

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 25th September 2013

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

CONSTITUTIONALITY OF NATIONAL POLICE SERVICE/
NATIONAL POLICE SERVICE COMMISSION BILLS

(Members registered manually)

Hon. Speaker: Hon. Members, I think we may now notice the reason why we have to stop the usage of this manual registration.

This is Communication from the Chair relating to the constitutionality of the National Police Service (Amendment) Bill 2013 and the National Police Service Commission (Amendment) Bill 2013.

Hon. Members, you will recall that on 23rd July 2013, during the First Reading of the National Police Service (Amendment) Bill 2013 and the National Police Service Commission (Amendment) Bill 2013, the Member for Suba, hon. John Mbadi, rose on a point of order seeking the direction of the Chair as to whether the consideration of the two Bills by the House was constitutional.

Several Members contributed to the debate, including the Leader of the Majority Party, hon. A.B. Duale, the Member for Rarieda, hon. Nicholas Gumbo, the Member for Kigumo, hon. Jamleck Kamau, the Member for Kipipiri, hon. Gichigi, the Member for Mbita, hon. Milly Odhiambo, the Member for Budalangi, hon. Ababu Namwamba, the Member for Eldama Ravine, hon. Moses Lessonet and hon. Njoroge Baiya, the Member for Githunguri.

In summary, the following issues were raised for determination by the Chair. May I resume my seat so that Members can take their seats.

(Several Members walked into the Chamber)

Hon. Members, you could move away from there so that we can proceed. You may register your presence later.

Hon. Members, I am saying that in summary, the following issues were raised for determination by the Chair: One, whether the consideration of the National Police Service (Amendment) Bill 2013 and the National Police Service Commission

(Amendment) Bill 2013 was contrary to the Constitution and the Standing Orders. Two, whether Clause 3 of the National Police Service Commission (Amendment) Bill 2013 that seeks to amend Section 10(1)(k) of the National Police Service Commission Act 2013 was contrary to Article 246, Clause 3 of the Constitution.

Hon. Members, you will recall that the Chair undertook to rule on these matters before the House proceeds to consider these Bills at the Second Reading. Let me dispose of the first issue on whether consideration of the National Police Service (Amendment) Bill 2013 and the National Police Service Commission (Amendment Bill) 2013 by the House was contrary to the Constitution and the Standing Orders.

Hon. Members, you are all aware that all the business that comes before the House is approved by the Speaker, pursuant to Standing Order No. 47(3). Amongst the issues the Speaker considers in approving the business, is the constitutionality of that business. Indeed, Standing Order No.47(3) and Articles 3 and 10 of the Constitution oblige the Chair to respect, uphold and defend the Constitution. To this extent, the National Police Service (Amendment) Bill 2013 and the National Police Service Commission (Amendment) Bill 2013, having been duly approved for publication by the Speaker pursuant to Standing Order Nos.47 and 114 are properly before the House.

Hon. Members you will however recall that my predecessors have previously ruled on numerous other occasions in the past, but not withstanding the approval of any business by the Chair under the Standing Order, the issue of constitutionality can be raised by a Member at any stage of consideration of any business by the House. The request for consideration of the constitutionality of a particular business, however, must be specific. It is through being specific that the Chair is capacitated to revisit the issue. In this respect, the Chair has had the occasion to re-look at the arguments advanced by the Member for Suba and noted that the hon. Member did not attempt to bring to the attention of the Chair any specific provision in either of the two Bills whose constitutionality he was contesting. This, therefore, settles the first question.

As regards the second issue, as to whether Clause 3 of the National Police Service Commission (Amendment) Bill 2013 that seeks to amend Section 10(1)(k) of the National Police Service Commission Act 2013 was contrary to Article 246, Clause 3 of the Constitution, the Member for Rarieda, hon. Nicholas Gumbo, raised this issue as an example of the provisions in the Bill that contradict the Constitution. Indeed, this was the only specific provision that was identified by the Members during the debate as a provision that contradicts the Constitution.

The Chair has looked at the provisions of Clause 3 of the National Police Service Commission (Amendment) Bill 2013 which seeks to amend Section 10 (1)(k) of the National Police Service Commission Act 2013 by adding the words “on disciplinary matters relating to transfers, promotions and appointments” immediately after the words “of the service.” Hon. Members if the proposed amendment was to be passed by the House, the amended Section 10 (1)(k) of the National Police Service Commission Act 2013 would read as follows:

“In addition to the functions of the Commission under Article 246(3) of the Constitution, the Commission shall hear and determine appeals from members of the service on disciplinary matters relating to transfers, promotions and appointments.”

The issue raised by hon. Eng. Gumbo is whether this provision would be contrary to Article 246(3) of the Constitution which provides as follows:

“The Commission shall: (a) recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service; (b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and (c) perform any other functions prescribed by national legislation.”

Hon. Members as you will notice from plain reading of the proposed amendment, there exists absolutely no contradiction to the proposed amendment with Article 246(3) of the Constitution. Indeed, Article 246(3) (a) vests in the National Police Service Commission the power to recruit and appoint persons to hold or act in offices in the Service, confirm appointments and determine promotions and transfers within the National Police Service. In my view, the proposed amendment merely seeks to empower the Commission to administratively hear and determine disputes arising out of the exercise of its constitutional powers and there is no negation, in my opinion, of the provisions of the Constitution as alleged by hon. Eng. Gumbo. This now obviously settles the second question.

Hon. Members, in conclusion, this House has set precedent on these matters. My predecessors have ruled that a question of constitutionality of a proposal before the House cannot be subjected to a vote, but to the conscious decision of the Speaker. I have scrutinized the two Bills and I do not find any provision that will offend our Constitution.

I am also aware that these two Bills were referred to the relevant Departmental Committee for consideration. Should the Committee have a contrary view, I will be guided accordingly and advise the House how to proceed. In this regard, there is an opportunity available at the Second Reading to bring up any such matters. I now rule that the two Bills are admissible for proceeding to the Second Reading.

Hon. Wandayi: Hon. Speaker, I do not intend at all to dispute your ruling. I have to abide by it as is the custom of this House. I just want to seek your indulgence. Following your ruling that precedents have been set in the past by your predecessors that matters of constitutionality on Bills and Motions before the House can be raised by Members at any time, would I be in order to proceed and raise such matter at this point in time so that you may take the opportunity to consider it before we move to the Second Reading?

Hon. Speaker: There is no Bill as yet. That was merely Communication from the Chair, hon. Wandayi.

Hon. Wandayi: So, I am asking if you can allow me to---

Hon. Speaker: At the point where the Bill is being discussed, this is considered. The reason I have given the window that you may raise it during Second Reading is because the resolution of the House is the one that carries the day. So, should you raise and the House resolves in a particular---

Hon. Wandayi, when the Bill is now formally before the House during the Second Reading, you will be at liberty to raise whatever issue you want to raise. I have not shut all the windows for that.

Hon. Mbadi, you had a similar point.

Hon. Ng’ongo: Hon. Speaker, I want to thank you for your communication. I agree with your communication that really matters of constitutionality need not be put to vote and that one needs to be specific on which provisions of the Constitution a particular legislation is offending.

In your communication, you said that the Member of Parliament for Suba, that is I, was not specific. I listened to your ruling and you touched on the provisions which were cited by hon. Gumbo. However, I wanted the Chair to consider the National Police Service Commission Bill. Clause 3 of that particular Bill, in my view, offends the very Article of the Constitution that you read. This particular provision reads: “Section 10 of the National Police Service Commission Act is amended by deleting (a) and substituting therefore “on the recommendation of the Inspector-General and the approval of the Cabinet Secretary.”

This is tying the hands of the Commission to only recommendation by the Inspector-General and the Cabinet Secretary, subjecting the Commission to direct supervision by the Cabinet Secretary. That is not provided for under Article 246(3) of the Constitution.

Hon. Speaker: Hon. Mbadi, you are referring me to what I have already--- It is water under the bridge now. You raised that and that is why I have left the window open. You can raise that matter when the Bill is now read a Second Time. There is no harm in you raising that.

Hon. Ng’ongo: So, hon. Speaker you are allowing us again to revisit your communication. You see, I had a problem with that because you have made ruling. So, it is at this point that the Speaker---

Hon. Speaker: Hon. Mbadi, I clearly said that should the Committee have a contrary view, I will be accordingly guided and I will advise the House how to proceed. Members should utilize the opportunity available at the Second Reading to bring out such matters. We should proceed now so that when the Bill is formally read a Second Time for debate, then you can raise the issue.

Next Order, please.

PAPER LAID

The following Paper was laid on the Table:

Report of the Departmental Committee on Administration and National Security on the Consideration of the National Police Service (Amendment) Bill, 2013, and the National Police Service Commission (Amendment) Bill, 2013.

(By hon. Abongotum)

REQUESTS FOR STATEMENTS

RESETTLEMENT OF INTERNALLY DISPLACED PERSONS

Hon. Wekesa: Hon. Speaker, Sir, pursuant to Standing Order 44(2)(c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security concerning resettlement of internally displaced persons (IDPs) in the country, particularly in Teltet, Trans-Nzoia County.

Hon. Speaker, it is unclear whether the Government is according due consideration to key aspects affecting the resettlement process such as recognition of two

categories of IDPs; those from the post-election violence (PEV) and the forest evictees and the appropriate method and process for resettling and compensating the IDPs.

Hon. Speaker, in view of the recent enactment of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2013, the Chairperson should inquire into and report on how the Government arrived on the total number of IDPs. Two, why the Government is compensating the IDPs by way of monetary compensation *vis-a-vis* the allocation of land. Three, whether the Government has complied with Section 9(3) of the Act which prescribes the procedure for resettlement of IDPs and state the expected timeline for the closure of all IDP camps. Four, whether the Government has facilitated consultation with the IDPs, as provided in Section 9(4) of the Act, including the establishment of the National Consultation and Co-ordination Committee, as provided for in Section 12. Five, the criterion that is currently being used by the Government to identify IDPs and the measures put in place to ensure that compensation is not diverted. Six, the role of the area Members of Parliament in the resettlement process.

Thank you, hon. Speaker.

Hon. Abongotum: Thank you, hon. Speaker. My good friend the hon. Member for Saboti asked a very important question especially on the issue of resettling Kenyans.

Hon. Speaker, Sir, at the moment you all know that the Minister in charge of Interior and Coordination of National Government is involved in the assignment that we know. We lost so many people. There are many preparations that are being done by that office dealing with the Westgate Mall tragedy. Therefore, I will request that we be given two weeks to be able to respond to this matter.

Hon. Speaker: Hon. Wekesa, is two weeks okay?

Hon. Wekesa: Two weeks are fine with me, hon. Speaker, Sir.

Hon. Speaker: Very well. Hon. Peter Kamande Mwangi, take the Floor.

ILLEGAL MANAGEMENT OF SCHOOLS BY BOARDS OF GOVERNORS

Hon. Mwangi: Thank you, hon. Speaker, Sir. Pursuant to Standing Order 44(2)(c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding illegal management of schools by the board of governors whose terms of office have expired.

Hon. Speaker, the Education Act clearly states that the tenure of board of governors should be three years. Most of the schools around the country are yet to appoint new board members. There has been an order from the Ministry which in essence aims at evading the process.

In the Statement the Chairperson should inquire into and report on the reasons for impeding the process of appointment of board of governors and why the Ministry of Education, Research and Technology has allowed schools to be run by boards whose term has elapsed.

Hon. (Ms.) S.W. Chege: Thank you hon. Speaker, Sir. I would ask the hon. Member to give the Committee one week because this matter is urgent. We were already discussing about the same and something is coming up. So, we will give an answer in a week's time.

Hon. Speaker: Hon. Kamande, is that okay?

Hon. Mwangi: That is okay, hon. Speaker.

Hon. Speaker: Hon. Gitari, your intervention is of what nature?

ALLEGED GO-SLOW IN THE POLICE FORCE

Hon. Gitari: Yes, hon. Speaker. On 25th July 2013, I rose to seek a Statement from the Chairperson of the Committee on Administration and National Security on the allegation of jamming police communication. The Chairman promised this House that he was to come back, but I am still waiting for that Statement.

Hon. Speaker: In the order of business, hon. Abongotum is supposed to issue some Statement. I may not want him to say until I have heard what response he has. Maybe we can allow him to see whether it is one of them. Hon. Abongotum, you have the Floor.

STATEMENTS

Hon. Abongotum: Hon. Speaker, Sir, I have a Statement which is not really related to the one requested by hon. Gitari. I have a Statement on the subject of CCTV or security surveillance cameras, which I will issue after this.

But on that, I am still waiting for a response from the Cabinet Secretary in charge of Interior and Coordination of National Government. Even being aware of what is happening in the country, I can actually issue that Statement as Chairman of the Committee.

I can make a Press Statement to confirm to the hon. Member that we are not aware of jamming of communication systems by the police. We are not aware of any strike or any picketing by the police because it is unconstitutional. The uniformed officers are not supposed to go on strike and, therefore, I want this matter to end there. I want to confirm to the hon. Member that there is no strike and there is no jamming of communication systems in this country, right from Lokichoggio to Lunga Lunga. It is not happening.

Thank you, hon. Speaker, Sir.

Hon. Gitari: Hon. Speaker, Sir, I sympathize with my friend, the Chairman. When it comes to giving the Statement, which had very many clarifications sought by Members. He says that, that matter ends there. Is he taking the business of this House seriously? This Statement had very many clarifications sought, but he casually takes us round and then says that that matter ends there. Is it in order for him to do that?

Hon. Speaker: Perhaps, without having to paraphrase anybody, if I got the general tenor of hon. Asman Kamama, it is well captured in the words of one Woodrow Wilson of the United States of America that, when you see the Congress plenary, you see an exhibition, but when you see a committee of Congress at work, then you see Congress at work. I do not know whether I am communicating. I am sure that, that matter could be better interrogated in Committees. I am just wondering whether hon. Gachoki, you have appeared before this Committee to discuss that matter so that we do not do an exhibition and you do the work. I believe that if you will be given a chance to appear before the Committee, perhaps, you will prosecute this matter better and give more information

which you may be unwilling to exhibit here in the plenary. Perhaps, you can tell us that. Hon. Kamama, do you want to respond?

Hon. Abongotum: Hon. Speaker, Sir, earlier this week, the Member of Parliament for Kitui East had issues and I took the trouble of inviting him and the Inspector-General to come and make clarifications. If hon. Gitari is not satisfied with my Statement, I invite him to my Committee on Tuesday, next week so that we can prosecute this matter and conclude it.

Thank you.

Hon. Speaker: Hon. Gitari, is that a good suggestion?

Hon. Gitari: Hon. Speaker, Sir, that is a very good suggestion but I did not understand whatever you were trying to explain. I will understand if you did it as a surveyor like me and not as a lawyer.

Thank you.

Hon. Speaker: Well. I think we will have to revise the Oxford Standard Dictionary because this is a very straightforward matter, hon. Gachoki. I am sure you understood but I know you will be able to prosecute this matter in the manner you want to when you appear in the Committee. You will be at work there and not now. Is that hon. Osele, the Member for Kabondo Kasipul? I am unable to refer to hon. Members by their constituencies because there have been very many divisions and splits. I do not know who represents which constituency, but I certainly know that hon. Dalmas Otieno represents Rongo. Is that correct? Yes, hon. Osele. I cannot see your name here but I can see you upstanding. You can now proceed.

Hon. Onyango: Thank you, hon. Speaker, Sir. I listened to the Chairman give his response and I agree that he is really trying his best with regard to insecurity in our country. However, he needs to be told that strikes by the disciplined forces are constitutional. Article 41(d) is very clear that every worker has a right to strike. I would like to know whether there is another provision within the Constitution that outlaws or makes it unconstitutional.

Hon. Speaker: You know it is also good to read all Articles of the Constitution together. Do you want the Member to respond or can we ask hon. Kaluma to assist?

Hon. Kaluma: I can do that outside the House.

Hon. Speaker: Hon. Osele, it is true that every Kenyan has a right to strike, but of course there are also other considerations which are within the Bill of Rights. There is no right that is absolute. Hon. Kamama, do you have another Statement you want to make? I would like to ask hon. Gideon Mungaro to revisit his Standing Orders. No Member is supposed to obstruct the Speaker from the Member who is on his feet.

INSTALLATION OF CCTV CAMERAS IN MAJOR TOWNS

Hon. Abongotum: Hon. Speaker, Sir, following the request for a Statement by Mathira Constituency Member of Parliament, hon. Peter Kinyua, on the CCTV cameras, I would like to state as follows:

Installation of CCTV security surveillance cameras in Nairobi, Mombasa, Kisumu and Nakuru has been a priority for the Government since 2006. The installation of the cameras is in line with the intended modernization of the police surveillance and communication system and adoption of new policing.

The National Police Service first forwarded a proposal to procure a modern communication, command and control system to the then Ministry of Provincial Administration and Internal Security in April, 2006. Subsequently, a technical committee chaired by the Communications Commission of Kenya (CCK) with members drawn from all telecommunication service providers was formed which recommended procurement of an efficient command and control system that included a CCTV system as one of the major components.

An expression for the procurement of this system was advertised in the local daily newspapers on 15th and 19th February 2008. Evaluation was done and a request for funding was forwarded to the Ministry of Finance in the 2007/2008 Financial Year.

(Loud consultations)

The funding of the project was, however, not realized. I just want hon. Members to be a bit quiet so that they can listen because this project is of greater magnitude especially in terms of funding and security in our major towns.

Hon. Speaker, Sir, in June, 2010, the then Commissioner of Police forwarded a request for the procurement of a modern command and control communication system to the Ministry of Provincial Administration and Internal Security and a proposal for funding in the 2010/2011 Financial Year to the Ministry of Finance. However, funds were not allocated in the annual budget as proposed to enable commencement of this procurement process.

In June 2011, the Police Department forwarded another proposal for procurement of a modern communication system which included the CCTV component as a sub-system to the then Ministry of Provincial Administration and Internal Security. The Ministry initiated the process and on 3rd February, 2012, with an expression of interest restricted to Chinese firms, advertisements were made. The project was to be financed partly by the Government of Kenya and partly by the Chinese Government as a concession loan through the Exim Bank of China.

Subsequently, tenders were issued to the shortlisted firms and the major components of the project were as follows:

- (i) computer-aided dispatch system;
- (ii) wireless digital communication network;
- (iii) automated vehicle location system; and,
- (iv) video surveillance system - CCTV system.

Hon. Kinyua: On a point of order, hon. Speaker.

Hon. Speaker: Yes, hon. Weru.

Hon. Kinyua: Hon. Speaker, I made the request for this Statement well before what happened on Saturday. Yesterday, all of us wanted to contribute towards what the Government ought to have done as far as deterrence of these kinds of crimes is concerned. Here we are, we cannot even hear the Statement he is reading simply because hon. Members are consulting on other issues. It is fair that we hear what the Committee Chairman has to say, so that we can interrogate the Statement with a view to finding the way forward.

Hon. Speaker: So, is it your point of order that consultations by hon. Members were too loud? Indeed, there were hon. Members who were also consulting the Chair. Maybe, hon. Kamama can read out the Statement.

Hon. Abongotum: Hon. Speaker, four firms, namely, AVIC International Holding, Alit, ZTE Kenya Limited and Huawei Technologies Africa Limited were shortlisted and subsequently invited to submit both their technical and financial bids. The technical bids of the four shortlisted firms were opened on 27th July, 2012. Three bidders returned their bid documents; AVIC International Holding, ZTE Kenya Limited and Huawei Technologies Africa Limited. Technical evaluation was, again, done and completed, and ZTE Corporation Limited satisfied the criteria set out in the tender document and hence was recommended for financial evaluation.

Hon. Speaker, however, Huawei Technologies Africa Limited appealed to the Public Procurement Administrative and Review Board which directed the Ministry to suspend the procurement proceedings until the application was heard and determined. On 14th January, 2013, the same Board dismissed the application and advised the Ministry to validate the tender and continue with the procurement proceedings. Huawei Technologies Africa Limited was, again, not satisfied with the ruling and proceeded to the High Court of Kenya for a judicial review on the ruling. On 18th January, 2013, the Ministry was ordered to suspend the procurement proceedings until the appeal was heard and determined. The Ministry is still awaiting the outcome of the court process and instructions of the Attorney-General on the way forward.

The project was to start in Nairobi and the period of installation was to be determined alongside the entire project as the components are inter-related. However, the then Ministry of Metropolitan Development initiated another CCTV project to cater for Nairobi Central Business District (NCBC) in June, 2012. The project is ongoing and they have been in the process of installing the CCTV cameras since December, 2012. The Ministry in charge of urban planning is, therefore, better suited to comment on the progress of the other projects.

Hon. Speaker, as we all know, CCTVs are required, as a matter of urgency, in our major cities. That is the status as we speak. So, we are still waiting for the High Court to conclude the case, so that the company that was awarded the tender can proceed with the project.

Thank you, hon. Speaker.

Hon. Speaker: Yes, hon. Peter Weru Kinyua.

Hon. Kinyua: Hon. Speaker, I have listened to the Statement that has been given by the Chairman of the Committee on Administration and Internal Security, hon. Kamama. I would wish that the Committee interrogated the matter further. The project which was conceptualised 10 years ago, has still not been implemented. What is standing on its way at the moment is a court case. After withdrawal of M/s Huawei Technologies (Africa) Limited, a busybody of this city, Mr. Omtata of Kenyans for Justice and Development, is now standing on the way of this project.

The CCTV cameras turned out to be very useful in piecing up together the events of Saturday at the Westgate Shopping Mall. This technology has previously been used elsewhere in the world, including during the investigation of the Boston bombing and the London bombing. The Westgate Shopping Mall CCTV cameras have been used to reconstruct the events that preceded the occurrence of those atrocities. So, I do not know

whether hon. Kamama can give us a clear way forward as to when the Ministry intends to implement the project and explain whether there is a budget for it or we have to wait until we have such a public outcry to see the need to implement the project.

Finally, I would like him to give us the integrated plan. I am aware that the initial project was not just about the CCTV. It was an integrated security project that was intended to enable the Traffic Department of the Kenya Police and other security organs to derive information from it.

Hon. Speaker: Yes, hon. Kamama.

Hon. Abongotum: Hon. Speaker, I agree that this project has taken too long. It was supposed to commence in 2003. I want to confirm that immediately the court case is disposed of, the project will commence with the funds that are available. I know that the Ministry has a budget for the CCTV system and other integrated components. However, the project will be implemented in phases because the amount of money involved is colossal. So, I want to confirm that the project will commence immediately using the budget that is available.

Hon. Speaker: Hon. Weru, I expect you to appear before the Committee, if you think that it should be done differently. Maybe, there is nothing much we can do here for now.

Hon. (Eng.) Rege: On a point order, hon. Speaker.

Hon. Speaker: What is it, hon. James Rege?

Hon. (Eng.) Rege: On a point of order, hon. Speaker.

Hon. Speaker: Look at your microphone.

Hon. (Eng.) Rege: Thank you, hon. Speaker. Finally, I caught your eye.

Hon. Speaker: No, you are one of the tallest Members. So, you will naturally catch my eye.

(Laughter)

Hon. (Eng.) Rege: Hon. Speaker, while I concur with my friend and brother, hon. Kamama, on what he is talking about I also want to put emphasis on the serious requirement for this Information and Communications Technology (ICT) surveillance in this country. When I was the Permanent Secretary (PS) in 2004/2005, my Minister and I came up with a paper that was introduced in Parliament to make sure that all strategic places have CCTVs. To date, it has not happened.

Hon. Speaker, matters of security importance are so crucial in this country but we do not seem to take them seriously. In the entire Tenth Parliament, this country was using a very dangerous space simply because someone went to court and stopped the procurement of surveillance of our air space and for a long time we were operating very dangerously. I was the chairman at that time.

Hon. Speaker: Hon. Rege, you rose claiming to be on a point of order. Now, you are giving information. What do you think is out of order?

Hon. (Eng.) Rege: Hon. Speaker, I am developing the issue about this.

Hon. Speaker: If you are not developing it in your mind, do not continue.

Hon. (Eng.) Rege: Hon. Speaker, if you do not mind let me just ask him.

Hon. Speaker: So, what is out of order?

Hon. (Eng.) Rege: My point of order is--- It is really not a point of order.

Hon. Speaker: If it is not then surely you know it is not. Be fair to the hon. Member. This is because I think you have very useful information. With respect, I think what you are saying is very useful but I think it will be more useful if it is presented to the Committee.

Hon. Abongotum: Hon. Speaker, you can allow him because he is an expert.

Hon. Members: No. No.

Hon. Speaker: Now, for those of you who are shouting from gangways, that is not the way to go about it. The Chair does not operate that way. Hon. Rege, I think what you have is very important, but this is not the time. We have other business. Your own rules do not allow you to do what you want to say. Ask a question.

Hon. (Eng.) Rege: Hon. Speaker, could hon. Kamama inform this House if that document--- In fact, it would be prudent for that document to go to the Finance Ministry, Attorney-General and then be brought to this House. Could hon. Kamama tell this House whether that document ever stepped in the Assembly for approval? Thank you, hon. Speaker.

Hon. Abongotum: Hon. Speaker, I want to confirm to the House that not all tenders will actually be brought to this House because the Ministry deals with many tenders on a daily basis. So, I also want to confirm that the then Ministry of State for Provincial Administration and Internal Security which is now the Ministry of Interior and Coordination of National Government actually followed the correct procedures. Actually, everything was above board until the court cases were lodged by the complainants and as usual, you know we have to leave it to our courts to decide, which they are going to decide sometimes this month. Then of course, the company which was awarded the tender can commence these works immediately. So, we do not have to bring everything to this House. Thank you, hon. Speaker.

Hon. Speaker: So, maybe the wheels of justice are still keeping to tradition of grinding slowly. Hon. Gladys Wanga.

REQUEST FOR STATEMENT

STATUS OF ACTING CEO OF NATIONAL GENDER AND EQUALITY COMMISSION

Hon. (Ms.) Nyasuna: Thank you, hon. Speaker. I have a very brief request for a Statement. Pursuant to Standing Order No.44(2)(c), I would like to seek a Statement from the Chair of the Departmental Committee on Justice and Legal Affairs concerning the National Gender and Equality Commission.

Hon. Speaker, the Chief Executive Officer (CEO) of the National Gender and Equality Commission has been acting for a period longer than the legally required period of six months. This is the 12th month that the CEO continues to act. In his Statement, the Chair should inquire into and clarify the circumstances preventing the confirmation of this CEO and the Committee should seek to provide guidance to the Commission on how to proceed on this matter.

Thank you, hon. Speaker.

Hon. Speaker: Chair of the Departmental Committee on Justice and Legal Affairs. The Vice-Chair is here? Can you please log in your card? I think there is

something wrong with these machines. That is a very long route as opposed to pressing the buttons.

Hon. (Ms.) Kanyua: My apologies, hon. Speaker. Allow me to commit the Committee to provide an answer in two weeks.

Hon. Speaker: Yes, hon. Gladys.

Hon. (Ms.) Nyasuna: Hon. Speaker, this is very simple, I would have hoped that the Committee would have gotten back to us in a week.

Hon. Speaker: Let her respond.

Hon. (Ms.) Kanyua: Hon. Speaker, the members of the Committee are actually signaling three weeks but because I had mentioned two weeks--- We have some Bills that we are considering at the moment. So, let me keep it at two weeks. Otherwise, the members of the Committee are asking me to extend the time to three weeks. So, kindly hon. Wanga, you will get the answer in two weeks.

Hon. (Ms.) Ghati: On a point of order, hon. Speaker.

Hon. Speaker: What is out of order?

Hon. (Ms.) Ghati: Thank you, hon. Speaker. My point of order is that I think this is an issue that needs urgent attention. I want this issue addressed as soon as possible. We are keeping the National Gender and Equality Commission right now in limbo. Twelve months in acting capacity is not acceptable in this country. I would wish to support that the Committee reduces the number of days that they have to take to respond to this issue.

Thank you, hon. Speaker.

Hon. Speaker: Well, as you all appreciate the first priority of committees is not to create jobs or confirm appointments. In as much as I sympathise with hon. Ghati, of course, that Committee has other responsibilities like scrutinising Bills which I think is right and several Members have actually come up with many legislative proposals. I think it is only fair that in as much as we also want to exhibit our concerns for those that may be about to lose their jobs or those who might be about to get jobs and confirmed in appointments, let us also appreciate that the committees can only do so much. I think if they are saying that they can only give a response in two weeks, let us also respect that. So, two weeks.

Next Order.

MOTION

APPOINTMENT OF MEMBERS TO PAN-AFRICAN PARLIAMENT

Hon. A.B. Duale: Thank you, hon. Speaker. I beg to move the following Motion:

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THAT, pursuant to Article 5 of the Protocol to the Treaty establishing the African Economic Community and relating to the Pan African Parliament, this House concurs with the resolution of the Senate made on Tuesday 30th July, 2013 approving the appointment of the following Members of Parliament to the Pan African Parliament: -

1. Hon. Zakayo K. Cheruiyot, MP
2. Hon. Rachel Wambui Shebesh, MP
3. Hon. Millie Grace Akoth Odhiambo-Mabona, MP

4. Hon. Sen. Kipchumba Murkomen, Sen.
5. Hon. Sen. Janet Ongera, Sen.

(Loud consultations)

Hon. Speaker, please, protect me. This is a debating Chamber. Every Member will have his or her chance to speak.

Hon. Speaker: Order, Members! The Leader of the Majority Party will be heard. If you must consult, you must do so in low tones. Those are your own rules. Consult in low tones.

Hon. A.B. Duale: Hon. Speaker, the Protocol to the Treaty establishing the African Economic Community and relating to the Pan African Parliament is a document that I have and I expect Members of Parliament both in the Senate and the National Assembly to go through.

The House Business Committee (HBC) has since received written notification from the Minority Party wishing to amend the list by deleting the name of one Senator and replacing it with that of one Member of the National Assembly. I am not anticipating debate, but I am only passing the message of the HBC so that Members can debate from that point of view.

The Protocol confirms in the article on membership that there are a number of countries - about five of them - which have representation from both their Senate and the National Assembly. The representation of the Senate is in line with the Protocol and the law. Kenya, as a member of the Pan African Parliament and as a country that has two chambers, cannot send names to the Pan African Parliament from only one chamber. Last time before we withdrew this Motion, there was a debate on whether or not the Protocol allows the membership of a country which has a bicameral parliament.

The Parliament of Kenya is entitled to five members. We are to send five Members of Parliament to the Pan African Parliament. In line with the HBC's notification initially the Senators nominated two Members while the National Assembly has nominated three Members. The list of the membership to the Pan African Parliament originates from the leadership of both coalitions; just the same way we deal with the membership to the Parliamentary Service Commission, the ACP, the CPA and our own departmental and standing committees. So, those are not names that originate from the Office of the Speaker or the Office of the Clerk; they originate from the parties in Parliament and with a wider consultation of the leadership in and out of this House.

The Motion belongs to the House but as the Leader of the Majority Party, I want to set the record straight. Any amendment to the names can only be brought by the leadership. An individual Member cannot amend this Motion as per the Standing Orders.

(Loud consultations)

Hon. Speaker, every Member has a card and every Member will be given time to speak. This is a House of debate. It is not a choir and we do not have a chorus. You have the chance to disagree with the Leader of the Majority Party. If you want the people you represent to hear you on any Motion, then you take the Floor. We will all keep quiet and

listen to you. People are watching and they do not listen to chorus. I want to be heard. I want my time to move the Motion.

This Motion has passed through the Senate. Today, Wednesday 25th September, 2013, the Motion is before the National Assembly. The next sitting of the Pan African Parliament is in the first week of October. It should be noted that Kenya, as a regional leader, both economically and politically, our representation should reflect the strength and the position of Kenya as one of the emerging strong and powerful countries in the region. So, the people we send there will enjoy under the Protocol all that they enjoy under our Act on privileges.

There are articles on immunity, privileges, functions and powers. There are rules of procedure, the oath of office, the way the sessions will be carried out, the budget of the Pan African Parliament, and the seat of the Pan African Parliament. All that is well documented in the Protocol. If Kenya wants to withdraw the way we felt one day and called a session to discuss our withdrawal from the International Criminal Court, then there is the clause of withdrawal in the Protocol. There is also the review of the Protocol.

Hon. Speaker, we have men and women who represent us in Brussels and I am sure their report will be tabled before this House for debate. The same will obtain for the men and women legislators that we will send to the Pan African Parliament. We will bring the report here. Your name must be in this Order Paper today. Tomorrow it might be you. We must have a situation where---

(Loud consultations)

Hon. Speaker: Hon. Members, allow him to say what he wants to say.

Hon. A.B. Duale: Hon. Speaker, let me help you. With regard to hon. Shakeel Shabir, the people of Kisumu are elitist. They know English. They want to see you speak. They do not want to see you shouting in a chorus. They want to hear your language. Hon. Speaker, he is making---

Hon. Speaker, the Motion is here and I will ask my colleague, the Minority Party Whip, to second and confirm the notification that was brought to the HBC.

Thank you.

Hon. Speaker: Hon. Members, what can I do from here? As you know hon. Members, from here, even if I was technically able to do what you are requesting me to do; to sort out problems with the machines, I cannot. Even if I was able to, I will not. I have sent the Clerk to find out from the technicians what the problem is.

In the meantime, let us give hon. Gideon Mung'aro a chance.

(An hon. Member raised his hand)

You will never catch my eye by raising your hand. Never! Please, do not raise your hand while there is an hon. Member on his feet.

Hon. Mung'aro: Hon. Speaker, Sir, I want to second this Motion with an amendment. This is to give notice that the CORD coalition in the National Assembly---

(Several hon. Members stood in their places)

Hon. Member: He has seconded! Give it to someone else.

Hon. Mung'aro: *Wacha siasa, Bwana!*

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Your machine is working. Look at the microphone, it is working.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Speaker. I seek your indulgence, if you could kindly guide the House.

The Leader of Majority Party, while he was moving this Motion, indicated that by procedure, amendments cannot be brought to this House. That is one.

Secondly, if my memory serves me right, if a Motion of this nature is brought to the House and is defeated before the Floor, you cannot bring the same individuals. You will have to bring a totally new list of individuals.

(Applause)

So, what I would like the Chair to guide us on is if, indeed, what I have indicated of the two issues is true, and if they are true, because I know that hon. Members seem to have an issue with one or two people---

Hon. Members: All Members!

Hon. (Ms.) Odhiambo-Mabona: If it is all, I have no problem. Then they can bring it and pull it down. But if the issue is one or two, then I would encourage the Leader of Majority Party to withdraw the Motion, seek consensus and bring a new list, instead of bringing division. So, I would encourage the Leader of Majority Party to withdraw the list and bring a new list that is agreed upon as a House.

Thank you, hon. Speaker.

Hon. Ng'ongo: On top of what hon. Odhiambo-Mabona has said---

Hon. Speaker: Hon. John Ng'ongo, you want to speak to a point of order that hon. Odhiambo-Mabona has spoken to, in addition. You think it is going to help the Chair make a decision? This is a very simple matter. I do not need to be on my feet to make a decision on this. It is so simple like the sun rises from the East and sets to the West. But, hon. John Ng'ongo, make your point.

Hon. Ng'ongo: Hon. Speaker, Sir, besides what hon. Odhiambo-Mabona has spoken to, I think---

Hon. Speaker: Hon. Benjamin Langat, if you could limit your greetings.

Hon. Ng'ongo: Hon. Speaker, Sir, on top of what hon. Odhiambo-Mabona has spoken to, it is very clear that this House cannot amend the list on the Floor of the House through a Motion that is brought to constitute a committee. It should be done through the right procedure. Ours is to either endorse or reject the entire list.

Besides that, hon. Gideon Mung'aro has just attempted to propose an amendment. Standing Order 54 says you can only amend a Motion that has been moved, seconded and the Question proposed. So, it is either hon. Mung'aro seconds this Motion or he sits down and allows someone else to second it. You then propose the Question and he stands now to propose the amendment. We have to do it procedurally.

Hon. Speaker: You are absolutely right and correct. Hon. Gideon Mung'aro was on his feet seconding the Motion.

Hon. Mung'aro: Hon. Speaker, in that case, I do not have to say very much, I second the Motion so that I can come back and amend it.

(Question proposed)

Hon. Speaker: Hon. Members, while still on my feet, you may wish to appreciate the language used in this Motion. That it is seeking the concurrence of this House. I think it is important that hon. Members also again very quickly look at the Standing Orders, and see what they say with regard to concurrence. If you do not concur, what is required? What is the threshold required if you do not concur with what the Senate has passed? It is not a matter of a Special Bill.

If the Senate has given you, you must concur in one way or the other or reject with the requisite numbers. I am saying this because you are talking about proposing amendments and the rest. So, you must do it within the rules.

The Question is now proposed.

Hon. Kaluma: Thank you, hon. Speaker. Before I contribute to the Motion, there is even a legal issue that I would request guidance from the Chair. That is the question as to whether, in law and in practice, we should be waiting for the Senate to originate Motions such as this for our concurrence. I doubt really that the Senate should be involved in this matter.

Hon. Speaker: Just for your information; for the smooth running of the bicameral legislature, administratively, we have structured it in such way that the Senate originates names of hon. Members to the Pan-African Parliament. The National Assembly is responsible for Commonwealth Parliamentary Association (CPA); the Senate is responsible for the Inter-Parliamentary Union (IPU), that is where the secretariat is; and again the National Assembly is responsible for the ACP-EU; for the convenience of both Houses. They are your brothers; they may be older than you, hon. Kaluma, but they are nevertheless your brothers. We need to operate that way, for the convenience of the two Houses.

Hon. Kaluma: Hon. Speaker, Sir, may I then contribute to the Motion. It is good that we operate in that manner with our brothers in the Senate, but we are, first of all, duty-bound under Article 2 and 3 of the Constitution to always respect and uphold the Constitution.

I think in as much as we want to accommodate one another for the nation to be seen to be operating smoothly, we must do it in principle and within the Constitution. The Leader of Majority Party has indicated that the time is too short. It is not the mistake of hon. Members that this Motion is coming today.

We had all the time to bring it in good time to interrogate it. We should avoid this tendency of bringing things in the last minute and we are not able to ventilate the issues and really look at them.

The Majority Leader, in bringing the Motion before the House, has indicated that we have several nations in the Pan-African Parliament which are currently bicameral in nature and have Senators and Members of the National Assembly participating in PAP. May I indicate as I make my presentations that, that is the tradition of those countries. We have our own Constitution and it says in Article 2 that it is the supreme law and nothing else supersedes it.

Hon. Speaker, Sir, in our context, the functions of the National Assembly and the functions of the Senate are clearly stipulated under Articles 95 and 96. I want to make

emphasis that the National Assembly represents the interests of the people or constituencies or wherever that representation may be.

The functions of the Senate are stipulated under Article 96. The Article says that the Senate shall represent the interest of the counties, debate and legislate on Bills affecting and concerning counties.

Strictly on an issue of principle, we must, in protecting the Constitution, be asking what the membership of the Committee to the PAP proposed from the Senate will do. What is the interest of Homa Bay County in PAP? Unless we are just sending people there to--- Which is this Bill concerning Homa Bay County or any county in Kenya that is capable of being legislated and debated--- I am confirming that we will be wasting an opportunity to properly serve this nation.

(Applause)

If, in the appearance that we want to be collegial or good we leave opportunities duly given to a particular institution and refer them to other institutions whose mandate does not allow them to deal with that---

Hon. Speaker, Sir, may I confirm that I have no problem with the persons coming from the National Assembly, particularly the nominee from CORD coalition, hon. Millie Grace Odhiambo. I believe she can represent us there. We have a problem with this Motion to some extent. When you are a nominated Member of the Assembly, whether in the Senate or in the National Assembly, is that the body we send you to?

Hon. Members: No!

Hon. Kaluma: Hon. Speaker, Sir, I am worried. We have the interest of the nation and our people. Nomination requires you to represent the specific interests of the nation within the Senate or the National Assembly. We have enough people elected properly by Kenyans sitting in the National Assembly or in the Senate to make representation.

Hon. Speaker, Sir, with those comments, I oppose this Motion. I will consider supporting this Motion if we sit and reconsider the Members we are sending to PAP.

I beg to oppose.

Hon. Speaker: Hon. Members, unfortunately this is just a Motion and it is not a Bill. But these provisions will apply. I, therefore, rule so. Exercise of legislative powers in terms of Article 109(3) says:

“A Bill not concerning county government is considered only in the National Assembly, and passed in accordance with Article 122 and the Standing Orders of the Assembly.”

Article 122(1) says:

“Except as otherwise provided in this Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the Members in that House, present and voting.”

This is the operative Article of the Constitution to guide this debate. The exception is what is provided for with regard to money Bills concerning counties and special Bills. So, in terms of what will happen is in Article 109(3) read together with Article 122(1) which says:

“Except as otherwise provided in this Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the members in that House, present and voting.”

So, let us move that route. The Motion has been moved. For avoidance of doubt, and this is important, before hon. Angwenyi takes the Floor, the point raised by hon. Millie Odhiambo is important. If the leadership of both sides feel that they may require further consultations, it is advised from the Chair that, that route be explored.

(Hon. (Ms.) Odhiambo-Mabona moved around the Chamber)

Hon. Millie Odhiambo, stop moving around. You can take her campaign for the position later on. I want to make it absolutely clear that it is within the purview of the House for any Member to rise and move an amendment to this Motion.

Indeed, what hon. Mung’aro attempted to suggest was to propose an amendment to the Motion. Therefore, hon. Members, it is important to bear this in mind. However, we have a responsibility as the National Assembly both to ourselves and to the country that we be seen to be providing leadership. We merely want to propose the nomination of five of your colleagues to represent the country at PAP. We are 349 plus 67 Members sitting in the Senate. We only need five Members and we cannot all be there. Let us reflect on what we are about to do and on what we are discussing so that we make the right decision. Of course, it is also true that if you defeat this Motion, you may not bring it back with the same names.

Hon. Angwenyi: Thank you, hon. Speaker, Sir. Before I give my opinion, I am not sure whether this Motion was seconded.

Hon. Speaker: It was seconded by hon. Mung’aro.

Hon. Angwenyi: Hon. Speaker, Sir, for the sake of this country and for the sake of close working relationship between this House and the other House, let us embrace each other. Let us begin to work together. Therefore, let us approve the five names.

Hon. Speaker: Hon. John Mbadi, I know that you have an amendment.

Hon. Ng’ongo: Hon. Speaker, we are confronted with a situation that is probably difficult to handle because the Constitution contemplates only Bills being transacted by the two Houses but before us is a Motion. Nevertheless, I rise to support the Motion with an amendment.

Therefore, I beg to move the following amendment:

THAT, the Motion be amended by inserting the following words after the word “Parliament” at the end of the Motion-

“subject to deletion of the name “The Hon. Sen. Janet Ong’era, MP” and substituting therefore the name “The Hon. Daniel K. Maanzo, MP.”

Hon. Members: No! No! No!

Hon. Ng’ongo: Hon. Speaker, I have my reasons for moving this amendment.

Hon. Members: No! No! No!

Hon. Ng’ongo: This is my amendment.

Hon. Members: No! No! No!

Hon. Ng’ongo: Hon. Speaker, we need some order in the House.

Hon. Speaker: Order! Order, hon. Members! Let him move the amendment.

Proceed, hon. Mbadi.

Hon. Ng'ongo: Hon. Speaker, I would urge my colleagues to, first of all, agree. Whoever does not agree with me, there will be time for voting.

Hon. Members: Sit down! Sit down!

Hon. Speaker: Order! Order, hon. Members! None of you has the authority to direct hon. John Mbadi to sit down. He has the permission of the Speaker.

Proceed, hon. Mbadi.

Hon. Ng'ongo: Hon. Speaker, I am wondering why we have this noise. I thought it was consultation but it has turned out to be something else. I would urge my colleagues that we shall have time for voting. If they do not agree with the amendment, or even with the entire Motion, as I see it, they will reject it. For now, let me make my point.

In my view, we need to have a good working relationship with Senate, as Kenyans have persistently asked us to do. However, even as we do so, there are things that we need to check. First of all, I agree with my colleagues that, truly, the Senate is a very unique House in this country. If you look at the composition of the Senate and the laws regulating its functions and operations, you will appreciate that they are totally different from those that apply to the National Assembly.

The moment we take a Member of the Senate to represent us outside this country, that Senator's county is advantaged. I have spoken to this matter before. Senators vote as delegations from the counties. However, since this is a regional legislative assembly, I would urge that we become a little tolerant and accommodate the Senators. I am moving this amendment because of two reasons. Firstly, the Senate is over-represented. The membership of the National Assembly is 349 while that of the Senate is only 67. Giving them two out of five slots is too much. We need to give them one slot at most. Secondly, regional balance is very important in this country. Once we have hon. Grace Akoth Odhiambo, who should be there anyway, being a Suba minority---

(Loud consultations)

Hon. Speaker: Order! Order, hon. Members! Allow hon. Mbadi to make his point.

Hon. Ng'ongo: Hon. Speaker, we have Janet Ongera. We all come from Nyanza. If we come to Nairobi, there is already hon. Rachael Wambui Shebesh. So, having those two regions producing two Members is not acceptable. We have the Eastern region, which does not have anyone. Of course, the slots are only five and, therefore, we cannot have all the regions represented. So, I am trying to avoid a situation where one region is going to be represented by more than one Member. Even the North Eastern region is not represented.

(Loud consultations)

Hon. Speaker: Hon. Members, remember that hon. John Mbadi is moving an amendment. As soon as he finishes, I will put the Question.

Hon. Ng'ongo: Hon. Speaker, I do not understand why hon. Members cannot wait for the Question to be put. Why are they agitated?

With those remarks, I beg to move.

Hon. Speaker: Hon. Mbadi, do you have a seconder for your amendment?

Hon. Ng'ongo: Hon. Speaker, I have more than enough seconders but I thought an amendment does not have to be seconded.

Hon. Speaker: It has to be seconded, hon. Mbadi. Who is seconding you?

Hon. Ng'ongo: Hon. Speaker, hon. Joe Mutambu is ready to second the amendment.

Hon. Speaker: Proceed, hon. Mutambu.

Hon. Mutambu: Hon. Speaker, first and foremost, I want to thank hon. Mbadi for moving this amendment for a clear reason. Regional representation is very important in this country. It is very disappointing to have Members from the same region to represent us.

Hon. Speaker: Are you seconding the amendment?

Hon. Mutambu: Yes, hon. Speaker.

Hon. Speaker: Just finish then.

Hon. Mutambu: Hon. Speaker, I am giving reasons as to why I am seconding the amendment.

Hon. Speaker: No! No! No! Just second!

Hon. Mutambu: With those remarks, I beg to second.

(Question of the first part of the amendment, that the words to be left out be left out, proposed)

(Question of the first part of the amendment, that the words to be left out be left out, put and negatived)

Hon. Speaker: Hon. Members, the amendment has been defeated. There is nobody claiming a division. So, we shall continue with the Motion as it is.

(Debate on original Motion resumed)

Yes, Leader of the Majority Party.

(Loud consultations)

Hon. A.B. Duale: Hon. Speaker, I want hon. Members to listen to me.

Hon. Speaker: Order! Order, hon. Members! Now listen!

Hon. A.B. Duale: Hon. Speaker, now that the amendment has been defeated and we are back to my original Motion; I rise under Standing Order No.58 and seek the leave of the House because the matter before us has turned ethnic and regional. I also come from the North Eastern region and I do not have anybody in the proposed team. So, we will go back to the drawing board and build consensus.

Hon. Speaker, a time comes when you have to offer leadership. We will go back and consult the mighty and the powerful. We will consult the little and the big. We will consult the rank and file of the coalition.

(Loud consultations)

Hon. Speaker: Order! Order, hon. Members! Allow the Leader of the Majority Party to finish making his point.

Hon. A.B. Duale: Hon. Speaker, it is very sad that Parliament spent a lot of money on a retreat in the South Coast for the sake of safeguarding the dignity of this House. Let us listen to each other.

Hon. Speaker, given the importance of the PAP, I hereby seek the leave of this House to withdraw the Motion and ask my colleagues from both sides of the House to be patient, so that we can agree on the shares for the North Eastern, Coast, Central, Nyanza, Western and Nairobi regions. We will then go back to the 47 counties, bring names and have our membership to represent us at the PAP.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, if you look at your Standing Order No.58 under which the Leader of the Majority Party claims to seek leave, it is you hon. Members who must grant that leave because it is by leave of the House that the Motion will be withdrawn. It is you and the only way you give leave is by voting. I am sure you want to vote orally.

Hon. Members: Yes.

Hon. Speaker: So, I put the Question.

*(Question, that the Motion be withdrawn,
put and agreed to)*

Hon. Members, the Motion stands withdrawn.

(Motion withdrawn)

Hon. Members, from 2:30 p.m. up to now it is approximately only one-and-a-half hours. I am sure we have capacity to do even four hours and beyond. Now, before we move to the next Order which is Order No.9, I want to call on the Chair of the Budget and Appropriations Committee to make his Report.

REPORT ON AMENDMENTS TO FINANCE BILL

Hon. Musyimi: Thank you, hon. Speaker. As the Chair of the Budget and Appropriations Committee, I wish to state that we are agreeable with the amendments by the Departmental Committee on Finance, Planning and Trade. We, as a Committee, are satisfied that the requirements of Article 114 of the Constitution have been met because the Departmental Committee on Finance, Planning and Trade has consulted with the Cabinet Secretary for the National Treasury.

Hon. Speaker, my Committee, during its Sitting on 25th September this year, considered several amendments to the Finance Bill, 2013.

(Loud consultations)

Hon. Speaker: Hon. Members, this one relates to the Finance Bill. The Finance Bill affects every corner of this Republic. So, it is certainly important that every Member pays attention to what is being said. It is more important than the Press conferences out there in the car park.

(Laughter)

This is very important. Hon. Mutava Musyimi.

Hon. Musyimi: Thank you, hon. Speaker. My Committee wishes to relay its views and comments on the amendments in accordance with Standing Order No.114(3)(a). The views of my Committee are as follows: -

With regard to the amendment to Clause 5 of the Finance Bill, 2013 by the hon. George Ogalo, my Committee has declined the amendment on the basis that the proposal to place a 1.5 per cent Railway Development Levy on exports will hurt Kenya's key export products such as tea, coffee and horticulture.

Hon. Speaker, the amendment to Clause No.118 of the Finance Bill, 2013 by hon. George Ogalo, again my Committee was agreeable to the proposal to require a warrant by the Commissioner of Income Tax prior to conduct a search where tax fraud is suspected. However, my Committee proposed that the amendment should be revised to require that the Commissioner may secure any premises for 48 hours where he is of the opinion that an offence under this Act is about to be committed prior to obtaining a search warrant.

On the amendment by hon. John Mbadi, Member for Suba on New Clause 21(a), my Committee declined this amendment on the basis that the amendment to Pay As You Earn (PAYE) tax structure would negatively affect income tax collections. Indeed, the amendments by our hon. colleague do very validly contravene the basic tax principles of equity and non-discrimination and will deny massive revenues to the Exchequer. It is, therefore, the case that the Committee has declined but we are warm to the idea of spending more time and more consultations, particularly with stakeholders on this particular idea in due course.

Hon. Speaker, on the amendment by hon. John Mbadi again on New Clause 22(a), my Committee again declined the amendment due to the expected impact on the capital markets and the need to seek wider consultations. Indeed, as I was sitting in this Chamber, I got a call from the National Stock Exchange (NSE). They are very worried about these amendments and we could easily affect the NSE very negatively thereby engineering inflation and rising the cost of standards of living of our people. We reject this amendment but, again, are willing as a Committee to look at these suggestions and see what gains can be heralded from them in due course.

On the amendment by hon. George Mallan Omondi to Clause 15 of the Finance Bill, 2013, my Committee again opposed the amendment to Clause 15(3) which seeks to delete the words "and 30 per cent of the tax in dispute." However, my Committee proposed that Clause 15 of the Finance Bill, 2013 may be amended to provide that the payment of the 30 per cent of the tax in dispute should be limited to a period of 90 days. Hon. Speaker, therefore, my Committee is of the view - as I summarise - that the amendment proposed by the Member for Suba should not be admitted for consideration in the Committee of the whole House. The amendments proposed by the Member for Rangwe should not be admitted for consideration in the Committee of the whole House. However, the amendment to Clause 18 be admitted. If the Member moves it, it should be

amended to provide that and I quote: “The Commissioner may secure any premises for 48 hours where he is of the opinion that an offence under the Act is about to be committed prior to obtaining a search warrant.”

Hon. Speaker, finally, the amendments proposed by the Member for Alego Usonga should not be admitted for consideration in the Committee of the whole House. However, the amendment may be admitted if the Member moves that Clause 15 of the Finance Bill, 2013 be amended to provide that the payment of and I quote “30 per cent of the disputed tax” should be limited to a period of 90 days.

Hon. Speaker, I thank you.

(Hon. Musyimi laid the document on the Table)

Hon. Ng’ongo: Hon. Speaker, Sir, I beg to table the Report of the Committee.

Hon. Speaker: Go ahead, hon. John Mbadi

Hon. Ng’ongo: Thank you, hon. Speaker, Sir. Ordinarily, the reason why Standing Order No.114 became necessary was to facilitate the work of this House through a Committee of the House, which would help by scrutinizing and analyzing various legislations that are Money Bills in nature.

From the Statements of the Chair of the Budget and Appropriations Committee--- It is unfortunate that I am speaking and I am a Member of that Committee. The Chair should have provided an analysis of these effects that he has just spoken about, so that this House would be able to make a decision from an informed position.

It is unfortunate that my amendments have been declined by the Committee. Allow me to just say two words. I have realized that it is very difficult, painfully so, to tax the rich in this country. It is not true that if you introduce Capital Gains Tax, it will affect adversely the capital market in this country.

This is not the first time we have spoken about Capital Gains Tax in this country. Remember before 1985, we had it but because Members of this House, a good number of them were in real estate business, they decided to keep the benefits. What my amendment sought to do was--- If today someone opens a shop for selling clothes, he will pay tax. But if one buys a house for Kshs.20 million and sells it for Kshs.30 million, the profit of Kshs.10 million is not taxable.

This is completely unacceptable, it defeats the very essence of equity and as a student of tax, as one who has done taxation, and I know that one of the principles is equity; you need to tax more the rich and less the poor. My Committee has rejected my amendment to cushion the poor; the very low, those who are earning below Kshs.38,000 per month.

(Loud consultations)

But at the same time, the same Committee is protecting the super-rich Kenyans who are able to buy houses and sell them at exorbitant profits. This is not what the representatives of the people should do.

Finally, if you are talking about---

Hon. Musyimi: On a point of information, hon. Speaker, Sir.

Hon. Ng'ongo: I do not need the information from my Chair, because I am actually well-equipped in financial matters.

Hon. Speaker: Hon. Member, you are actually on a point of order.

Hon. Ng'ongo: Yes, I actually respect my Chair, but he will accept that I am more schooled in financial matters than him.

(Loud consultations)

That is true, and actually I am one of the five registered members of the Institute of Certified Public Accountants of Kenya (ICPAK) in this House. How, can my pastor friend, or bishop, really inform me on financial matters?

(Laughter)

Hon. Speaker: Who now?

Hon. Ng'ongo: Hon. Speaker, Sir, I want to conclude. I do not understand how---

Hon. Speaker: Is it hon. Chepkong'a? Unfortunately, the machines are not working.

Hon. Chepkong'a: On a point of order hon. Speaker, Sir. Is it in order for hon. John Mbadi, to hold us to ransom over arguments that he ably presented to his Committee, including attacking his own Chair of the Committee? That is discourteous. Secondly, is it in order, again, for hon. Mbadi, to prosecute his application in the manner he is doing, a very wild manner, instead of doing so in a courteous way? Will you rule that he is out of order for not extending courtesy to his own Chairman?

Thank you, hon. Speaker, Sir.

Hon. Speaker: Well, as relates to the matter of courtesy, I will leave it to hon. John Mbadi, to know whether or not he wants to extend courtesy to his own Chair but, I think, he has a right to also be heard because it is about amendments from the Committee and they have communicated to me. In fact, I was going to just deal with the matter after hon. John Mbadi.

Yes, hon. John Mbadi, finish.

Hon. Ng'ongo: Thank you, hon. Speaker, Sir. I will forgive hon. Chepkong'a because he was not with us in the 10th Parliament when we were developing a relationship with hon. Mutava Musyimi; we are very close friends. He will be shocked the way we sometimes engage with him. He thinks it is discourteous, but I am very courteous to my friend, hon. Mutava Musyimi.

I think the people I am not courteous to are the rich people who do not want to be taxed, and that is what hon. Chepkong'a is, indirectly, saying.

Hon. Speaker: Hon. John Mbadi, now you are going on and on to address the principle and I understand the principle you are advancing.

Hon. Ng'ongo: Hon. Speaker, Sir, I wanted just to point out that it is not true that this amendment would destabilize the stock market. What we are trying to do is--- If today hon. Mbadi buys Safaricom shares for Kshs.10 and sells them tomorrow for Kshs.20, he will make a profit of Kshs.10, which should be taxed because it is an income.

In this country, the moment you try to tax the rich, they will come up with all manner of arguments, like it is going to discourage investment or you are scaring away

investors. Who are these investors? It is us. It is you and I. These hon. Members are protecting themselves; let them not pretend that they are protecting investments.

Hon. Speaker: Hon. John Mbadi, another point of order.

Hon. Macharia: Thank you, hon. Speaker, Sir. I have heard hon. John Mbadi talking about being a Member of ICPAK. I do not think he is in order to mislead this House that these amendments will not have any negative effect on the capital markets. I think he should be declared out of order.

Hon. Speaker: Hon. Members, the Report of the Budget and Appropriations Committee was presented and of course it is important we know that the proposed amendment falls within the category of Money Bills. It is very clear a Money Bill may not deal with any matter other than those listed in the definition of a Money Bill in Clause 3. Indeed, a Money Bill in this Constitution is a Bill other than the one specified in Article 218, which makes provisions dealing with: -

- (a) Taxes;
- (b) imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriations, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment;
- (e) matters incidental to any of those matters;

Obviously, even without going to anything else, whatever hon. John Mbadi is proposing is not just incidental but direct. Of course, the Constitution is very clear that if in the opinion of the Speaker or the National Assembly a Motion makes provisions for a matter listed in the definition of a Money Bill, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly, after taking into account the views of the Cabinet Secretary for Finance. The relevant Committee in this case is the Budget and Appropriations Committee, in which hon. John Mbadi is a ranking Member. That Committee has presented its report and, therefore, the Committee of the whole House may not proceed, and will not proceed to consider the proposed amendment by hon. John Mbadi; that will not be in the consideration of the Committee of the whole House.

Furthermore, the Committee will only consider the proposed amendments by hon. George Oner and hon. George Mallan to the extent permitted by the Chairman of the Committee, which is already contained in the report that has been tabled by hon. Mutava Musymi.

It is, therefore, ordered that this is the business that will be transacted in the Committee of the whole House, and not anything else. You may not vote on anything that has been ruled as inadmissible. Very well

Yes, hon. the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, thank you very much for your ruling. Before I came to the House I was a very wild man. I want to put it on record that we are Members of Parliament and we represent the rich, the poor and the middle class.

An hon. Member: The rich!

Hon. A.B. Duale: Hon. Speaker, hon. Mbadi should not play populist politics. I represent a cross-section--- I am sure the Member for Westlands, hon. Wetangula is here. Yesterday he said that Westlands contributes 47 per cent of the taxes of this country. He represents the rich. Half of his voters are rich. Some of us represent the largest owners of camels in this country. I am talking about serious owners of camels.

(Laughter)

We also represent those who own one goat.

Hon. Speaker, to add to what you said, Article 210 of the Constitution--- I only want to go to the bit where hon. Mbadi's amendment was affecting the Income Tax. The law is very clear that no tax or licensing fee may be imposed, waived, or varied except as provided by legislation; that is what we are doing. Two, if the legislation permits the waiver of any tax or licensing fee: (a) a public record of each waiver shall be maintained together with the reason for the waiver; (b) each waiver and the reason for it shall be reported to the Auditor-General.

Hon. Speaker, you have said it. However, hon. Mbadi wants to remove the Teachers Service Commission staff and other civil servants, who are State officers. A State officer must pay taxes. Hon. Mbadi wants to remove 49 per cent of Kenyans who want to pay tax. And because he does not belong to---

Hon. Ng'ongo: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Even as you make the point of order, hon. John Mbadi and the Leader of Majority Party, I believe this is a matter which is disposed of. It is water under the bridge. It will not be considered in the Committee of the whole House. You may make your point, hon. Mbadi.

Hon. Ng'ongo: Hon. Speaker, my points of order are two, and are based on what hon. A.B. Duale has spoken to. First of all, he should not impute improper motive on another Member. I am not playing populist politics. I want to remind hon. A.B. Duale that his own Cabinet Secretary for Finance was on the Floor here and he said that Capital Gains Tax would be reinstated. I can refer to his speech. That is what I am trying to do. I am doing what his Government has failed to do. So, referring to me as a person playing populist politics when they have failed to do what they should do is in bad taste.

Finally, he is talking about waiver and that is why sometimes I would advise that, if you are not a finance expert do not use finance terms. Waiver is not the same thing as legislating by changing the percentage of tax. Waiver is waiver. If the Cabinet Secretary gives a waiver, he says that the tax is payable, but will not be paid because of a certain reason. That is what you report. However, this is not a waiver. We are legislating to vary the rates of tax. I am not even saying that those people should not pay tax, but they pay zero per cent. Now, zero per cent is tax, only that the net effect is zero. If you are not a finance person---

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Hon. Members, having disposed of that matter, it is now time to go to the next Order, which is the Committee of the whole House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[Hon. Chairlady (Dr. Laboso) took the Chair]

THE FINANCE BILL

Hon. Chairlady: Order, Members! Those who are exiting should do so quietly, so that we can get on with business.

(Clauses 3, 4, 5, and 6 agreed to)

Clause 7

Hon. Langat: Hon. Chairlady, I beg to move: -
THAT, Clause 7 be deleted.

If you look at the Order Paper, we are proposing to delete Clause 7 because it relates to VAT and the House concluded its debate on the VAT Bill and it is now an Act of Parliament. I am talking about two months ago. So, whatever was supposed to have been done has been overtaken by events. That is the reason I am proposing this amendment.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 7 deleted)

(Clause 8 agreed to)

Clause 9

Hon. Langat: Hon. Chairlady, there is an amendment under this Clause 9, but after consultations, I wish to withdraw it because what is in the Bill actually cures what I thought we were trying to cure by that amendment. I, therefore, wish to withdraw that amendment.

Hon. Chairlady: There is a point of order, by hon. Nyasuna. Do you have a point of order, hon. Nyasuna?

Hon. (Ms.) Nyasuna: On a point of order, hon. Chairlady. I wish that the Chair elaborates what he is saying; he talks about an amendment that has been cured. I am appealing to the Chair to tell this House about this amendment and what has been cured?

Hon. Chairlady: Chair of Committee, just explain very briefly. Remember we are in Committee Stage. Just explain to hon. Members, so that they know what you are passing.

Hon. Langat: Hon. Chair, I thought I did it, but I can still repeat it.

Hon. (Ms.) Nyasuna: In simple language.

Hon. Langat: I am saying this relates to an exemption of a benefit which is paid by insurance. What we intended to do was to ensure that, that which benefited employees within an organization should really be exempted from taxation of an employee. If you look at what is proposed in the Bill as it is, it has captured that. It is really an amorphous kind of amendment. What we are trying to cure, which is something that benefits, is already proposed by the original Bill.

(Proposed amendment by hon. Langat withdrawn)

(Clause 9 agreed to)

(Clauses 10 and 11 agreed to)

Clause 12

Hon. Langat: Hon. Chairlady, I beg to move: -

THAT, clause 12 be deleted and replaced with the following new clause –

Amendment to
section 25 of Cap.
470.

12. Section 25 of the Income Tax is amended –

(a) in subsection (1) by deleting the word “nineteen” appearing in paragraph (a) and substituting therefor the word “eighteen”

(b) in sub-section (7) by deleting the word “nineteen” appearing in proviso (iii) and substituting therefor the word “eighteen”

Hon. Chairlady, I wish to refer hon. Members to the amendment which I have signed. The effect of it is that I am removing whatever is already in the Bill and replacing it with what I have now on the piece of paper, which is already distributed to hon. Members.

Hon. Chairlady, here we are trying to anchor in the Constitution the definition of a “child” as per the Constitution and as per the Income Tax Act.

(Question of the amendment proposed)

Hon. Kajwang’: Hon. Chairlady, we do not have it on the Order Paper. I wonder if hon. Langat could articulate it properly, so that we follow the proceedings in the Chamber.

Hon. Chairlady: Just read that amendment because many hon. Members do not have a copy.

Hon. Langat: I am saying that Clause 12 of the Bill be deleted and replaced with new Clause 12.

In the Constitution, a child is somebody below 18 years. In the Income Tax Act, it is 19 years. So, we want to align it with table two, that is all.

Hon. Chairlady: So, you are harmonizing the Act with the definition of “child” in the Constitution.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 12 as amended agreed to)

(Clauses 13 and 14 agreed to)

Clause 15

Hon. Chairlady: Hon. Members, there is a ruling that was given earlier on this Clause to hon. George Omondi. You need to tell us whether you are willing to amend as proposed by the Budget and Appropriations Committee. This is because if you are not willing to abide by that, then we will not be able to proceed. I think there was enough guidance from the Chair. The Floor is yours, hon. Omondi.

Hon. G.W. Omondi: Hon. Chairlady, I have consulted with my Chairman and agreed that the amendment that was proposed by the Budget and Appropriations Committee be acceptable.

Hon. Chairlady: Did he say that it is acceptable?

Hon. G.W. Omondi: Yes, he accepted it. Whatever was contained in this paper is not what we had agreed. He had just drafted it.

Hon. Chairlady: Okay, do we now have the concurrence of the Chair of the Committee on the amendments as proposed by the Chair of the Budget and Appropriations Committee? Maybe you can tell us what it now says.

Hon. G.W. Omondi: I have it here, hon. Chair. Can I read it?

Hon. Chairlady: Is it George W. Omondi's amendment? It was an amendment to your amendment, was it not?

Hon. G.W. Omondi: It was.

Hon. Chairlady: Okay. The Chair of the Committee wants to say a word, but you will continue to give your amendment.

Hon. Langat: Hon. Chairlady, I want to thank him because he is trying to do something good. But I wish he could read the Act as it is now before he moves that amendment.

The Act, which is being amended by this Finance Bill says that if you are in dispute on any assessment of tax, then first you pay 100 per cent. The amendment in the Finance Bill makes it easier for the taxpayer, by saying that instead of paying 100 per cent, you only pay 30 per cent of the amount that is in dispute. If we reject that, then we will go back to the original 100 per cent, which is very bad to the taxpayer. I think it is good to really check that situation first.

Hon. G.W. Omondi: On a point of order, hon. Chairlady.

Hon. Chairlady: What is your point of order, hon. George W. Omondi?

Hon. G.W. Omondi: Hon. Chairlady, I think the amendment which has been accepted by the Budget and Appropriations Committee actually retained the 30 per cent.

We are now removing it. What we are putting is that a refund, if the dispute is decided in favour of the taxpayer, should be effected within 90 days. But we retain the 30 per cent.

Hon. Chairlady: Is that okay. Can you now read the amendment, hon. George W. Omondi?

Hon. G.W. Omondi: Hon. Chairlady, I beg to move: -

THAT, Clause 15 be amended as follows: -

(a) the taxpayer shall pay 30 per cent of the disputed tax pending determination of the dispute.

(b) that such dispute must be determined within 90 days of the complaint being lodged.

(c) that should the dispute be determined in favour of the taxpayer, then the 30 per cent tax paid, as aforesaid, shall be refunded within 90 days.

(Question of the amendment proposed)

Hon. Chairlady: Okay. I can see an intervention from Dr. Nyikal.

Hon. (Dr). Nyikal: Hon. Chairlady, I want to support that amendment. Whereas we support and protect the Kenya Revenue Authority (KRA) to raise taxes for this country, it is also important to protect the taxpayer.

On the particular provision that says that they pay 30 per cent, I wanted zero per cent. This is because once you pay, it is very difficult to get your refund. This has been abused by the KRA, which levies the tax and knows that there is nothing you can do other than paying it. We want it to be zero per cent. We accepted 30 per cent because it was lower. Within the 90 days it should be refunded, if the ruling is in favour of the taxpayer. I wanted to add that we put an interest to be paid by the KRA.

I end by saying that the mood I am seeing is that when you want to protect the ordinary person there is a lot of opposition. I accept that situation.

Hon. Chairlady: Hon. George Omondi has put in his amendment that the time for refunding the paid tax is not without a limit. His amendment has now limited refund to 90 days.

Hon. Kajwang': Hon. Chairlady, it should be left the way it was proposed originally by the Committee; theirs did not have the 90 days. When you put the 90 days, you make assumptions that the dispute settlement can work within those 90 days. You will notice that in the Act that we passed, the dispute is settled in the High Court and this court may not run the race of 90 days because of several other things that happen and affect legislation. So, to put the 90 days is really to say that there will be no determination of dispute, particularly in favour of the person who is disputing the tax. I would like the amendment by the Member to be accepted but the "b" part of it, which talks about 90 days is unreasonable.

Hon. G.W. Omondi: Hon. Chairlady, the reasoning behind this amendment is that to get a tax refund from the tax authorities is a nightmare. It will not be good to keep on giving taxes; at the moment, it is true that very many people have lodged tax refunds but they are not getting them. Why do we not limit the period within which the KRA should refund the tax paid?

Hon. A.B. Duale: Hon. Chairlady, I think there are two aspects here. I totally agree with hon. Kajwang' that disputes cannot be resolved within 30 days. I also agree

with my other colleagues that if the dispute is resolved, then either party – if it is the taxpayer or KRA – should fulfill their obligation within 90 days. But the element of 30 days with the kind of Judiciary we have in our country---

Hon. Chairlady: It is 90 days and not 30 days.

Hon. A.B. Duale: Could the hon. Member then repeat the amendment?

Hon. Kajwang’: The way it is phrased, it talks about the period within which the dispute will be resolved. However, what he is saying and what the Majority Leader is saying, which is correct, is that after the dispute has been settled, the payment should be done within 90 days. So, we need to recast his amendment so that, that is very clear.

Hon. Langat: Hon. Chairlady, it is better to read it out. He said somewhere that the dispute is to be resolved within 90 or 30 days. I think that is where the problem is. It is okay that the payment should be made within 90 days, but it is not for the KRA to determine when the dispute is to be resolved.

Hon. Chairlady: So, the amendment, according to hon. Kajwang’, is not bringing out the message properly.

Hon. G.W. Omondi: Hon. Chairlady, it says that the taxpayer shall pay 30 per cent of the disputed tax pending a determination of the dispute. I think hon. Kajwang’ is talking about the second part which says that such a dispute must be determined within 90 days of a complaint being lodged. The third part states that should the dispute be determined in favour of the taxpayer, then the 30 per cent of the tax paid as aforesaid shall be refunded within 90 days.

Hon. Gichigi: Thank you, hon. Chairlady. My position on this is that as much as we want to say that we do not want to limit the period to 90 days, leaving this issue open ended is actually subjecting the taxpayer to horror. People who may not have dealt with KRA when it comes to tax refund may not understand what taxpayers go through. I am saying that if we were able to resolve a presidential petition within six months--- Let us limit the period; let us not leave it open, otherwise people will never get their money back.

Hon. Langat: Hon. Chairlady, I want to request my friend, because I have agreed with him almost 90 percent, to withdraw that part which gives the period for resolution of the case. This is because most of the time we cannot go and tell the High Court to determine a case within that period because of many factors.

Hon. Chairlady: Does the six-month period sound reasonable?

Hon. Members: Yes.

Hon. Langat: Hon. Chairlady, let me agree to the six-month period.

Hon. Chairlady: Hon. Omondi, the feeling of the Members is that it should be six months. Read out part “b” of the amendment.

Hon. G.W. Omondi: Hon. Chairlady, part “b” says that the dispute must be determined within 90 days of the complaint being lodged.

Hon. Chairlady: So, amend that to six months. That is what the Members are saying. Just read it as it should be and then you can polish it after, so that we can move on. I want you to read out that part.

Hon. G.W. Omondi: I will read it out, hon. Chairlady. It says: “Such a dispute must be determined within six months of the complaint being lodged”

Hon. Members: *Iko sawa!*

(Question of the further amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

(Clause 15 as amended agreed to)

(Clauses 16 and 17 agreed to)

Clause 18

Hon. Chairlady: On Clause 18, we have two amendment proposals. We will begin with the proposal by the Committee, which will be followed by the one by hon. George Oner.

Hon. Langat: Hon. Deputy Chairlady, I beg to move: -

THAT, Clause 18 be amended-

(a) by renumbering the existing provisions as sub-clause (1);

(b) in the renumbered sub clause (1), by deleting the word “without” appearing immediately before the word “warrant” in the proposed new provision and substituting therefor the word “with”;

(c) by inserting the following new subclause immediately after the renumbered subclause (1)-

“(2) Section 119 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (1)-

“(1A) Notwithstanding subsection (1), the Commissioner or an authorised officer may, prior to obtaining a warrant, secure the premises for purposes of ascertaining whether this Act is being complied with.”

Hon. Chairlady, I also wish to encourage my friend to withdraw his amendment because it is similar to mine. That section was giving the Commissioner power to enter into your premises without a warrant but the Committee agreed that allowing such a move would be unconstitutional. So, we are saying that the Commissioner must obtain a warrant but we are also giving him powers to secure the premises, pending acquisition of a warrant. This is to ensure fairness to both the taxpayer and the Commissioner. If we do not give the Commissioner the power of securing the premises, the moment the Commissioner indicates that he is looking for a warrant to go and inspect the premises; everything will be carted away from the premises by the next morning. So, we need to secure both the revenue collector and the taxpayer.

(Question of the amendment proposed)

Hon. George Oner, I would like to hear your views on this amendment because if hon. Langat’s amendment goes through, yours will fall.

Hon. Ogalo: Thank you, hon. Chairlady. I agree with the Chairman of the Committee because my fears have already been taken care of by his amendment. So, I agree to withdraw my amendment but before I do so, I would like to say that when an hon. Member proposes an amendment to a Bill that is to be discussed by a Committee, it is important for the Committee to invite the Member as they discuss such amendments. I say so because my earlier amendments to Clauses 3 and 4 were dropped even before I was given a chance to explain their import. They would have been cured by simple amendments. Whereas we need to build railway lines, we also need jobs now. Therefore, taxation of raw materials for the manufacturing sectors should not be allowed. However, you did not give me an opportunity to explain myself. You just threw away the amendments. Therefore, I would advise Chairpersons of Committees to go that way in future.

Hon. Chairlady: Hon. George Oner, that is a good idea. Chairpersons of Committees, when you discuss amendments in future, please, try to invite the Members and resolve any matters arising. You might find that you do not need to bring some of them to the Floor of this House.

Hon. Langat: Hon. Chairlady, my Committee is very open. Anybody who wants to attend sittings of my Committee, including hon. Oner, who is my friend, should come across. We will always talk to you, hon. Members.

Hon. Chairlady: Hon. Nyikal, do you still have something to add?

Hon. (Dr.) Nyikal: Hon. Chairlady, we agreed that the requirement to produce a warrant should be subject to a time limit. Therefore, I would like to hear that bit read out. We had agreed that the Commissioner can only secure premises for 48 hours while looking for a warrant. So, is that bit contained in the amendment? I would be happy to know.

Hon. Chairlady: Committee Chairman, is the time factor factored into your amendment?

Hon. Langat: Hon. Chairlady, my amendment does not have 48 hours.

Hon. Chairlady, it is not wise to limit the Commissioner in terms of the period of time he can secure premises. It would be like telling the court to sit on a Sunday to ensure that the Commissioner gets a warrant, in case of some premises that are secured on a Friday. So, let us just leave this amendment the way it is. As long as a warrant will come, the premises should be secured. We are not saying that one will be stopped from moving around. At least, no goods should leave the place before the inspection takes place. So, let us leave it open. Those are matters of the courts.

Hon. (Dr.) Nyikal: Hon. Chairlady, as we protect the KRA, let us also protect the businesspeople because they are the cow that brings the milk. Let us not protect the milkman and leave the cow unprotected. If KRA officials lock up your premises, and there is no time limit within which to inspect them, the premises can remain locked for a year. That is why we proposed a time limit of 48 hours. If there is the difficulty of a weekend, I would probably be happy with a period of 72 hours.

Surely, just saying that the Commissioner can secure some premises and go away is dangerous. We know how things go on in this country. Those guys can lock up your premises for three months and keep on asking you: "Are you serious that we should open this place?" You know what that means in Kenya. So, I propose that if 48 hours is too

short, we should probably make it 72 hours. By that time, KRA officials should have gotten a warrant.

Hon. Chairlady: Yes, hon. Cyprian Iringo. Gichigi, I know that you are not using your own card. I hope that you are fully aware of the new rules, hon. Members. From next week, you will have to pay Kshs2,000 if you lose your card.

Hon. Gichigi: Hon. Chairlady, I am surprised. I am using my own card.

Hon. Chairlady: The name I have on my screen is that of Cyprian Kubai Iringo.

Hon. Gichigi: Hon. Chairlady, I do not know how that happened because even the codes I used are my own.

Hon. Chairlady: So, there could be a problem with the system?

Hon. Gichigi: Yes, hon. Chairlady.

Hon. Chairlady, I agree with Dr. Nyikal. We know the history of taxation in this country. Some tax collectors will victimise people just out of malice. Some will sleep on the job. Others have serious targets. They will try to meet their targets by blackmailing people. So, in order to avoid corruption and inconveniences, let us agree on a reasonable period of time within which the taxman can go to court and obtain a warrant. Therefore, I suggest five days.

Hon. Chairlady: Those are 72 hours.

Hon. Kipsang, do you have an opinion on this matter?

Hon. Sang: Thank you, hon. Chairlady. Some of us are businessmen. We know how KRA deals with some of us. So, let us take into account two days of the weekend. Assuming that a public holiday falls on a Sunday, Monday will also be a holiday. So, let us provide for four to five days, so that we can take care of ourselves. As Members of Parliament, we need to take care of the taxpayers as well as the Government. We should not be one-sided. So, I support the idea of five days. The minimum should be four days.

Hon. Chairlady: Yes, hon. Njenga.

Hon. Njenga: Hon. Chairlady, as hon. Nyikal said, we should also protect businessmen. Those of us who have dealt with KRA know the limitations and the constraints in which they put businessmen. They do not treat them as friends. I want to suggest 48 working hours to take care of Christmas, *Idd-ul-Fitri* and any other holiday.

Hon. Chairlady: Hon. Ali Dado, do you have something different? You have changed your normal sitting position.

Hon. Dado: Hon. Chairlady, I decided to change my sitting position because the Chair is not catching my eye.

What I wanted to say is exactly what the last speaker said. If we have 48 working hours, then we know that within that period, KRA can commit more manpower to that course in order to complete the task.

Hon. Chairlady: Hon. Shakeel, make the final remarks on this one, so that we can move forward.

Hon. S.S. Ahmed: Hon. Chairlady, I have not come across any Act which talks about working hours. Working hours can depend on many issues. For example, Nakumatt Supermarket works 24-hours a day. So, what is a working hour, and by whom? Certain countries work on Saturdays. So, I propose that we provide for at least three days. I want to give one particular reason for that suggestion. There is one taxpayer who owes this country more than Kshs4 billion. He was given time, and he took away all the assets and put them into another company. We are now looking at a case where officers from the

Income Tax Department went and put padlocks on some premises but they were told to remove them. They normally put padlocks.

Hon. Chairlady: Hon. Shakeel, can you please wind up.

Hon. S.S. Ahmed: Hon. Chairlady, I am giving examples. We have to make some sense in our examples. I am giving a live example where an Income Tax official went to some premises and put padlocks. They were then told to remove them. So, we should provide for three days. I do not suggest much more than three days.

Thank you.

Hon. Chairlady: Yes, hon. Kimaru.

Hon. Kimaru: Hon. Chairlady, I think the solution to this is pretty simple, so that we do not have the ambiguity between which hours are working and which ones are not working, if we insert a clause stating “48 hours exempting weekends and holidays”, that would basically do the trick.

Hon. Chairlady: Chairman of the Committee, this is your amendment.

Hon. Langat: Hon. Chairlady, I want to say that I am in agreement with what the hon. Members have said. The only time I am alone as the Chair is when someone else is saying three days and others are saying four days. I want the House to allow me to propose four days. If there is a weekend, there will be two days for a weekend. Then there will be Monday and Tuesday to cater for the rest. I do not know whether I can propose a further amendment.

Hon. Chairlady: No. Just read your amendment. It is an amendment to an amendment.

Hon. Langat: Hon. Chairlady, I wish to move a further amendment to the amendment, that we insert the following words after the word “premises” appearing in Clause C(2)(i)(a). The words I am proposing to put are “for a maximum period of four days.”

Hon. Chairlady: Okay, four working days or just four days?

Hon. Langat: Four days is okay, hon. Chairlady.

(Question of the further amendment proposed)

The Hon. Chairlady: Okay. I see an intervention by hon. Oner.

Hon. Ogalo: Thank you, hon. Chairlady. A Kenya Revenue Authority Commissioner can come and secure your property for four days and then he fails to get the warrant. On the fifth day, he lets you free. On the sixth day, he is back and closes it for four days. Is there any mechanism we can use through this amendment to cure this? My amendment required the Commissioner to have a warrant. If you reasonably suspect somebody, why do you not just go and get a warrant before you go and tell him you suspect him? Go and approach the person with a warrant. If you say four days, then the Commissioner will come and secure your buildings. He will come on the fourth day without the warrant, what will you do? Is there anything we can do in this amendment to secure the taxpayer?

Thank you, hon. Chairlady.

Hon. Kajwang’: On a point of order, hon. Chairlady. I think that has been taken care of. Number one, when somebody goes for a warrant, he has to explain to the court why he is looking for it. So, if he is going for the second time, the court should be able to

show that this fellow may have gone there the first time. Yes, there could be a reason why a Commissioner would come a second time with legitimate reasons. However, number three, when somebody secures a warrant for a limited period of time, then that meets the threshold of the Constitution which is a warrant, so that nobody comes to your house without permission or any legal authority, and takes or seizes your things. I think that has been taken care of.

Hon. Chairlady: Okay. I think we have got the legal advice. That is why all of us have contributions to make. Yes, hon. Ochieng.

Hon. Ochieng: Thank you very much, hon. Chairlady. I also have a legal mind sometimes, and on this one I wish to differ with my senior, hon. Kajwang'. The reason someone will want to do something without a warrant is that they will want to surprise you. They want to do something without you knowing, but in law we have something called "Anton Piller Order". If the KRA or anybody concerned know they want to raid a place, or there is an offence being committed, they can go to court *ex parte* – without referring to you or without you knowing - to get the warrant. The idea that we can leave this open I think is not good. This is because we are talking about trade. We just passed a very important Bill the other day – the VAT Act. That has got a lot of things that go with it.

Hon. Chairlady, I want to support the amendment that we cannot allow any authority in this country to be searching premises without a warrant. We cannot allow that.

Hon. Chairlady: So, Chairman of the Committee, what is your final word on this? You have heard the sentiments of the Members. Please, just read your amendments finally.

Hon. Langat: Hon. Chairlady, I wish to make a further amendment by inserting the following words after the word "premises" appearing in Part---

Hon. Chairlady: Hon. Langat, I am saying just read the part containing the amended bit.

Hon. Langat: It says that "Notwithstanding subsection (1), the Commissioner or an authorised officer may, prior to obtaining a warrant, secure the premises for a maximum period of four days for the purpose of ascertaining whether this Act is being complied with."

Hon. Chairlady, let me just suggest a final comment. I want to tell my friend that the reason why we have the Finance Bill every year is to refine all the other laws which we make all the time. So, if that abuse comes up, I think we will have another Finance Bill in the next financial year. So, this is something which is continuous, and which we can still look at.

*(Question, that the words to be inserted be
inserted put and agreed to)*

(Clause 18 as amended agreed to)

(Clauses 19, 20, 21, 22 and 23 agreed to)

Clause 24

Hon. Langat: Hon. Chairlady, I beg to move: -

THAT, Clause 24 be amended in the proposed New section 22A(1)(e)(ii) by inserting the words “if the chairperson, director, chief executive, management and the personnel are shareholders of the company” at the end thereof.

Hon. Chairlady this section seeks to put criminal liability on the directors of a company if a member of staff fails to pay tax. So, we are only saying that some of the directors and members are not shareholders or executives. So, it will be unfair to put liability on them when they are there on a day-to-day basis. I think we are trying to protect the directors who are not necessarily part of the day-to-day running of the company from that liability; liability is only fixed on the people responsible.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 24 as amended agreed to)

(Clauses 25, 26, 27, 28, 29, 30 and 31 agreed to)

(Clause 2 agreed to)

(Title agreed to)

Clause 1

Hon. Langat: Hon. Chairlady, in terms of procedure, I thought we were supposed to go to new clauses and then--- I really do not know. How will the new clauses be captured?

Hon. Chairlady: I am told this is the new procedure. I also knew it the way you do, but just go ahead and move your amendments to Clause 1.

Hon. Langat: Hon. Chairlady, the Clause 1 I am trying to amend is affecting the new clause which is yet to be passed.

Hon. Chairlady: Go ahead and prosecute it and let us see how it unfolds.

Hon. Langat: Hon. Chairlady, I beg to move: -

THAT, Clause 1 be amended by –

(a) inserting a new item (c) immediately after item (b) as follows –

(c) section 5A on the 1st February, 2013

Hon. Chairlady, this is just to give effect to the start date for the coming into effect of that Customs Duty and Excise Duty.

Hon. Chairlady: When is the effective date, hon. Langat?

Hon. Langat: Hon. Chairlady, please, give me one minute so that I consult. I have a problem because already some of the taxes have started running. We are just trying to fix statute. I wish I was allowed to pass the amendment first.

Hon. Chairlady: Hold on, hon. Wandayi. Let me first propose the Question then we can hear your contribution.

(Question of the amendment proposed)

Hon. Sumra, do you have a comment? Is it about the effective date?

Hon. Sumra: Hon. Chairlady, I just want to give a suggestion to my Chairman of the Departmental Committee on Finance, Planning and Trade. I think the effective date could just be put as the beginning of the financial year in July. This is because February is in the middle of the year. Every financial year goes with the audit years. I suggest July. It will be proper that way because July is the beginning of our financial year.

Hon. (Dr.) Nyikal: Hon. Chairlady, I do not understand why we are going to 13th February. Does this mean that we are backdating the date and the taxes? If that is the case, what is the reason? If we have an amendment, it is good to inform Members of the implication. We also need to inform the ordinary people. I would like to have that explanation, please.

Hon. Ng'ongo: Hon. Chairlady, well, taxes can be backdated. There is something we call provision of taxes order which is usually given. However, it should be aligned to the beginning of the financial year. That is why I found February a bit curious. It is not illegal to backdate tax though. You can backdate tax if you had already projected that for 12 months, we need to vary this and that tax to this and that amount to be in a position to collect so much. Immediately Parliament gives the provision of collection of taxes order which gets formalized through the Finance Bill--- We need to hear from the Chairman whether or not that is the case and why February is necessary. Indeed, February is another financial year altogether.

Hon. Kajwang': Hon. Chairlady, I am also rising to talk on the backdating. This is the point at which I differ with my friend from Suba and as he always reminds us: When you are a financial expert, stick to financial expertise.

Now, there is something called retroactivity. You cannot subject a person to something which was not law at the time that it--- This is particularly if it causes pecuniary effect. It used to be the law before the new Constitution. The Constitution has now come up with that, you cannot have a law which has a retrospective effect. So, what else the financial analyst knew, the Constitution has bypassed it.

Hon. Kimaru: Hon. Chairlady, as much as I would like to agree with hon. Member there, who is *Marangi* in matters of law, I think there are many things that are not basically using specific laws; there are regulations. I believe that the provision of collection of taxes order is such one regulation or guideline which will allow taxes to be collected beforehand and I know many other things. Even when we look at *Uwezo* Fund and so on, it is not being effected by a law of Parliament; it is by a regulation from other quarters.

I, therefore, agree with hon. Mbadi on this issue regardless of whether he is a *Marangi* or not in law.

Hon. Ng'ongo: Hon. Chairlady, what I meant is that when you pass the Budget Estimates, you are in effect giving a provision of collection of taxes order to the Executive. It is a provision of approval by Parliament. So, you cannot say that Parliament has not approved. Just the same way we are today legislating; we have given a

provisional order for them to collect. So, they can collect up to the time the Finance Bill is approved. If the Finance Bill is not approved or that provision is not approved then the Government must refund all those taxes. That is how it works. It is not retrospective because Parliament had given an approval.

Hon. Langat: Hon. Chairlady, I have the comments from Members. Under the last Finance Bill, actually under the Fifth Schedule we brought in Excise Duty on mobile transfer and bank transfers. The challenge is that the charging provision in the main Act was not done. However, under the Fifth Schedule the House approved that those taxes be paid. Therefore, this is just a regularization of what has already been passed. This is not the first time. We even passed the CDF here the other day. The House said that this amendment shall take effect from 1st July. We passed it and it was signed into law. This is not a new practice because we have always regularized many times. Somebody should not read any mischief.

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 1 as amended agreed to)

New Clause 3A

Hon. Langat: Hon. Chairlady, I wish to introduce New Clause 3A which hon. Members have been given and it reads as follows: -

THAT, the following new clause be inserted immediately after
Clause 3 –

3A. The Customs and Excise Act is amended in Section 91A by inserting the words “or wooden or metallic containers” immediately after the word “bottle” appearing in subsection 1A.

I think there was just a mix up in terms of typing. It never appeared on the Order Paper, but we had agreed that Customs and Excise Act is amended in Section 91A by inserting the words “or wooden or metallic containers” immediately after the word “bottle” appearing in subsection A.

Hon. Chairlady, if you look at the current Act; Customs and Excise Act---

Hon. Member: Which is that clause?

Hon. Chairlady: New Clause 3A.

Hon. Langat: New Clause 3A on Customs and Excise Act. If you look at that section---

Hon. Chairlady: Order, hon. Members. Why is there confusion? Just hold on.

Hon. Langat: It is New Clause 3A and I have read the amendment verbally.

Hon. Chairlady: It is a new clause being introduced. Whenever new clauses are being introduced, you introduce them in the end, but they will be fixed at their right place in the Act.

Hon. Langat: Hon. Chairlady, for the purposes of levying excise--- I have read it hon. Chairlady.

Hon. Members: We did not get it clear!

Hon. Chairlady: You were not concentrating. But for the benefit of everybody being on the same level---

Hon. Langat: Let me do it. I hope my friend is concentrating so that he should not take the House back again. The New Clause reads as follows: -

“The Customs and Excise Act is amended in Section 91A by inserting the words “or wooden or metallic containers” immediately after the word “bottle” appearing in subsection 1A.

Hon. Chairlady, that section basically deals with alcoholic drinks. If you look at the present Act, it only recognizes glass and exclusive metallic containers. It is a standard practice for alcoholic drinks to also be packed in metallic containers.

Hon. Kajwang’: Hon. Chairlady, I rise on a point of order. There is something which is coming, particularly on Finance Bill which is worrying me. That many amendments do not appear in the Order Paper or the Supplementary Order Paper. Many of them are passed through this window here from the civil servants. These are the ways where we find amendments which come and pass us and by the time we realize it, we have not reflected on them. So, I think that the amendments which we need to look at should be the amendments which appear on the Order Paper that hon. Members have reflected upon. Hon. Members who have amendments may have made those amendments. This business of pieces of papers coming from the bar should be discouraged.

Hon. A.B. Duale: Hon. Chairlady, the Standing Orders provide for the Chairs of Committees to bring amendments on the Floor. Secondly, it is the practice of this Parliament --- Dr. Nyikal will agree with me that when we are dealing with Bills, the stakeholders of that Bill from any Ministry or the private sector are allowed to sit there for consultation. So, my good friend T.J., there is nothing out of order.

Hon. Ng’ongo: On a point of order, hon. Chairlady.

Hon. Chairlady: What is your point of order, hon. Ng’ongo? Let me also remind hon. Members that those pieces of papers hon. Kajwang is talking about were distributed from about 3.00 p.m. this afternoon.

Hon. Ng’ongo: Thank you, hon. Chairlady. I think if I got the Chair correctly, he has put it clearly that this is an amendment that is not on the Order Paper. I think we need to understand. I agree that Chair of Committees can bring amendments on the Floor of the House, but this is a money Bill and there is no exemption of money Bills going through the correct procedure. So, allowing even the Chair of the Committee to sneak in amendments on a money Bill is completely out of order. These amendments which did not follow the correct procedure as provided for in our Standing Orders should not be accepted.

The reason why these amendments---

Hon. Member: *Tosha!* That is enough! You can now sit down!

[The Chairlady (Dr. Laboso) left the Chair]

*[The Temporary Deputy Chairman
(Hon. Kajwang’) took the Chair]*

Hon. Ng'ongo: No, I have the Floor and the Chairlady has not told me to sit down. Hon. Chairman of the Committee, I hope you are listening. It is a coincidence that the hon. Temporary Deputy Chairman who raised this matter is presiding. I really do not know how the conflict of interest---

But hon. Temporary Deputy Chairman, I think you were right before you become the Chairman, that a money Bill is a different Bill. Let us respect money Bills. On money Bill, you have to process amendments through the right procedure otherwise we will allow Chairpersons of Committees to sneak in amendments here which we may regret later. Which are these amendments that are coming from some quarters? These people who are sneaking in papers are strangers in this House. So, hon. Temporary Deputy Chairman, help this House. These amendments are suspicious.

The Temporary Deputy Chairman (Hon. Kajwang'): Alright. The amendment has been moved. Hon. Members, you will have the right to either negate or pass it when we put it to vote. If it may appear not procedural, your vote will show it.

So, you can allow me to propose the Question. When I propose the Question, you can make that decision. Can we clearly have the amendment? Members are entitled to the text.

(Hon. Members consulted loudly)

Just a minute! Can the Chair recite clearly so that hon. Members know what you are talking about? They have a right to know.

Hon. Langat: Hon. Temporary Deputy Chair, I have read the amendment and this is now the second time.

The Temporary Deputy Chairperson (Hon. Kajwang'): No, no! You can make it the third time or fourth time provided hon. Members are very clear.

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I have read the amendment but let me read it out again. This is the new clause that I am proposing. It says "The Customs and Excise Act is amended in Section 91A by inserting the words "or wooden or metallic containers" immediately after the word "bottle" appearing in subsection 1A. This is the amendment that was agreed by the Committee.

This amendment has been given due process. It was approved by the Speaker and it was here by 2.00 p.m. So, this is a duly processed amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Well I do not want to stifle debate. The points that Members are raising are legitimate, in my view. Members have not known the text of the amendment before us because this is the Custom and Excise Act. So, they do not want to be caught unawares that they are moving something which will cause them problems later on. Can you tell them whether you are removing or inserting the words "or wooden or metal containers" after the word "bottle"? You are including the words "wooden and metal containers". That is the effect of this so that they do not go out there and find that there are containers in Mombasa finding their way into this country because of this amendment. This is what these people are saying. Can you make it a little ordinary so that an ordinary Member of this Assembly is able to follow? This is the direction I want you to take.

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I have come from there but I can do it if it is very necessary. This amendment touches on alcoholic drinks. The

Act which is in place now excludes metallic containers in terms of packaging those alcoholic drinks. Those containers are used internationally.

The Kenya Revenue Authority has no issue with this. I think it was exclusion in the last amendment. So, it is just an addition of metallic and wooden containers in the packaging of alcoholic drinks.

I also want to say that this is something that we canvassed in my Committee and it was agreed. The only problem is that it was not typed in the original Order Paper. I have circulated it and the Speaker has approved it.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be read
a Second Time, proposed)*

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Nyikal, can you be the last voice I hear on this?

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, one, I agree with the Leader of the Majority Party that I used to sit there as a mandarin. I have heard that word but I do not know what it means. However, I am now here in a different capacity. I am representing people. When I leave this House and go out, I must know exactly what I have passed even when saying a container of glass, metal or box. I need to know the effect of that on tax. That is why it is here.

It will only take a few minutes to know in terms of tax that this is what it will mean. If it has no effect on tax which we are discussing or no effect on people, why should we spend time on it? This is what I want to know so that next time they are demonstrating I do not look foolish that I passed something that I did not know.

The Temporary Deputy Chairman (Hon. Kajwang’): We appreciate that, hon. Nyikal. With the comments that have come from the Chair, I think we understand now where we are going. I propose the Question---

Hon. (Dr.) Nyikal: I still do not!

The Temporary Deputy Chairman (Hon. Kajwang’): Order!

*(Question, that the new clause be
read a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 5A

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, the following new clause be inserted immediately after Clause 5-

Amendments to
section 137 of
Cap.472.

5A. Section 137 of the Customs and Excise Act is amended by –

(a) deleting the proviso to subsection (1)

(b) inserting immediately after subsection (2) the following subsections –

(3) the duty on money transfer services shall be charged at the rate in force when the service is provided and shall be collected and paid by the cellular phone service providers, bank, money transfer agencies and other financial institutions;

(4) the duty on other fees charged by financial institutions shall be charged at the rate in force when the fee is being charged and shall be collected and paid by the financial institutions;

(5) the Commissioner may permit the payment of tax under subsection (1), (2), (3), and (4) to be deferred to a date not later than the twentieth day of the month following that on which then it becomes due.

(c) re-numbering subsection (3) as subsection (6)

This amendment relates to Clause 1 which had a big debate in the last Finance Bill. We had given them authority to levy these taxes but that clause itself was not inserted in the Bill. Therefore, we are making it expressly provided that the money transfer services shall be charged at the rate in force when the service is provided and shall be collected and paid by the cellular phone service providers, bank managers, agencies and other financial institutions. The duty and other fees charged by financial institutions shall be charged at a rate in force when the fee is being charged and shall be collected by the financial institutions.

We are simply introducing a charging clause for what already exists in the Act.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be read
a Second Time, proposed)*

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, this is a new clause. It was one of those that were circulated by 3.00 O’clock. I am sure you are following the debate on Section 137 of the Customs and Excise Act.

Hon. Ochieng: Thank you very much. I like the words being used by the Chairman of that Committee, that we are merely introducing a charging clause. Charging tax is not a small issue. So, he cannot use the word “merely” in a charging clause. He must explain to us the basis. New Clause 5A which we want to be part of the Act which we passed on 1st February, this year, mandates banks to charge some fees. I know that the banks started charging the fees from 1st July, this year and not February. What is the effect? Will we ask banks to remit money that they did not collect? What is the impact of backdating this? That is the problem that I have. I think the best practice would be to

charge from the day you start charging. You do not charge, take it back and say that we will start charging February this year.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, when you circulate this next time make sure that every Member has a copy because I do not think that every Member has a copy.

Hon. Ochieng, if you have this copy, you would have noticed that they are saying that the charging will be done at the rate in force when the service was provided. So, the commencement date or the effective date does not touch on this amendment. Am I right, hon. Chairman?

Hon. Langat: Hon. Temporary Deputy Chairman, there will be no effect. This was already going on. It is just a matter of formalising. People have been paying the tax since that time, under the force of the Fifth Schedule. So, nobody will be asked to pay anything extra. They have already been levying this tax and remitting it to KRA.

The Temporary Deputy Chairman (Mr. Kajwang’): Hon. Members, I want us to move very fast. We still have business to transact. Could we have the last word on this matter, hon. Mbadi?

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I am mixed up. I do not know whether this is the price for coming late. I know that these charges are there on mobile phones and all that but we have not been subjecting financial transfers and other financial transactions to a fee. This is being introduced for the first time. To me, that should not be accepted by this House because we are overtaxing Kenyans. I do not think it is acceptable to pay tax for transacting business in a bank. The Chairman of the Committee is deliberately avoiding that bit. He is somehow confusing us but I know that the financial institutions have not been paying tax.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Opiyo Wandayi, I have not heard your voice today. So, can you say something or did you press the button by mistake?

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added
to the Bill, put and agreed to)*

New Clause 30A

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, the following new clause be inserted immediately after clause 30-
Amendment
to section 31
of No. 4 of 2010

30A. Section 31 of the Alcoholic Drinks Control Act, 2010 is amended in subsection (2)(b) by inserting the words “or metallic containers” immediately after the word “bottles”.

Hon. Temporary Deputy Speaker, this is just harmonisation of the Customs and Excise Act and the Alcoholic Drinks Act as far as the packaging is concerned. So, it is just adding “metallic containers”.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, the amendment is on the Supplementary Order Paper, on page 302. So, I am sure that you have reflected on it.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Yes, hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Finance Bill (National Assembly Bill No.2 of 2013) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Hon. Deputy Speaker in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE FINANCE BILL

Hon. Kajwang’: Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Finance Bill (National Assembly Bill No.2 of 2013) and approved the same with amendments.

Hon. Langat: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. A.B. Duale seconded.

(Question proposed)

Hon. Deputy Speaker: Yes, hon. Mbadi.

Hon. Ng'ongo: Hon. Deputy Speaker, I just want to register my disappointment in the way my colleagues have treated this Bill for two reasons. Firstly, one of the cardinal principles of taxation is equity. You tax less the poor and tax more the rich. What I witnessed this afternoon, sadly, is that this House is very good at taxing the poor and protecting the rich. That is why they have rejected the Capital Gains Tax. Who in this country gets involved in capital gains? It is the rich people. It is those who can buy houses and sell them exorbitantly and those who can afford to buy land along Thika Road, which when it is developed its value increases tenfolds. However, the rich people, who have no voice and whose only power is to elect the same individuals who come to Parliament to legislate---

Hon. Njenga: Hon. Deputy Speaker, my friend, hon. Mbadi, is misleading the House. It is in bad faith to mislead the House. When you buy a house on Thika Road or wherever else, you stop being an investor and become a trader. Income Tax and Corporation Tax reach you. So, the hon. Member is misleading the House. Further, all the taxes that are collected are meant to improve the economic status of the poor, and not the rich.

With those remarks, I beg to say that the particular hon. Member is out of order.

Hon. Deputy Speaker: Yes, Chairman of Committee.

Hon. Langat: Hon. Deputy Speaker, I also want to say that hon. Mbadi is misleading the House.

Hon. Ng'ongo: On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Mbadi, please remember that this is the Third Reading. We are not debating the Bill any more.

Proceed, hon. Chairman.

Hon. Langat: Hon. Deputy Speaker, the hon. Member is misleading Kenyans to the extent of saying that this House rejected the Capital Gains Tax. It was ruled by the Speaker that we could not proceed with those amendments due to procedural issues. It is not that the House refused to endorse those taxes. So, he was misleading the House. He was actually making a political statement in the process.

Hon. Deputy Speaker: I can see a long list of contributors here. Hon. Mbadi, you have made your point. Hon. Francis Chachu Ganya, are you on a point of order?

Hon. Ganya: On a point of order, hon. Deputy Speaker. Is the Chair of the Committee in order to mislead this House that because of the procedural issues raised by the Speaker, we were not given the chance to debate this when actually a committee of the House sat? It is the Committee which came up with that recommendation and refused those amendments proposed by their members. The Committee is a unit of this House. It is the Committee that has denied the poor the resources that they require through taxation and has ensured that the rich of the rich gain and benefit.

Hon. Deputy Speaker: Okay, hon. Members. We need to move. Hon. James Wandayi.

Hon. Wandayi: I have withdrawn it, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. Thank you. Hon. Grace Kipchoim. Do you want to make a comment?

Hon. (Ms.) Kipchoim: No, hon. Deputy Speaker.

Hon. Deputy Speaker: Members, you are now playing with these gadgets. I have given the Floor to Eng. Gumbo.

Hon. (Eng.) Gumbo: Hon. Deputy Speaker, I thank you. I just want to make a brief comment. The issues that have been raised by my colleagues about amendments to Bills involving taxation – amendments just appearing on the Floor of the House without Members being prepared should be taken seriously. Issues of taxation are very delicate and they touch on the poorest of the poor in Kenya. I want to remind my colleagues that we may be thinking that we are doing service to ourselves but we are not. Some of the most acknowledged leaders in the world include Dr. Manmohan Singh, the Prime Minister of India and Luiz Inacio Lula da Silva, the former President of Brazil. There is one thing in common among the two, that both of them were former peasants. If we continue this way, we are going to give the impression that some of us who are in leadership have no idea of what the poor people of Kenya go through. It is something that we have to take very seriously so that we do not gloss over issues of taxation when the majority of people in this country are actually very poor and can hardly make ends meet. That is my comment.

Hon. Deputy Speaker: David Gikaria.

Hon. Gikaria: Thank you, hon. Deputy Speaker. I want to correct a few issues that have been raised by hon. Mbadi. If you look at my area, there are a few people who are now coming together to form a small co-operative society with the aim of buying land and property. Their intention is to make money. It is not the rich only who buy property in upmarket areas. All I want to say is that, as the speakers have said, whatever money is collected is for purposes of giving services to the poor and it is a misconception to say that we are taxing the poor without considering how much the rich are paying. I want to say that the amendments that have been brought by the Committee are in place and we support them so that we can be able to move. Thank you.

Hon. Deputy Speaker: Order, hon. Members. You will still have an opportunity to make a few comments after I put the Question.

(Question put and agreed to)

Hon. Langat: Hon. Deputy Speaker, I beg to move that the Finance Bill, (National Assembly Bill No.2 of 2013) be now read the Third Time.

Hon. Njenga seconded.

(Question proposed)

Hon. Deputy Speaker: Kirui Limo.

Hon. Limo: Thank you, hon. Deputy Speaker. I rise to make a few comments on the Finance Bill, 2013. One of the key moves which we have really done on this is the reduction of the percentage which was actually required when you had a dispute with the KRA. That is a very good move. We know that in this country there are many investors who have been shying away because of that previous requirement. We always have

disputes in taxation. The requirement that you pay 100 per cent and then you dispute figures has really brought a lot of problems to the investors, but the new requirement of paying 30 per cent will encourage investors. Two, the provision that once the case has been determined refund must be done within six months is a good move because we have had many cases where businesspeople have actually had to stay without refunds for a very long time. That is a good move. The other issue---

The Deputy Speaker: Now, hon. Limo, this is not debate time. So, just make brief comments. Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Deputy Speaker. Just very briefly, first of all I want to say I am really disappointed at the way we have not looked adequately at the issue of double taxation. I am disappointed at our overtaxing Kenyans and especially poor Kenyans.

Finally, hon. Deputy Speaker, I would want to encourage the same thing I said before; let us give time to debate. This is a House of debate. When we rush things and Kenyans are not satisfied, they tell us that we were in the House when the matter was passed. Even when I do not have numbers, I want my voice to be heard in the opposite.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, and your voice has been heard and will continue. Ali Rasso Dido.

Hon. Dido: Thank you, hon. Deputy Speaker. I just want to make a few comments on this. I think taxation is a serious matter, without making a political speech here. As legislators, we must say that taxes must be clearly spelt out so that entrepreneurs and investors should note that these are the taxes they must pay.

Secondly, without taxation we cannot grow the economy but that tax must go to all the deserving areas. Also, we must reduce corruption so that people are not taxed and the money goes down the drain.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. Hon. Joyce Emanikor.

Hon. (Ms.) Emanikor: Thank you, hon. Deputy Speaker. I rise to register my disappointment while I know that I do not like some faces looking at me.

(Laughter)

While I support the Bill because it is cushioning the poor, we have also ensured that the Exchequer will get revenue to offer services to Kenyans. My disappointment is on the way the debate was handled during the Committee Stage where first, the amendment papers came in late. We did not have time and we also realised that not all of those who were saying “yes” were sure of whether to say “yes” or “no”. It is because they did not understand and the debate was not given enough time. Simple but fundamental questions were not answered. A question, for instance, asked by hon. Dr. Nyikal on what effect the packaging of alcohol in metallic and wooden containers would have on tax was a very simple question that would have even reduced the tension, but it was actually brushed off. That is my disappointment.

I stand to support.

Hon. Gaichuhie: Thank you, hon. Deputy Speaker. I also want to thank my colleagues for having passed this Bill. I want to state here that tax matters are not matters

you can just discuss in this House. Our Committee is open. If you have any tax matters, please, come to the Committee where we can have time and quantify what effects tax has so that when we come to the Floor, we are able to discuss with enough information. Otherwise, in the House alone, it is very hard to quantify the effects of taxation. I urge hon. Members to appear before our Committee from now up to June. It is open. Come we discuss so that we can have good laws in place.

Hon. (Dr.) Nyikal: Hon. Deputy Speaker, I think my point has been raised but I will repeat it. Most people here are intelligent enough to follow issues. It is our duty to bring out the facts where things are being said. Nobody is going to be here for six months or even one year and read all the laws, particularly when you are making amendments and you say, "I" is removed and replaced---". You need to say what the impact that has on the tax and on the person on the street. I have said it before and a way has to be found where we do that.

With regard to our Committee, I think we must go back and look at new ways of raising tax instead of looking at the people, particularly the poor people--- I can see the rich people are protected. We must look at new ways of raising tax other than just looking at the average person.

Hon. Mwaura: Hon. Deputy Speaker there are very many good provisions in this Bill. For example, there was a provision about ensuring that terrorism does not gain foot through financing. I was quite disappointed by that tax although it was anchored on railway development. In my opinion, it ought to have been different from what was proposed.

We seem to be looking for money for the poor. Even if they were to come together, as hon. Gikaria has said, in co-operatives where people are making a largesse, I think that is where we should have taxed most. My disappointment is because I witnessed in this House today Members who come through party listing and demean fellow Members. I do not think we are just an addendum of this House.

Hon. A.B. Duale: Hon. Deputy Speaker, I want to thank my colleagues for passing the Finance Bill. We have finished the amendments within the stipulated period – our deadline was 27th September 2013.

Under the Bill of Rights as much as the citizenry has a right to get service from the Government, the citizenry has an obligation to play its role in taxation in order to raise revenue.

Speaking as a Member of the coalition that is in Government, I know that we have a blueprint. We want to bring investors. We will take care of those who will be affected by the Capital Gains Tax. We will care for the poor. We will raise more money so that we create safety nets for the poor in terms of health, water, sanitation and education.

Taxation, globally, is supposed to be equity. The rich, investors and the middle class are supposed to cushion the poor. As much as we want to raise taxes, we need to create a balance so that all sectors of our society are committed.

Hon. Angwenyi: Hon. Deputy Speaker, I want to join my colleagues in thanking this House for passing this Bill. It is unfortunate that we must tax the poor citizens of this country. For them to get some of the services, we must tax Kenyans, including them. We need to raise more revenue so that we can spread it out especially to the marginalized areas of this country. That way, the country will move together as one single nation.

We should not tax too much potential investors. If we stifle investments, we will not get jobs. We will be unable to create wealth and this country will not move forward. We must ensure that we oversee the use of the revenues that we raise through taxation.

Hon. Deputy Speaker: Hon. Members, I realize that there is a lot interest in this Bill. I can give the Chairman the last chance.

Hon. Langat: Hon. Deputy Speaker, I want to thank hon. Members. After here, the House must own the Bill. I want to answer some of the questions.

Hon. Dr. Nyikal wanted to know what effect additional metallic containers will have in the tax. I want to tell him that it will not have any negative impact. We are just enhancing the variety of materials available for packaging of alcohol, so that we can enable the practitioners to package it in a variety of materials.

The other thing is that, it is the responsibility of every hon. Member to prepare himself for the Bills that are before the House. I have heard some hon. Members say that this was not done. It is the responsibility of every hon. Member to prepare for any Bill. That is why the Order Paper is placed in the website more than 12 hours before the sitting of the House. So, I want to request hon. Members that we support the Bill and, anything else we can consider it as a Committee.

Thank you.

(Question put and agreed to)

(Several hon. Members stood up in their places)

Hon. Deputy Speaker: You do not have the numbers. We move to the next Order.

Hon. Ng'ongo: We have the numbers!

Hon. Deputy Speaker: You do not have 30 hon. Members, hon. Ng'ongo.

Hon. Member: They are 20.

(The Bill was accordingly read the Third Time and passed)

Second Reading

NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL

Hon. Wandayi: On a point order, hon. Deputy Speaker. Earlier today, the Speaker gave us a leeway that later in the day we could raise some issues pertaining to this Bill that is before the House.

Hon. Deputy Speaker, I rise under Standing Order 47(3)(b). Without really reading it, that Standing Order basically talks about the Speaker's discretion to determine which Motion should come before the House. My submission is that, that discretion is open-ended. It has to be exercised within the confines of constitutionalism, good governance and democratic principles.

The reason why the Police Service Commission was created and given specific powers was out of the many years of Kenyans yearning for reforms in the police sector. If you look at Article 249---

Hon. Deputy Speaker: Hon. Wandayi, you know we have been on this matter and you have been on it from the beginning. Allow the Motion on this Bill to, first of all, be moved, seconded and you will have ample time to prosecute the issues that you want to prosecute.

Hon. Wandayi: Hon. Deputy Speaker, I stand guided, but I think---

Hon. Deputy Speaker: Please, allow the Mover to move the Motion on the Bill then you can proceed with the issues that you have.

Can we have the Motion on the Bill moved. Who is the Mover of this Motion, the Leader of Majority Party? Order! Order! The Speaker did not say at any time; he said that we will give a ruling but he did not indicate when. Hon. Wandayi, you have been on these two Bills right from the beginning, if I remember. You will have ample time to be heard. This is a debating Chamber and you are allowed to have your time and say. So, please just be patient and you will have your say. However, let us be procedural or let us do it the way it should be done.

Hon. Abongotum: Hon. Deputy Speaker, since the Mover of the Bill is not here, I want to propose that we postpone it up to tomorrow.

*(Hon. A.B. Duale entered the Chamber
without bowing to the Chair)*

Hon. Deputy Speaker: Hon. Majority Leader, I order you to move the Bill or tell us what is not in order.

Hon. A.B. Duale: Hon. Deputy Speaker, I am ready to move the Bill.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Deputy Speaker. I am perturbed. Parliament has spent millions taking us through an induction course and the Leader of Majority Party is serving his second term and over and above that, he is also the leader or the purported Leader of the Majority. Has the Chair not seen the Leader of the Majority Party walk across like this is Garissa Market? He has no respect for this House. That is why I rose earlier on, on a point of order for hon. Mbadi to teach him some *nyathe*. He needs to know some *nyathe*. He needs to follow the rules of this House. He must know people. You are seated there as the Chair. He must give the Chair respect. As the Majority Leader, he must follow the rules of this House.

Hon. Deputy Speaker: Thank you, hon. Millie Odhiambo. The Majority Leader, I think nobody is above the law. When we are in the House, let us all respect the Chair.

(Applause)

*(Hon. A.B. Duale went to the Bar and
bowed to the Chair)*

I do not know whether that constitutes the *nyathe* that hon. Millie has talked about.

Hon. A.B. Duale: Hon. Deputy Speaker, I want to lead by example. With the history I had with one, Millie Odhiambo before one Mr. Mabona came on board, I know what *nyathe* means. I had known this from this beautiful girl.

I beg to move that the National Police Service Commission (Amendment) Bill, (National Assembly Bill No.17 of 2013) be now read a Second Time.

An hon. Member: Read it out!

Hon. A.B. Duale: Hon. Deputy Speaker, you can protect me because I was accused of behaving like I was in Garissa Market. My colleague is behaving like he is in the Suba Fish Market. It is only that different markets have some significance.

This is a very important Bill. Hon. Millie Odhiambo raised a very fundamental point that Members are now bound to. This is the Second Reading. Those who are not in the House when we reach the Committee Stage next week should not complain that they did not get a chance.

Hon. Deputy Speaker, what prompted us to do this amendment as a country was because of a number of issues. One, there was a complete breakdown between the role of the Inspector General and that of the National Police Service. We felt that the Committee would deal with this.

Section 10(1)(a) of the Act is being amended. The current provision of that Act is to keep under review all matters relating to members of the service. What the proposed amendment is trying to add is that this should be done in consultation with the Inspector General. There is need to have consultation over matters to do with human resource. The Commission will still have the mandate over the human resource but there is need to consult daily, weekly or even quarterly because the Inspector General is the command centre.

Section 101(g) of the same clause deals with summoning of witnesses to assist in the process of investigation. Here we feel that an amendment should be done. At what level can the Commission investigate? The Commission cannot investigate a criminal act. The amendment is adding that the Commission shall not undertake investigation on criminal matters; that is the purview of the CID.

Because of time factor, there are new sections "F", "K," and "R" of the same Section 10 which will be amended. All these are being done so that the roles are defined and then they are confined within the mandate of the Police Service Act, under Article 246 of the Constitution

Clause 10(4) is being amended. What they have added is that the disciplinary control, as envisaged under Article 246(3), shall be limited to the development of fair and clear--- Of course, Section 11(1) is being amended. The Second Schedule of the Act is also being amended.

I beg to move.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, it is now time to adjourn the business of the House. This House shall stand adjourned until Tomorrow, Thursday 26th September, 2013 at 2.30p.m.

The House rose at 6.30p.m.