance with its document and the taskforce with the document that they had submitted - which have been made public - were then merged and many clauses were then harmonized. So, this becomes one Bill taking into account aspects developed by the taskforce on devolution and the Ministry of Finance.

I just want to highlight that, indeed, we have come a long way because the thinking and mood was quite at variance in the initial stages. But with a lot of consultations, the harmonization process was able to bring us closer together on these aspects, so that there is adequate co-ordination and clear linkage between the National Government, its budgetary process and a clear linkage with the county government and also, further than that, with the county governments and its entities. That is because in this Bill, you will find that it goes beyond just the national government or the county government in totality. We also provide, particularly under Articles 166 onwards, details on how urban areas and cities will be financed, how they should be managed and so forth. We also provide a lot of details on entities because there are public entities like water companies which belong to county governments. For those entities again, there is very clear provision on how they ought to be managed, what are their accounting processes, whom do they report to and who, in overall, approves their budgets at the county levels. So, all those things have been brought very clearly in this Bill and I would like to say that it is important that hon. Members scrutinize it. It is a very huge document but there are issues that we must bear in mind that if not properly taken care of, there could be a risk of an overlap or intrusion into the management of county governments.

I also want to state here that these Bills provide a very elaborate process on the budget stages that the county governments must also take. I am dwelling more on the county governments because, at the end of the day, that was the focus that I had put in it. The focus has got to be that once the budget cycle starts nationally - because the county government financial years are in concurrence with the national budget--- Once the process is triggered off and there is a mechanism to show that there has to be an inter-governmental budget council which brings the national government and the county governments together, they have an opportunity to discuss the policy issues that must be incorporated in matters of finance. Then they will have a timetable upon which to deliver. That way, by the time the national budget is coming to the Assembly or Parliament, what the county governments have also requested or put in place can be adequately captured at the national level so that, subsequently, when they are getting their share, it is very clear on what is expected.

Mr. Temporary Deputy Speaker, Sir, this Bill goes further to also repeal a number of Acts. I think it is important that hon. Members note that because there are some Bills that we had passed earlier, things to do with guarantees, borrowing and how grants can also be extended to county governments. I think those are very important provisions which I would like hon. Members to look at very carefully. That is because in all these, we were also proposing that at no time should one government crowd out the other when it comes to borrowing and when it comes to grants being extended.

(Applause)

We were very clear and it is important that hon. Members remember that. We do not want a situation where if there is a window for either international borrowing, the national government

crowds out and takes everything, and then the county governments cannot access any credit lines for a development project that they want to undertake in their given area. It is absolutely important that I draw this to the attention of hon. Members when they are looking at the provisions that will relate to borrowing and so forth. Please, bear that in mind.

It is also important for hon. Members to remember that there are new players; the controller of budget and the audit office. All these offices also come into play in this particular Finance Bill. We are also saying that there must be county fiscal strategy papers so that, at any one time, resources are not just being dispensed with, but there is a clear strategy and policy that has been developed by the county government to ensure that the resources are being released and utilized as required. This is so important because it will mean that the capacity of the county treasuries throughout the country – the 47 county treasuries – must ensure that there is adequate capacity; people who have proper knowledge in matters of public finance and planning. They must be there, they must be recruited and they must also know that there are very stringent penalties if they do not follow the provisions that are laid out in this Bill.

Mr. Temporary Deputy Speaker, Sir, we have also made sure that in this Bill, the issue on how resources and the criteria that can be used to even allocate funds is also being made clear within the county governments. This should also be read in conjunction with the County Government Bill which has been passed, although there are few areas that we will be dealing with later as they are important. There will be county treasuries and the head of the county treasury shall be appointed by the governor in the respective county government. The county secretary is responsible for the treasury of the county and is a member of the executive of the governor. So, it is very clear that the governor of the day in any given county must take very serious precaution, care and caution when nominating the people who are going to be appointed in that particular position.

I think the rest are a lot of details which will require a lot of scrutiny from hon. Members but I want to urge hon. Members, particularly those who are either in the Departmental Committee in charge of finance or those who are in the Budget Committee, to literally look at this particular Bill with a toothcomb because their recommendations and input are going to be extremely serious and valuable in ensuring that the final outcome from this House will be a Bill that we can all respect and support.

At the same time, I want to remind Kenyans that this is a Bill that will either make or break devolution. So, please, dear hon. Members, look at it very carefully because any clause that will be seen to be reversing the process of devolution, particularly in the areas about finance, is dangerous.

Mr. Temporary Deputy Speaker, Sir, previously, when Kenya started on the road map to devolution, one of the early points of attack in ensuring that devolution never succeeded was the area of public finance. What happened was that the then regions were simply starved of resources and by so doing, the central Government then was able to make sure that the county governments became subservient and they started trooping back to the centre with begging bowls to be able to survive. We do not want that to recur. We do not want our county governments to become begging counties. We want them to become counties that will generate employment, attract investment and actually be able to realise growth in terms of Gross Domestic Product (GDP) and sustain it at a very high level; we all would like to see it at a rate of about 10 per cent or more, so that we can generate sufficient employment for our people.

Mr. Temporary Deputy Speaker, Sir, at the same time in this Bill, the issue of internal revenue for the counties is also brought out. This is revenue different from the national revenue

that will be shared. There are issues that will relate to what a county government can do, what it can raise and how it should be able to raise it. Again, this is factored in this Bill and I want to recommend to hon. Members that it requires support, but no Bill is perfect. That is why we are debating it today to be able to seal any loopholes.

Mr. Temporary Deputy Speaker, Sir, with these remarks, I strongly support this Bill and I ask hon. Members to support it as well. Thank you.

(Question proposed)

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I want to start by thanking the Minister who moved this Bill for all the comments he made. I also want to thank the Deputy Prime Minister and Minister for Local Government who has seconded this Bill for all the comments that they made. I would, first of all, want to join the Deputy Prime Minister and Minister for Local Government in urging hon. Members of the House to be very careful about this Bill. He has quoted the history correctly and said that the *majimbo* governments were killed through starvation of funds from the central Government. The attitude in Treasury, contrary to what the Minister has said, has not really changed. The intention to control from the centre is very much there and this is why I am asking hon. Members to be very careful about the nitty gritty of this Bill. Let us bring as many amendments as will be necessary to protect the existence of county governments.

Mr. Temporary Deputy Speaker, Sir, I want to start by what I see as an attempt to control county government funds outside the Constitution through Clause 17. Clause 17 is a very dangerous clause and I want the Minister and hon. Members of Parliament to look at it again together with others that I am going to mention. This clause talks about the responsibilities of the national Treasury with respect to public funds and the Constitution. The Constitution says that the funds of the county governments will be a minimum of 15 per cent and will not be subject to negotiation, discussion, begging or anything. A minimum of 15 per cent will have to automatically move from the Consolidated Fund and go to county government funds.

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

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

Mr. Temporary Deputy Speaker, Sir, this is not the spirit of Clause 17. Clause 17, instead of creating a situation where the county government quota is automatically deducted and sent to the county government, it tries to create a schedule for payments; effectively what it says is that there will be an inter-governmental budget and economic council, which will create a schedule for payments and that schedule will have cash flow projections.

Mr. Temporary Deputy Speaker, Sir, Clause 8 particularly says that: “In making payments from the Consolidated Fund to county governments revenue fund, the national Treasury shall ensure that disbursements are carried out promptly in accordance with the published schedule of the disbursements. In the event of a shortfall of funds, the national Treasury shall ensure that disbursement of available revenue is on a *pro rata* basis and takes into account Articles 202 and 203 of the Constitution”. In effect, what it is saying is that if the entire

nation collected this amount of money, the projections of the cash flow were done in this way. The Treasury is saying that, for instance, last year we would not have got an automatic charge on the Consolidated Fund of the Kshs105 billion that ought to have gone to the counties automatically. What Treasury is saying in this particular clause is that if we have collected so much by the end of the first quota, then whatever little--- These words are going to haunt the counties for the rest of their lives. If we have shortfalls, Mr. County Treasurer or whoever will be in charge of the treasury will wait.

We shall divide this on a *pro rata* basis for all the 47 Counties. Then, after we get whatever amount should come, then we will remit it to the county. So, this is what is going to happen practically. The Governor will have plans of action and he will need money. The County Secretary in charge of the Treasury will be telling the Governor and the Cabinet of the Governor and the counties that there is no money; I have to go to Nairobi to talk to Treasury. When he goes to the Treasury, he will have difficulties, first of all, to get appointment with the Cabinet Secretary as you would very well know what would be happening. After being kept all the way from Tana River County, he would be told your appointment is tomorrow at 4.00 p.m., and at 4.00 p.m., the Cabinet Secretary is not available, because he is meeting with the President. Maybe, after three, four or five days, he will be told there are serious shortfalls. My friend, go back and tell your governor, tell your County Government, we have not collected enough money for this quarter. Therefore, Tana River County will not have enough money to support the budgeted plans of action.

Mr. Temporary Deputy Speaker, Sir, this is going to be the story of our lives and the story of the lives of counties. This is going to give Treasury so much power. It will also decide which county gets the first amount. Even if they say it will be done on a *pro rata* basis, they are not even giving the time schedules so that they say, at this time, all the counties will receive the money. They are leaving it loose. So, it means it is at their discretion. When we have collected enough money; we are not saying all the counties will get it. It will be like what is happening with these old people's money. You will hear that it is certain counties which are receiving the money and not the rest of the country.

Mr. Temporary Deputy Speaker, Sir, we have to be very careful how we formulate the law. This law is going to cause untold suffering to the people who are living in the counties. It is going to cause untold sufferings to the governments that we are going to set at the county level. I would urge the Minister, and I know his technocrats are listening to me; he must go back and give us what the Constitution intended. We want a direct charge on the Consolidated Fund. We do not want to be told that there are shortfalls; we have schedules, we have these plans, oh, BAT has not remitted, East Africa Breweries has not paid, Safaricom has not brought, so you wait. Let us wait for the second quarter, third quarter, we would send the money. We do not want our Governors, and the Secretaries to the Treasury in the counties to spend all their elected time, and the time of the appointment here in Nairobi spending allowances from the county, sitting here waiting to get money remitted to the counties.

Mr. Temporary Deputy Speaker, Sir, this is a very dangerous clause. I do not like its formulation. I am asking the Minister to look at it again. I am asking Members of Parliament, please, if you want your county to survive, go and read this clause. We are being short changed here, and you are going to be told this is a good law, let us pass it, and you will pass it with your eyes closed, and your counties will die. They will all be converted into subservient units of the Central Government. This is why we are saying devolution is being killed by the Treasury, and I

stand by that. There are very many clauses here, which continue to have the old mentality of the Treasury to control what monies go to the counties.

Mr. Temporary Deputy Speaker, Sir, we have had this problem with the CDF. How many times have we asked the Minister here? How many times have we asked Questions here to the Minister asking him: Where is the balance of the money? But because it is not a direct charge on Consolidated Fund of money that is being taken off, they play around with it. They use it to control. They use it to do their own things around. Let us be careful. I want to say it again, please, Members of Parliament, let us go and look at this Bill. Let us not rush at all, at all! Let us discuss it until the cows come back but we must get it right.

I want to say that the amount of money the Treasury projects is a very little. A minimum of 15 per cent must be kept away. We must not be told about schedules of collections. We must have that money remitted immediately to the counties.

Mr. Temporary Deputy Speaker, Sir, I would like to continue—

The Minister for Nairobi Metropolitan Development (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. I am really impressed by the submission by the hon. Member for Garsen. But is he in order to mislead this House that the money due to counties must be remitted immediately, and yet we are aware of two things, one, the taxes are not collected immediately on 1st July? They come on monthly basis.

Secondly, prudent cash management requires that the amounts be disbursed as per the needs of the county. Thirdly, if you delete this clause on *pro rata* basis, then we have the same problems, where Treasury would have the discretion to pay County of Garsen or Tana River but not the other one. But now, it is on *pro rata* basis. If we have a shortfall in revenue, then it is *pro rata*, which means all the counties will benefit.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, that is not a point of order. First of all, I want you, people, to listen. When we say---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Member for Garsen! Minister, those were really points of argument.

Proceed, hon. Mungatana!

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I have touched the real thing and that is why the Minister must wake up.

I am asking Members, please, if they are listening to me wherever they are, to go and read this clause again, because this is the real thing. This is the language of Treasury. We all know that they will keep telling you, oh, Exchequer issues! Exchequer issues! We have not collected taxes, bla bla, bla, so you would wait.

Mr. Temporary Deputy Speaker, Sir, we are not going to move this counties in the direction we want if we allow this clause to go. We must put very strong provisions here. To collect Kshs105 billion is not a big thing for this Government. They have squandered so much money in different ways. So, Kshs105 billion is not an issue. If they say they cannot collect revenue on 1st July, let us wait. But by this month, one month after, let all the money come out. At any rate, there is a clear provision that any monies that have not been spent in the Consolidated Fund, and I am sure they will be remaining more than Kshs100 billion, would be available to be added and taken to the counties. This is where the rubber meets the road. I really want us to think about how we will formulate but my own formulation, and I know we will be bringing an amendment here so that we have this money come out in the manner in which the Constitution stipulates. When the Kenyan people passed this Constitution, when we went to

campaigns, we told them they will be getting this amount of money, and we are not going to go back on that.

Mr. Temporary Deputy Speaker, Sir, I know my hon. colleagues would speak more on that but I want us to talk about another issue. The Treasury has also tried to give itself powers that do not belong to them. I am looking at Clause 6. I am raising these issues so that Members can pick up some of the things that are worrying me; the thinking that is behind Treasury.

Mr. Temporary Deputy Speaker, Sir, the Treasury must not be involved in issues to do with auditing. If we passed in this Constitution an independent office called the Auditor-General's Office, then the Treasury must not purport to try and create a parallel system that will be bringing certain other audits that will be contrary, maybe even in conflict with what the Auditor-General may have done.

Mr. Temporary Deputy Speaker, Sir, if you look at Clause 6, in a very nice way, it has been pushed somewhere there saying at 6(b) "This Act shall prevail in the case of any inconsistency" Therefore, it creates a seniority of this Act.

If you look Clause 6, you will see that it says:

"This Act shall prevail in case of any inconsistency between this Act and any other legislation, on the following matters-

(b) preparation, submission and auditing of accounts including the time for doing so."

So, the Treasury wants to have power through this clause. Even if the Auditor-General should bring any law here to still maintain a system line of auditing, that will be going down all the way contrary to what the Auditor-General's power have been specified in the Constitution, the Treasury wants to manage and be able to audit itself. If you look at it, you will find that it is the same thinking that we are saying we do not want under the new dispensation of time.

If you go through all these clauses, you will see that there is a deliberate effort of sidelining the Auditor-General so that he just becomes another office. We have had these kinds of questions in this House. We have had issues in this House and the Treasury says "No", we have this report. Obviously, the audit that will be done by the Treasury will not be the audit that can be done by the Auditor-General.

Mr. Temporary Deputy Speaker, Sir, I am arguing that let us look at this law with a toothcomb. There is a reason, by the way, why these people decided to make a big volume like this. This is to discourage hon. Members of Parliament from reading. However, we will read it by the way and we will go through it by way of toothcomb and look at those clauses that are creating a monster out of the Treasury and telling us that the Treasury will look after everything.

Look at what has happened after the initial debate. When people looked at this Bill, they said: "No, we will read it tomorrow," and they all walked out. If there was no contribution going on, it could pass with all these things. I am saying that there is a problem here. The Auditor-General seems to have been sidelined and there is a clause which has been created here. Even if the Auditor-General is to take his rightful position through an Act of Parliament, maybe now or in future, what will happen is that the Treasury boss or the Secretary to the Treasury will advise the President that this law is not necessary. He will tell the President that if this is enacted, the President's powers to tell him or her to do this and that will be gone. So, let us make sure that any law that the Auditor-General brings does not pass. This is politics and the President may be having controlling numbers in the House. We would have facilitated the killing of the Office of the Auditor-General in this country.

Prof. Kaloki: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is an important Bill that we are debating. The Minister knows very well that the Bill pertains to Public

Finance Management and that means that Departmental Committee on Finance, Planning and Trade should be able to work on this or scrutinize and give feedback on it so that we can work together. Would I be in order to request that the Committee is given time to go through this Bill which is important so that we can make our contributions and guide the nation better?

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Prof. Kaloki. You know better. Once a Bill has gone through the First Reading, it is automatically committed to the relevant Departmental Committee. So, you should be working on it as hon. Members go through the Second Reading.

Mr. Mungatana: Thank you, Mr. Temporary Deputy Speaker, Sir. That is not a point of order. I was making a point that the Treasury is arrogating itself powers that are dangerous and they are obfuscating other offices that ought to have equal powers.

I will now come to another point. This is a very quick one; sub clause 6 again. I am still on the powers of the Treasury on Clause 17. It says that the approval or withdrawal from the Consolidated Fund by the Controller of Budget together with written instruction from the National Treasury requesting for withdrawal shall be sufficient authority for the Central Bank of Kenya to pay the amounts from the National Exchequer. This tries to create an equal footing between the National Treasury and the Controller. The Controller is a constitutional office which is not supposed to be under direction of anyone. They are the ones who actually control the money that is supposed to come out. We cannot have a provision that says that it has to have written instructions from Treasury to be joined with the Controller and then, that is when now money can be released from the Central Bank of Kenya. What we are trying to do here is to kill other offices that ought to be as strong as the Treasury, if not better. That is because these are independent offices. When the Kenyan people were passing this Constitution, they had reasons to create those independent offices. Mr. Deputy Speaker, Sir, my time is over but I beg to---

Mr. Deputy Speaker: You have one additional minute!

Mr. Mungatana: Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, I wish to say one other very quick thing before I finish. Look at, for example, the powers that these people want to give themselves. Under Clause 5, if a county executive member of finance has with the approval of the county assembly decided to create a county corporation in their gazette, they are trying to say that it has to come to Parliament. Downstairs, when he has finished with whatever corporation they were dealing with, they do not need Parliament. Why are we making life so difficult for counties even to create corporations that will serve specific purposes?

QUORUM

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. It is surprising that we are discussing such an important Bill with almost an empty House. There is no quorum. It is very serious! This Bill is very important.

Mr. Deputy Speaker: Indeed, you are right, hon. Mbadi. Ring the Division Bell.

(The Division Bell was rung)

ADJOURNMENT

Mr. Deputy Speaker: Order! Order! Hon. Members, it is now time to interrupt the proceedings of the House. Therefore, the House stands adjourned until tomorrow, Wednesday, 14th March, 2012, at 9.00 a.m.

The House rose 6.30 p.m.