

[DONE]

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 21st May, 2013

The House met at 2.30 p.m.

[Hon. Speaker (Mr. Muturi) in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

The Budget Implementation Review Report of the Third Quarter 2012/2013 from the Office of the Controller of Budget.

The First Quarter Report for the Ethics and Anti-Corruption Commission for the year 2013 covering the period 1st January, 2013 to 31st March, 2013.

The Annual Report and Accounts of the Kenya Sugar Board for the year ending 30th June, 2011.

The Annual Report and Accounts of the Kenya Industrial Research and Development Institute for the year ending 30th June, 2010.

The Annual Report and Accounts of the Kenya Industrial Research and Development Institute for the year ending 30th June, 2011.

The Report of the Auditor-General on the Financial Statements of the Coffee Development Fund for the year ending 30th June, 2012 and the Certificate thereon from the Auditor-General.

The Report of the Auditor-General on the Financial Statements of the Kenya National Bureau of Statistics for the year ending 30th June, 2012 and the Certificate of the Auditor-General thereon.

The Report of the Auditor-General on the Financial Statements of the State Corporations Appeal Tribunal for the year ending 30th June, 2012 and the Certificate thereon from the Auditor-General.

The Report of the Auditor-General on the Financial Statements of the Sugar Development Fund for the year ending 30th June, 2012 and the Certificate thereon from the Auditor-General.

The Report of the Auditor-General on the Financial Statements of the Water Service Trust Fund for the year ending 30th June, 2012 and the Certificate thereon from the Auditor-General.

(By Hon. A.B. Duale)

Hon. Ng'ongo: On a point of order, hon. Speaker, Sir. In line with the presentation by the Leader of the Majority Party, the Public Finance Management Act, Section 37(6) puts it very clearly that the Cabinet Secretary should submit to the National Assembly not later than 15th May, any comments of the National Treasury on the budget proposals by the Parliamentary Service Commission and the Chief Registrar of the Judiciary.

Hon. Speaker, Sir, 15th May was last week on Wednesday. Could we get clarification from the Leader of the Majority Party why this has not been brought to Parliament and if it has been, where it is.

Hon. A.B. Duale: Hon. Speaker, Sir, Hon. Mbadi is right. Now that we have the Budget Committee and all the other Departmental Committees, those sentiments will come. We had the timelines concerning the budget-making process. So, tomorrow afternoon, those sentiments will come. That is both for the Judiciary and the Parliamentary Service Commission.

POINT OF ORDER

DISHARMONY AT KENYA WILDLIFE SERVICE

Hon. Shidiye: Hon. Speaker, Sir, I wish to seek a Ministerial Statement with regard to industrial disharmony in the Kenya Wildlife Service (KWS). In the recent past, top managers of KWS have been put on notice and are likely to be sent home. It appears that there is discrimination and unfair practice that has caused jitters and may likely run down the entire organization.

Furthermore, top managers are intimidated and have been demoralized. I, therefore, request for a Ministerial Statement in regard to the above.

Hon. Speaker: Well. The Statement should be given by the Chairperson of the relevant Departmental Committee. It should be forwarded to the Chairperson of the Committee on Environment and Natural Resources.

Hon. Ochieng, you had requested for a Ministerial Statement.

HIRE OF JET FOR DEPUTY PRESIDENT'S VISIT TO WEST AFRICA

Hon. Ochieng: Hon. Speaker, Sir, we are just from a busy weekend and so many things have happened. My request for a Statement relates to what happened last week and throughout the weekend. We appreciate that the Government must work and that, in the process of working, a number of things are necessary. One, that the President will from time to time have to travel out of the country and so will the Deputy President. This afternoon I seek a Statement from the Leader of the Majority Party to know a couple of things related to the tour of duty by the Deputy President to a number of African states last week. I would wish to know the following:-

(1) Whether the Leader of Majority Party could clarify to this House the purpose of the Deputy President's visit to West African countries of Gabon, Ghana, Brazzaville and Nigeria alongside other countries that he went to.

(2) What benefits did that travel bring to this country? Was it necessary for the Deputy President to travel at the time he travelled? What purpose was it and what benefit did we gain from the visits by the Deputy President to West Africa?

(3) How many Government officials accompanied the Deputy President to those West African countries? I want to know how many in the sense of identity, who, what rank and what level.

(4) I would also like to know the criteria the Office of the Deputy President used in choosing some Members of this House who travelled with him. Specifically, I would like to know the criteria that was used to chose Hon. Chanzu and Hon. (Ms.) Ng'ang'a to accompany the Deputy President on his trip to West Africa. In the same vein, I would like to know whether the Speaker sanctioned the travel of the two hon. Members who travelled with the Deputy President.

(5) I would also like to know the means of travel by the Deputy President, how the jet that he used was procured, at how much, when the procurement was done and whether the bids were done publicly or privately. What law was followed? Was the Public Procurement Act used in procuring the jet that the Deputy President used in his tour? Did the Government look at what it means? As we all know, our national carrier, Kenya Airways (KQ) flies to West Africa daily. It flies to Gabon, Ghana, Brazzaville and Nigeria.

(6) I would like to know whether it is the policy of the Government to hire the so-called luxury jets every time the Deputy President is flying. We just spent a princely sum not long ago to buy a jet for the President. We would like to know why it was difficult to use that jet because the President was around. Did we have to hire another jet for the Deputy President to travel? We are wondering whether there are two governments here; the Government that belongs to the Deputy President and one that belongs to the President. If that is the case, let us be told whether we will need a jet for the Deputy President so that we do not hire one every time he flies because it is going to be very costly.

(7) I would also like to know how much and at what rates we paid the persons who travelled with the Deputy President. How many people travelled? How much were they paid in terms of per diem? Finally, I would like to know the overall cost of the whole trip to the taxpayers.

Hon. A.B. Duale: Hon. Speaker, Sir, I have said that this is a Government that follows the rule of law. I will bring a very comprehensive Statement tomorrow afternoon showing a comparison where previous leaders in the last Government used the same jet.

Hon. (Ms.) Shebesh: Hon. Speaker, Sir, in addition to what the hon. Member has asked in the Statement to the Leader of the Majority Party, I would like him, as he is replying, to also state categorically the role of the Deputy President *vis-a-viz* the role of the last Vice-President in terms of travel and the work that he has done outside this country in terms of foreign policy. We want it to be clear, once and for all, that there is a fundamental difference between a Vice-President and a Deputy President according to what is clearly spelt out. As I conclude, let me also ask him to furnish us with the comparisons of the travels undertaken in the same Government by the Vice-President and the Prime Minister to the various countries that he has mentioned so that, once and for all, we can give this House the accurate position on the travelling by the Deputy President and the highlights of that trip. Lastly, on those who accompanied the Deputy President, can the Leader of the Majority Party tell us clearly whether they went through the proper procedure of this House to get clearance to accompany the Deputy President?

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

Hon. Speaker: I hope hon. Members were taken through the use of the cards. Right now, the hon. Member who has been recognized is Hon. Onyonka. Please, just relax!

MISINFORMATION ON COMMITTEE ELECTION

Hon. Onyonka: Hon. Speaker, Sir, there is an issue that I would like to raise with you. For the last two or three days, we have been having elections for committees in the House. This is a matter that I raised briefly with the Clerk of the National Assembly. Yesterday, I was communicating with the Office of the Clerk as to the modalities of holding the elections. On my phone, I received correspondence from the Office of the Clerk which was asking me to be here on Tuesday morning so that we could hold elections for the Committee on Defence and Foreign Relations. I got that message on Friday. That made me to plan my visit to my constituency, Kitutu Chache South. I visited my constituency, but when I came this morning, I found that the elections were held yesterday and nobody had called to inform me that the elections were going to take place. The only information I was given was that there was enough quorum for the elections to proceed. I feel that my rights were violated by me not being given due respect and due accordance like all the other Members of the House who are my colleagues, so that I could have fought for a fair chance of getting the Chairperson of the Committee on Defence and Foreign Relations.

Hon. Speaker, Sir, I would like you, with due respect, to make a ruling on that matter. You can authorize us to have a re-election. You can cancel that election and give us another date to conduct the exercise.

Thank you.

Hon. Speaker: There is an hon. Member who has put in a request and I can see he is busy turning his back. The Hon. Ken Obura, you know once you press this gadget, it shows that you are making a request.

(Laughter)

Hon. Mirenga: Thank you, hon. Speaker, Sir. I want to confirm that, indeed, even by just looking at me, you can easily tell that I am properly briefed concerning the details and the usage of this microphone. However, I also wanted to say something about the elections that were held yesterday by the Departmental Committee on Defence and Foreign Relations. On Saturday, while I was visiting my constituents, the great people of Kisumu City, I received a communication from the Office of the Clerk alerting me and, of course, mobilizing me to appear in Parliament Buildings, Committee Room Number 9 at 1.00 p.m. on Tuesday - which is today - for the election of the Chairman and the Vice-Chairman.

Hon. Speaker, Sir, with that information, therefore, I decided to programme and plan myself to be within my constituency until last evening and then on arrival, when I got to the Committee Room today for the elections, I was advised that the said elections had actually taken place yesterday. I also beg that you give direction on this matter because that has affected many of us. We had wished to be there to either present our candidatures or, at least, support one of our own to those positions.

Thank you, Hon. Speaker, Sir.

REFERRAL OF DIVISION OF REVENUE BILL TO THE SENATE

Hon. Ng'ongo: Thank you, hon. Speaker, Sir. I indicated to you yesterday that I was going to raise a matter that I feel is of great concern not only to this House, but to the people of Kenya. You will recall that you referred the Division of Revenue Bill, 2013 to the Senate in line with Standing Order No.233(4). That particular Standing Order is actually derived from the Public Finance Management Act, Section 8 (1)(b). However, I would like to seek your ruling because I have since realized - through reading the Constitution, the Act and the Standing Orders - that we probably did that unconstitutionally. But this House probably is not to blame because the Standing Orders were derived from the Public Finance Management Act, which Act has a very glaring anomaly as I will shortly explain.

Hon. Speaker, Sir, very quickly if you go to Article 95(4) of the Constitution, it is where the role of the National Assembly is clearly spelt out. Article 95(4)(a) says:-

“The National Assembly –

(a) determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter Twelve;”

So, hon. Speaker, Sir, it is very clear from the Constitution that determining the allocation of national revenue between the two levels of Government - that is the National Government and the County Government - is a preserve or function of the National Assembly and not the Senate. It goes ahead to say in (b):

“The National Assembly –

(b) appropriates funds for expenditure by the national government and other national State organs;”

Hon. Speaker, Sir, but when you go to the role of the Senate, which is Article 96 of the Constitution, it is very clear. Article 96(1) states:

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

Article 96(2) states:-

“The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.”

These are special Bills and ordinary Bills.

Article 96(3) of the Constitution states - and this is where I want this House to engage its mind to:

“The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.”

That is what we called the County Allocation of Revenue Bill. So, the role of the Senate only comes in to determine allocation among the counties and not between the two levels of Government.

Hon. Speaker, Sir, if you go further to Article 218 of the Constitution - from which our Public Finance Management law was derived, and reading through the Public Finance Management law, it says that the Senate will refer a Division of Revenue Bill to the National Assembly in line with Article 218(1)(b).

If you go to Article 218(1)(b) of the Constitution, and I would like to read that, It says:

“(1) At least two months before the end of each financial year, there shall be introduced in Parliament—

(b) A County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217.”

Article 218(b) talks about a County Allocation of Revenue Bill. Actually, it is the Division of Revenue Bill in Article 218(1)(a) of the Constitution.

Hon. Speaker, Sir, so, it is like when we were doing the Public Finance Management Act, we went and uplifted the wrong provision of the Constitution and put it in the Public Finance Management Act. If you go - and I want to quickly do that because I have to wind up and I do not want to turn this into a debate---

Hon. Speaker: Hon. Mbadi, take your time. You are bringing a very, very serious matter.

Hon. Ng’ongo: Yes, hon. Speaker, Sir. So, looking at Article 110 of the Constitution which talks about Bills concerning county governments and how they should be referred from National Assembly and the Senate, if you go to Sub-Article 2 it states:

“(2) A Bill concerning county governments is-

- (a) a special Bill, which shall be considered under Article 111, if it-
 - (i) relates to the election of members of a county assembly or a county executive; or
 - (ii) is the annual County Allocation of Revenue Bill referred to in Article 218; or

(b) an ordinary Bill, which shall be considered under Article 112, in any other case.”

So, it is either a special Bill or an ordinary Bill. So, there are just two Bills.

Hon. Speaker, Sir, what is a special Bill? There are two types of Special Bills. One, is any Bill which relates to the election of members of a county assembly or a county executive or is the annual County Allocation of Revenue Bill referred to in Article 218. There is no mention of Division of Revenue Bill. If you go to the ordinary Bill, it says: “An ordinary Bill which shall be considered under Article 112.”

Hon. Speaker, Sir, as I conclude, I realize that the Division of Revenue Bill in the Constitution does not have to go to the Senate and I want to demonstrate further that we are likely to face a constitutional crisis if you refer the Division of Revenue Bill to the Senate. It is very clear that if the Senate makes amendments, those amendments will have to be referred back to us and if they reject the Bill, it has to be referred back to the National Assembly. If we do not accept the amendment from the Senate, then the two Houses are supposed to constitute a Mediation Committee. In the event that that Mediation Committee fails to agree, that Bill is lost. Now, take a hypothetical situation. If the Division of Revenue Bill goes to the Senate and the Senate makes amendments which this House is not happy with, it will be taken to the Mediation Committee. If we fail to agree, we are telling this country that the Division of Revenue Bill will be lost. Do you think this country can lose a Division of Revenue Bill? Therefore, I realize that this Constitution could not be reckless in that matter. This Constitution made it very clear that for the Division of Revenue Bill, it should be in the National Assembly to consider it from the beginning to the end. It is dividing money between the National Government and the County Government. But for the County Allocation of Revenue Bill, which is sharing the revenue among the 47 counties, that has to be originated from the Senate. It will come here but we can only overrule them by a two-thirds majority. So, there is a cushion but in the Division of Revenue Bill, there is no cushion which means it was not a requirement that it goes to the Senate.

Hon. Speaker, Sir, I think this ruling is very necessary. We need to get to understand how to go forward because I have also realized - if you allow me just to add a little - that there is likely to be conflict between the two Houses. I see some zeal in the Senate to claw and get some powers from the National Assembly.

Hon. Speaker, Sir, I see some scenes where the Senate derives some power from the National Assembly. There is nothing wrong with that. The Senate in other countries probably is an upper House and more powerful. But, unfortunately, the people of Kenya voted for something different. The people of Kenya made the National Assembly, so to speak. If the upper House is bigger – I mean the upper House of Senate, it should be bigger in terms of legislative responsibility and oversight. It should have more powers. So, the gist of my ruling was not the tug of war between the National Assembly and the Senate, but to think about this particular issue, namely, the Division of Revenue of Bill. If we leave it to go the way it is and we have the Senate make amendments which we may need to be happy with - I am not saying we are going to be unhappy. But in the event that we are unhappy, it may lead into a constitutional crisis. We may not end up with the Division of Revenue Bill, which this country cannot afford.

Hon. Speaker: I am willing to hear some more ventilation on this particular issue because if you keenly listened to what Hon. Ng’ongo has taken us through, this is a serious matter. Therefore, it is a matter that I will need to do a Considered Ruling. Therefore, I am open to hearing more representations from the Floor.

Hon. A.B. Duale: Hon. Speaker, Sir, I totally agree with Hon. Ng’ongo. This is an issue that I picked this morning with the Cabinet Secretary for Treasury and the Leader of the Majority Party in the Senate. When this august House disposed of the Division of Revenue Bill that was mandated to give the allocation between the national Government and county governments, that Bill was supposed to go for assent by the President. That was the procedure and they are consulting. But I want you to rule further because there is a lot of talk in the media of a struggle between the Senate and the National Assembly. I request you to give a fundamental ruling based on the Constitution. If you look at Article 93 of the Constitution, the establishment of a Parliament, it does not talk about lower or upper house. That is Chapter 8 of the Constitution on the Legislature. It says:-

“93 (1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.

(2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.”

Our colleagues in the Senate must know that our functions and their functions are anchored in the Constitution. So, you cannot create an upper and lower house from the streets. It must be anchored on the Constitution. In Article 94 of the Constitution, again, the role, function and responsibility of the National Assembly is stipulated. The same Constitution, which the people of Kenya passed in Article 96, stipulates the role of the Senate. So, whether you talk to the media or speak at a funeral, the role of the Senate will remain as per the Constitution.

(Applause)

The role of the National Assembly will remain as per the Constitution unless, otherwise, you subject the people of Kenya to a referendum. This must come out very clearly. If you go to Article 107(2) - because this is a matter of national interest – when there is a joint sitting between the National Assembly and the Senate, the presiding Speaker is the Speaker of the National

Assembly. What does that tell you? This is the upper House and that is the lower House. You are the Chair of the Parliamentary Service Commission (PSC) and the Clerk of the Senate is the Secretary. That again tells you which one is “upper” and which one is “lower”.

Hon. Speaker, Sir, this same Constitution in Article 108 talks about party leaders. The only party leaders Article 108 recognizes is the Leader of the Majority Party in the National Assembly and the Minority Leader in the National Assembly based on the coalition strength. It does not talk about a Majority or Minority Leader in the Senate. This is the Constitution the people of Kenya, in their wisdom and numbers - over 60 per cent in 2010 - voted for. I am raising this fundamental issue because our colleagues are talking about the Constituencies Development Fund (CDF). Our colleagues are talking about a lower and an upper House. Some of them are our very good friends. In the last elections, the Kenyan people provided a platform where they said that if you want to become the President, you stand for presidency and if you want to stand for deputy presidency, you have a choice. If you want to stand as a governor, senator, county women representative or a member of a ward, the Kenyan people gave the infrastructure and you chose the road you want. Now that we are leaders, we expect you to give a ruling. I totally agree that Article 110(a) and Article 120, if you read them clearly together, the Bill that the Senate owns is the County Allocation of Revenue Bill. But the Division of Revenue Bill belongs to the National Assembly. We did it within 10 days. We want the ruling that you are going to give to make sure and tell the nation per the Constitution that Article 96 gives the role of the Senate and Article 95 gives the role of the National Assembly. Those are the boundaries. Those are the walls. You cannot shift those walls. If you want to shift the walls, you must go back to the Kenyan people. This is a document for the Kenyan people. It is not for Parliament. Even for us to amend this Constitution, we have been given a procedure and situation. We want you to give a ruling based on the Division of Revenue Bill and also the clear line between the roles of the Senate and the roles of the Speaker. We passed the names of the nominees to Parliamentary Service Commission (PSC) here, and I want my colleagues to hear this. Last Thursday and now, the Senate is saying that those names must be taken to the Senate for approval.

You are the Chair of PSC. How can you allow the names we have passed here to go to another place? What they should have said is this: “Let us pass our names. You pass your names and then we pass all the names”. How can they approve names for this House? I think there is total confusion. As the Leader of the Majority Party, we want to live within this beautiful document. We need a ruling.

Hon. Oyugi: Hon. Speaker, Sir, thank you for giving me this chance. Ordinary people always ascribe power in constitutions. The Kenyan people ascribed power in the Constitution, giving a distinction between the House of Parliament, which is the National Assembly and the Senate. The role of the Senate and the National Assembly, in my opinion, is not one that should be solved in this House because the Constitution settles it; it is very clear. Article 95 of the Constitution isolates what we really need to be doing as the National Assembly and Article 96 is clear in terms of what the Senate is supposed to do. It is proper for every human being to want to be in a position of power and higher authority. But as it is stated in this particular Constitution, it goes without any reasonable doubt that the National Assembly is the one that is superior to the Senate. I am not just saying that because I am a Member of this particular House.

Hon. Speaker, Sir, the Constitution states very clearly which House is above the other. I would like to quote Article 112 of the Constitution which states that even though the Senate does have the role of allocating money to various counties, but you will see that the National

Assembly has veto over those decisions of the Senate. So, if we can veto the decision of the Senate on issues of the county, then where else will they get the power to stamp their authority in Parliament?

Hon. Speaker, Sir, the other thing that I would like to speak on is the Article that creates for us the CDF Act, which is one of the things that Members of the Senate have spoken to in the past couple of days.

Hon. Speaker, Article 202 in its sub-articles states that:-

“County governments may be given additional allocations---”

It is the particular CDF Act which says that there should be additional money to the counties. But it is only managed through Members of Parliament.

So, whereas the Senate would like to engage this particular House in all manner of wars of superiority, I do not think any amount of tricking in the Standing Orders would amount to amending this particular Constitution. The Constitution has spoken and I think our colleagues in the Senate need to understand their roles which are limited to issues of legislation in the counties and, perhaps, in the most unfortunate circumstances, the impeachment of a President, if at all, it will ever arise. But then again that has to originate from this particular House. It is the National Assembly that needs to originate that particular Bill of impeaching the President for the Senate to then rubber stamp. Otherwise, in everything else, I think it is the National Assembly that is superior.

Thank you very much. I really think the Senate should sit pretty and know that the National Assembly is supreme and we do not have to fight over it.

Thank you, hon. Speaker.

Hon. Ababu: Hon. Speaker, allow me to add my voice to this matter, even though I had addressed myself to this matter earlier. I am really happy that we have this opportunity where you will deliver a ruling on this matter. Personally, I really cannot wait for that ruling because I believe this ruling will lay to rest - put it in bed as it were - an issue that really is a non-issue because all this discussion is being perpetuated by our sister House and, unfortunately, the media has also tried to fan this matter as seniority, “upper this, lower that”. It is really a debate that even a first year student of law will tell you does not really need to arise because seniority does not arise from the number of people you represent. It does not arise from the side of the geographical area of the constituency you represent. Seniority or any other status only arises from functions and the mandate given by the Constitution of the Republic of Kenya. That is where you draw from. If the Senate is really interested in the definition of who is senior and who is junior and who is upper and who is lower, they should draw that mandate from the Constitution. It is really laughable for anyone to imagine that by revising Standing Orders, you will be revising the constitutional mandate granted by this Constitution. You cannot revise the Standing Orders that determine the procedures of a particular House and thereby purport to vary what the Constitution has enacted.

Hon. Speaker, besides the many functions – and I want to thank the Leader of Majority Party because he has elucidated the functions and the powers of this House better than any lawyer in a court of law. Besides the many functions, including the fact that when the two Houses sit jointly, as indeed, happened when His Excellency the President addressed Parliament, hon. Speaker, you presided as Joint Speaker of that Joint Session.

(Applause)

Besides that, the Constitution vests in your Chair additional responsibility that in the unfortunate event a vacancy were to arise in the Office of the President, the Constitution at Article 146(2), is clear that:-

“When a vacancy occurs in the Office of President:-

(a) the Deputy President shall assume office as the President for the remainder of the term of the President; or,

(b) if the Office of the Deputy President is vacant, or the Deputy President is unable to assume the Office of the President, the Speaker of the National Assembly shall act as President and an election to the Office of the President shall be held within sixty days after the vacancy arose in the Office of the President.”

Hon. Speaker, the Constitution contemplates a scenario where you could actually be Commander-in-Chief of the Kenya Defence Forces in the event---

(Loud consultations)

Hon. Speaker, that is not gospel according to Bishop Ababu Namwamba; it is the Constitution of the Republic of Kenya. So, really, if we want to engage in this debate, as I have said, it is unnecessary debate because the Constitution is absolutely crystal clear in terms of the functions and in terms of the mandate of the two Houses. Even when you talk about the primary responsibility of any Parliament anywhere on the face of the earth, it is legislation.

When you look at Article 109 on Exercise of Legislative Powers, that is the section of the Constitution that addresses the fundamental responsibility of Parliament; which is to legislate. You would see, right from the beginning that legislative authority is primarily vested in this House and the Constitution is very clear at Article 109(2). It states as follows:-

“Any Bill may originate in the National Assembly.”

The same Article restricts the legislative authority and mandate of the Senate to matters only concerning county governments. But the same matters can still be legislated here and even when it comes to matters of financial allocation, the Constitution permits this House to veto decisions of the Senate.

Hon. Speaker, let me conclude by addressing this issue – I hope your ruling will also pay attention to this. There has been an attempt in the Senate to compare the structure of Kenyan Parliament to the structure of Parliaments in the United States of America (USA) and in the United Kingdom (UK). So, we are told by Members of the Senate and the media that in the USA, the Senate is the Upper House and in the UK, the House of Lords is the upper House. May we send this message clearly to the Senate that those comparisons cannot fly even an inch above the ground. One, in the USA, for the avoidance of doubt; the Constitution is absolutely clear in terms of the hierarchy of the Senate and the Congress. It is absolutely clear and leaves no doubt to the extent that the Vice-President of the USA is the Speaker of the Senate in that country. That is a comparison that nobody is bothered to remind anyone here.

Furthermore, the responsibilities granted to the Senate in the United States of America (USA) are of a level of a structure that cannot be compared to the responsibilities handed to the Senate in Kenya. The House of Lords in the United Kingdom (UK) is a peerage House – a place where feudal lords or peers of the monarch would sit, chat and assist the monarch to reign over the monarchy that, at one time, was extending as far as our shores. Remember those days when the House of Lords came to being. The King rode at the head of the military. He led the wars.

The feudal lords had to finance those expeditions. Therefore, the King chose to share certain privileges with you when you were picked to serve in the House of Lords.

Can you also, Senators, go back and look at the history of the House of Lords and how it came to be the Upper House in the structure of the Parliament of the United Kingdom to reign above the House of Commons? So, really, this is not a matter that should even be taking our time but, because it has arisen, let us address it and address it with finality. Constitutionally, historically and traditionally – from whichever angle of the compass you look at it – the National Assembly is the senior House in the Parliament of Kenya, as constituted by the Constitution.

Thank you, Hon. Speaker, Sir.

Hon. Speaker: Yes, Leader of the Minority Party.

Hon. Nyenze: Hon. Speaker, Sir, what my colleagues have said is very correct. Since this debate started, it has been disturbing me. Many times, I have disagreed with the Leader of the Majority Party but today, I agree with him. This House is superior to the Senate for various reasons. I want to refer to Articles 95 and 96 of the Constitution. Article 96 gives the Senate only three roles, and all of them have to do with the counties. Those roles include allocation of revenue to the counties and representing them to ensure fairness. If the National Assembly plans to remove the President or the Deputy President from office, the Senate should also be consulted.

Other than those three functions, the Constitution gives the Senate no other responsibility. In their wisdom, Kenyans created the Senate for purposes of devolution. Those of us who were at the Bomas of Kenya during the constitutional review process tried to make this fact known very well. The creation of the Senate was only for the purposes of devolution. That is why they are there to fight for the counties to get a fair share of the national revenue. The Senate is responsible for only 15 per cent of the national Budget whereas the National Assembly is responsible for the appropriation of 85 per cent of National Budget. Therefore, when you talk about the superiority between the two Houses of Parliament, Kenyans are wise enough.

Hon. Speaker, Sir, you must make it very clear in your ruling because the Senators have even gone a notch higher to claim responsibility of controlling the Constituencies Development Fund (CDF). They do not want Members of the National Assembly to control the CDF. They are interfering with a very serious responsibility that we have been given by the Constitution. As Hon. Ababu Namwamba said, the UK is already running away from that old system where kings and lords had to lord it over the commoners. The UK is trying to run away from that system. Unfortunately, our Senators want to compare themselves with the UK kings of those times, when everybody else in the world is running away from that system.

Therefore, hon. Speaker, you must make this very clear in your ruling because we are following the Constitution. Under Article 95 of the Constitution, the role of the National Assembly is very clear for everybody to see. Let us follow the Constitution. Let us put the National Assembly in its rightful place and let the Senate play its role of trying to convince the National Assembly to allocate more revenue to the counties and make sure that there is a balance. When the National Assembly considers Motions to remove the President or the Deputy President from office, the Senate can be asked to give advice.

Thank you, Hon. Speaker, Sir.

Hon. Speaker: Yes, Hon. Cheptumo.

Hon. Cheptumo: Hon. Speaker, Sir, as you consider hon. Members' views to assist in your ruling on this very important issue, I would like you to address yourself to the provisions of Article 1 of our Constitution. The Constitution says, in Article 1, that this country's sovereign

power belongs to the people of Kenya, and that, that sovereign power can only be exercised in accordance with the Constitution.

Hon. Speaker, Sir, the Constitution was adopted by Kenyans following a long constitutional review process. There were exhaustive consultations and, finally, we adopted the Constitution. It was the desire of Kenyans that there shall be two Houses of Parliament namely, the National Assembly and the Senate. Article 93 is very clear. I would like to urge you to be guided by the provisions of Article 93 as you make your ruling. You should not be guided by the wishes of the Senators, Members of the National Assembly, Press or any other individual. We should not give certain roles which are not provided for by the Constitution to any institution. We have the Constitution as it is and the Constitution as it is supposed to be. As you deal with this issue, hon. Speaker, you should be guided by the Constitution as it is and not the Constitution as it is supposed to be. Talking about the Constitution as it is supposed to be would be expressing the wishes of the Senate.

I would like you to take note, hon. Speaker that, some of the Senators who are pushing for the Senate to be regarded superior were Members of the National Assembly. They actually participated in the debate that led to the passage of the Constitution. For them to now appear not to be part of the process of the constitutional review is, in my view, hypocritical. As a person who has been in the legal profession for several years, you know this country well. This House will rise to the occasion so that we begin to ensure that our Constitution is protected. Members of the National Assembly and the Senate swore to protect the Constitution. That is a very important issue.

Hon. Speaker, Sir, I was an Assistant Minister in the Ministry of Justice, National Cohesion and Constitutional Affairs when the Constitution was adopted. There was a proposal to make the Senate superior to the National Assembly. All Kenyans must know, as the Senators know, that the proposal was rejected by Kenyans. It would, therefore, be unconstitutional for us to bring it back through the backdoor. In any case, the only way the Senate can have a way is by subjecting this document to a referendum where the same Kenyans who passed it in 2010 shall participate. We will be happy when you give your ruling so that you arrest this particular debate which has shown us what Kenyans agreed upon when they passed the Constitution.

Hon. Speaker, Sir, I would urge that you make a ruling to the effect that this House--- I want to agree with my colleagues that this is the senior House because it has the will of Kenyans.

Hon. Aden: Thank you, hon. Speaker, Sir. I want to first of all thank my colleagues who have contributed to this debate. Indeed, I realize that what we are doing here this afternoon is per Article 94(4) of our Constitution. It states thus: "Parliament shall protect this Constitution and promote the democratic governance of the Republic."

The same Constitution under Article 93(2) states thus: "The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution." Remember, it does not say in accordance with the Standing Orders. The Senate is an important House. It is, indeed, mentioned in Article 96. The role of the Senate is clearly defined there. It is stated that the Senate represents the counties and serves to protect the interests of the counties and their governments.

The wishes of the people of Kenya are very well represented in this Constitution. If there was anything wrong in this Constitution at the time Kenyans were given an opportunity to assent or say no to it, they should have, if they so wished, made the Senate the upper House. They would have said no to the draft then and made the necessary amendments to make the Senate the upper House above the National Assembly.

Hon. Speaker, Sir, I think it is of utmost importance that our good friends in the Senate realize that they have a very important role to play in this country, which is the effective implementation of devolution. That is where the focus should be. I do not want to repeat many things that have been made very clear by the learned friends in this House. They show categorically clear that, indeed, this is a superior House to the Senate and that, this is not something that can be debated or put into question.

As you make your ruling, Hon. Speaker, Sir, I want you to be very clear that, indeed, the Bill that we passed for revenue allocation should be redirected to the appropriate place. It should not be where we send it by mistake as my good friend Hon. Mbadi has stated.

This House has lately been under a lot of attacks. This House has lately been intimidated to a great extent. This is a trend that should not be allowed to continue. In so doing we, indeed, demean the wishes of the people of Kenya. The people of Kenya decided that this is the House where they should express their sovereignty. Article 1 of the Constitution states that all sovereign power belongs to the people of Kenya. I want you to rule - and rule very clearly - that this House should never be compromised. Its status and integrity should never be questioned from any quarters.

Hon. (Ms.) Kiptui: Thank you, hon. Speaker, Sir. I also want to add my voice unto this debate. I wish that when you make your ruling, it will be one that will put this matter between us and our sister House, the Senate, to rest. It is indicated in Article 95(5)(a) and (b) of the Constitution that the National Assembly is supposed to review the conduct in Office of the President, the Deputy President and other State officers (including Sarah Serem when we decide to remove her). It goes further to state that the National Assembly can appropriate funds, expenditure by the national Government and other national State organs. It does not tell us to go and negotiate with the counties. If the Constitution wanted to say that, there is no reason why that was not stated.

Under Article 4(c), our role is defined as exercising oversight over national revenue and its expenditure. This is, therefore, the upper House or the senior House. We did not find it necessary to go out there and thump-chest and say that we are the senior House. However, since we have been provoked by our sister Senators, we need to put this debate to rest.

Hon. Linturi: Hon. Speaker, Sir, I wanted to seek a Statement but, at the same time, I feel persuaded to contribute to this debate. Allow me to say that the culture of impunity in this country - it appears - has not come to end. I really do not expect a House that is composed of very senior citizens in this country; people that we respect; people that we expect to read, understand and interpret the Constitution of this country in the right way---

Hon. Speaker, Sir, I want to sympathize with them for not having properly read and understood the Constitution which, some of them really participated in passing in 2010. If they actually did, then they should have made the right decisions. They should have been able to understand the role of the National Assembly. For purposes of bringing up to speed the Kenyan nation to understand that we are not in any way in contest with the Senate, I would like them to look properly at their roles as provided for under Article 96. When you look at the four roles as provided for by the Constitution, they all revolve around issues to do with counties. The only role that is extending outside matters that are touching on counties is the issue of participating in the process of the removal of a President.

Hon. Speaker, Sir, they are only supposed to participate. They cannot initiate the process of removal of a President because that is the work of the National Assembly.

An hon. Member: *Maziwa lala!*

(Laughter)

Hon. Linturi: Hon. Speaker, Sir, you know it is very interesting. I would like to remind the Senators that I did not participate in the writing of this Constitution, but I would die defending this Constitution. That is because I was part of the people who went round the country telling people that we need to understand it.

In my view, the Senate, with all due respect and humility, the House called “the Senate” was meant to be a house for retirees. It was supposed to be, if you allow me, *nyumba ya wazee*.

Unfortunately, hon. Speaker, Sir, we also have very young men in that House who have a lot of vigour and who feel misplaced. I really want to plead with them that next time there is an opportunity provided for by the law, they should represent the people in a more vibrant House like the National Assembly, where real work is required. That way, they could utilize their expertise and energy in serving this country. Otherwise, I want to really plead with them that many of us are concentrating on how to sort out the problems of this country and not on the issues about supremacy, who is big and who is small. Many hon. Members have said that whether you are big or not that will be determined by your responsibilities as provided by this Constitution. If we continue, because it is only this Parliament that has power to make and amend laws, we will also end up suggesting that these people sit three times a year, because we will want them to remain there, but let them give us an opportunity to serve this country. We can always ask them to engage with us when they feel that there are some things which they want us to give them, or some work for the Senate. They can only consult us because we are the only people who can give more work to them through the amendment of the law.

I do not know whether I should make my other Statement.

Hon. Speaker: You will do it after this one.

Hon. (Ms.) Shebesh: Hon. Speaker, Sir, without repeating what my colleagues have said, there is a history to this debate. When we were in the Tenth Parliament, many of us, as colleagues, were asking each other: “Are you going to be a governor? Will you be running for Senate? Will you be running for Member of Parliament or the County Assembly member or as a women representative?” Many of the conversations ended up--- Those who chose to go to the Senate did so because, as has already been said here, of their age and how many years they had been in Parliament. Therefore, I suspect that the agitation for excessive power in the Senate is probably coming from those who are there for the first time, the new Senators who are young. I would say that in your ruling it will be prudent to help the country, and the young Senators who vied for that position not aware that they would not be doing what we are doing here in the National Assembly, to see what the Constitution writers intended for the Senate. We have come in with a new system of devolution, and it is very true that devolution is a key pillar in this new Constitution. For it to be successful, the Senate was mandated to work very closely with county assemblies. When the county assemblies were coming up with budgets, it was only the Senators - it was put in the Standing Orders - who were allowed to get into the chambers and listen to the presentation of the governors as they expounded on how they intended to run the counties. I would urge you to clearly spell out the role of the Senators in relation to the county assembly and the role of this National Assembly in relation to the counties. I think once that is clear, the Senators will know that we are not usurping any of their powers. If anything, we are trying to do our work so that they do what the Constitution intends them to do. Please, if the Senators decide to speak about our CDF, to form committees like the Committee on Defence and Foreign

Relations, which is on national issues that only this House can deal with--- They are even suggesting that they should form PIC and PAC. In fact, they are displaying lack of knowledge of this Constitution. I think they want to incite--- I do not know whether that is parliamentary. Because of the backlash that we have been facing, as a House, we are seen to be a soft target for anybody who wants to wake up and say anything. Let me make it clear that we are a soft target, but we are very united in what we know is our role in this House and what our rights are. Therefore, your ruling will help demystify this. It will give us more work to do in terms of the Division of Revenue Bill; most importantly, we will stop giving people work. It seems they do not have much, except over the weekend when they accompany presidents, former vice-presidents and former prime ministers. That is the work I have been seeing the Senators on TV doing. Hon. Speaker, give us this ruling so that everybody knows their role.

Hon. Omulele: Hon. Speaker, Sir, I am glad that I have finally caught your eye. Thank you for giving me this opportunity to make comments on this very important issue. I think we swore our allegiance to this Constitution. If you look at Article 3, it states that every person has an obligation to respect, uphold and defend the Constitution. I am glad that my first statement in this House is in defence of the Constitution. We must do this with energy, because everything we do in this country must be grounded in this supreme law of the land. We are seeing a situation where different bodies--- The Senate was stating that they want to become an upper House, or a superior House or whatever they want to become, without going through the Constitution. That same Article 3 of the Constitution says that anybody who wants, or wishes, to form a government outside out of the Constitution is doing so unlawfully. This is the law and I do not know where my brothers in the Senate are deriving their ideas from. I have heard, and I have had occasion to read in the newspapers that they are saying that some of the things they want to do were mutilated in this House. But you will note that the legislative role in this country, as my brothers have clearly stated, is a role of this House. So when they say that we sat here, or the previous House sat here and mutilated the Constitution and, therefore, removed the powers they wanted to exercise, what are they telling us? They are telling us to go back to the drawing board, look into the drainage and find out what was thrown into it, so that we can tell the people what was thrown away, which is the power my brothers at the Senate should be exercising. You have a heavy burden on your shoulders and you must carry it. I have confidence and I am sure that you will deliver a ruling that will be worthy of your reputation and your history; it will redeem this country because it must be governed by the Constitution. You must deliver this. You must do this. You must protect the Constitution and this House. We shall stand behind you and say yes, this is the Constitution and we defend it.

Thank you.

Hon. (Eng.) Mahamud: Hon. Speaker, Sir, the people of Kenya gave us a Constitution in 2010, and it establishes a Parliament which has two chambers, the Senate and the National Assembly; the roles of each of them are very clearly defined. We cannot at this stage be pretending to be changing those roles through Standing Orders or through the media. We are being taken over by another group and matters of the Constitution are being handled through either the Press or the Standing Orders. Our sister House is trying to assert itself, and saying that it is the upper House. There is no upper House or lower House. We are both the Parliament of Kenya – the Senate and the National Assembly.

Hon. Speaker, Sir, we also see the functions that the Senate is trying to assign itself by trying to establish all the committees of this House. I wonder what they want to do. I think that is a very dangerous trend, and it must be stopped. So, in your ruling we must clearly say that we

must uphold the Constitution. The Constitution as framed has proper intentions and we must interpret it with those intentions in mind. Any attempt to try to bring things through the backdoor must be rejected; we appeal for your ruling, so that we defend the Constitution we all swore to defend.

Thank you.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Speaker, Sir.

Hon. Speaker: Hon. Wakhungu, your name does not appear on the screen. So, you may keep rising there but you will not get a chance. That is analogue.

(Laughter)

Continue, Hon. Odhiambo-Mabona.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Speaker, Sir, for giving me this opportunity. I apologise in case I repeat what somebody else may have said since I have just come in.

I just want to say that as I was walking in I heard somebody saying, “*maziwa lala.*” It was not me but I want to say that I was privileged to be one of the framers and drafters of the Constitution. I even know its history; as a lawyer, I am sure you know that even when the court interprets the law, it looks at the plain meaning, and where the plain meaning does not assist it, it goes to the legislative history. If you go to the legislative history, I can state for a fact that I was in the Select Committee of 27 hon. Members. I know for a fact that the history was that originally we had intended to follow the American system, where the Senate is the superior House. However that was not very popular and hon. Members very categorically stated so; in fact, in jest somebody said that, that would be a House for retirees. So, people are not just saying things that were not spoken of; they were actually said.

Hon. Speaker, Sir, therefore, I would want to say that even when you look at the way it is structured, the same Senators were complaining then that the Senate would become very--- I am looking for a polite word but I lack words. You know it is a bit thin. I would want to say that I know that the Senators are feeling bad that they do not have any work to do. They are feeling idle and that is why they are wasting a lot of time meddling in all things that do not concern them like doing work of Members of the National Assembly, County Women Representatives and County Representatives. We need to give them something. As our fellow colleagues - we were with most of them in this House - let them talk to us; the work which we had intended them to do is very important; this is to protect the interests of the counties. We acknowledge that the law does not give them that clout. If they want, let them talk nicely to us because this House plays a very important role, and we will consider moving an amendment to the Constitution.

Hon. Speaker, Sir, I just want to draw our attention to Article 127 - if somebody has read it then they will excuse me. I just want to give you examples of where power lies. Power does not lie in what you say. If I come to this House and speak from morning to evening, trying to convince this House that I am a man, the fact that I have said I am will not make me a man. There are other factors, which I may not say in this House, that will show that I am woman.

(Laughter)

I, therefore, want to say that even for the Senators, if you are a leader and you want to stand up, thump your chest and say you are a leader, you are probably not a leader. Therefore, if

you want to stand up and thump your chest and say the Senate is the senior House, you actually are not a leader. So, I want to just look at Article 127 of the Constitution to just give you examples. If you look at the Parliamentary Service Commission, its chairman is the Speaker of this House.

Hon. Speaker, Sir, if you look at where you are having a mediation Committee, which is given mandate under Article 113--- I am just giving you examples. This Constitution is replete with examples that give this House superiority. Look at Article 113; when you are looking at the Mediation Committee Article 113(3) states: "If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent." It is not the Speaker of the Senate.

So, hon. Speaker, Sir, I would want to say that I want to agree with my colleagues on the issue of asking you to make a ruling. If you make a ruling on this you will actually be getting into the fray; you will be getting into danger of chest thumping and saying I am the leader. We know you are a leader. By our work, we know we are leaders. Let us sit, do our work and if Senators are idle we will occasionally invite them to sit in the gallery and watch what we are doing. Do not make any ruling.

(Laughter)

Hon. Speaker: Hon. Odhiambo-Mabona, I know it is because you came late that you may not have known the reason why a ruling is being sought by Hon. John Ng'ongo. It is in relation to the procedure adopted in referring to the Division of Revenue Bill to the Senate, which would appear to be proper in terms of our Standing Orders and the Public Finance Management Act, which the Tenth Parliament passed; nevertheless, in the opinion of Hon. John Ng'ongo, there is contradiction in the Constitution. That is the issue on which a ruling has been sought. Let us hear the last one, so that we can proceed. I think I have heard sufficient contributions on this.

Hon. ole Lemein: Thank you, hon. Speaker, Sir. Article 108(1) of the Constitution of Kenya reads:

“(1) There shall be a leader of the majority party and a leader of the minority party.

(2) The leader of the majority party shall be the person who is the leader in the National Assembly of the largest party or coalition of parties.

(3) The leader of the minority party shall be the person who is the leader in the National Assembly of the second largest party or coalition of parties.”

Hon. Speaker, Sir, I wish to get clarification because the Senate has got the majority leader and the minority leader. Where do they get the powers to appoint the same? I also want to know something about the expenditure of these Houses. Where are we going to get the power to give them funds, or to appropriate money to these offices?

Thank you, hon. Speaker, Sir.

Hon. Speaker: Very well. I think, hon. Members, we have ventilated on that matter sufficiently. Those who may not have gotten a chance, I am sure will get a chance to contribute to another issue, but I want to thank Hon. John Ng'ongo for raising this issue. I think it is fundamental in the way we do business here, especially with regard to the constitutional requirements relating to the Division of Revenue Bill and the County Allocation of Revenue Bill, which is supposed to come from the Senate. I think it is particularly that issue that we need to get

clarity on, and make sure that whatever we do, we do it in keeping with the provisions of our Constitution. I think I should be able to deliver that ruling tomorrow at 2.30 p.m. Thank you. Next Order!

STATEMENT

REQUEST FOR REVIEW OF GAZETTE NOTICE ON REPEAL OF NATIONAL ASSEMBLY REMUNERATION ACT

Hon. Linturi: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Just a minute. You had indicated that you wanted to seek a statement and not necessarily a Ministerial Statement?

Hon. Linturi: Yes, hon. Speaker, Sir. Thank you for indulging me.

I beg to make the following Statement:-

Noting that the Salaries and Remuneration Commission issued a *Kenya Gazette* Notice No.3143 dated 8th March, 2013 which purported to repeal the National Assembly Remuneration Act, Cap.5, the Parliamentary Pensions Act, Cap.196 and which contravenes Section 59(a) of the Finance Act, 2012 that amends the SRC Act, 2012 to require parliamentary approval for all subsidiary legislation emanating from SRC; aware that Article 94(5) of the Constitution provides that: “No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation” I wish to request the Committee on Delegated Legislation to review the same *Kenya Gazette* Notice for conformity with the Constitution and the parent Act.

MOTIONS

APPROVAL OF CHANGES IN MEMBERSHIP OF SELECT COMMITTEES

Hon. A.B. Duale: Hon. Speaker, Sir, I beg to move the following Motion:-

THAT, notwithstanding the resolution of the House of 16th May, 2013, regarding appointment of Members to respective Committees, this House further approves the following changes to the membership of the following Select Committees:-

1. Hon. Peter Kaluma, MP, to be appointed to the Committee on Delegated Legislation
2. Hon. Asman Abongotum, MP, to move from the Departmental Committee on Defence and Foreign Relations to the Departmental Committee on Administration and National Security.
3. Hon. Abass Mohamed, MP, to move from the Departmental Committee on Administration and National Security to the Departmental Committee on Defence and Foreign Relations.
4. Hon. Priscilla Gathecha, MP, to move from the Departmental Committee on Finance, Planning and Trade to the Departmental Committee on Justice and Legal Affairs.

5. Hon. Peter Weru Kinyua, MP, to move from the Departmental Committee on Justice and Legal Affairs to the Departmental Committee on Environment and Natural Resources.

This is the beginning of another set of adjustments that we are going to bring on Thursday where we want to balance the membership of the House from the two coalitions. We want to go by the provisions of the Standing Orders, that every Member should be in two Committees, one departmental and one either standing or select. We have agreed, as the leadership, and the two Whips are working on the final list in which we will make sure that every Member is in two committees; it will be tabled in the House on Thursday afternoon.

The two committees, namely the Committee on Administration and National Security and the Committee on Justice and Legal Affairs are the only ones that will elect their chairs this afternoon. I will ask the House to approve the list and ask the Minority Whip to second this Motion.

Hon. Mung'aro: Hon. Speaker, Sir, I would like to second the Motion. I also want to assure the Members that, as the Leader of the Majority has said, we are working on the list. We have had many issues with the membership of the minority. By Thursday afternoon, we will try our best to rectify all the issues that we have, so that we can table the whole list. Some Members have been asking a lot of questions, but that is what we are working on, and we will make sure that everybody is a member of a departmental committee and a select committee.

I second the Motion.

(Question proposed)

(Question put and agreed to)

WRITE-OFF OF PARASTATAL LIABILITIES

THAT, aware that over 90% of the raw materials for the agro-based parastatals such as Nyayo Tea Zones, sugar and cotton factories comes from rural farmers residing in counties; noting that the farmers produce all the inputs but do not receive any benefits from their activities; deeply concerned that county governments are likely to face numerous financial challenges due to limited sources of revenue, this House urges the government to write off all the liabilities of these parastatals and hand over the management of the same to the county governments to form part of the income generating activities for the respective county Governments.

(Hon. Koyi on 15.5.2013)

(Resumption of Debate interrupted on 16.5.2013)

Hon. Speaker: Hon. (Dr.) Nyikal was contributing and he had a balance of five minutes. You may, therefore, resume the Floor.

Hon. (Dr.) Nyikal: Thank you, hon. Speaker, Sir, for the opportunity to address myself to this Motion that seeks to have agro-based parastatals transferred to county governments. I also wish to take this opportunity to just look at the debate that has just ended. When I decided to get

into politics and I chose to vie for a seat in the National Assembly, even with my known limited legal mind, I read the Constitution as a lay man; it was so clear to me that the National Assembly is actually the senior House. It, therefore, beats logic that those experienced lawyers in the Senate have an issue on this matter.

Let me now address myself to this Motion. Kenya's economy is to a large extent agro-based. Our industrialization, to a large extent, is going to be based on agro-industry. The huge unemployment that our youths face is to a large extent as a result of how we use land, particularly how we grow our agro-industry. We have decided, as a nation, that we are going to have a devolved system and counties. There is no doubt that the counties will need a lot of resources. Already, many governors are lamenting that they may not have enough resources. I, therefore, support any move that will help the counties to get resources and raise their own funds.

However, we also know that a lot of these parastatals are not very productive now, or commercially viable, and the Motion indicates that they have a lot of liabilities. It is therefore, my view that before we transfer these parastatals, it would be wise to have all of them evaluated as to commercial viability before we transfer them to the counties. Only those that are found to be commercially viable can be transferred after all the liabilities have been settled by the Government.

We know that if we merely settle the liabilities and do not do anything on the productivity of the parastatals, many of the counties will find themselves with huge a burden of trying to look for resources to get these parastatals moving. So, I would advise that all of them be evaluated, and those that are viable be relieved of any liabilities and then their management be transferred. Those that are found not to be commercially viable at this time should then be rehabilitated to commercially viable status and then similarly transferred.

With those remarks, I beg to support.

Hon. Manje: Thank you hon. Speaker for using technology to see me.

I want to stand and oppose this Motion because it will set a precedent where county-based parastatals will start agitating for the same thing. We dealt with the Division of Revenue Bill last month, and we allocated revenue to counties. So, if we go ahead and transfer parastatals, it will be like a backdoor allocation of resources.

Another issue is that most of these agro-based parastatals are not performing. Last year the Government was in situation where it was to try to resuscitate these parastatals so as to privatise them. It is an on-going situation. I think that is the correct approach; the Government should try to resuscitate the parastatals and then after that it can privatise them. This is a good option.

The other point is that these parastatals are not well distributed in the whole country. So, if we say that the parastatals are taken by different counties, we might end up with counties that do not have any of these parastatals.

There is another issue that we need to take care of when we are devolving. We have to remain united as a country. Some of the things that make us united are these common assets. So, devolving the parastatals to counties will be a way of setting us apart.

So, I think I will oppose this Motion and wait for a time when we will try to audit them, and see how they are distributed in the country because many of them might be within Nairobi. If we transfer all the parastatals to Nairobi, it will mean that we will defeat the logic of devolution. Remember we are allocating resources to counties. We have said that we will give, say, 32 per cent of revenue to the counties, yet we do not have any means of getting revenue from the same counties.

So, I oppose this Motion, and say we should shelf it for the time being.

Hon. Speaker: I will follow the order in which you pressed your gadgets.

Hon. Gikaria: Thank you hon. Speaker. We are still learning how to use these new devices. My name is Gikaria from Nakuru Town East Constituency.

First, of all, let me say that I rise to support this Motion brought by Hon. Koyi on how to assist parastatals. If you look at Nakuru, we have one parastatal by the name Pyrethrum Board of Kenya (PBK). It has been brought down to an extent that reviving it is a big problem. We think that the only way we can support the revival of that parastatals is by the Government coming in to assist. Of course, the Government has given a lot of money to the Pyrethrum Board of Kenya to try and bail it out of the debts it has.

Hon. Speaker, I want to support the Motion by saying that if, indeed, the Pyrethrum Board of Kenya is bailed out by the Government, it is going to address the issue of unemployment, especially among the farmers, the flower pickers and the transport industry. There will be many people benefitting out of the pyrethrum parastatal if it is revived. I want to say that it is a noble idea brought by Hon. Koyi, and we should be able to support parastatals.

Also in Nakuru County, we have another parastatal called the Kenya Industrial Estates (KIE), which also came down. If the Government has promised that it is going to create employment, this can only be done if the Government is able to come in and assist. But support is not enough; we need to get financial and capacity support in terms of staff, or the workers, who will be working in parastatals.

On the issue of transferring the parastatals to the county governments, I think the law is very clear. I do not know whether we will be infringing on the law by transferring these parastatals to the county. So, we need to look at what the law says, and how these parastatals are supposed to be governed, so that we do not contravene the laws that exist.

At the same time we need to look at the capacity of the county governments, which have inherited most of its workers from the former local authorities. Maybe we will request the Mover to see how they can be assisted in terms of the capacity.

Thank you, hon. Speaker.

Hon. Wandayi: Thank you hon. Speaker for giving me the opportunity to contribute. My name is Opiyo Wandayi, Member for Ugunja Constituency.

Hon. Speaker, I stand to oppose this Motion in principle. First, it is because of the way in which it has been drafted. The importance of agro-based industries cannot be overemphasized. But the problem we have with these parastatals, or the Government-owned companies, so to speak, is real inefficiency and corruption; simply transferring these bodies to the county governments without looking at the root cause of the inefficiencies and corruption will be simply to transfer problems which the county governments, as currently constituted, will not be able to solve, or cope with.

What I think should be prioritised is the privatisation of these parastatals and similar organisations in a transparent manner. We need a process that should end up giving ownership of these parastatals to the farmers and the local communities in a way that they will feel adequately represented in these organisations.

You are talking of writing off liabilities, but the Government cannot do that. To attempt to do so would basically open a Pandora's box. These parastatals currently have got a lot of debts; most of their creditors are basically the Kenya Power and Lighting Company and other private suppliers. I do not understand to what extent the Government will go towards writing off these liabilities. I wonder if it is really in the interest of the communities to do so.

In carrying out privatisation within the law, attempts must be made to give priorities to the local communities. For instance, in the case of sugar factories, the farmers who produce sugar-cane must be allowed, through their sugar grower associations, to take part in this process and own shares commensurate to the stake they hold in these organisations.

The role of any government, be it the national Government or the county governments, is not to engage in business. The primary role of the Government, at both the national and county level, is to provide an enabling environment for business to thrive. That is what I would encourage the emerging county governments to spend their energies on.

Hon. Members will realise that where the private sector is involved in the agro-based industry, there is a lot of efficiency, profitability and benefits to the local communities. A good example is the tobacco growing industry, which in this country is purely privately owned. Tobacco companies, particularly the British American Tobacco (BAT) Company, which I had the privilege of working with for quite some time, engages farmers on contract to grow tobacco. It invests heavily in this business by providing extension services, carrying out research, supplying farmers with inputs, guaranteeing markets and paying farmers promptly.

(Hon. Speaker (Mr. Muturi) left the Chair)

*(The Deputy Speaker
(Hon. (Dr.) Laboso) took the Chair)*

Hon. Deputy Speaker that is what we should be aiming to do with these parastatals, if they are to be beneficial to farmers and the country at large. I look forward to a situation where one day we will wake up and find the South Nyanza Sugar Company or Nzoia Sugar Company or Mumias Sugar Company being able to pay farmers adequately and on time for their deliveries, being able to provide extension services and carry out adequate research, as is done by the BAT and other companies.

Another example is Kenya Breweries Limited, which has invested heavily in the growing of barley in Narok, Molo and parts of Timau. It is a very efficient process. Why can we not go that direction without bothering these nascent county governments with work they are not good at doing?

Therefore, we need to look at this Motion with a view to coming up with a different Motion that will compel the Government to fast-track the process of privatising these parastatals, so that farmers can own them. The issue of corruption has to be addressed, as a matter of urgency, as we wait for the privatisation process to be completed. It has been the norm in this country for Government officials to look at parastatals as their cash cows. In the past, it was common practice for the President to summon heads of parastatals for cash to be used in his own private affairs, including political campaigns. Therefore, corruption has to be addressed, first and foremost, in these parastatals. But most importantly, we must speed up the process of privatisation to make these organisations viable before even thinking of transferring them. In any case, I do not think transferring them is an option. We should make them private, so that they can be owned by ordinary Kenyans.

With those remarks, I beg to oppose.

Hon. Deputy Speaker: Yes, hon. Adan Mohamed Nooru.

Hon. Nooru: Thank you, Madam Deputy Speaker, for giving me this opportunity. I stand to oppose the Motion.

In the first place, the Motion is talking of the farmers who produce raw materials for agro-based industries, or parastatals, that benefit from these activities. It then urges the Government to transfer these parastatals to the local county governments. If we have to transfer these parastatals, why do we not transfer them to the members of the public themselves, if they are to benefit? There is no logic in moving them from the national Government to the county governments for these bodies to generate revenue for the county governments.

Hon. Deputy Speaker, it is too early for us to think about giving parastatals to county governments on a silver platter when we do not even know whether the county governments have capacity to implement what they have already been given. We should give time to the county governments to settle down and spend the money they have been given on their priority areas. This culture of Government doing business and competing with businessmen, as my colleague who spoke before me said, should come to an end in this country. On the other hand, if parastatals are said to be having a burden of debts, which one comes first? Why do we have to transfer a burden from the national Government to the county governments? We should think of doing this when these bodies start making profits, so that the county governments can boost their revenues. So, which one comes first? Do we have to write off the loans first and then transfer the parastatals? This is just moving a problem from one point to another.

For the reasons I have stated, I do not see how the farmers who produce the raw materials for the parastatals will benefit directly. The culture of parastatals, or Government doing business, and competing with ordinary people in the same field, should come to an end. We should not transfer these bodies to the county governments only for the county governments to continue doing business and running factories instead of them creating an enabling environment for people to do business, and enable the county governments to collect revenue and deliver services.

With those remarks, I beg to oppose.

Hon. Deputy Speaker: Yes, Hon. Odhiambo-Mabona.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Deputy Speaker, for giving me this opportunity.

I want to say at the outset that the intention of this Motion is very noble. The intention of the Mover of the Motion is to provide a mechanism through which we can revive our agro-based industries. The challenge that I see, which many hon. Members also see, is that we are saying that these agro-based industries are already facing challenges. They have incurred a lot of liabilities and a good number of them have been going through many problems. Even if the Government were to off-set those debts and transfer these bodies to the devolved units, what guarantees are there that these bodies will pick up?

The devolved governments are just starting. In fact, the county governments are in transition. Hon. Members realise this from the debate that we have had here on the roles of the Senate and the National Assembly. This is also playing out at lower levels. We have chosen executives at that level, who do not even know their roles. I can tell this from the kind of work that some of them are doing. They still do not know their roles. You find somebody who has been appointed an executive in charge of water walking around and talking about energy or something else. So, this is a very good Motion, but it has come a little too early in the day.

We need to heavily invest in our agro-based industries. Just yesterday I saw on the internet that one Kenyan product is causing a lot of excitement in the USA, that is the green berry coffee. This is because a lot of people there are suffering from obesity. There are women who are trying to be size eight, and so they invest a lot of money in exercises, gymnasiums and

all manner of products that enable them to cut wait. Finally they have discovered that with the green berry coffee you do not even need to exercise. You can sit down and eat all the *omena* and *ugali* that you have and still be able to cut weight. So, it is really selling in the USA. Just out of curiosity and, of course, for practical purposes, I went round asking for it, but it is not available in Kenya.

I am saying this because what you are likely to see is that the USA is going to get out the chemical that is responsible for the reduction of the weight and patent it. Very soon it will not be available in Kenya. What is the implication to the coffee farmer in Kenya? It means that if you want to plant coffee or extract that specific product then you will have to get permission from the USA as a coffee farmer in Kiambu.

So, hon. Deputy Speaker, this is something that I will put before my Committee, that is the Departmental Committee on Agriculture, Livestock and Co-operatives. As a matter of urgency Kenya must protect the intellectual property rights of our farmers to the benefits in the green berry coffee.

I want to advise the Mover of this Motion that for now I will abstain from supporting it. If he brings it back in six months' time – it is really noble – it will strengthen our devolved units. At that time I will be in a position to very bravely support it. Otherwise, for now I abstain from supporting it.

(Several hon. Members stood up in their places)

The Deputy Speaker: Hon. Members, standing up has ended. We are now on technology.

Hon. Langat: Thank you, hon. Deputy Speaker, for giving me this opportunity to contribute to the Motion before us. When you look at the Motion, it is very encouraging and we should support it. However, when you go deeper into the matter, you realize it is not a very simple one. First of all, the Mover of the Motion should have given us examples of the agro-based organizations, where they are located and how they were formed. I come from Kericho County. If I were to accept this Motion, I would be saying that Muhoroni Sugar Factory, which is located in Kisumu County--- The farmers in Kericho County have been supporting it 50 per cent. Therefore, this Motion should be looked at very critically. In fact, we need a law to create procedures for transferring these organizations to different counties. How do you transfer, for example, Nyayo Tea Zones? It has farms in Kericho, Meru, and in many other parts of the country. If we accept this Motion then it must be followed by a law providing for how to handle cross-cutting parastatals. In fact, it would have been very easy to say that we sell the organizations to those who support them, namely the farmers. They can be given shares and then own the organisations. I have no problem with the Kenya Tea Development Agency (KTDA) because the factory is in Kericho and the tea farms there are owned by the farmers in that region. The factory in Nyeri is owned by the farmers in that region. So, if we were to go that direction then we would accept--- However, issuing a blanket order that all organisations in one county belong to that county is not practical.

This Motion can only be supported when there is a procedure on the process of transferring the organisations. The process has the potential of causing chaos amongst counties in Kenya. This is because people have invested in these organisations and they may not wish to surrender them to other bodies. Subject to that I would support the Motion. We need to have

criteria and a law passed by this House to guide the process. For now I do not support the Motion in its present form.

Hon. Simba: Hon. Deputy Speaker, we need to ask ourselves why the likes of the Nyayo Tea Zones were formed. The zones are in the middle of forests. It was purely for purposes of conservation of the forests. I oppose the Motion because this body is a non-profit making. To the Mover, who is also the architect of the Motion, I am sorry to say that we cannot imagine that new employment will be created for our people - there are already people working in the tea zones. That gives us a reason not to support the Motion. The primary reason for the formation of the Nyayo Tea Zones is conservation of our forests.

I beg to oppose the Motion.

Hon. Shidiye: Hon. Deputy Speaker, from the outset, this is one of the most confusing Motions we have handled so far. This country suffers a lot of problems and farmers have been suffering. Many parastatals in this country are not performing very well. This is because of mismanagement. You will realize that taking these parastatals to the counties might not necessarily help. We will just be devolving corruption. When a parastatal is run poorly, even if you take it to a county that will not really help. In China, for instance, corporations run by the government are doing very well. Here in Kenya that is not the case. Big corporations in China are able to assist citizens to start businesses in other parts of the country and they are run professionally. We need to ask ourselves certain questions. Are these parastatals operating---

Take the example of Mumias Sugar Company, Nzoia Sugar Company and Muhoroni Sugar Company. Are these sugar factories really viable? Even if you say that you are going to remove all the liabilities like debts, and you start all over again, will they really perform? These sugar factories are not viable. I say this because you need big acreages of farmland to be more efficient. This is because those sugar factories are not viable. It is only in Kenya where you have so many parastatals, all of them milking the economy and not adding value both for the farmers and the national Government, yet every year we allocate them money.

Hon. Deputy Speaker, we have entities like the Bura Irrigation Scheme that are white elephant projects. The Bura project has not performed very well because from inception the idea was just to create jobs for some people based on political patronage; it does not have professional management. The problem with our big agro-based companies is that we have corruption and mismanagement. These have become the order of the day; corruption that has guzzled a lot of taxpayers' money.

Another example is Nzoia Sugar Factory. We have worked very hard on it. Many people have put money into it, but up to now the Government cannot say that it is something viable.

The reason why I am opposing this Motion is because if we cancel the corporations' debts and transfer them to the counties, they will not perform because counties do not have capacity, or good managers, since they are just beginning.

With those few remarks, I beg to oppose.

Hon. Bunyasi: Hon. Deputy Speaker, I rise to contribute to this Motion. I think it is a noble idea that we should look for ways and means that can improve the economic base of our counties. Many of these parastatals can be domesticated by being taken to the counties. This makes a lot of sense, particularly if the parastatals make money for, or contribute to the economies of the counties. We know, as has been said, that parastatals have had a mixed history. Some have gone under partly because of corruption, or poor mismanagement and a hostile market, or a market that cannot support the operations of a particular enterprise. So, there are

very many reasons for their failure. I would tell Hon. Koyi that this is a noble idea but he should be selective.

Somebody talked about legislation but I will simply say that we need to look critically at what we want to give to the counties. Some of them have deep holes and if we move them over to the counties, they will eat even deeper into the county resources. Some do not, probably, need to exist. As I partially support this Motion, I would say that there is need for significant selection activities. There is need for financial audit. There is need for careful review of these entities. There are some entities that are, probably, no longer viable and, therefore, there is a risk of having a mixed bag.

Having said all of this, I welcome the possibility that this will give us an opportunity to put the spotlight on what is happening in these parastatals. Many of these parastatals are mismanaged; they are patronage centres. We do not need them as they, but this may help us to see how they are run. Can they be cleaned up? If they are entirely domesticated by being taken to the counties--- There is the risk of taking institutions or parastatals that might drain the counties' resources. The patronage problem at the national level might become an even bigger problem at the county level.

I still think that we will get a chance to look again at these parastatals. We will get a good opportunity to know which parastatals need to be supported, and which ones need to be weeded out.

For the people of Nambale in Busia, in respect of this Motion, we have cotton which used to be one of our major cash crops, but it has gone off the market; it is almost out of vogue in the area. We had corrupt co-operative societies and national institutions that went down with this crop. The only person who remained with the crop, and sacrificed resources, was the farmer. They were left with debts that are now probably 20 or 30 years old, and will never be paid. So, before you transfer that kind of an animal to the counties you would have to look at it very carefully.

I welcome the possibility of a review in the form it is. We would need some retouching before it can become something that you can discuss.

With those few remarks, I give this Motion my qualified support.

Hon. Abongotum: Hon. Deputy Speaker, I rise to oppose this Motion and I will give reasons. We all know that our economy is agro-based, and unless we turn round our agricultural sector, we will not realize the double digit growth that we aspire. We all know that Nyayo Tea Zones, sugar factories and cotton factories are all in various counties. Most of them actually exist in more than one county. So, when we decide to take these institutions to the county level, the first thing that we will get is a conflict; one county will say that it wants to manage an institution in a certain way and another will say something else. So, this is a recipe for conflict. Unless the process of transfer is handled by a professionally selected authority so as to harmonize intra and inter county issues, the process will be a recipe for chaotic management of these institutions.

In the interim, I want to propose that we have good managers. Let the Government come up with very professional managers to manage these institutions. We all know the way it turned out when the current Governor of Nairobi was appointed the Managing Director of Mumias Factory. He did an excellent job. So here we have issues of management and so let us get the best managers to prosecute the business of management.

Hon. Deputy Speaker, we should think of transforming our economy from agrarian to industrial. What we have in Kenya these days is still the peasantry farming of those old days. We

need to transform our economy to an industrial economy, so that we can address the challenges that our people are facing, especially poverty.

We all know that these institutions have consumed a lot of our money. The issue of liabilities has to be addressed because some of them arose from corruption. Let us think of how we can prosecute the people who ran down these institutions.

Let me veer off for a short time and address the issue of the CDF, as mentioned by a few Senators in this country. Trying to talk negatively about the CDF is an assault on development in this country.

Hon. Deputy Speaker, Sir, this is the only concept that has succeeded in this continent and everybody, most members of parliament, a number of institutions and especially the departmental committees on agriculture from all over Africa are coming to borrow this idea. For a Senator to suggest that this should go to the counties when those counties have actually not even absorbed the money that they were given by this Parliament is actually to promote inefficiency. Members of Parliament are proven to do a good job. They have done it before. I can give an example of myself. I was able, in Tiaty Constituency, to construct 100 schools from the Constituencies Development Fund (CDF) without holding any *Harambee*. So, when you say that this should be scrapped and taken away from Members of Parliament, you are actually killing development in this country.

So, I want to warn our Senators that if they are idle, let me advise them that they should actually tour this country and start from the poorest counties to understand the problems and the challenges that *wananchi* are facing in those areas. If you kill CDF, you are preparing a battle royale with Kenyans and Kenyans are going to demonstrate – not the demonstration that we saw recently accompanied by pigs but they are really going to demonstrate and ask for their rightful share in this country.

With those few remarks, I beg to oppose the Motion but if it is brought and properly conceptualised at some stage later, we can consider our positions. For now, I oppose. Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Okoth, switch on your microphone so that I can give the chance to you?

Hon. Okoth: First of all, let me congratulate the leadership of the House and thank everyone in the technical team for making sure that we finally can move away from the analogue system of rising up of around 50 people at a time to a more sophisticated and respectable system. So, to hon. Deputy Speaker and your whole team, thank you and kudos for a good job for making this happen quickly.

I rise to oppose this Motion because again the era and the context in which we had Government corporations as the only sole owners of capital to run important sectors of our economy is long over. When we look at countries like China that have huge markets and internal markets and the leverage to influence the global trade game, it makes sense for them to have Chinese parastatals and state corporations that are well funded, professionally managed and competitive to come to the point of even constructing roads and bridges in Kenya. However, when we talk about the context of perennial failures – things like the Nyayo Tea Zones that were done in an era of good intentions but have not delivered on those good intentions - it is time to cut our losses and move forward.

Hon. Deputy Speaker, I will give you a good example. Safaricom today is the most profitable company in Kenya, creating work for shareholders, creating win-win situations in services for customers all across the board, financial communication and creating wealth for the

Kenya Government through taxes. Look at the billions that Safaricom pays as well as the dividends that come back to the Government as an owner of a great majority shareholder of Safaricom. This is the model we should move to. We cannot afford to transfer bad ideas, bad financial loads and baggage to the counties that are new and young governments. I think the county governments should not even dream of touching these parastatals that have been perennial failures. They should stay away from them and let the private market in Kenya figure out what is really competitive and then we, as the National Assembly and other agencies of Government, should make policies that support our farmers in the agriculture sectors to be owners of companies that are successful, to get the requisite and relevant subsidies so to speak. A lot of our produce can be competitive if well managed, market oriented and gets Government subsidy and trade protection.

So, that is the direction that we should go. I am fully opposed to this Motion. We should not transfer bad ideas, bad corporations and failing institutions to the county governments. The county governments should organise themselves. If any of the organisations that we are trying to save here through this Motion had any value that was great to them, we would simply let the market take care of them. Why do we not list them and see if they turn out to be the next Safaricom and let those Kenyans who are willing to take that risk go out and buy shares in them? Let us own these companies and see if it works but to saddle our children and grand children with great debt by handing it over and pretending we are wiping the books for the counties, we are fooling ourselves.

So, with those few remarks, I am glad to go on record opposing this Motion and hope we will find other ways to help our farmers to be successful on the local, regional and global markets without harming our counties with bad stinking corporations.

Thank you.

Hon. (Ms.) Kanyua: Thank you, hon. Deputy Speaker. I rise to support the Motion and really congratulate the Mover for bringing it to this House. I support the Motion because agriculture under which the Motion is brought is now fully a county function. If you look at Schedule Four of the new Constitution, all of the functions around agriculture including processing need to be transferred to the counties. So, I support that the agro-based parastatals should now start to function in the counties.

Hon. Deputy Speaker, in the counties we elected Members of the County Assembly and the governors are now forming the county executives. So, the questions of capacity will start to be answered with the settling down of the Government at the county levels. I do not buy the argument but it is a good time to transfer some of these things. Capacities need to be built first. As soon as we elected these County Representatives, we elected the governors and deputy governors; they should be ready really to handle the functions that come with it.

Hon. Deputy Speaker, the only thing I want to challenge the Motion is that it should cover all the agro-based parastatals. The ones listed here are merely indicative and these are not the totality of the agro-based parastatals that we have in this country. If the Motion is to help the counties in their entirety, then all of the agro-based parastatals would need to be covered and captured in this Motion.

I also like the hon. Members who have spoken before. They agree with the issue of looking at those that transcend more than one county. There is a lot of settling and inter-county arrangements, including the councils that need to be brought into operationalisation before some of these things can then be transferred to counties. Where the parastatal is shared, owned or the beneficiaries are more than one county, there would be reason for the executive committees to

first come into establishment. So, I support the Motion but argue that the implementation can then be staggered.

Hon. Deputy Speaker, in answering or speaking to the issue of the Senate which was the Motion we had earlier, I also want to point out that in this National Assembly we also have Members of the National Assembly elected at the county level just like the Senators. So, the function of Senators looking at counties is not even an exclusive function of the Senate. This National Assembly has 47 Members sitting here who look at the interests of the counties in the National Assembly and so therefore that issue is not even exclusive. All of us really have a duty to look at how to develop our counties as we go further.

I beg to support the Motion.

Hon. Wario: Asante sana Mheshimiwa Naibu Spika kwa fursa hii. Ninasimama kupinga Hoja hii kwa sababu kubwa ukiangalia Hoja hii haitoi mwongozo thabiti. Hoja hii inasema mashirika ya kiserikali yanapata mali kwa watu wanaoishi katika kaunti. Kitungo chochote, kikiwa ni cha kawi au uchukuzi, hata kile kiwanda kinachotengeneza risasi huko Eldoret kinatoka katika kaunti. Ni kitengo kipi cha uzalishi hakitoki kaunti? Hili ni swali la kwanza.

Swali la pili, ukisoma Hoja inasema hawa wanatoa mali gafi lakini hawapati faida kabisa. Kama kweli hawapati faida, anavyodai aliyoileta Hoja, ni kwa nini uhamishe upeleka mashinani shida hizi?

Mhe. Naibu Spika, jambo la tatu ambalo linanipa matatizo kuelewa ni kuwa, anasema Serikali ya ugatuzi haina uwezo wa kiuchumi kisha anataka tuchukue mashirika ya kiserikali na tuyapeleka kule. Hapa anatuchanganya. Hoja hii haitoi mwongozo na nitaipinga. Miaka ya themanini, Benki ya Dunia ilitoa sera ya *Structural Adjustment Programme* ambayo imetunyang'anya na kudhalalisha mashirika yote katika nchi hii. Leo, mashirika haya yameanza kufufuka na tunataka kuyapeleka mashinani. Katika Serikali ya ugatuzi, malalamiko ni mengi kama vile maswala ya fedha na sera. Ni vipi tutapeleka mashirika haya? Je, tutakapokosa suluhisho kwa matatizo yanayotukumba, njia rahisi ni kuyasukuma mashinani? Iwapo kuna matatizo ya kiuchumi, tunastahili kutafuta suluhisho kama Serikali kuu. Utajiuliza mada ya Serikali kukuja na mashiriki ya Serikali ni nini. Kila shirika ambalo liko hapa lina lengo, mada na maudhui.

Shirika la Nyayo Tea Zones, lengo lake kubwa sio kilimo wala ni uhifadhi wa mazingira. Swali nyeti ni kuwa: Ikiwa leo utahamisha mashirika ya kilimo kwa kaunti, kesho, mimi nitaleta Hoja, kwa sababu ninatoka Pwani, ya kusema kuwa mashirika ya uchukuzi yakiwemo Bandari la Mombasa na Kenya Ferry yapelekwe kwa kaunti ya Mombasa. Mbunge mwingine ataleta Hoja kusema kuwa kwa sababu petroli imepatikana Turkana, mashirika ya kawi ipelekwe huko Turkana. Lengo la Serikali kuu ni nini? Serikali kuu itapata raslimali ya kuendesha serikali za kaunti wapi? Ni wakati wetu sisi kama Wabunge tufikirie taifa. Kuna tofauti baina ya ugatuzi na majimbo. Huu tunao ni ugatuzi ambao unategemea Serikali kuu. Kwa hivyo, tukatapohamisha mashirika ya Serikali, Serikali itapata raslimali wapi ya kuendesha maswala ya ugatuzi?

Kwa hayo machache, ninapinga Hoja hii ambayo ni hatari sana kwa taifa la Kenya.

Hon. Losiakou: Hon. Deputy Speaker, I rise to oppose the Motion. The concept, spirit and the idea of coming up with this Motion is very good. My opposing it is aimed at helping the Mover to reconstruct the Motion, which is very important. The subject is very important.

Agro-based parastatals cut across the country. For example, the Kerio Valley Development Authority (KVDA), which is based in Eldoret is owned by more than six counties. We have the Pyrethrum Board of Kenya in Nakuru, but even people in West Pokot have ownership in that parastatal. The KVDA Building is a property of another county in Eldoret. So,

if we passed this Motion today, it means that all the other five counties, including West Pokot, would lose in that investment yet the resources which built the KVDA Building and which support the KVDA come from those counties which are likely to lose. That is why I am saying that the idea is very good, but where is the data to tell us how much KVDA is worth? Should we decide that it goes to the counties, how much will go to the six counties? Where will the KVDA Headquarters go? This is a recipe for chaos should we do that. I want to urge the Mover to see the need to withdraw this Motion, so that in the next six months, we will support him. Something needs to be done so that we do not pass a Motion that will cause chaos in our country. Look at the idea that they are already liabilities, which means they are indebted. If you take an indebted company, which is not making any resource, how can it become a resource to the counties where we are transferring it? It is our responsibility as the leaders of this nation to withhold this Motion and work on the facts. We need to come up with a properly constructed Motion.

For example, the best pyrethrum content comes from Pokot South. This means that we are actually the owners, but the parastatal is in Nakuru. When you transfer the parastatal to the county, it will go to the Nakuru County. What about the people who produce the best pyrethrum? What is going to happen to them? Those are the ideas which are missing in this Motion. I am appealing to the Mover to re-look into this matter in a wide point of view, so that when we come up with it, it has enough facts that will enable us as leaders to make informed decisions.

In conclusion, I want to say something about the Senators' debate. Articles 95 and 96 of our Constitution is very clear about the roles of the National Assembly and those of the Senate, but I wonder where they are getting the idea that one House is superior to the other. I tend to think that there are some hung-overs from the last elections. When we were crisscrossing the country soliciting for votes, some Senators were either against some of us here or they were supporting us. They were like the surrogate fathers in some of the counties. Maybe because of that idea, they are now saying that they were campaigning for two or more Members who are here; they are actually the bosses of the three. They have forgotten that we went through the elections and what happened happened. If they did not read the Constitution, then there is an opportunity for them to read it today and then they can decide. I would be very surprised if some of them will defend their seats. As somebody said, there are young people there who should be here. If they have no job, then they should seek an opportunity to come to the National Assembly to transact business for this country. Otherwise, I will advise them that we went through the elections and it is over. Let us leave the campaign and election hung-overs. We should restrict ourselves to Article 96 of the Constitution as we do our job.

I rise to oppose this Motion.

Hon. Nyamweya: Thank you, hon. Deputy Speaker, for giving me a chance to contribute to this Motion. First and foremost, I am opposing the Motion for the following basic reasons: The county governments have been formed to provide public utility services to the counties.

QUORUM

Hon. Member: On a point of order, hon. Deputy Speaker. Do we have quorum? It seems to me that there may not be quorum.

Hon. Deputy Speaker: Clerks, can you ring the Quorum bell!

(The Quorum Bell was rung)

Okay, we now have quorum. The Quorum Bell can now be stopped. What is your point of order, Hon. Shimbwa? Can you give him the microphone? Have you switched off or put your request to the button?

Hon. Shimbwa: On point of order, hon. Deputy Speaker. I would like to draw your attention to the fact that some of the hon. Members are forgetting their cards and they have already left the House. So, perhaps, it is important to remind hon. Members that we have gone digital and, therefore, if you are leaving the House, remove your card so that you do not misplace it.

I already have two cards here which had been left unattended.

Hon. Deputy Speaker: Thank you Hon. Shimbwa, but the practice is usually that at the end of the day, they are collected and taken to the reception area. Whoever does not have his or her card, can pick it from there when you next come to the House. The important thing is to remember your password. Also remember to press when you want to contribute. This is because I can see most of you looking very expectant, but I do not see your names on the screen. So, just learn the tricks. Some hon. Members know how to come in and switch on their microphones immediately.

Hon. Members: *(Inaudible)*

Hon. Deputy Speaker: They are there but I am saying some of you may be wondering why there are many Members on one side. It will depend on how they have switched on their microphones. I think it was Hon. Nyamweya who was on the Floor. What is happening with the microphone?

Hon. Nyamweya: Thank you, hon. Deputy Speaker. The role of the county is to provide utilities for us; provide roads, water, schools and not to come and manage factories. I come from the Kisii County. We have South Nyanza Sugar Factory, which is a parastatal and Trans-Mara which is a private company. I have Kahawa Sukari at Ndhiwa which is private company. When you look at all these companies and see how they operate---

With the parastatal in Trans-Mara, within two weeks the farmer is paid. When you go to the other factories, it will take three weeks or one month before the farmer is paid. What we need at this time at the county level, the farmer needs better roads where he can take his produce. The farmer needs a market for his produce.

Hon. Alouch: On a point of order, hon. Deputy Speaker. Once the issue of quorum is raised and the Quorum Bell is rung, my understanding of the Standing Orders is that no further proceedings are taken until the Chair is satisfied that the quorum has been attained.

Hon. Deputy Speaker: That is exactly what happened, Hon. Alouch. The clerks confirmed that we had quorum before we continued.

Hon. Alouch: I apologise, hon. Deputy Speaker.

Hon. Nyamweya: The hon. Member wanted to interrupt me. He was not listening when the Deputy Speaker said that we had quorum when we proceeded.

What I was saying is that, the role of the county is to give us utilities. I come from the Kisii County and I am giving you an example of how we are surviving in South Mugirango. All the factories are actually paying the farmers very well and the farmers are getting their money in time because there is a new private enterprise which has come in. The farmer needs water, electricity and the county government should give those services.

The drafter of the Motion says that counties are not going to have funds. If they are not going to have funds, how then do you give them parastatals and how can the parastatal give them

money? Are you going to punish the farmer? Who is going to pay and who do you want deprived the benefit?

The role of the counties is given and that is why national parastatals are being privatised and we are all going private. So, the time for doing anything for the State, be it at the county level or the national level has passed. What we need at the moment is, how efficient can we support the farmer? Somebody who is starting a small factory can be supported. The person can be supported, in my own estimation, by providing power supply, water and whatever else that can enable somebody move his produce to the market. They cannot look for the market for what they make or what they can grow.

The other day I saw at Machakos County they are giving investors free land. That is the way to go. But it is not right to say that there is a parastatal somewhere which has been mismanaged, let us pay off the debt and give it to the county. The county has no capacity to run a factory because there are people who can run a factory.

You know, we have been bashed around as Members of Parliament. There is one thing I know, nowhere in the world is salary based on productivity. The salary that we are getting was done some years back. One thing I can say is that the person who gave us our current salary did not see what the Tenth Parliament did. The Tenth Parliament gave this nation a new Constitution. That is our contribution and that is why we stand here talking about the county. Even the Press and the people who stood around Parliament demonstrating; the Tenth Parliament gave them that chance to demonstrate.

It is the Tenth Parliament which under the Government of National Unity did well for this country. There is a lot of bias about hon. Members. There is nowhere in the world where what this Parliament has done, any Parliament has implemented. There is nowhere in the world where there is a new political order.

We have two Houses, the National Assembly and the Senate. There is the Supreme Court which was not there. Whatever ruling they made--- The Tenth Parliament, which reduced our salaries, did so much for this country. It created the new political order---

Hon. Deputy Speaker: Order, Hon. Nyamweya! You are now diverting. I gave you a few minutes, but you seem to have been too passionate. Please wind up.

Hon. Nyamweya: Thank you, hon. Deputy Speaker. Let me wind up.

What I wanted to say is that I cannot support this Motion for one simple reason: We cannot turn the county governments into manufacturers by making them own what should belong to private enterprises. The county governments should give us infrastructure, so that even the ordinary person at the village level can benefit from economic development.

For those reasons, I oppose the Motion.

Hon. Deputy Speaker: Yes, hon. Samuel Gichigi.

Hon. Gichigi: Thank you, hon. Deputy Speaker. I rise to support the Motion.

I want to be very categorical that that the national Government has no business at all operating businesses in the agriculture sector. Under Schedule Four of the Constitution, where the functions of the national Government and those of the county governments are listed, it is clear that the only roles that the national Government has in the agriculture sector is policy formulation. Anything like growing crops is left to the county governments. Therefore, it will be very difficult for anybody to justify opposition to this Motion. Those opposing the Motion should probably propose some amendments so that we can do away with the agro-based parastatals, instead of suggesting that the status quo remains. The national Government should be

able to remove itself from this kind of business within a period of about five years. The sooner this is done, the better.

Hon. Deputy Speaker, I recognise the fact that the county governments may not have the capacity to run these entities. In fact, it would be illegal for these entities to be passed on to the county governments as they are because a number of them were established under a national law. They have to be disbanded and their activities handed over to the counties. So, my simple reading of the law is that it is just a matter of time before the functions of these parastatals can be given to the county governments. We have no business saying that they should continue being with the national Government. I come from Nyandarua County where we have really suffered because of the national Government's pretence of running commercial business. The pyrethrum sector has seen farmers lose a lot of money. We had Ministers staying in Nairobi appointing people to sit in the boards of these parastatals. Let them see what the farmers will be doing. Let them be employed by the farmers. It is high time we did away with these particular organisations.

One of the reasons we went the devolved way, as provided under Article 174, sub-clause (h), is to facilitate decentralisation of State organs, in terms of their functions and services; from the Capital City of Kenya. This would be a good start for implementation of this particular provision of the Constitution. Therefore, I support the Motion but I do not support the transfer of the organisations as they are. I support the transfer of the functions of these organisations from the national Government to the county governments.

With those remarks, I beg to support.

Hon. Deputy Speaker: Yes, Hon. Pukose.

Hon. (Dr.) Pukose: Thank you, hon. Speaker, for giving me the opportunity to contribute to this debate.

I stand here to oppose the Motion because, for me, the role of the Nyayo Tea Zones is a national function, which is part of soil conservation efforts. If we have to privatise it---

Hon. Deputy Speaker: Just a minute, Hon. Pukose. Are you on a point of order, hon. Sunjeev?

Hon. (Ms.) Sunjeev: Yes, hon. Deputy Speaker. Could I request that we find out whether the House has quorum for it to continue with this debate?

(The Clerk-at-the-Table confirmed there was quorum)

Hon. Deputy Speaker: Hon. Sunjeev, this House, indeed, has quorum. It has 51 Members. Therefore, we can continue.

Proceed, hon. Pukose.

Hon. (Dr.) Pukose: Thank you, hon. Deputy Speaker. What I was saying is that I oppose the Motion in the format in which it is. My opposition is based on the fact that devolving the agro-based parastatals to the counties at this period of transition would be devolving problems to the counties. One of the things found even within the agro-based parastatals is that the source of the raw materials is not just limited within those counties. They get raw materials from other counties as well. So, that means even justification for the setting up of the factory itself in a particular county is based on availability of raw materials in the surrounding counties. So, how do we determine that a factory should just belong to the county in which it is located?

Secondly, we have Kenyans from different parts of the country who are working in those factories. Devolving factories to the counties would mean that Kenyans who do not hail from a

particular county will lose their jobs. They will be told to go back to their counties. In my constituency, namely, Endebeess, one of the major agro-based activities is Agricultural Development Corporation (ADC), which runs several farms. The workers in Sabwani Farm, for instance, have not been paid for the last five months. Those in Olkadongo Farm have not been paid salaries for the last four months. In Nai Farm, workers have not been paid salaries for the last four months. In Japata Farm, the workers have not been paid for the last three months. Those in Cholim Farm have not earned salaries for the last five months.

Therefore, devolving the ADC farms to the county government would be transferring this problem to the county. These workers will suffer. All the houses in which the ADC farm workers live in are collapsing. They have no health facilities. Over the weekend, I was in Nai Secondary School to preside over Education Day. The school had no dining hall for students. There were two dormitories for girls. One of the dormitories was built by the Ministry of Education while the other one was built by a donor. The classrooms were deficient. I am talking of eight out of 12 classrooms, and of about eight teachers against a requirement of 26 teachers. So, if we devolve the ADC farms in that area to the county government, getting support from the national Government will be a problem.

Hon. Deputy Speaker, most of the county governments in this country are at the infancy stage. They do not even have their own staff members yet. They are in the process of recruiting members of staff. Most of the ADC farms have been left fallow this year. No farming is going on. One wonders where the money for the last financial year went. But this can only happen when we have an established system in place.

So, with those few remarks I beg to oppose this Motion.

Hon. Opoire: Thank you, hon. Deputy Speaker. I stand to oppose this Motion, but from the word go I would like to be on record that I am aware that various parastatals require support in terms of writing off liabilities and also rehabilitation.

My reasons for opposing this Motion are: One, funds to write off the liabilities will be coming from the central Government which will have already given funds to the counties so that they can be ready to cover their functions. To give additional support in the form of writing off liabilities is like giving double support. They will be lucky if the parastatals will do well. They could then reap the benefits that come out of that. However, most likely they will not do well. This will mean that county governments carry the burden of doing the work of running parastatals which are inefficient. That will be an extra responsibility for the county governments. We know that the county governments are there to assist the communities in rehabilitating roads, running hospitals, schools and so on. The attention of the county government will have to be refocused towards running the parastatals instead of doing the core responsibility of running the counties in a manner spelt out in the Constitution.

In addition to that, they will have to go back to the Government to seek support so that the parastatals get back on their feet. That will actually burden the county governments. We would rather wait until they take off properly. At the moment, however, it is necessary that the Government writes off the debts and rehabilitates the parastatals but they be run according to the Act governing the parastatals.

We know that inefficiency exists. The Government should write off the debts and instill new management skills and styles so that the parastatals operate in a manner that is efficient and beneficial to the entire county rather than to single county governments.

Hon. Deputy Speaker, with those remarks, I beg to oppose the Motion.

Hon. G.W. Omondi: Thank you, hon. Deputy Speaker for noticing me. I rise to oppose this Motion based on several reasons. The first reason is that I really do not see how the transferring of the present parastatals to county governments will make them any efficient. The present problem that we have is that the parastatals are very inefficient. In fact, they operate below their installed capacity. They actually survive because of handouts or subsidies from the central Government. I really do not see how the county governments will manage this.

This, in my view, is tantamount to spoon-feeding the county governments. We are pushing the county governments to look for investors and surely this is not one of the ways of looking for investors.

The other reason is that these parastatals were set up using taxpayers' money and handing them over to particular counties will be unfair to those counties whose tax was utilized. They will have nothing in the end because they will not have any parastatal handed over to them.

The world over, the requirement of the World Bank and the IMF is that we should be privatising institutions. If this is done, we will be going back to State regulations which do not help in the economic development of our country. The best thing to do is to gradually privatise these parastatals. We should then allow other people from the counties to benefit by buying shares in the parastatals.

The other benefit is that by privatisation, efficiency will be promoted. The tax base of the parastatals will also be widened and everybody will benefit. Giving them out at this particular time--- Even if the debts were written off, there is no guarantee that the county government will not, again, build up these debts given the inefficiency that any Government-run organization always comes up with.

For those reasons, hon. Deputy Speaker, I oppose this Motion.

Hon. Deputy Speaker: Hon. Anthony Kimaru. Now, I have 20 minutes before I call the Mover to respond. However, I have a long list before me of hon. Members who want to contribute. Could we agree to reduce the time from the allowed 10 minutes to, say, three minutes per speaker?

Hon. Members: Yes.

Hon. Kimaru: Hon. Deputy Speaker, probably, after this.

(Laughter)

The Deputy Speaker: Hon. Members, we have agreed that it is three minutes per speaker.

Hon. Kimaru: Thank you, hon. Deputy Speaker. I hope that I will get the benefit of speaking for 10 minutes because the new rule has just come in after I had already stood. I seek the Chair's indulgence though.

Hon. Deputy Speaker: A Motion should take exactly three hours which ends in 20 minutes' time.

Hon. Kimaru: Hon. Deputy Speaker, I totally support the spirit of this Motion but unfortunately in the form that it in, I reluctantly oppose it. The idea of decentralizing most of these parastatals is noble and I am surprised when many of us say that these parastatals at the local level cannot function. If you were to ask me, these are going concerns; they are businesses that can be conducted profitably and we have seen it all over. We have coffee co-operatives at the local level functioning properly and succeeding. I do not see why a sugar factory, where the local people are producing cane and there is infrastructure in place, should not succeed. I

support the spirit that it is possible to decentralize them and still make them functional. My idea is that these particular parastatals can be owned by the people around there. People living within that area can buy shares through the co-operative model and run such factories profitably. What I would be opposed to is giving these parastatals to the county governments for one basic reason; that business is not for the county governments. Most business should be put in the hands of private organisations and that is where business thrives best. Governments, be they county or national, more often than not, are not the best runners of business because there is a conflict all over. The money may not be put where it is supposed to go and that is why even at the county level, I am surprised that the many boards that are supposed to be constituted right now are not in place. People within towns who are contributing a lot of money to have services provided within the towns will find this money going to the wrong areas. You are supposed to have water, good roads but in the absence of bodies to run those particular functions, you will find that the people who are contributing revenue will not have benefit of that revenue. Similarly, I do not see how a county government will manage a factory or parastatal in the best interest of the farmers there. If that parastatal made profit, you can be sure that those profits may not be ploughed back to give the best benefit to the farmers or the owners of that parastatal. So, I would prefer at a later date maybe the Mover can bring in a Motion to have this privatised and follow the model of the co-operatives.

Again, more importantly, there is need to come up with a marshal plan to boost agriculture. It is simplistic and pretence to assume that agriculture should not be aided. In America or the UK we have heavy---

Hon. Deputy Speaker: Unfortunately, your time is up!

The Member for Rongai (Hon. Moi): Hon. Deputy Speaker, this, by the way, is my maiden speech but I will just take less than three minutes. I stand to support this Motion. I believe that if we take the agro-based parastatals to the counties, they will stand a better chance of being managed properly. Previously, they floundered because they were managed centrally here in Nairobi but if they were managed back at the county level, I believe there would be better and more efficient management.

Secondly, I believe that if we take the route of privatisation, I do not think anyone at the county level would have a chance to buy these parastatals. I think all the moneyed people would take these parastatals without a chance of the people at the county level to acquire these assets. Take the example of the Kenya Commercial Bank and the National Bank of Kenya, where are the small people? They are not there. It is major moneyed people who are there and so it would be better to first--- I support the Motion but it needs further fine tuning. Of course, it will generate revenue. A colleague was saying that there is mismanagement but they also failed because of corruption. If they are closer home, I think the people will monitor the assets and there would be better management. So, I support it.

Initially when I spoke I forgot to thank the people of Rongai since this is my first time to speak. I want to thank the people of Rongai for electing me as their Member of Parliament and also God for enabling me to be here in Parliament.

Thank you; I support the Motion.

Hon. Anami: Hon. Deputy Speaker, thank you for giving me this opportunity. I am just getting worried that we are losing confidence in these county governments and yet they are just starting. I rise to support this Motion that we should give opportunity to the county governments to run these parastatals. They are parastatals; they are not necessarily factories. Of course, they

will have different facilities and we should be positive that they will be managed by the able ladies and gentlemen that have been engaged by county governments.

The proximity of the people who produce tea or sugar-cane makes them understand the intricacies of managing those parastatals. So, in the spirit of public participation, in the spirit of getting them involved in devolved governments, let us support this Motion so that the people in rural Kenya can participate in getting benefits and carrying out enterprises that will enable them to make maximum benefit of their productivity. Of course, transferring those parastatals to county governments will increase productivity because people will understand what is happening with their products. People will understand and they will participate in making sure that they do good business. It is not to be generalized that anything that is going rural is going to suffer management of inefficiency. I am saying let us give confidence to our county governments. Let us have confidence in the managers who are being deployed there because many people are applying now to work in the counties. If we give them this opportunity, we are going to promote public participation, productivity and income generation.

With those few remarks, I beg to support.

Hon. Serut: Hon. Deputy Speaker, on the outset, I rise to oppose this Motion. I have read through this Motion and it says that the counties are going to face financial problems unless their financial base is boosted by transfer of these parastatals.

QUORUM

Hon. Ganya: On a point of order, hon. Deputy Speaker. Is there quorum in the House? I am afraid we do not have quorum in the House.

Hon. Deputy Speaker: Clerks, can you please confirm whether we have quorum? No, we do not have quorum. Ring the Quorum Bell.

(The Quorum Bell was rung)

Hon. Members. We have quorum now and Hon. Serut can continue.

Hon. Serut: Thank you, hon. Deputy Speaker. Before the Quorum Bell was rung, I was saying that at the outset I oppose this Motion. Reading through this Motion, it envisages a situation where if these parastatals we are talking of are transferred to the respective counties, it would boost the revenue. The Mover of this Motion did not convince us and neither did he tell the House how this was going to happen. Take for instance the Nyayo Tea Zones which were established for purposes of protection and conserving water catchments under gazetted forests in this country; they occupy a width of about 100 metres. There are 17 zones in this country. These Nyayo Tea Zones have no titles. I have been sitting here listening very carefully and I have asked myself: How are they going to be transferred and yet they have no titles in the first place? These are actually zones within the forest. The forest conservation together with management of water catchment areas is done in conjunction with the Kenya Forest Service (KFS). The two cannot be delinked. How then can Nyayo Tea Zones be transferred to the counties?

Hon. Deputy Speaker secondly is the issue of the sugar companies. Most of the sugar companies are now under private ownership. How are sugar companies going to benefit the counties if they are going to be transferred there? If it is cess, then it is already being collected by the respective counties. Initially, it was being collected through the county councils. Currently, that has been transferred to the respective counties. So, by merely transferring these parastatals, I

do not see how the revenue base is going to be raised in the specific counties unless there are other ways of doing it. Therefore, I stand to oppose this particular Motion and ask the Mover to go and rethink what the intention of the Motion was and maybe we can revisit it at a later date.

Thank you, hon. Deputy Speaker.

*[The Deputy Speaker
(Hon. (Dr.) Laboso) left the Chair]*

*[The Temporary Deputy Speaker
Hon. (Ms.) Shebesh) took the Chair]*

The Temporary Deputy Speaker: (Hon. (Ms.) Shebesh): Go ahead, hon. Member.

Hon. Dido: Thank you, hon. Temporary Deputy Speaker. I stand to oppose this Motion although I would really appreciate the spirit with which it has been brought to this House. I think, as a legislative House, what we must avoid is the sort of pedestrian legislation that in the end does not help our people. This is because 85 per cent of the National Budget remains at the national level and only 15 per cent goes to the counties. If we want to bail out a parastatal or any of our organizations that are operating at the grassroots, then the counties will not have the ability to bail them out.

Secondly, we must learn from other countries like the US where 20 per cent feeds 80 per cent. In our country, almost 80 per cent are reliant on agriculture and yet we are not even self-sufficient in food. Therefore, the drafter of this Motion should look back and see what it is that we want to do by introducing it to the House. Is it to benefit the farmers or to give some work to the counties? There is a missing link. We are trying to pass the burden from the national Government to the counties. The Motion says that the counties do not have the financial muscle to undertake this task.

Secondly, by allowing such Motions to be passed in this House, we will open a Pandora's box for the livestock, coffee and tea farmers to come to this House and present such Motions and Bills stating that everything has been taken to the counties. How will the national Government generate revenue? Therefore, the role of the Government, both at the national and the county levels, is to create an enabling environment for business enterprises.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Order, Member! Your time is up. I want to call upon the Mover to respond.

Hon. Koyi: Thank you, hon. Temporary Deputy Speaker, for having given me this chance. I really wanted to proceed, but looking around the House, there is no quorum.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, you rose to respond as the Mover. So, you cannot raise the issue of quorum yourself. So, you will just continue responding.

Hon. Koyi: Hon. Temporary Deputy Speaker, before I respond, let me give five of my minutes to Hon. Mbadi.

Hon. Ng'ongo: Thank you, hon. Temporary Deputy Speaker. Let me take this opportunity to thank Hon. Waluke, who has seen it fit to donate to me a few of his minutes. He has donated five, but I may just spend three or four. I want to support this Motion for two reasons. First, it is clear that agricultural function is by Constitution given to county governments. Therefore, whether we like it or not, this is something that we need to give to county governments and have the county governments think of the best ways to restructure these

corporations. If you look at the County Governments Act and the Constitution, they talk about the county State corporations. So, there is a provision in law governing State corporations that are going to be at the county level. Therefore, we are not going to do anything illegal in that aspect.

I would want to plead with the Members who are opposing this Motion.

QUORUM

Hon. Kemei: On a point of order, hon. Temporary Deputy Speaker. I do not know whether we have quorum to continue transacting the business of the House.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, there is no quorum. I order that the Quorum Bell be rung.

(The Quorum Bell was rung)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Shebesh) left the chair]*

*[The Deputy Speaker
(Hon.(Dr). Laboso) resumed the Chair]*

Hon. Deputy Speaker: Hon. Members, we are unable to raise the necessary quorum. It is, therefore, time to adjourn the business of the House.

Hon. Ng'ongo you will have a balance of four minutes when this House debates that Motion next.

ADJOURNMENT

Hon. Deputy Speaker: This House stands adjourned until tomorrow Wednesday, 22nd May, 2013 at 9.00 a.m.

The House rose at 6.15 p.m.