

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 15th October 2013

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

The following Papers were laid on the Table: -

The Annual Report and Financial Statements of Kenya National Bureau of Statistics for the year ended 2009/2010.

The Annual Report and Financial Statements of Kenya National Bureau of Statistics for the year ended 2011/2012.

The Annual Report and Financial Statements of Kenya School of Law for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

The Annual Report and Financial Statements of Maseno University for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General and Financial Statements of the University of Nairobi for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

(By hon. A.B. Duale)

REQUEST FOR STATEMENT

Hon. Speaker: Hon. Alice Ng'ang'a, you have not placed a request but I can see that your name is on the list of those Members who have Statement requests to make.

DEMOLITION OF WAREHOUSES IN THIKA TOWN

Hon. (Ms.) A.W. Ng'ang'a: Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding irregular demolitions.

Demolition of some buildings and properties has taken place before the affected persons were given prior notice. A case in point is the recent demolition of warehouses belonging to some businesspeople based in Thika Town. The demolition was conducted by the county government and appeared to have targeted properties belonging to members of the Asian community. This was done without prior notice or any reasons given to the victims. This was done despite those businesspeople having provided services and means of livelihood to over 2,000 people in that area.

Hon. Speaker, in his Statement, the Chairperson should inquire into and report on the following: -

(i) Reasons for the demotions, including information on whether notices were given.

(ii) Any planned compensation for the loss of property that the owners incurred and for the livelihood loss for the employees.

(iii) Measures put in place by the Government to ensure the security of investors, workers and properties, given the constitutional right given to the citizens of this country to live and invest in any region.

Hon. Speaker, this is a matter of national importance and, therefore, I would like the Statement to be brought to the House very soon. I understand that members of the Asian community are meeting to decide whether to invest again in Thika and Kiambu County in general, citing harassment. I note that those people have been very good to us, and have stayed there for a long time. They are committed to social responsibility. They contribute to our economic growth. I am also worried about the people who work in their factories. I would urge that we ventilate on this issue because it has really affected the victims of the said demolitions. Right now, they are not operational. There is nobody to protect them, especially because some of them have just come in.

In some counties, we have seen governors asking investors to go and invest there, with the promise of being given free land to carry out their investments. In our county, and especially in my constituency, these people are already there but we are scaring them away. They are no longer willing to invest because they are being harassed and they cannot report to anybody. This development has made the residents of Thika Town very sad because they no longer go to work. They are wondering who is next to be hit.

Hon. Speaker, please, allow me to give this chance to some hon. Members who would wish to contribute to this matter, especially hon. Wamalwa and hon. Shebesh, amongst others.

Hon. Speaker: Hon. Alice Ng'ang'a, you rose on a request for a Statement.

Hon. (Ms.) A.W. Ng'ang'a: Hon. Speaker, the reason for requesting you to allow hon. Members to ventilate on the matter is because it is just like any other matter of national importance. Whether we use the right procedure or not, this is the only place where we can address such matters as they come up. We need to address them as they come up and ensure that they do not spread out to other places. Please, give hon. Members the platform to ventilate the matter.

Hon. Speaker: Hon. Alice Ng'ang'a, unfortunately, my background is such that I know, without fear of contradiction, that this is a House of rules and procedures. My first responsibility is to ensure that those rules and procedures are upheld. Therefore, in as much as I have sympathy with the request, I cannot breach the rules. Therefore, I would want to hear from the Chairperson of the Committee, if he or she is present, as to what their position is and how soon they think they can come with the Report on the request, so that it can be appropriately deliberated upon.

Where is the Chairperson of the Departmental Committee on Transport, Public Works and Housing, hon. Maina Kamanda?

Hon. Kamanda: Thank you, hon. Speaker.

Hon. Speaker: Hon. Kamanda, I had not noticed your request because the first name appearing here is not very familiar. I am talking about the name "William".

(Laughter)

Hon. Kamanda: Hon. Speaker, I want to support and agree with the hon. Member that this is a very important issue. This is something that has been done by the county government and I would request a maximum of two weeks so that we can write to the Governor. Within those two weeks, we will bring an answer here.

Hon. (Ms.) A.W. Ng'ang'a: Hon. Speaker, we are talking about these investors meeting this week to decide on the way forward. Their way forward might be withdrawing from investing in Thika Town, including Kiambu Town. A period of two weeks is long and I will not be helping them. It should be less than a week because this is a matter of national importance.

Hon. Speaker: Hon. Kamanda, remember that under Article 95(1) of the Constitution, you represent the people in the constituencies and other special interests. So, hon. Alice Ng'ang'a feels that the matter is---

Hon. Kamanda: Hon. Speaker, this is a case that I will need guidance by you so that we summon the Governor to our meeting. We need to be guided whether we can summon the Governor to appear before our Committee.

(Hon. Members remained standing while the Speaker was on his feet)

Hon. Speaker: Hon. Kamanda and I want to say this--- Hon. Nkaissery, please, take a seat. It will be easier to consult with hon. Jimmy Githinji. Those who are still walking may have to freeze because they are taking long. Maybe lunch was too sumptuous. Hon. Waluke, freeze where you are!

Hon. Members, for avoidance of doubt, and I think hon. Kamanda has raised an issue which I know may be exercising the minds of many of you regarding certain statements that have been uttered, I just want to make it clear to ourselves and the rest of the country that under Article 124 of the Constitution, Parliament is empowered to constitute committees. Article 125 of the Constitution covers power to call for evidence by committees. It is very clear and I want to read it for avoidance doubt:

“Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.”

Hon. Members, if governors fall under the category of persons then you will be acting within your powers.

(Laughter)

Article 125(2) states thus: “For the purposes of Clause (1), a House of Parliament and any of its committees has the same powers as the High Court-

(a) to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;

(b) to compel the production of documents; and

(c) to issue a commission or request to examine witnesses abroad.”

So, hon. Members, even abroad. I want this understood not just by us, but even by other people outside of this Assembly. Parliament and its committees have the power to summon any person.

(Laughter)

I am laying this emphasis deliberately and I am sure you know why.

Hon. Members: Yes.

Hon. Speaker: There are some people who think that they appear here at the convenience of the House or committees of the House. The committees have that power. I will not receive any letters from anybody purporting to give excuses as to why they are not able to appear before a committee of the House. They must appear before those committees and excuse themselves there.

(Applause)

That is, indeed, the proper procedure. The Speaker is not going to micromanage committees. Therefore, if any person is summoned to appear before a committee, they are obliged and duty bound by the Constitution to appear there and excuse themselves before those committees and not before the Speaker. This must be made clear and understood to all and sundry.

(Applause)

Hon. Kamanda: Thank you for that guidance and ruling, hon. Speaker. I have asked that question because before we have had people who have been invited by House committees, but they refuse to attend. It is good that you have now clarified. I think they have heard. The Departmental Committee on Justice and Legal Affairs summoned some people – I do not want to mention names--- The Chief Justice was summoned by the committee and he refused to appear and then went to the media to say that he could not honour the summons by the Committee. It is on that basis that I wanted that ruling. Thank you very much.

Hon. Speaker: Hon. Kamanda, I will even go further and explain this: Article 95 deals with the role of the National Assembly. Article 95(5) states thus:

“The National Assembly-

(a) reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and

(b) exercises oversight of State organs.”

If you read Article 260, it states that all commissions, be they independent or not are State organs.

(Loud consultations)

I think we must appreciate--- I know everybody may be a bit unclear because it is a new governance structure, but this is what Kenyans have given themselves. So, everybody must play their part and help others to succeed. If they are not then they will be liable to sanctions.

Proceed!

The hon. Jamleck Kamau is supposed to make two responses.

Hon. Kamau: Thank you, hon. Speaker.

Hon. Speaker: Sorry. Just before you respond I can see there are a number of interventions here. Are they points of order?

Hon. Kathuri: Yes, hon. Speaker. I have a point of order. When you were delivering the ruling which you have just made, you issued an order prior to the commencement of the main substance of your ruling that hon. Waluke should freeze. Instead of freezing, he sat down. Is it in order for hon. Waluke to refuse to freeze when you have expressly stated that he freezes? Instead, he sits down. Thank you, hon. Speaker.

(Laughter)

Hon. Speaker: Well, the English language is a growing language. So, hon. Waluke maybe for the time being may have understood to freeze as to sit.

(Laughter)

However, in future you do not sit when you are told to freeze. You just stand still. Hon. Keynan.

POINT OF ORDER

CONSIDERED RULING ON APPEARANCE OF CABINET SECRETARIES BEFORE COMMITTEES

Hon. Keynan: Thank you, hon. Speaker. Pursuant to your considered guidance to the House, there is a letter from the Office of the Attorney-General, the State Law Office written to the Speaker of the Senate and also copied to you and I felt I should share the same with the Members so that we see where this fits in, in the light of the direction you have given right now.

Hon. Speaker, this letter is dated 28th August, 2013. It is addressed to hon. Ekwere Ethuro, Speaker, Senate and hon. Justin Muturi, Speaker, National Assembly. I want to read it so that Members get the main thought of this particular letter. It reads: -

“Dear Speaker,

RE: APPEARANCE BEFORE PARLIAMENTARY COMMITTEES

The office has received numerous invitations to appear before several committees of Parliament and I have endeavoured to be present on as many occasions as I have been able to. On a number of occasions when I have been unable to attend, the committees have expressed their disapproval in a very strong language. First, I wish to inform that the National Security Council meets every Tuesday while the Cabinet meets every Thursday. I am also aware that Parliament does not sit on Monday and Friday. There is therefore need for the committees to arrange for meetings after consultation with my office on the only day available to both, which is Wednesday.

Secondly, I wish to request you to draw your committee’s attention to the express provision of Article 156 of the Constitution which states:

“(1) There is established the office of the Attorney-General.

(2) The Attorney-General shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.

(3) The qualifications for appointment as Attorney-General are the same as for appointment to the office of Chief Justice.

(4) The Attorney-General –

(a) is the principal legal adviser to the Government;

(b) shall represent the national government in court or in any other legal proceedings to which the national government is party, other than criminal proceedings and

(c) shall perform any other functions conferred on the office by an Act of Parliament or by the President.

(5) The Attorney-General shall have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party.

(6) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.

(7) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or specific instructions.”

I and the Solicitor-General and three deputies shall endeavour to avail ourselves as often as practically possible but we will require the understanding of committees where this is not possible. I wish to seek their co-operation with any officer of the Office of the Attorney-General and Department of Justice appearing before the committees.

Yours faithfully,

Githu Muigai.”

Hon. Speaker, the tone and the input of this letter is like it is a circular to the two Speakers. It is directly the opposite of what you have just stated because he says he is not available on Tuesdays because there is a National Security Council meeting. He also says he is not available on Thursdays because there is a purported Cabinet meeting. He also says he knows that Monday and Friday Parliament does not sit and he is also aware that in his own mind, Wednesday is a parliamentary day and, therefore, as far as this circular is concerned--- This is the first time that I am seeing a circular from a member of the Executive addressed to the Speakers of both Houses. I felt duty bound to bring this to the attention of the House because if you take a cue from this, then from what you have been seeing of late where Cabinet Secretaries (CSs) and other entities in the name of representing the Executive refuse to appear before committees, then I am sure they must have been advised.

Hon. Speaker, I also want to get your guidance. When we invite the Attorney General, he is not invited as an adviser to Parliament because Parliament has its own Legal Department. The Attorney-General is invited as a witness before any of the departmental committees and, therefore, I do not know in which context this circular was written to the two Speakers of the House. I felt we should get your guidance on this because as a result of this circular, the Attorney-General has failed to honour appearances before so many committees and in the process so many other members of the Executive are aping him. If we were to go like this and this is directly in contradiction to what you have said, it is wrong. I am aware and alive to the provisions of Articles 94, 95 as read with Article 125 of the Constitution, taking into account the provisions of Standing Order No.191 and Section 6 of the Powers and Privileges Act.

Hon. Speaker, notwithstanding all these, I stand here to seek your guidance because if this remains as an official document within the archives of the 11th Parliament, we will have gone down in history as negating the gains that we have made since 1998 when we removed Parliament from the strong ambit of the Executive, when everything was decided elsewhere and

Parliament was just used as a conveyor belt. I am sure this is not where we want to appear or to be placed as the 11th Parliament.

Hon. Speaker, we are in a presidential system where the work of Parliament is being discharged at the committee level and the Attorney General, being a very important player in the democratic management of the affairs of the Republic of Kenya, setting such a precedent, in my opinion, is an affront to the rule of law and against our own existence as the Legislature. It is an affront against the leadership of the institution of Parliament. It is because of this that I said we needed to get the considered guidance of the Speaker so that Members of Parliament and in particular the leadership of committees know that, indeed, what the AG has done is not only unconstitutional, un-procedural but it is also something that is deliberately tailor-made to make sure that committees do not work and by extension the 11th Parliament fails.

Hon. Speaker, I stand to seek your guidance. Thank you and I wish to table this letter.

(Hon. Keynan laid the document on the Table)

Hon. Speaker: Yes, hon. Kamama.

Hon. Abongotum: Thank you very much, hon. Speaker for giving me this chance. I just want to point out one thing pursuant to your directives and guidance and pursuant to what hon. Keynan raised; some Cabinet Secretaries are still living in the past. They are actually still practising the old Constitution and not the new one. So, they need to be given direction that this is purely a presidential system and that they must work very closely with committees, if they have to discharge their mandates.

Hon. Speaker, secondly, most of us has had a chance of visiting the United States of America (USA) or countries that practise the presidential system. Maybe most of them have not ventured to know how a presidential system works. So, we want to advise our Cabinet Secretaries, the Executive or our Leader of Majority Party who is here that they should benchmark and know what happens in the USA, Nigeria and Rwanda because these are the few countries that practise the presidential system up to and including Philippines.

Hon. Speaker, so, at this rate we are going to have problems with Cabinet Secretaries and even the Attorney General himself. We want to call upon your office to issue a circular to all Cabinet Secretaries that when they are summoned by Parliament, they must be here and they cannot come here at their own whims or discretion. They must come here because Article 125 says this.

Hon. Speaker, lastly, you can go further and advise the Cabinet, and the Leader of Majority Party is here, to be more serious with committees because at this rate we may actually take stern action against Cabinet Secretaries who are not complying with the provisions of the law. Thank you.

(Applause)

Hon. Wakhungu: Thank you, hon. Speaker, Sir. First is to thank you for the direction you have given in line with Article 125 of the Constitution. To add to that, the work of committees has heavily been hindered by Cabinet Secretaries. Article 152(5)(c) of the Constitution says:

“The President –

(c) shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under Clauses (6) to (10).”

Clause 6 states:

“A member of the National Assembly, supported by at least one-quarter of all the Members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary”.

This is the time for us to crack the whip. I was just seeking your guidance as you give that direction so that the House can read that clause for the way forward.

Thank you, hon. Speaker, Sir.

Hon. (Ms.) Shebesh: Thank you, hon. Speaker, Sir. I am appalled by the content of the letter coming from the Attorney General. I do not know whether it shows disrespect to the Chairs of Committees or to the position of the Speaker of the National Assembly. It is probably good for people to know that in the process of the President appointing Cabinet Secretaries of his choice, he also has the option of appointing an Attorney General of his choice. As we know, the Attorney General was appointed in the last Parliament.

Let it be clear in your communication to the Cabinet Secretaries and the Attorney General that either they are hiding the fact that they cannot do their work or because he is the legal representative of Government, he is portraying to Committees of this House that the Government cannot defend its legal position, a position I am sure the Jubilee Government would not want the Committees to think of. He is not only embarrassing the President, but also the Jubilee Members and we are therefore saying that it is about time the President, as he looked for Cabinet Secretaries, also explores the choice of getting another Attorney General.

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Apart from being the Member for Garissa Township, I happen to hold brief for the Executive. In the first place, I do not know how hon. Keynan is in possession of a letter which was addressed to the Speaker of the National Assembly and that of the Senate. But that is for you to find out; I am not sure whether tomorrow he will not bring a letter from my office.

When Kenyans went to the polls in a referendum to choose the Constitution, we chose three systems of governance which are interdependent and related. If I may continue because I have listened to hon. Keynan articulate his issues for about---

Hon. Speaker: Hon. Keynan on a point of order.

Hon. Keynan: Thank you, hon. Speaker, Sir. I stand on a point of order. I have known hon. A.B. Duale for so many years now, but I have not known him to be a sycophant of that level.

(Laughter)

That letter is a public document and, indeed, let me say, under Article 35 of the Constitution, it is not only hon. Keynan who is a privileged member of the Kenyan society, every Kenyan is entitled to right of access to information. Therefore, getting a document which was copied to the Chair of Committees, indeed there is nothing mischievous about it. I hope hon. Duale even as he purports to hold brief for the Executive will also appreciate that we are living in a new world under a new dispensation. Therefore, I am here to project, promote and protect the dignity of the 11th Parliament and this is one thing I will continue doing regardless of whether that document was illegally in my possession. It was not something that I picked from the

Speaker's Office. I am supposed to be one of the recipients because it was copied to me as the Chair of one of the Committees.

The best way for hon. Duale to protect the Executive here is to tell them the right thing to do. I want democracy in this House. Will I be in order to ask hon. Duale to withdraw his remarks because he has imputed improper motive on the part of hon. Keynan, that I had the document illegally? I want him to withdraw unconditionally, apologize to me and the House, and then he can execute what he wanted to say.

(Applause)

Hon. A.B. Duale: Just like hon. Millie Odhiambo, I have a very long history with hon. Keynan, dating back to the days at Moi University. He knows, even if he looked at me in the eyes, I have never been a sycophant.

(Laughter)

I chose, on 4th March 2013, which coalition to join and hon. Keynan chose which one to join. Mine happened to be the winning coalition which formed the Government and that is why I am holding brief for the Executive. It is unfortunate for those who are saying shame, at least they chose a different one and they must be contented in their position.

Hon. Members: Shame! Shame!

Hon. Speaker: Just a minute, hon. Duale. Hon. Members, you can laugh or cheer but surely to start shouting certain words, why would hon. Duale be ashamed? Ashamed of what! Similarly, you have no reason to be ashamed.

(Laughter)

Hon. A.B. Duale: I am a proud man to hold brief for a Government led by President Uhuru Kenyatta and his Deputy William Ruto.

(Hon. Members raised hands)

Hon. Speaker: Hon. Members, you have no business raising hands here.

Hon. A.B. Duale: I will go back to my issue that the Constitution is very clear. Article 19 introduces Chapter Four on the Bill of Rights and Article 93 touches on the Legislature and its powers. Article 129---

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

Hon. Speaker: Yes, let us hear your point of order.

Hon. Bosire: Thank you, hon. Speaker, Sir. I am seeking your guidance on whether the Leader of Majority Party is in order to say he has never been a sycophant. As the Leader of Majority Party serving the Government side, does he have an option other than to be a sycophant of that side?

Hon. Speaker: That is frivolous; sit down and if you repeat it you will go out. Do not be frivolous; you are reducing the House. We are not going to entertain you.

(Laughter)

Hon. A.B. Duale: I am sure the people the Member represents were expecting him to raise a more serious and fundamental point of order. I am sure Kitutu Masaba voters are watching and they will have their day because of what their Member of Parliament has said. If I may continue, the word “sycophant” is relative. It depends on which school you went to and who taught you English.

Article 93 of the Constitution introduces Chapter Eight on the Legislature up to Article 125. Article 129 begins Chapter Nine on the Executive and Article 159 begins Chapter 10 on the Judiciary. I am sure no Member of the Executive has been summoned to Parliament and refused to come. It is unfortunate if the Attorney General wrote that letter, we will deal with that at its time. The Government which President Uhuru Muigai Kenyatta leads is one that respects Parliament. It is a new system. When a Member of the Executive is summoned by Parliament, Articles 125 and 124 will be used. My good friend, hon. Keynan and hon. Shebesh were with me in a number of Committees in the last Parliament where people were summoned and asked hard questions. This matter before us is one that should be discussed within the context of a presidential system.

Hon. Speaker, under Article 152 Cabinet Secretaries, whether in this country or in the United States of America, know that the function of Parliament is oversight. Where there are issues, the same Constitution, Standing Orders and the Committees of this House will find the exit strategy. Even before the President sacks a Cabinet, the process is documented in this Constitution and the Standing Orders.

Hon. Speaker, I want to undertake that I will not use the words “rein on them”, but they must allow Parliament to execute its mandate. They must follow the Constitution as prescribed so that Parliament and its Committees have a very strong and powerful constitutional responsibility to oversee the Executive; whether in its own departments, Ministries or even parastatals.

So, with the Chair’s indulgence, I am sure I will pass the message. On a lighter touch, I would advise hon. Keynan that as much as he wants to use Article 35 of the Constitution on the freedom of access to information, let him be candid and tell the country how he got access to that letter. Did he break into the office or the registry of the Speaker to access that document or he was given by somebody? We need to know how he got that document because it is addressed to you, hon. Speaker. Before I withdraw, hon. Keynan will not run away from that.

Hon. Speaker: Hon. Members, this is a very simple matter because the letter that hon. Keynan read out is addressed to the Speaker of the Senate and myself. I saw it, but it is unsolicited for. It was sent to the Clerk to circulate to all Committees to note and deal. Therefore, hon. Keynan and I believe even hon. Members of his Committee have a right to be in possession of a copy of that letter.

(Applause)

Indeed, hon. Keynan has laid a copy on the Table. I noted it and marked it to the Clerk to deal with it as appropriate. So, it is not a secretive document. But there is a more serious issue here which we need to appreciate. The Executive out there must understand its place in relation to the Legislature. That is more important to me. I can see there are few hon. Members who still want to contribute on this. Hon. Keynan, you have already prosecuted---

Hon. Keynan: But I am being accused of having it illegally!

Hon. Speaker: But as to where you got it from, it should not worry you. I am aware that you are supposed to be in possession of a copy of that letter. It should not be a contentious matter.

Hon. Alouch: Thank you, hon. Speaker. The tone of that letter by hon. Attorney-General is quite abrasive and unnecessarily combative. I thought the Leader of Majority Party would have addressed his mind to the responsibilities of the Attorney General as set up in the Constitution, which is under Article 156(4)(a) to (c). I thought he would address his mind to the thin line between the roles of the Attorney-General as principal legal advisor to the Government and his responsibility as a witness to a Committee of Parliament. This is because the hon. Attorney-General seems to be confused about those two roles. When he is invited to come to the Committee of Parliament, he is not coming to offer advice; he is coming to be interrogated. He should understand that.

So, as you give your communication, I urge you to address that issue as well. Thank you.

Hon. Njagagua: Thank you, hon. Speaker. I am just seeking guidance and direction from the Chair because I have heard certain hon. Members advising you to write to the Cabinet Secretary. I am aware that there is what we call “separation of powers” between the Executive, Judiciary and the Legislature. So where does the Speaker come in to write to Ministries advising the Cabinet Secretaries, as and when to attend Parliamentary Committee meetings? I would imagine that they are all represented by the Attorney General who should advise them. If they do not turn up, it is up to the Committees to issue summons to those particular Cabinet Secretaries. Then we shall have cracked the whip.

Therefore, I am just seeking the Chair’s guidance on whether it is in order for Parliament and indeed, the Speaker of the National Assembly to write to the Cabinet Secretaries when the Constitution and the Standing Orders are very clear as to what we should do, and what should happen, if they do not turn up.

Thank you.

Hon. Speaker: Indeed, hon. Keynan did address that issue about failure to honour summons which attracts prescribed penalties under the Powers and Privileges Act. So, it is really you hon. Members who have the powers. The power is with you. You cannot lament and I cannot write letters to advise Cabinet Secretaries. We speak through our rulings here from the Chair. It is their business to look for those rulings. We do not advertise rulings; we make them here because we are a House of records. It is up to them to look for the records of the House.

Hon. Cheptumo: Thank you, hon. Speaker. The contents of the letter read by hon. Keynan worry me. The role of the Attorney General is the chief legal advisor of the Government. That letter, in my very humble submission, gives me the impression that the Attorney General is actually not advising as per the Constitution.

Hon. Speaker, Sir, where the Attorney General is unable, either directly or indirectly, to advise the Government the Executive would make serious mistakes, including failing or refusing to appear before House Committees. Having said that, I wish to refer to the oath of office by the Cabinet Secretaries. I want to read it to confirm to the House and the nation that they are constitutionally bound to obey what the Constitution says.

It states as follows:

“I Being appointed Cabinet Secretary of Kenya, do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic of Kenya...”

Hon. Speaker, Sir, the provisions of Articles 124, 125, 95 and 96 of the Constitution form part of our Constitution, which they swore to affirm. You should make a decision and give a ruling through which the Kenyan people and indeed, the Cabinet, will listen. I would like you to be guided also by that affirmation of office. It is important that they comply with the Constitution as they took the oath of office.

Hon. Speaker: Hon. Jamleck Kamau.

Hon. Kamau: Hon. Speaker, Sir, can I continue on the Statement?

Hon. Speaker: Were you not on this intervention or you wanted to respond?

Hon. Kamau: Yes, hon. Speaker, Sir.

Hon. Speaker: Before you respond, the Members are pressing interventions when they want to do other things. Point of order would be an intervention, but I do not see any intervention here.

Hon. Chepkong'a: Hon. Speaker, Sir, as you know, I am ICT literate, but unfortunately, maybe this system is a little bit challenged. I have a request for a Statement which you have already approved.

My request for Statement is directed to the Leader of Majority. The Kenya Defence Forces advertised for recruitment of service members and the Defence Forces constabularies in several daily newspapers and on their webpage. The advert requested all potential candidates to report to the recruitment centres and that the recruitment exercise---

Hon. Speaker: Hon. Chepkong'a, we have not finished with this particular aspect.

Hon. Chepkong'a: Hon. Speaker, Sir, I had a Statement, but since I have the microphone, let me contribute. We considered this letter in the Committee, which you were very kind to circulate to us and as far as the Committee on Justice and Legal Affairs is concerned, we found it as a non-issue in the first instance, because it does not comply with any law. It will be irregular for me to compare it with papers that are collected from the street, but it does not communicate anything that is legal, as far as we are concerned. So, as a Committee, we said that we will ignore it because the arguments that were being pursued in that letter are purely territorial. So, we do not think they are of any benefit to this House, neither does it add value to the work of this House or Committees.

Hon. Speaker: Since a number of you have raised quite a number of pertinent issues, let me give a proper Communication and ruling tomorrow afternoon for avoidance of doubt, but take it from the Chair that you must continue to exercise your functions as clearly provided for in the Constitution and more particularly, the powers provided under Article 125. Of course, hon. Wakhungu raised the issue of Article 152(5) which has two paragraphs, namely (a) and (b). If you read (b), it says that: -

“The President-

(b) may dismiss a Cabinet Secretary; and

(c) shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).”

So, you have what it takes. All those people you have talked about are your employees. You are the ones supervising them. So, if you think somebody is in breach of any law or provisions of this Constitution, you are at liberty to begin a process either under Article 152(6) all through to 10 or proceed under the Powers and Privileges Act. So, Members, it is you. It is very clear that you have the power to summon any person. We must at all times have that in mind.

Indeed, if you look at Article 1 on Sovereignty, sovereignty belongs to the people. How is it exercised? It is exercised either directly when they elect you or indirectly through their democratically elected representatives at the national level in Parliament and at the county level in the county assemblies. To who is sovereign power delegated? First of all, it is to the Legislature at the national level, then to the Executive, to the Judiciary and the others. So, you have what it takes. But I will do a considered Communication which all those who are writing those letters and giving unsolicited advice will be advised to go to the HANSARD and see to avoid falling off with Parliament when it exercises its power under the Constitution. We can move to the next item.

Hon. Aluoch: Hon. Speaker, Sir, as you are addressing the House on those issues, it came to my mind that the Cabinet Secretaries that we have now is a new crop of people who were not there before. Maybe it would be in order for them to know that in the last Parliament, Ministers were exempted from attending Cabinet meetings if they had an assignment in Parliament. They need to know that.

Hon. Speaker: Yes, but again, that will be if it is necessary. But for us, we do not even have to advise. We just have to follow the Constitution. It is immaterial where else they are supposed to be. If they are required to appear before a Committee, they should be courteous, appear before the Committee and seek leave; ask for permission. That is the way it is. We do not want to advise them about other things because the system was different. So, we can proceed. Hon. Jamleck Kamau.

STATEMENT

CAUSE OF POWER OUTAGES IN THE COUNTRY

Hon. Kamau: Hon. Speaker, Sir, hon. Abdullswamad Sheriff, Member for Mvita Constituency, requested for a Statement from the Committee on Energy, Communications and Information regarding the constant power outages experienced countrywide. The Committee summoned the Cabinet Secretary and the Principal Secretary in charge of Energy and Petroleum accompanied by the Managing Director of Kenya Power and other officers from the Ministry on 9th October, 2013, to deliberate on the Statement by the Member. I wish, therefore, to state as follows: -

The Statement requested from the Committee had two issues. One of the issues is what effective measures the Kenya Power has put in place to handle emergency power blackouts in the country to avoid recurrence of these power outages.

In relation to this particular inquiry by the Member, the Committee established that the Kenya Power is currently implementing a programme on investment that targets at having alternative supply lines in various installations in order to maintain supplies in the event of unforeseen breakdowns on the preferred sources. Two, towards achieving this goal, the company invested about US\$160 million, about Kshs13.5 billion, in constructing sub-stations and lines in the last eight years under the Energy Sector Recovery Programme Project (ESRP) and other programmes.

Three, currently, the company is constructing an additional 38 new sub-stations across the country at a cost of Kshs10.6 billion under the Kenya Electricity Expansion Programme.

Four, also in place is a programme to automate most of the network to allow faster response to interruption incidences. Automation of Mombasa Central Business District (CBD)

and environs has been completed at a cost of Kshs570 million while the same is under installation in Nairobi at a cost of Kshs300 million. This will be extended to other urban centres.

Five, the Kenya Power has in place a comprehensive preventive maintenance programme on the work.

The second question was whether a policy can be put in place to compel Kenya Power to compensate persons for any losses incurred due to power outage that is not restored in time without due reason.

On this particular matter, the Committee established that Kenya Power has in the last few years been undertaking rehabilitation and upgrading of existing network while, at the same time, extending to meet rising demand using available funds.

Secondly, compensation for losses incurred will not be sustainable from such network which is operating on a regulated environment.

Hon. Speaker, during our meeting which was attended by the hon. Member for Mvita, he raised a supplementary question in relation to the Statement. The question was in regard to the major facilities that can be put in place to address quality of supply in Coast region and their timelines.

Hon. Speaker, Sir, one, there will be a main 33KV cable alternative link from Kipevu to Makande Substation, a link to Mbaraki Substation and another link to Tononoka Sub-station both in the Island. The links are due in December, 2013.

Two, Mishomoroni Second 7.5 MVA Substation in Mainland North will be commissioned in December, 2014.

Three, the Jomvu – 23 MVA Mainland West will be commissioned in December, 2014.

Hon. Speaker, I beg to lay this Report. Thank you.

(Hon. Kamau laid the document on the Table)

Hon. Nassir: Thank you very much, hon. Speaker, Sir. First and foremost, I wish to thank the Departmental Committee on Energy, Communication and Information under the able leadership of my brother, hon. Jamleck. It is true that a meeting was called by the Committee and I was called as a friend of the Committee on a first hand basis, to try and see whether we can be able to resolve this issue.

There is one clarification I want to seek from hon. Jamleck. When will we expect the Energy Bill because that is something I am aware the Departmental Committee on Energy, Communication and Information is either working on or is expecting from the relevant Ministry? As much as a comprehensive answer has been given, Mombasa is currently experiencing very unfair outages. The outages are experienced on a daily basis and last for hours. I think the Energy Bill will clearly define issues especially those to do with compensation for the many hours that the business community and individuals have lost. Is the Chairman aware when we can get the Energy Bill so that we can put this amendment in that Bill or should we do this through a Private Member's Motion?

Hon. Kamau: Hon. Speaker, Sir, indeed, that is a very important issue that I even discussed with the hon. Member. That is the Energy Bill. Of course, it has not come to the House yet. So, it has not been committed to the Committee yet. Of course, there are processes that it has to go through, but we will endeavour to ask the Ministry to fast-track it so that the concerns raised by the Member can be addressed as quickly as possible.

Hon. Speaker: Hon. Nassir, as a Member of the House, you are also entitled to propose legislation---

Hon. Nassir: Hon. Speaker, Sir, that is what I wanted to start with. But because we are not aware and we do not have a timeline, I would like to bring this particular legislation to the House as a Private Member's Motion.

Hon. Speaker: Very well. Hon. Members, are those interventions or points of order?

Hon. Losiakou: I am not sure whether it is a point of order. Mine is an intervention. I want to seek a further clarification from the Chairman on the Statement that he has made.

The clarification is on the power outages. I am sure that as he addresses the issue of Mombasa, he is thinking about the whole country. We have the biggest problem of power in West Pokot County. We experience power outages more often than not. Why can the Chairman of the Departmental Committee on Energy, Communication and Information, the electricity generating company and Kenya Power bring power from Turkwel to Kapenguria to sort out the problems in North Rift? It is a shame that the place that produces power is the one that experiences power outages. We cannot experience uninterrupted power supply for a whole day.

Hon. Speaker: Hon. Pkosing, is it true that you are a Member of the Departmental Committee on Energy, Communication and Information?

Hon. Losiakou: I am not a Member of that Committee, hon. Speaker, Sir.

Hon. Speaker: I think I will advise that you make your own request for a Statement. That is because it will really not be fair when the Chairman is dealing with the issue of Mombasa to expect him to take some leap to West Pokot. It might be a bit tricky. Maybe, you could make a request and then they will examine the issues you will raise. Through your request, you will say the issues you would like them to address, either themselves or through those agencies that you have mentioned.

Hon. Losiakou: I oblige hon. Speaker, Sir. The Chairman should know that I am on the way.

(Laughter)

Hon. Speaker: I can see other interventions. Are they points of order or we can allow hon. Kamau to finish?

Hon. Kamau: Thank you, hon. Speaker, Sir. Indeed, the Statement I have made is exactly what I would have told him. Of course, we are determined to make sure that we answer all the issues that come before the Committee. We will be glad to get a Statement from the Member or from other Members so that we can sort out those issues once and for all.

I also have a second Statement which will be presented by the Vice-Chairman, if you allow him.

Hon. Speaker: Very well. Yes, hon. Jackson Kiplagat Kiptanui.

Hon. Kiptanui: Thank you, hon. Speaker. I have a Statement to a request made by hon. David Ouma Ochieng, the Member for Parliament for Ugenya Constituency. Apparently, it appears like hon. Ochieng is not in the House. Maybe, I will have to wait until he comes. I suspect that he is campaigning in Nyanza.

Hon. Speaker: We have said that we want hon. Members to be informed when requests to their Statements will be made. That is because I am aware that there are some Committees which are sitting. The proper route to take is not for an unknown Member to speak from some

place asking whether he can stand in for him. That is not right. I think it is only fair that if hon. Ochieng was aware that the response was coming today, we can make a decision. Was he aware?

Hon. Kiptanui: Hon. Speaker, Sir, he appeared before the Committee last week and most likely he was aware that we were to give make this Statement.

Hon. Speaker: He might not be aware. He has the responsibility to look at the HANSARD. Can you make the Statement tomorrow in the afternoon?

Hon. Kiptanui: That is fine, hon. Speaker, Sir.

Hon. Speaker: Hon. Ochieng has the responsibility to look at the HANSARD. I am assuming that he is in the country. He has a responsibility to look at the HANSARD and, maybe, deputize somebody to stand in for him if he feels that it is too much to sit in the Chamber.

Yes, hon. Chepkong'a

REQUEST FOR STATEMENT

RECRUITMENT OF SERVICEMEN AND SERVICEWOMEN BY KENYA DEFENCE FORCES

Hon. Chepkong'a: Thank you, hon. Speaker. I rise to request for a Statement from the Leader of the Majority Party, pursuant to Standing Order 44(2) (c). As I have stated, recently, the Kenya Defence Forces advertised for recruitment of servicemen and servicewomen in several newspapers. The KDF requested potential candidates to report to recruitment centres, and indicated that the exercise would be absolutely free. The KDF had warned in the said advertisement that corruption, bribery and other acts of corruption are illegal.

According to the advertisement, a copy of which I have, the recruitment exercise was to commence on 30th September, 2013 and end on 29th October, 2013. The said advertisement provided for the recruitment dates, the counties, the districts and the centres at which the exercise will take place. The Kenya Defence Forces Act, 2012, stipulates and provide for the criteria to be followed in seeking to recruit members of the KDF, which must comply with Section 25 of the Kenya Defence Act and Article 232(1)(g), (h) & (i) of the Constitution.

Hon. Speaker, regarding the ongoing recruitment of members of the public to KDF, I would like to know the following from the Leader of the Majority Party: -

(i) Whether the advertisement that was widely circulated by the KDF complied with Section 28(2) of the Act that enjoins the Defence Council to consult the Public Service Commission (PSC) in the recruitment of members of KDF.

(ii) The mode of communication used in the communication between KDF and PSC, indicating whether it was verbal or written, and the nature of consultations.

(iii) Whether the advertisement that invites prospective candidates to report to the designated recruitment centres on the stated dates has complied with Section 28(3) of the Act, which states that the advertisement shall contain, among other things, the chances allocated for each county, at least, 30 days before the recruitment.

Hon. Speaker, the law does not give them any chance, by avoiding usage of terms like "may" or "would be" or "maybe". It says "shall", in respect of information relating to the number of vacancies allocated to each county. I am sure that this is a matter of interest to even the Leader of the Majority Party, who comes from Garissa County. I would like him to tell us how many chances were allocated to Garissa County and to my county of Uasin-Gishu. I have read the advertisement. I even asked other people to read it, so that it could be clear that I did not misunderstand it. Therefore, I would like to know whether KDF allocated specific chances to each county, as required by the law.

Hon. Speaker, further, the Leader of the Majority Party should inquire into and provide a Statement on the following: -

(iv) Whether the actions of the Defence Council are in contravention of Section 20(2) of the Kenya Defence Forces Act and Article 232(1) (i) of the Constitution, which specifically requires them to afford adequate and equal opportunity to all.

(v) Whether the actions of the members of the Defence Council, as State officers and public trustees, were in breach of Article 73(1) (i), which requires them to exercise their power in a manner that is consistent with the purposes and objects of the Constitution.

(vi) Whether the actions of the Defence Council in the said advertisement was in total breach of Article 73(2)(b), which requires them to act in an objective and impartial manner in decision-making by ensuring that their decisions are not influenced by improper motives, when they failed to adhere to Section 28 of the Kenya Defence Act, 2012.

(vii) Report to this House on the total number of recruits to be enlisted in KDF during the ongoing exercise, indicating the chances available to candidates in each county, as clearly stipulated in Section 28(3) of the Kenya Defence Forces Act and Article 232 of the Constitution.

Hon. Speaker, it is very serious that State officers can breach the law that sets them up. It is even more serious that they can breach the Constitution that was adopted only the other day. It is very fresh in the minds of everybody. I am surprised that KDF do not have lawyers to advise them on such very clear provisions of the law. All the hon. Members seated in this House have witnessed the number of candidates who turned up for recruitment at the various centres countrywide.

People in various counties did not know the numbers of recruits who were to be enlisted into KDF. So, they turned up in millions. Some of them even died because they thought that it was only one chance that was available. People are living as if we are still in the dark days. There is nothing secret about recruitment by our defence forces. Those are people who are supposed to protect us. They are supposed to be employed on merit. We do not want to hear about kangaroo activities happening behind the back of the National Assembly.

Hon. Speaker, the Statement is extremely urgent, particularly given that there is a breach of the law. I am speaking as a lawyer. This is not pedestrian talk. Therefore, I expect the Leader of the Majority Party to respond by Thursday, latest.

Thank you.

Hon. Speaker: Very well spoken, hon. Chepkong'a. We do not expect you to actually do pedestrian stuff. Hon. Duale, what is your undertaking?

Hon. A.B. Duale: Hon. Speaker, I want to confirm that the Cabinet Secretary for Defence is, herself, a very able lawyer and a one-time Chair of the Law Society of Kenya (LSK). I am sure that there are many other lawyers in the Ministry. So, the Ministry is not short of lawyers.

Secondly, on the last bit of hon. Chepkong'a's request, on the total number of recruits enlisted from each county, I want to confirm that the exercise is ongoing. On the other bits of the request, I can bring the Report on Thursday. I am sure that it will confirm whether or not KDF have contravened the Kenya Defence Forces Act and the Constitution. So, I will bring an answer on Thursday. However, I cannot bring information on the bit of the total number of recruits because the exercise is still ongoing. That specific detail might be availed on another day.

Hon. Speaker: Leader of the Majority Party, more importantly, from what hon. Chepkong'a has raised, is the requirement under Section 28 that they must indicate that when the recruitment begins, there will be so many vacancies available for such county and so many

vacancies for such county and so on and for forth. The reason is that Kenyans would want to know why county “a” would have 15 recruits while county “c” has five recruits, and why another one has zero recruits, so that they do not turn up for recruitment to just run around and then to be told “you have flat feet” and such like stories.

So, that is important, hon. Duale.

Hon. A.B. Duale: Hon. Speaker, I will also bring statistics showing the height preference of Kenyans according to counties. Maybe, some counties are producing too short people so that the army cannot find even one person, but that is off the cuff. I will bring the allocation per county and why different counties have different numbers.

Hon. Speaker: Hon. Sabina Chege, I know you want to make two responses. Before you do that, we want to confirm that the Members who sought the Statements are present. If they are absent, we want to know whether they were aware that the responses were coming today. Who sought the first Statement?

Hon. (Ms.) S.W. Chege: Hon. David Kangogo Bowen, Member of Parliament for Marakwet East.

Hon. Speaker: Is hon. Bowen present? He is absent not desiring to be present. Is he aware? Who is the other one?

Hon. (Ms.) S.W. Chege: The next one was sought by hon. Kamande

Hon. Speaker: Is hon. Mwangi Kamande in? He is absent not desiring to be present.

Hon. (Ms.) S.W. Chege: I will respond tomorrow.

Hon. Speaker: Okay. However, those Members must be present tomorrow. They have a responsibility to look at the HANSARD to know that the responses will be given tomorrow. If they are not present, the responses will be dropped.

Hon. (Ms.) Emanikor: Hon. Speaker, mine is an extension of Chepkonga’s question. I would want the Leader of the Majority Party to confirm reports that the Kenya Defence Forces recruitment is marred by incidences of corruption thus making it unfair. People have to give money to the tune of Kshs500,000. Those are the reports and allegations that we are getting from the ground. The panel that recruits the candidates----

Hon. Speaker: Hon. Emanikor, remember at the back of your mind that you are responsible for the accuracy of your statements.

Hon. (Ms.) Emanikor: I am responsible and I am saying that those are allegations from the ground.

Hon. Speaker: Please, let us not deal with allegations here. The hon. Leader of the Majority Party has heard your point.

Hon. (Ms.) Ng’etich: Hon. Speaker, I want to add to the point that was raised by hon. Kangogo that besides the number of people to be hired, there is the issue of gender. I will give an example of Sotik. They needed one female, but they made all the males run and run and yet, they only required one female. If they knew this, why were they making the participants engage in an exercise in futility? That is very unfair.

Hon. Speaker: Maybe, the county was supposed to produce three. You want to go the route of not more than two-thirds of either gender. I think the Leader of the Majority Party has heard the point. We do not want young girls to run too much if it is affecting them.

Hon. Nakara: Hon. Speaker, I just want to add on what others have said concerning the recruitment exercise by KDF. With regard to the adverts of the Cadet Officer positions, some of the applicant’s names do not appear in the dailies. I discovered that Turkanas are all over and since our names are similar to those of others, our positions could be given to others who come

from outside the county. It is now two years and we have been missing on those chances. We have not had any person being recruited for the position of Cadet Officer in Turkana County. Whenever they advertise, they should specify the area; whether it is Lodwar, Kapenguria or wherever. We have discovered that there are Turkanas living in Central Province and they have been taken for those positions and yet, the Turkanas in Turkana County miss those opportunities.

Hon. Speaker: Hon. Members, let us not debate the issue before the Leader of the Majority Party brings his Report. The matter is a serious one, I appreciate.

Hon. (Ms.) Shebesh: Hon. Speaker, I think what you are doing is right because the Leader of the Majority Party needs to know the real concerns on the recruitment method. In Nairobi County, because identity cards are required, we know you come from Kiambu, Muranga, Kakamega, or Kisumu and so, even if you are a Nairobi County voter and you reside in Nairobi, the recruitment is biased because you are told to go to your home counties. It is about time we are told whether or not we will ever be recognized as Nairobi County. Is it that if you are in Nairobi, but you happen to come from Garissa, then you must go back to Garissa for the recruitment? That matter needs to be made clear to us as Nairobi County.

Hon. Murungi: Hon. Speaker, the issues raised by hon. Members are very pertinent. My constituents will be made to run 20 kilometres tomorrow. If the Leader of the Majority Party has a hotline, I will be able to advise them whether or not to run tomorrow because only one person will be recruited. They are really eager for tomorrow's exercise. Hon. Speaker, you could advise hon. A.B. Duale to give me some information because that will be so crucial to my constituents.

Hon. Speaker: Let the Leader of the Majority Party bring the Statement as he has promised on Thursday and there will be sufficient time for Members to discuss the matter. Next Order!

I can see there is an hon. Member who is merely purporting to raise her hand or smile but, you see, none of that is the way to catch the Speaker's eye under the new governance structure. I made a ruling and it is over. Raising fingers or hands will not help.

Hon. Members, the next Order is Committee of the whole House, but I have received a request from the Chair of--- Hon. Bosire, when the Speaker is making a communication and you want to talk, you must then be in your constituency and not in the House.

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

Hon. Speaker: This Member, I think you are inviting trouble to yourself for nothing. I have received representations from the Chairman of the Departmental Committee on Finance, Planning and Trade that the business listed as Order No. 8 on the Order Paper is not ready because of the numerous amendments that have been proposed for the two Bills. It is, therefore, taken out and it will be on the Order Paper tomorrow at 2.30 p.m. We, therefore, move to Order No.9.

(Order No. 8 – Committee of the whole House deferred)

BILLS

Second Reading

THE TAX APPEALS TRIBUNAL BILL

(Hon. Lang'at on 10.10.2013)

(Resumption of Debate interrupted on 10.10.2013)

Hon. Speaker: Any Member may rise in their place and contribute to the business; that is the Tax Appeals Tribunal Bill, National Assembly Bill No.7 of 2013.

Hon. Omulele: Thank you, hon. Speaker for giving me this opportunity. For a long time, we have had a situation where taxpayers have been subjected to decisions by officers of the taxing body in this country and we have not had a clear way to go when they feel their rights have been infringed. We have had a situation where commissioners, especially the Commissioner in charge of Customs, have made very drastic assessments with regard to taxpayers. We have had situations where people who otherwise think that they have paid their taxes and met their tax liabilities get assessments that have actually sent them to their early graves. Some of the figures that have been set out in those tax assessment reports by the officers from Kenya Revenue Authority have been impossible to stomach. I know for a fact that the Commissioner of Customs wakes up one morning and writes to you a very brief letter - probably one page - telling you that you have tax liabilities in regard to customs in excess of Kshs500 million, Kshs2 billion and Kshs3 billion. Those kinds of letters have been sent to people who have up to that moment thought that they had met their tax liabilities. For a long time, those people have had to actually meet those liabilities or, otherwise, face the vagaries of trying to get justice through the regular courts. In the regular courts or the High Court as it were, the real risk to those people is that we have not had judges who have been well trained in matters of tax. Sometimes, when those judges are confronted by those kinds of figures, they take the route that, for the tax authority to come up with that assessment, then it must have had some reason to do so. They have been very reluctant to assist people who have approached the courts in this regard. Those are Kenyans who have suffered quite a bit and they have had their businesses closed. A case that comes to my mind immediately is like the one of Al Motors where the tax liability was assessed to be in excess of Kshs2 billion and when they went to court, they were denied a stay and KRA proceeded to issue an agency notice which in effect brought that company to its knees and to closure.

So, hon. Speaker, this Bill is a good one because, for the first time, we are going to bring expertise towards matters of determination of tax disputes between members of our society and the tax collecting body. In this way, we shall be able to develop jurisprudence through which members of our society shall be able to know with certainty that if you do "a" with regard to tax, then "b" shall surely follow and, really, this is the way that an orderly society must go. So, for that reason, I agree that this is a Bill for which the time really has come and we must support it.

Hon. Speaker, I have also looked at this Bill and I am happy to note that the Tax Appeals Tribunal shall have a membership consisting of a chairperson and not less than 15 other members who shall, subject to the Act, be appointed by the Cabinet. However, the chairperson shall be a person who is competent enough to be appointed as a judge of the High Court. I am also happy to note that the membership of the tribunal will also be improved by membership from the judicial and legal profession. At least, five of those members will have legal training. This is good for the reason that tax matters in this country and, in fact, in the whole world, are very complex. Those are matters to which legal minds must be applied and precedents must now be set so that we know for certainty that those are the tax expectations that will follow you if you engage in any one business or if you wish to act for any person in regard to a tax matter.

They have provided for the appointment of tax agents so that we are developing professionalism in matters of tax. So, for that reason, I am happy because we have, for a long time in this country, not had a special profession that deals with tax. Some of our young men and women who are taking university degrees in economics will have an opportunity now to specifically deal with tax matters.

Hon. Speaker, for a long time, we have had tax collection in this country and all of us are here today because we are beneficiaries of the taxes that have been collected by the tax collecting bodies and agencies under KRA. However, we have for a long time assumed that all matters are good and we have not had a specific branch to deal with the infringements that occur in the course of collection of those taxes. So, for this reason, I am very happy and I think this is a timely Bill that we must all support.

Hon. Speaker, KRA and the Commissioners appointed under the KRA Act specifically under the customs branch of the KRA--- For a long time, we have had complaints arising from the manner in which they deal with taxpaying citizens of this country. We have had situations where a tax collector or a revenue officer for that matter makes a decision that is informed by matters that are extraneous to the matter that is at hand, and because members of the Kenyan society have not had a law which guides them on how to raise complaints, they have had to pay taxes that they really should not have paid. For this reason, those officers have wielded what we, in the legal profession, know as the “Sword of Damocles” over the people who pay tax. They have operated like imperial officers because their decisions have not been open to challenge. However, with this law that we are proposing to pass through this House, those members of our society who really make this country tick will have an opportunity to know exactly what it is that they are expected to do and in the event that they feel that they are not treated well by the tax collection agents and the revenue officers of KRA, they will be able to approach this body which is clearly independent of KRA.

Hon. Speaker, Sir, as much as we had a semblance of an appeals body that has been envisaged and has been operating---

Hon. Speaker: It is important to familiarize yourself with the light there. When it goes red, you should know that your time is out.

Hon. G.W. Omondi: Thank you, hon. Speaker, Sir. I would like to start by observing that the Committee on Finance, Planning and Trade is doing a wonderful job going by the number of Bills that they have brought to the Floor of this House. Most of the Bills brought to this Floor touch on the heart of our economy.

Hon. Speaker, concerning this particular Bill that has been brought before this House, I observe that one of the fundamentals of economic development in any economy is the extent to which the rule of law is entrenched or observed.

The other one is the speed with which commercial disputes are resolved. This particular Bill actually brings the dispute resolution at one point and this will speed up commercial disputes which will enhance our economic development. It is also true that taxes form a major part of our fiscal measures and the Bill endeavours to improve the fiscal system in tax collection.

Hon. Speaker, my other observation in this particular regard is that, sound fiscal measures are major integral ways of developing an economy. Any country must actually base their long-term fiscal measures and tax collection in their development aspirations.

Finally, the Bills intends to bring integrity because what happens is that many people fear paying taxes because it takes a longer time to get a refund or to be listened to. Therefore, there is rampant tax evasion. But with the establishment of this one stop tribunal, people will be

encouraged because the administrative competence of the tax collector is actually enhanced. All the foregoing factors will enhance our fiscal measures and promote our economic development.

With those few remarks, I want to say that this is a timely Bill which will enable us set up a Tax Appeals Tribunal.

Thank you.

Hon. (Ms.) Kajuju: Thank you, hon. Speaker. I stand to support the Bill. But while appreciating the issues that have been raised in the Bill, there are some other concerns that I will put forward as I make my submissions.

Hon. Speaker, Sir, Section 9 of the Bill is good because it recognizes the power of the chairperson to make the proceedings of the tribunal orderly and expeditious. But it also recognizes devolution because this is the time we have gone into the counties. There should be devolution in every centre of power. Every centre of any institution that has been set up by the Government should recognize devolution.

We also recognize the issue of access to justice. But my concern is in as far as this clause is concerned. Section 9 (2) (b) states: -

“The chairperson shall determine the place at which a panel may sit.”

It is my prayer to this Committee that it will go further and make provisions for registries to be set up. That is because much as what we have in the Bill shows that the penal or the tribunal can sit at any place or at any county that the Chair might decide, there is a process through which a matter should go before it comes before the tribunal.

There must be a registry where a dispute is filed or a case is filed before it reaches the tribunal. So, my concern is that this Bill and that clause in particular should provide for registries so that any person whose rights have been infringed can easily access the registry and be able to file the case before the Chair gives directions on when the case will be heard. That is because we have to recognize the fact that, expeditious trial of any matter is very important and that is why we talk about justice delayed is justice denied. Not every Kenyan may be able to reach the central registry probably in Nairobi to be able to file their disputes.

Hon. Speaker, my other concern is that under Clause 29 of the Bill, it provides for the publication of the decisions and the reasons of the tribunal. It states that once those decisions have been filed, they can then be applied by any person because they are an authority by themselves. But what is lacking in that provision - Section 29 (9) - is that under any law in Kenya, there must be a provision for a reasonable time within which any decision can be made. A decision that has been made by any court of competent jurisdiction - and the tribunal in this case will be a court - must be publicized within a reasonable time. So, if I was a party in a suit and I was not present when a decision of tribunal was being made, then by publicizing that decision and the reasons thereof, then judicial notice will be taken that I have gotten the knowledge. But without providing for the reasonable time within which that act has to be conducted, this particular provision is bound to be abused.

Hon. Speaker, Sir, with the Chairman present, I would pray that Section 29 (9) is amended in a way that there is provision for reasonable time, maybe, 14 days within which any tribunal must publish its decisions and the reasons thereof.

Hon. Speaker, I appreciate this Bill because among other things that have punished Kenyans, especially when it comes to judgments and decisions of the courts, is when a body like Kenya Revenue Authority makes a decision against a person then they do not have an option of getting a stay of the proceedings before their rights are addressed.

Hon. Speaker, Section 18 of this Bill gives the chairperson and the tribunal the power to order a stay of execution. We refer to it as a stay of execution that affects the implementation of the decision of anybody before an appeal.

Hon. Speaker, Sir, this Bill is good to the extent that it allows a person whose rights have been infringed to obtain a stay pending the hearing of an appeal before the tribunal. We also find that the membership of the tribunal is supposed to be 15 to 20. They have included the 15 to 20 so that the tribunal is able to sit because it is supposed to sit in panels of three. So, at any given time, you will have different panels sitting at particular places. To that level, I appreciate the number of persons that will be elected to this tribunal, so that they are able to deal with matters expeditiously as envisaged in this Bill. Otherwise, this is a proper Bill and it gives Kenyans the opportunity also to settle matters out of court.

Much as our system is an adversarial system of justice, we also appreciate that matters can be settled out of court with the consent of the parties. This is properly provided for in this Bill. Therefore, with the concerns that are raised in this Bill, I believe that it is a good Bill and it is implementable.

Hon. Speaker: I am just wondering whether you have looked at that Clause 29(10) that gives the tribunal the power to withhold certain confidential information and whether it may not be in breach of the Constitution itself. I will leave it to you people to deal with it in the Committee.

Hon. (Ms.) Kajuju: Hon. Speaker, Sir, that might not be a very good clause considering the accessibility to information as per Chapter Four of the Constitution. Maybe, that is something that is also of concern and the Committee should address it. Thank you for that.

Hon. Waiganjo: Hon. Speaker, Sir, I thank you for giving me an opportunity also to talk on this Bill. I rise to support the Bill. This is actually a very good piece of legislation and it is coming at the right time considering the chaotic nature of the taxpayer and the tax collector in the arbitration of disputes. That tribunal will join other renowned tribunals like the Rent Restriction Tribunal which for a long time has brought sanity into the landlord-tenant relationship. Also, we have the Business Premises Rent Tribunal, the State Corporation Tribunal and the Public Procurement Tribunal. You can count them, but of importance is the regulation that now will come forth between the Commissioner, KRA, and the taxpayer. The Commissioner would previously make decisions and the taxpayer would probably move to court, but the Civil Procedure Act was very stringent where matters of stay are concerned. You would find that where there is no exclusive department of tax appeals, a taxpayer would necessarily go to a civil court and it was very difficult to get the stay of execution. Mostly, the decisions of the Commissioner would go unchallenged.

So, this is a piece of legislation that also makes litigation very easy because an individual taxpayer without even the benefit of an advocate can approach the tribunal. The manner of filing this appeal is also very easy because all they need to do is to file a statement of facts, the decision of the Commissioner and, of course, the grounds for which they wish to rely. So, it is a tribunal that will make decisions of the Commissioner of the KRA and the taxpayer very expeditious. Again, we look at the membership of this tribunal as well. It is properly and well constituted considering that the Chairman gets five years non-renewable and the other members get three years so that, in the event an ordinary member would want to rise to become a chair, there will be continuity. It is a Bill that also looks beyond the term of office of the existing Commissioners.

Of concern is when the litigant in this appeal gets an award of costs. The KRA is part of the Government. So, for them, it is not as bad as the taxpayer. When the taxpayer gets an award of costs, he cannot execute it against the Government. He has again to go under the Government Proceedings Act. This is a robbery of sorts from the taxpayer. If you use your Kshs20,000 to go to this Tax Appeals Tribunal, you prosecute your appeal very well, win against the Commissioner and you are awarded costs, you cannot get those awards. You cannot benefit from those costs simply because there is another procedure on Government Proceedings Act that stops the taxpayer from that. That is the downside of this Bill. But, by and large, it is a good Bill and I support it. I like it when it is out of the Civil Procedure Act. The Civil Procedure Act is also very technical in nature and only advocates understand those procedures. But the manner in which this Bill rolls out the mode in which you can file an appeal and the way you prosecute it, I can see the taxpayer getting a very easy time with the Bill.

With regard to Section 29(1), when you file the appeal, obviously, it goes to the registry of the tribunal and it becomes public record. But then, Subsection 10 seems to be saying: "No! Let us keep trade secrets." Well, constitutionally speaking, that is hindrance of information. In my mind, the Committee should relook into some of those small issues that would make a very good Bill otherwise be a Bill that also goes back to be against the taxpayer. I am looking at the offences that are clearly spelt out on Part IV of this Bill. Any taxpayer reading Part IV, 31(a), (b), (c) and (d), is clear on the parameters. It is clear on the rights of the taxpayer and the rights of the Commissioner of KRA. But the best thing with this Bill so far, is the simplification of the procedure of the taxpayer in approaching the tribunal, the prosecution of the appeal and finally, perhaps, the expedition of the decision of the tribunal.

The tribunal will only deal with tax matters. So, it means then that matters will move much faster and more expeditiously. The fact that it has a membership of 15 to 20--- It would even be argued that they would better get all the 20 members considering that they need to be moving across the whole country. Therefore, every county will get a panel that is sitting every time. We have seen problems with the Business Premises Rent Tribunal and other tribunals when they go out to sit in different jurisdictions of this country and matters are usually filed after them. You find somebody who would otherwise file a matter at the Rent Restriction Tribunal or the Business Premises Rent Tribunal and, if the tribunal is sitting in Mombasa, they go all the way to Mombasa to file those matters and to get the awards. So, the membership base of that tribunal should be, at least, 20, which is the maximum, so that they can sit and look into matters of taxation, regulate and bring sanity to the tax regime.

With those few remarks, I support the Bill.

Hon. Njenga: Thank you, hon. Speaker, Sir. I stand to support the Bill. When I look at the composition of the membership that is advocated by this Bill, I get the assurance that we can obtain performance. The KRA, on the other hand, has lost almost all cases that it has taken to court. That weakness is known by taxpayers and for anything, they rush to court and sometimes, KRA losses.

With the chairman being a qualified judge of the High Court, a person of integrity and assisted by the people stated in Section 3(b)(2), with disciplines such as accounting, economics, finance, law, business and insurance, this is a tribunal that can perform and remove the weakness that people have known and used to exploit KRA. The experience required of five years and above is quite interesting. More importantly, I like the independence of this tribunal. For anyone who wants to participate in the performance of the tribunal, once this Bill becomes an Act, he

shall not have worked for KRA or such related authority. That is something that makes me wholly support this Bill.

Hon. Speaker, Sir, I also support this Bill because of the transition that it provides. Five years is the period that the chairman can serve in this tribunal. Five years is good enough time. The members who serve for three years can, as a matter of fact, replace the chairman or even recognize the potential in membership and have a chance to amend. The fact that we are not able to retry after the five-year period also makes me feel that we shall enhance the independence which we need. The fact that one must not be convicted of an offence makes me feel that this is the way to go.

More importantly, when I look at Clause 8(2), I am happy that they now recognize that the allocation shall be from this House. This tribunal will make our oversight work much easier.

I am also impressed by Clause 12 that brings in factuality. This is because anything can be cooked. The taxpayer and the Kenya Revenue Authority officers can cook situations that become very difficult for one to get out of. When factuality is brought in, you must bring in a statement or a memorandum of fact, and that before you even bring it you are supposed to pay Kshs20,000; it makes you feel that people who will be joking will not bring cases just for the sake of it.

The most important thing is that the decision of this tribunal will be as good as the decision of a court and will be final. If this is the case, scheming by people and depriving the KRA of money, or the KRA depriving people of their right to fairness will be brought to an end. Clause 34(2) prevents people from teaming up and ripping off the Authority, or the Authority officials teaming up and ripping off taxpayers.

I also like the rights of the taxpayer that are given in Clause 30, that you can only go and appeal if you have reason to say that whatever has been assessed is excessive, estimated or the decision made by the appeal should not have gone that way. This is because most taxpayers live under the mercy of Commissioners, the Commissioner-General, people who were appointed in the local committees and others that were not even conversant with this business, or procedures, of taxation.

Clauses 33, 34 and 35 provide for deterrence from evasion of tax and false financial statements, which is another thing that the KRA suffers all the time in form of false claims and false returns. These particular clauses involve tax agents, auditors, lawyers *et cetera*. They check the work not only of agents, but also of employers, employees and other officers who serve in boards of companies. This is because here, again, the scheming can be so strong that no one can even detect it, leave alone take action. When I know that I am employed and if anything happens as far as evasion of tax or failure to pay tax--- If I know that I cannot win an appeal, I will feel discouraged to commit offences.

The same clauses will curb rumour-mongering; the biggest problem that we have is that anything that happens in the KRA offices becomes public information. Since there will be a penalty of Kshs100,000 or one year's imprisonment, people will be disciplined. The whole Bill brings in the issue of people being disciplined and information being kept confidential. Something like this that goes on to enhance tax collection will enable us achieve economic objectives that every Government has promised us. This will also enable us to develop our country. This is because if we do not help our country by paying taxes, then the Government will be unable to purchase goods and services, and in return offer services that we require.

I know of the infrastructure that this country has been trying to build. I know the many services that we expect from our Government can be attained. Most importantly, this Bill

harmonizes the Constitution of this country. I believe that this is a Bill that everybody will be able to support with reasons, because we need a country where there is order and discipline, and where the rich pay taxes; we need a country where the poor benefit from the taxes paid by the rich. We need a country where the rich are also protected by the laws that we are making.

Hon. Speaker, Sir, with those remarks, I beg to support this Bill.

Thank you.

Hon. Ichung'wa: Thank you, hon. Speaker, Sir. I rise in support of this Bill more so because our court procedures are very technical, particularly when one looks at the civil procedure. Most cases in court are lost on account of procedure.

If one looks at Clause 14, he or she will find that the Bill exempts any appeal from the provisions of Civil Procedure Act. The Bill makes the cases before the tribunal simple, as one of the hon. Members has noted; it does so in respect of procedure, cost and time.

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

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

In this regard, this tribunal looks at the issues of tax regime the same way the tribunals on rent restriction, public procurement and business premises do. It makes the appeal on matters of the tribunal fairly specialized and professional in terms of procedure, so that facts before it are given due attention. Matters of tax can be very professional; issues before a court are understood by very few people. If you look at the composition of the tribunal, you find that with time, it will become very professional; it will be possible to do justice to the parties that will be in dispute. In a way, justice will be accorded to all the parties. The fact is that this tribunal will do justice to the parties concerned, particularly the ones that will take disputes to the Tax Commissioner, and that is why I support this Bill.

We say that we must give to Caesar what belongs to him, and that is why we must pay taxes. In the past it has been possible for the tax commissioners not to respect the taxpayers. With this tribunal in place, it will be possible for taxpayers to get justice out of disputes.

Hon. Temporary Deputy Speaker, I support this Bill.

Hon. (Ms.) Kiptui: Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity. I also rise to support this Bill, especially noting that court matters once commenced take a long time.

A tribunal such as this one will help speed up resolution of disputes between the KRA and the taxpayers. In a tribunal, procedures will not be as strict as they in a court. The tribunal will help save time; the time taxpayers spend going to courts will be shortened.

Hon. Temporary Deputy Speaker, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Jeptai.

Hon. Members, there being no more requests for debate on the Tax Appeals Tribunal Bill, I call upon the Mover to reply.

Hon. Langat: Thank you very much, hon. Temporary Deputy Speaker. My job is just to thank hon. Members as the Bill has received a lot of support from them. One of the areas in respect of which I heard hon. Members raise some concerns is that of the qualifications of the chairperson. Some hon. Members said that the chairperson needs not be somebody who is

qualified to be a judge. He can actually be an expert in taxation matters or a practitioner. Those are the issues we will look at during the Committee stage.

Another issue that hon. Kajuku has raised is about confidentiality of information. Hon. Members should appreciate that whatever we are transacting here are business issues between the private sector and the Kenya Revenue Authority. So, it should not be subjected to the requirement of public access to information. The Bill provides opportunity for an aggrieved business person to appeal in terms of tax that may be levied on his or her business. Therefore, the issue of making it public should not arise. The aggrieved persons will be private persons.

Hon. Temporary Deputy Speaker, this is a very innovative Bill. We are saying that we can use the route of tribunal to arbitrate on matters of taxation. This is a more relaxed process than a court process. Another thing we are doing, which I would like hon. Members to know, is saying we create a one-stop shop for all the tax appeals, be they of VAT, Income Tax or Excise Duty so that the tribunal can build sufficient capacity to enable it deal with any appeal that will go to it.

This is a very important Bill and, therefore, I encourage hon. Members to pass it at the Second Reading Stage. I cannot claim to have absolute knowledge of how these things are done. Therefore, hon. Members are free to bring forward amendments to improve the Bill, so that we can have a very good law.

With those remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, we are not able to put the Question on the Tax Appeals Tribunal Bill (National Assembly Bill No.7 of 2013). Therefore, I direct that the Question be put during the next sitting.

(Putting of the Question deferred)

Next Order!

THE KENYA INFORMATION AND COMMUNICATIONS
(AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Yes, Leader of the Majority Party.

Hon. (Eng.) Gumbo: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): What is your point of order, hon. Gumbo?

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Speaker. I have no intention whatsoever of interrupting debate on this Bill, but Parliament is a House of rules and traditions. I notice that the Bill that we are just about to debate is the Kenya Information and Communications (Amendment) Bill, 2013. I am a Member of the Departmental Committee on Energy, Information and Communications. We have discussed this Bill at length. We have engaged the stakeholders. We have just discussed the Tax Appeals Tribunal Bill, which falls under the Departmental Committee on Finance, and which was moved by the Chairman of that Committee. I appreciate that both the Constitution and our Standing Orders are silent on who should move debate on a Bill during the Second Reading, but Article 109(5) of the Constitution says that a Bill may be introduced by any Member – which is okay – or committee of the relevant House of Parliament.

Hon. Temporary Deputy Speaker, this constitutional provision is for a good reason. We are fully seized of this Bill. Even Standing Order 114, on introduction of Bills, talks about legislative proposal for which a member of a committee is in charge. Standing Order 117 provides that every Bill shall be accompanied by a memorandum and a statement of the objects and reasons of the Bill. With utmost respect to the Leader of the Majority Party, if the person who is best placed to really own and explain the objects and reasons of the Bill is not the Chairman of the Committee, then it should be an able Member of the Committee, like me. I am at a loss as to why in certain Bills Members of the Committee are allowed to own the Bills.

As a Committee, we feel that our Bill is being taken away from us. I have, in many occasions spoken about this matter, but this House sometimes tends to be run on George Orwell's principle of all animals being equal but others being more equal than others. As the Leader of the Majority Party moves debate on this Bill, could it be explained to us, as Members of the Departmental Committee on Energy, Information and Communications, why our Chairman, who is right here in the House, is not the one to do so?

Hon. Temporary Deputy Speaker, I beg your direction.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Gumbo. By your own standards, you said that any person can move debate on a Bill. I keep on saying that any business that comes to this House passes through the Clerk of the National Assembly and the Speaker. It is important for us to know the process, so that when we have some issues, we can raise them during the process. Otherwise, as indicated on the Order Paper, the Bill is supposed to be moved by the Leader of the Majority Party. Therefore, I direct that he moves debate on it. I am sure that he is able to explain why he is moving it.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, before I move debate on this Bill, I seek your indulgence to clear the air regarding what my colleague has said. Far from George Orwell's *Animal Farm* principle of all animals being equal but some animals being more equal than others; that is not the case.

I will go down in history explaining why finance-related Bills are in the name of the Chair. These are Bills which came to this House before the Speaker made a Communication from the Chair guiding the House on this matter. All Government Bills, including the Wildlife Bill, the Division of Revenue Bill, among others, have been signed by the Leader of the Majority Party. This was precipitated by the fact that when a Government Bill is signed by the Leader of the Majority Party and the First Reading on it is done, it is committed to the relevant Committee. The Committee of Parliament has an oversight role. You cannot sign a Bill and then have oversight role over it. That was the genesis of the Government Bills. That is why I will move. The Bill is for you to critique. The Bill is for you to disagree with the Government. Even in my moving notes, I will highlight the areas where Government feels that there are reasons why we brought it to the House. So, it is not only for the Departmental Committee on Energy, Information and Communications. I have nothing against the Chairman of that Committee. These were first Bills and no other Bill from Government will be signed. This is a decision taken by the Speaker and there is a ruling to that effect.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Maybe for further directions, the Bill is by the Leader of the Majority Party. He may now move.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I wish some of these responsibilities went to other people, so that I have time to serve my constituents. That is with a light touch.

The objective of this Bill---I am sure the Committee on Energy has tabled a report of their findings in this House, which will guide the Members in debating this Bill at the Second Reading Stage.

This Bill provides for enactment of legislation to create an institutional framework. Parliament is required to provide for the establishment of a regulatory body which must be independent of Government, political, and commercial interests, which include the media owners associations. It will reflect the interests of all Kenyans from all sectors of our society. It will ensure that media standards, regulations and monitoring in terms of compliance are observed. This is what this Bill envisages. This is the objective of the Bill.

Currently, we have the Communications Commission of Kenya (CCK). This Commission exercises major control on behalf of the Government through representation, appointment and funding. The reason for this amendment is also to allow making of regulations, whose basis is the Constitution of Kenya 2010. The Commission has to confirm the independence of control under Article 34 of the Constitution. Due to advancement in technology, which has eliminated the traditional distinction between telecommunication and broadcasting, the Commission needs empowerment to effectively discharge its mandate. What is the way forward in this amendment Bill?

Parliament must enact legislation that will provide for establishment of an independent and impartial body. What will the body do? In terms of structure, this body must be independent. It must not be under control of Government, political or commercial interests. As I said earlier, it must reflect our diversity and all sections of our society. It must set all broadcasting and media standards. We were here the whole of last week and today setting up financial standards. We have even set up a tax tribunal mechanism. So, we must have standards and a way to monitor compliance within the media sector. In doing that we are complying with the provisions of the Constitution.

This Bill intends that the Communications Commission of Kenya will be renamed and known as the Communications Authority of Kenya. The Communications Authority of Kenya will replace the CCK and recruit competitively in accordance with Article 232 of the Constitution, which talks about how recruitment should be done competitively within the public sector. The Authority will have oversight over the Universal Service Fund through the Universal Service Authority Council. Under this amendment, the Government will fund the CCK after it is reconstituted and renamed.

Once we pass the amendments, this law will set a very high standard in terms of monitoring and compliance of the media. The law will make sure that this in tandem with the provisions of the Constitution, 2010.

With those remarks, I beg to move that the Kenya Information and Communications (Amendment) Bill, 2013 be read a Second Time. I will ask the Chairman of the Departmental Committee on Energy, Information and Communications to second.

Hon. Kamau: Hon. Temporary Deputy Speaker, I beg to second this Bill. Pursuant to Article 118 of the Constitution and Standing Order No.127 the Departmental Committee on Energy, Information and Communication facilitated public participation by engaging stakeholders on the Bill. The Committee met with the Ministry of Information and Communication, the CCK, the Media Council and Safaricom amongst others. We received written submissions in form of memoranda from the Media Council and the CCK; all these in an endeavor to achieve public participation.

The Committee scrutinized this Bill thoroughly. We came up with various recommendations as a Committee. I would like to guide hon. Members on what the main observations about this Bill were.

First of all, the Sixth Schedule of the Constitution provides that operationalizing Article 34 should be by 27th August, 2013. However, the National Assembly on Wednesday 31st July, 2013 extended the period by four months pursuant to Article 261(2) of the Constitution to allow for further discussions and engagements with stakeholders.

As the Leader of the Majority Party has indicated, the intention of the Bill is to amend the Kenya Information and Communication Act in order to, among other things, align it to the Constitution of Kenya. In this respect the Bill seeks to provide a statutory framework for governing the communication sector in order to confirm and satisfy the requirements of the Constitution of Kenya.

This Bill proposes to make a raft of amendments to enable better regulation of the sector by providing for the handling of new regulatory challenges in the communication sector due to rapid technological changes. It actually proposes to rename the CCK as the Communications Authority of Kenya, so as to better the regulatory functions of the current commission.

The Bill seeks to provide a framework for dealing with issues relating to competition and consumer protection in the sector, of course the enactment of this Bill shall not occasion additional expenditure of public funds. There are quite a number of things I would like hon. Members to specifically look into. I refer you to Article 34(5) (a) of the Constitution of Kenya, and if you allow me, I will want to quote what it says.

“Parliament shall enact legislation that provides for the establishment of a body which shall –
(a) be independent of control by government, political interests or commercial interests.”

Hon. Temporary Deputy Speaker, on this particular one, the Committee deliberated at length and they were asking themselves quite a number of questions. Do we make the Communications Authority of Kenya or the Media Council the body envisioned by the Constitution under Article 34(5)(a)? We were clear that the Media Council of Kenya may actually be hindered because of one thing called commercial interests. You find that in the media, we have the media owners themselves and, of course, their overriding motivation is commercial interests. Therefore, making them the body envisioned by the Constitution would actually not be according to the Constitution or the framers of the Constitution, therefore, we thought the Communications Authority of Kenya would actually be the body envisioned by the Constitution under Article 34(5)(a).

Hon. Temporary Deputy Speaker, therefore, when we move to the Committee stage, the Committee will be moving the necessary amendments and I hope Members will be able to support this, because I think it is important for us to make it crystal clear that this is a body that we intend to make extremely independent of control by the Government, political interests or even commercial interests.

Hon. Temporary Deputy Speaker, there is another issue that we actually worked on. We looked at this Bill critically and said that if, indeed, the Communications Authority of Kenya is a body that we need to be that independent, then the appointment procedures must be reviewed as well. This is because we cannot have a body that is independent and then we leave it to the whims of one individual to make appointments at will. Then that raises the question that, that will not be independence at all. The Committee will be coming up with some recommendations on the way forward regarding appointments, so that any appointment made will be in conformity with the Public Appointments (Parliamentary Approval).

Those members who will be nominated will have to be cleared by this House for that independence to be there. I think that is something that I will really invite the Members to look into seriously and critically. I think that will make that particular authority to either be independent or be controlled by some other forces. We believe that once we make the nominees come through the House, they will be able to have some form of independence. They will not fear that the appointing authority might remove them from office.

Hon. Temporary Deputy Speaker, there is another issue we looked at and that issue was also very critical. If you look at this particular Bill and more specifically under the appointment procedure, it talks about:

“Within 14 days of the commencement of this Act or of the occurrence of a vacancy in the office of the chairperson or a member of the board, the Cabinet Secretary shall by notice in the *Kenya Gazette* and at least two newspapers of national circulation declare vacancies in the board.”

Hon. Temporary Deputy Speaker, we had a beef with that because we cannot at this time say that within two weeks from the minute the Bill becomes operational that all the directors of the Communications Commission of Kenya should cease to hold office. I think we must be able to have a situation where institutional memory is actually let to go on as we move on. However, we are in agreement that the best procedure is to let those who are currently serving serve until their terms expire, after which the appointment procedures spelt out here, and which will be amended if the House agrees, will then take place. That is one of the issues that I would really urge Members to look into seriously. If we are seeking within 14 days to send all the directors of the CCK home, I think we will be sending a bad message to this country. That will not be the right way to go, therefore, we will be coming up with the necessary amendments during the Committee stage.

Hon. Temporary Deputy Speaker, we also have a committee envisioned within this particular law and that is the Universal Service Fund Council. This Council is going to be extremely important. This is the team that is going to be looking into the fund that is going to be created as a result of the various contributions from the service providers. The essence of this fund is to make sure that there is network coverage throughout the country. If you go to some areas of this country today, you will find that there is no network coverage. This fund will make sure that the areas that hitherto do not have coverage are actually taken care of.

This fund will be a very important because in our estimation it will actually have about Kshs4 billion per year. That is a committee that I think will also need to be taken care of seriously. We are also aware that members of this committee were appointed in February this year, but in the spirit of making sure that the membership of this committee also goes through the same procedure, we also are going to be making recommendations to the House that we amend this particular law, so that even the members of this particular committee can also go through House vetting.

Hon. Temporary Deputy Speaker, there are quite a number of other areas but most of them are just to clean up the Bill the way it is; those are the specific areas that we are looking at to make sure that this Bill is actually better.

Hon. Temporary Deputy Speaker, in conclusion, allow me to thank the good offices of the Speaker and the Clerk of the National Assembly for the support the Committee received. They facilitated the smooth execution of its mandate. The Committee also appreciates the secretariat for the appropriateness in the preparation of this report.

May I also thank my Committee members who sat for very long hours to look at this Bill, sometimes under very hostile conditions. In fact, sometimes we got some unkind words from the Cabinet Secretary responsible for Information Communication and Technology. We were not discouraged. We had to continue and make sure that we give Kenyans the right Bill which will assist this country move forward.

Hon. Temporary Deputy Speaker, with those few remarks, I wish to second. Thank you.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nicholas Gumbo. You are a very serious member of the Committee. Now that your Chairperson has given his contribution, you can proceed.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I thank you for giving me the opportunity to contribute to this important Bill. The communications industry in Kenya has walked a very long path. Those of us who grew up in the rural areas will remember the days when we used to walk as long as 20 to 30 kilometres in search of a telephone booth only to reach there and find that the booth was in operational. We also remember the many long queues that used to be here in Nairobi as people waited to make calls in telephone booths; these have now become more or less obsolete.

Hon. Temporary Deputy Speaker, it is not just in that area. Most people may not remember that giant corporations like Safaricom and even the CCK hardly 10 years ago were just very little sub-units of what was the giant Kenya Posts and Telecommunications Corporation.

This advancement has been both good and bad, in that we all know for, instance, what has gone on in our country of late. There is the issue of terrorists using unregistered SIM cards to co-ordinate their activities. Regulation in this sector is important, so as to transfer the benefits to both the operators and the users. There is no question about it; the growth in the telecommunications sector in Kenya, as in the rest of the world, has simply been exponential.

Some of the wealthiest corporations, not just in Kenya but in the whole world today, are actually found in this sector; Google, Safaricom and MTN are some of the wealthiest corporations in the world today.

This growth has also come with its challenges. There have been questions raised on the Floor of this House. I have had the privilege to question, for example, how this huge bottom line was coming about. Concern has been raised and I am glad this Bill addresses it.

On the quality of service that is being offered by the main telecommunications bodies, especially GSM operators in Kenya, as things stand now the licensing of GMS operators is hinged on meeting certain quality of service parameters. At the moment, none of the four GSM operators in Kenya has met all the eight quality service parameters required by law to be able to validate their licences. This is a matter that the Chairman will tell you we have engaged in very aggressively. We are asking ourselves: Is this huge bottom line as a result of the fact that they are not making the necessary investment, so that the consumers can get quality service?

It is no secret that on Fridays it is almost impossible to call on any of our networks, particularly some large ones. The dropped calls are very many. Sometimes I may be calling someone who is next door and my phone says, "Sorry, the mobile subscriber cannot be reached", yet their phone is on. These are issues that are of concern. As a nation we have to address them. It saddens me and I have raised these matters in our Committee that in Kenya the penalties so far

stipulated in our laws have been too little. If you charge, for example, giants like Safaricom Kshs.500,000 for a violation of that nature, that to them is pocket change.

I am happy that for the first time this amendment is seeking to introduce penalties which will be a quarter of their gross turnover. Now, the telecommunication bodies will start to feel the pinch, and they will start to invest more, so that we are able to get what we pay for. It is really not right that dropped calls become the order of the day. Incomplete calls are also common. You may be talking to someone and then, all of a sudden, you are cut in the middle and there is no recourse anywhere; even when it is there, it is very lenient.

I know there has been a spirited attempt by the Telkom bodies to try not to have this implemented in law. I am appealing to Members of this House that the proposal as it is now for 1 per cent of their gross turnover to cater for violations will make them be able to provide better quality service, as the terms of their licensing requires them to do. It is only ethical if your terms of licensing state that you have to stick to certain parameters. For example, if we are in a contract and I buy something from you, there are certain guarantees that the seller has to give the buyer. This is what we are talking about regarding the quality of service in the Telkom bodies.

This is a matter they have been fighting aggressively. I know there is a lot of lobbying by the Telkom bodies, for penalties to be reduced. The penalty that has been proposed of 1 per cent of the gross turnover is very good, and we will start to see not only the growth of telecommunication sector in this country, but also the growth of quality service; customers should get value for money.

Many parts of Kenya are still not accessed, and the idea of the Universal Service Fund, as proposed in the Bill, has been there even in the amended Act of 2008 but the implementation has been weak. Now that we have a trust to look after this fund, we should start by looking at all areas in Kenya. Where we are now, telecommunication is no longer a privilege, it is becoming a right of everybody to be able to communicate whenever and wherever.

The Chairman has just spoken about the proposal to have the Cabinet Secretary appoint a new board after 14 days. As a Committee, we feel that a level of continuity and institutional memory is important for this new authority to be able to get a foothold in the field. We will be coming here as a Committee and requesting the House that this proposal in the Bill be amended, so that we can allow those who are there at the moment to steer the new corporation for a certain duration before we start looking into bringing in new people to run it.

Finally, every time I stand in this House, I am a very proud Kenyan and one of the things that have concerned me is the fact that by and large the ownership in the Telkom sector, in big companies is by foreigners. I am a believer that if Kenya is to grow, then wealth has to find its way into the pockets of Kenyans. Therefore, we should be able to make legislation and regulation in this House that will benefit the young and upcoming Kenyans. I am a firm believer that probably our answer to the question of youth unemployment in Kenya lies in the Telkom sector.

We should remove as many barriers as possible from this sector to enable young entrepreneurs--- Let us not allow the big companies to take them for a ride. Some of the biggest innovations in this country, for example, the automatic vehicle parking systems, have been developed by Kenyan students in laboratories. I find it an act of mischief that as our students and young people develop these things in the laboratory, they are paid peanuts and the huge companies and corporations start to enjoy the benefits. I am made to understand that the famous M-Pesa service could have been developed in one of the laboratories in our universities. If we had allowed the young Kenyan who developed that famous money transfer system to be able to

get some royalties, a minimum amount and a small percentage per every transaction, we would be on our way to creating young Kenyan billionaires and making Kenya a better place to live in.

With those remarks, I beg to support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Nairobi County Woman Representative, hon. Rachel Shebesh.

Hon. (Ms.) Shebesh: Thank you, hon. Temporary Deputy Speaker. I want to contribute very briefly to this Amendment Bill.

Listening to the Chair and Members of this Committee, it is obvious why there was a bit of tension between themselves and the Cabinet Secretary. I was in the last Parliament, and I am assuming that we looked at this Bill and gave too much power to the Cabinet Secretary. These are powers that in the new dispensation we are no longer giving to the Executive. Instead, we are giving them to commissions, authorities and legislatures.

I start by commenting that the Bill ensures that the Cabinet Secretary, in his role, does not usurp any other power, or infringe on the rights of the media by having too much power. I do concur with the amendment that states the Commission which we had earlier suggested to be an authority be given full power to regulate the media. I am 100 per cent in support of freedom of the media, but there is nobody who does not need regulation. Everybody in this country, the Executive, the Legislature and the Judiciary has an arm that oversees, or regulates, it. We cannot allow the media to be unregulated. This Bill, therefore, gives us an authority that will be not only independent, but will also ensure that the rights and freedoms of everybody, including those of the media fraternity, are safeguarded.

Therefore, I am in total support of the amendments here, but I do know also that there is controversy about the members who are currently in the Communications Commission of Kenya. The passage of this amendment Bill as it is, would mean that overnight we would have no members of the CCK. I think what the Committee is suggesting is prudent, that an amendment be brought to the Floor of this House before this Bill is passed. This is because that kind of annihilation of a body that exists will really not serve the purpose the amendment is seeking.

So, I want to support the Committee of this House and want to say that the media has become like the fourth arm of Government. This country listens to the Executive, Legislature, and Judiciary and also listens to the media. I think it is about time the media became responsible, not because they are gagged, but because they are forced to take responsibility for the things they say and propagate.

I am in total support of this Bill. Thank you.

Hon. Langat: Thank you very much, hon. Temporary Deputy Speaker. I also want to contribute to this debate on the Kenya Information and Communication (Amendment) Bill, 2013. Looking at the Memorandum of Objects and Reasons, I note that one of the things that this Bills seeks to achieve is the independence from control by both the Government and the commercial sector.

We all agree that communication is really a very key sector; it involves more than the communication and the media. This is also a security sector. If we do not manage our communication, or media sector, well this country will be exposed to risks.

What happened at the Westgate Mall tragedy was because of communication mismanagement. Videos were shown. You could see people communicating but we did not know who they were. I am sure they were using our systems to communicate. Therefore, I strongly believe that the communications sector and the media must be strongly controlled. In fact, this Bill proposes a change from “Communications Commission of Kenya” to

“Communications Authority of Kenya.” In other words, it seeks to give more powers. But when I look at it, I ask myself, how do you achieve independence?

Hon. Temporary Deputy Speaker, look at the appointments proposed in this Bill; you are just telling us that, this is a Bill that is supposed to be independent. But look at the appointment. Look at the composition of the board. It has three Principal Secretaries, who are Government officials. The other members proposed to be appointed in this Bill are also appointed by one person. You are telling us that a Cabinet Secretary will just advertise and then on the list they will draw they can just get some comments from the public and then they appoint people to the Authority. The chairman will advertise, then get complaints, give names to the President and then he will appoint.

Look at what is proposed in the Bill; how do you fire the chairperson? How do you fire members of the Authority? It only says if you receive a complaint from the public--- If it is a chairman of the board, then you give the President the complaint, the President shall fire. Then for the other members, it is the Cabinet Secretary who will act. There is no security of tenure for the members of the Authority – I stand corrected by the Committee. So, I want to encourage the Committee to undertake radical amendments to this Bill, so that it really achieves what we intend to achieve. There is no independence which is being talked about as a requirement in the Bill. I will really support the Committee if it comes up with amendment that will create a body that Kenyans can have confidence in.

Hon. Temporary Deputy Speaker, if the Chairman can be fired at any time, or if the members of the board can be fired because of complaints without any checks--- I think the Committee should consult and come up with a body that will truly be independent, and which will be respected by Kenyans. This is because if this sector is mismanaged it can bring chaos in this country. It can bring serious security concerns.

Therefore, I would really want to know, for example, if the interests of the stakeholders will be catered for. I agree that we want independence, but how will you get the interest catered for? Stakeholders must also be consulted.

Hon. Temporary Deputy Speaker, I also want to say that freedom of media is something which we need to defend. This Bill should provide for freedom of the media; however, it should not allow irresponsible reporting by the media. In fact, we need to say yes, you are given all the freedom to say what you want to say, as long as you are willing to take responsibility for what you say. We need to put serious caveats around it, so that irresponsible media owners and journalists are not given all the power to say what they want. But in the event they knowingly report things that are not correct, then serious consequences should be visited on them, so that we protect Kenyans. This is because many Kenyans have also suffered because of wrong or irresponsible media reporting.

Hon. Temporary Deputy Speaker, I want to support the Bill, but I really would expect the Committee to bring serious and radical amendments to give it the independence which is being talked about. In fact, appointment should not be left to one person. It should not be like a one man show. We need it to be more objective. Kenyans should feel that those who are qualified--- I have looked at the qualifications for those who will be appointed and I am okay with them. But why should we have an exception? Are we saying that we are targeting somebody who is not a degree holder? If we really would go for degree holders, then let us go for first degree holders.

If we want to say that we want somebody with a degree then we should really come down and say “somebody with a diploma and above”. Let us set that minimum criterion. But do not say “the general requirement is first degree” and then say “Somebody can be appointed if he

can show that he had a good career.” We are giving room for corruption. We need to set standards which must be followed.

I do not want to say much; I want to urge hon. Members to support the Bill, but the Committee should introduce radical amendment to make this a good Bill.

Thank you, very much. I beg to support.

Hon. Ichung’wa: Hon. Temporary Deputy Speaker, I am sorry, I had gone to make useful consultations with hon. Jamleck Kamau due to his long experience as a Cabinet Minister in the former regime of hon. Mwai Kibaki. I rise to support this Bill. From the outset, I want to relate to the sentiments of my good friend, hon. Langat that, indeed, if we are talking about independence, it must be seen to be independent; it must be independent and not just in writing. I truly share the sentiments that if we have a board where a good number of the members are from the Executive, it may truly not be independent.

The object of this Bill is to have an authority that is free of any political, Government or even commercial interests control. Therefore, if you load the board with many Principal Secretaries, we may lose that independence. I would also implore the Committee to look at ways of amending that to ensure that there will be real independence of this Authority. I also support this Bill for one particular reason, which is in relation to the freedom of the media. Indeed, the media ought to be free; but as has been said, I wish to repeat that freedom also comes with responsibility. Therefore, to have an authority that will not only create an environment where the media will be free, but will also be one that will regulate the media is very important. The fact that this Bill touches on both creating an environment for freedom and also regulating the media to create some sense of responsibility is a move in the right direction. It is not lost to many Kenyans that, indeed, many of our media houses, more so during the post election violence in the late 2007 and early 2008--- It was unfortunate that a number of our media houses greatly contributed to the escalation of violence by clearly inciting people through broadcasts.

It is unfortunate that the existing Communications Commission of Kenya has had no teeth to bite. We will get an authority that can regulate broadcast content in this country and one that can take action against media houses that not only broadcast content that is inciting to the members of the public, but also content that is also not good for our children. This will be a step in the right direction. I do not have much on this Bill. I am not an expert in broadcast matters, but I am a strong advocate of freedom, not just of expression but also that of the media. Therefore, I strongly support this Bill. I also call upon the Chair of the Committee to look at the issues that will give the board more independence.

I support the Bill.

Hon. (Ms.) Mathenge: Hon. Temporary Deputy Speaker, I did not realize that you had noticed me because normally I sit here and I have to walk out in protest. Thank you for recognizing me.

I want to support this Media Bill, but I have a few issues because there are some areas which are not clear. The Committee needs to sit and clarify issues a little bit more comprehensively. For example, if you look at clause 46(a) and (f), one of the functions of the Authority in relation to broadcasting services shall be to protect the right to privacy of all persons. I wonder what the Authority is going to do if the broadcaster is in breach of this. We need to know how they are going to address that issue. I have looked at the Bill and I do not see anywhere where it appears. Again, in the same Clause 46(h) and (i), the Authority shall have the power to set standards and manner of programmes. This is good because some of the programmes that may be viewed are not really good for our children. We need to monitor this. I

also feel that this cannot be left to the Authority. The Authority, together with the broadcaster, should agree on programmes.

The final one, which I find a little bit disturbing is Clause 40(6), which provides that where the Authority makes a decision that a licensee is competing unfairly, the Authority shall take specific actions. The Bill says all the things that it will do. If I am a broadcaster, am I not in business? Business is about competition. If I am in business, it is about competition. How are they going to determine whether I am doing it unfairly or not? We need to clarify this, otherwise you can find one media house victimizing other media houses because, maybe, it will not be getting the coverage that it will want.

This is a Bill whose time has come. I support it but I would urge the Committee to look at those three issues, which I feel are very pertinent to make the Bill as good as it should be.

Hon. Waititu: Thank you, hon. Temporary Deputy Speaker. I also rise to support this Bill. In our country Kenya, since Independence, we have been having issues concerning this Bill. In this 11th Parliament, we have the CORD and the Jubilee coalitions, but most of us are very good friends. When the media comes in between the two coalitions, they raise many concerns about the differences between us. If anybody in this House does something small, it is broadcast to the whole world that something big has happened. They are our friends, but sometimes they raise good issues as when there is hunger or floods, but they should also understand, as my colleague, Member for Kikuyu, has said here, that during the clashes in this country, the media contributed greatly by giving wrong information about our country.

I support the Bill and also advise the media houses that they are Kenyans just like us. When they report, they should have Kenya at heart. They belong to the 42 tribes of this country just like it is the same with this House. They should show our children in school and other learning institutions that we value them as Kenyans. They should have a limit within which they can expose our country to foreigners by saying that this country is on fire. Kenya is not on fire. If they do not think about getting more money and think about having media houses which Kenyans can watch, we will get somewhere.

Again, we have children in our homes. I want to warn the media houses that the programmes that they air are not fit for children. They should monitor what they air and at what time. Sometimes, you are watching television with your children and the programmes being aired are not fit for them. I support the Motion. When we started fighting them here, it was not because we hate them, but because we wanted them to join hands and build Kenya.

I support the Bill.

Hon. (Ms.) Muia: Thank you, hon. Temporary Deputy Speaker. I rise to support this amendment Bill. However, I have one concern. We are all aware of media houses. When we say that this body will be extremely independent, if they go overboard, or if there will be issues to be raised, who will they be answerable to? Who will raise those issues because the Government will not even question them? The same case applies to Parliament. The tribunal will deal with consumers, and we need another body to oversee it if something goes wrong. This is because we have seen media houses talk about politicians and other people, or writing very damaging reports. If there is no one to oversee this body, there will be a lot of corruption. We need to create another body to oversee them in case of any problem.

Thank you, hon. Temporary Deputy Speaker.

Hon. Kamau: On a point of information, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): There is a point of information from hon. Kamau. Hon. Regina, do you want to be informed?

Hon. (Ms.) Muia: I do not need to be informed, hon. Temporary Deputy Speaker. I am okay.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): She does not need your information.

Hon. Members, there being no other request, I now call upon the Mover to reply. Yes, the hon. Leader of the Majority Party.

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Speaker. I want to thank all the hon. Members who made valuable contribution and set the stage for the Committee of the whole House. We will at the end of the day have an independent institution, independent of the Government, independent of political interference and independent of commercial interests.

With those remarks, I beg to move.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, we are not able to put the Question. I, therefore, direct that the Question will be put in the next sitting.

Let us move on to the next Order.

(Putting of the Question deferred)

THE MEDIA COUNCIL BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Yes, the hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I rise to seek your indulgence to withdraw this Bill on the basis that the Committee has not finalized on it and brought a report to the House. We can deal with this Bill next week. Let the report be brought to the House, so that hon. Members can debate the Bill based on it. So, I withdraw the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I direct that, that Order is deferred and not withdrawn.

(Bill deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, if you look at the Order Paper, you will find that we are through with the business of the day. Therefore, the House stands adjourned until tomorrow, Wednesday, 16th October, 2013, at 9.00 a.m.

The House rose at 5.45 p.m.