

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 22<sup>nd</sup> October, 2013

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

**Hon. Speaker:** Hon. Members, I have two Communications to make, one of which is to convey a resolution by the House of the People of the Federal Republic of Somalia regarding the terror attack at the Westgate Shopping Mall in Nairobi.

Hon. Members, you will recall that I issued a Communication on 24<sup>th</sup> September, 2013 regarding the act of terror at the Westgate Shopping Mall, Nairobi, resulting in deaths and several injuries. There is no doubt that this barbaric act of cowardice left everyone in the whole world shocked. Indeed, messages of condolences, solidarity and grieving have continued to trickle in our offices for conveyance to the nation. Most of the messages are from various friendly nations, prominent individuals, international organisations, parliaments and assemblies. It is on this note that I wish to bring to your attention one such message.

#### RESOLUTION OF THE HOUSE OF THE PEOPLE OF SOMALIA ON WESTGATE TERROR ATTACK

**Hon. Speaker:** Hon. Members, on 10<sup>th</sup> October, 2013, I received a resolution by the House of the People of the Federal Republic of Somalia passed on 28<sup>th</sup> September, 2013 with regard to the recent act of terror on the Westgate Shopping Mall, for conveyance to this House. It is signed by the Speaker, hon. Mohamed Sheikh Osman Jawari. The resolution condemns the terrorist attack and extends heartfelt condolences of the people of Somalia to the families of the deceased. The resolution says that they stand in solidarity with the injured and grieve with the people of the Republic of Kenya as well as this House.

The House of the People of the Federal Republic of Somalia underlines the need for collaboration between governments in the region to bring sustainable peace. It renews the House of the People's commitment to international principles, conventions and treaties that prohibit the use of violence in whatever form against civilians of any nation. It urges the people of Somalia to ensure social justice, protection of lives and refrain from violence; and urges their government to enter into agreements with its neighbours to enhance security, among others.

Hon. Members, on behalf of the National Assembly, and on my own behalf, I take this opportunity to thank and compliment the House of the People of the Federal Republic of Somalia, the Speaker of the House, hon. Mohamed Sheikh Osman Jawari and reiterate assurances of our highest considerations.

Thank you.

## COMMITTAL OF *UWEZO* FUND REGULATIONS TO COMMITTEE ON DELEGATED LEGISLATION

**Hon. Speaker:** Hon. Members, the next Communication is by way of guidance on procedure. The *Uwezo* Fund Regulations and Explanatory Memorandum have been tabled, pursuant to Section 11(1) of the Statutory Instruments Act (Act No.23 of 2012), which provides as follows:

“11(1) Every Cabinet Secretary responsible for a regulation-making authority shall, within seven (7) sitting days after the publication of statutory instrument, ensure that a copy of the statutory instrument is transmitted to the responsible Clerk for tabling before Parliament”.

The Cabinet Secretary, National Treasury, vide a letter dated 17<sup>th</sup> October, 2013, transmitted the Regulations to the Clerk for approval by the House, in accordance with Section 24 of the Public Finance Management Act (Act No.18 of 2012). In this regard, I wish to guide Members as follows:-

(i) the Regulations now stand committed to the Committee on Delegated Legislation for review and scrutiny, pursuant to Section 12(1) of the Statutory Instruments Act (Act No.23 of 2012) and Standing Order No.210;

(ii) in considering the Regulations, the Committee will be guided by principles of good governance, rule of law and shall in particular ensure that the Regulations comply with the provisions of Section 13 of the Statutory Instruments Act;

(iii) the Committee will also be guided by the provisions of Standing Order No.210 (3) to set up the parameters to consider when reviewing the Statutory Instrument;

(iv) when the Committee resolves that the Regulations are in order, the Clerk will convey the resolution of the Committee to the National Treasury for further action, in which case the Committee will not make a Report to the House; and,

(v) on the other hand, if the Committee does not accept all or any part of the Regulations, it may recommend that the Assembly resolves that all or any part of the Regulations be annulled or make further recommendations on amendments and Sub-section 4(b)(i) and part 3 of Standing Order No.210 shall apply, in which case the Committee shall table its Report in the House within 14 days from the date hereof for the House to consider.

Hon. Members, I now refer the *Uwezo* Fund Regulations and the Explanatory Memorandum to the Committee on Delegated Legislation to review and consider.

Hon. Members, copies of the regulation are available at the main reception. I thank you.

## PETITION

### DISMISSAL OF ENOCK MUKANDA FROM KENYA DEFENCE FORCES

**Hon. (Dr.) Pukose:** Hon. Speaker, I present the Petition by Enock Mukanda of ID Number 20413569, Ex-Service Number 9762461, who served in the Kenya Army Headquarters in the Signal Battalion and enlisted into the Force on 4<sup>th</sup> May, 1990 and discharged from the Kenya Defence Forces on 29<sup>th</sup> September, 1996 with the reason: “Service no longer required.”

I, the undersigned, a citizen of Kenya and a resident of Endebess region draw the attention of the House to the following:

THAT, aware that the disciplinary procedures for all military personnel is the function of the Kenya Defence Forces Military Council;

THAT, whereas a person or an officer injured while on duty is entitled to workman's compensation;

THAT, an officer injured fatally will resume duty on being declared medically fit by a competent Government doctor;

Therefore, your humble petitioner prays that the Government of Kenya through the National Assembly:

- (i) Ensures that the petitioner's plight is addressed;
- (ii) The Government of the Republic of Kenya through the Kenya Defence Forces urgently ensures that justice is served to ex Senior Private Enock Mukanda, Service No.64814 who was enlisted in the Kenya Army in 1990 and assigned to Signal Battalion. His service was subsequently terminated on 1<sup>st</sup> August, 1996 without being paid any terminal benefits. This was notwithstanding the fact that he was involved in a road traffic accident on 8<sup>th</sup> March, 1995 while in his course of employment as a driver of a military Mercedes Benz lorry of registration number 44KA25 along Kitale-Eldoret Road on the way to Kacheliba detachment camp;
- (iii) That the Kenya Defence Forces pays the terminal benefits to ex Senior Private Enock Mukanda to enable him cope with the reality of joblessness;
- (iv) That the Kenya Defence Forces provides workman's compensation as the petitioner was involved in a motor accident while on duty; and,
- (v) Makes any other order and alteration that deems fit in the circumstances of the case and your petitioner will forever pray.

This Petition has been presented by hon. Dr. Pukose in my capacity as the Member of Parliament for Endebess Constituency. I thank you.

**Hon. Speaker:** Very well. The Petition is referred to the Departmental Committee on Defence and Foreign Relations.

## PAPERS LAID

Report of the Departmental Committee on Justice and Legal Affairs on the Proposed Amendment to the Truth, Justice and Reconciliation (Amendment) Bill, 2013.

*(By hon. Chepkong'a)*

**Hon. Speaker:** Very well. I hope sufficient copies of that report are made available so that each Member is able to read through and that when debate on the Bill comes up, every Member will be in a position to make useful interventions and contributions.

The Special Report of the Public Investments Committee on the Contract between the National Cereals and Produce Board (NCPB) and M/s Erad Supplies and General Contracts Limited for the Supply of White Maize.

*(By hon. Keynan)*

The Public Finance Management (*Uwezo* Fund) Regulations, 2013 and the Explanatory Memorandum to the Public Finance Management (*Uwezo* Fund) Regulations, 2013.

*(By hon. A.B. Duale)*

## NOTICE OF MOTION

### ADOPTION OF REPORT ON SUPPLY OF WHITE MAIZE

**Hon. Keynan:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Public Investments Committee on the Special Report on the contract between the National Cereals and Produce Board (NCPB) and M/s Erad Supplies and General Contracts Limited for the Supply of White Maize as tabled before the House today, Tuesday 22<sup>nd</sup> October, 2013.

## STATEMENTS

**Hon. A.B. Duale:** Hon. Speaker, I have two Statements to make and both of them are from the Ministry of Defence. The first one was sought by Dr. Ottichilo on the San Marco Space Application Centre in Malindi.

### STATUS OF SAN MARCO SPACE APPLICATION CENTRE

The first question the hon. Member asked was about the current status of the centre in terms of its operations, management and legal framework. This center called Broglio Malindi Space Centre or San Marco Project base is managed under bilateral agreement between Kenya and the Government of Italy. The agreement currently in force was first signed in 1995 for a period of 15 years and it has been extended through exchange of diplomatic notes to end in June, 2014 to allow for completion of a negotiation for renewal.

The centre is managed by the Italian Space Agency, on behalf of the Government of Italy while Kenya's Ministry of Defence coordinates the activities carried out at the said facility, on behalf of the Government of Kenya. The centre offers telemetry, tracking and command services for national, trilateral and third-party world programmes. Three astronomy missions, SWIFT, AGILE and NuSTAR, for the study of X-rays and Gamma rays are supported under national programmes. The centre hosts equipment and tracks spacecraft and launchers for the programme.

The second question is on the scientific and economic potential of the centre and how the Government of Kenya has benefited since its inception in 1964 in terms of data acquisition, staff development and direct financial benefits.

Personnel drawn from Government of Kenya institutions have been trained in space science and technology. To-date, five Kenyans have been trained at doctorate level, three at master's level and 25 at technician level. The training of these personnel and the funding for the same have been undertaken by the Government of Italy. The centre conducts training and runs internship programmes for university students in space science technology.

Under the current agreement, Kshs240 million has been spent on Ngomeni community development projects. One hundred and eighty-five Kenyans are employed directly by the centre, while goods and services are acquired from Malindi and Kilifi counties. In 1995 Agreement, the annual rent payable to the Government of Kenya was US\$50,000 but this has since been increased to US\$100,000.

The thriving relationships between Kenya and Italy, arising from the bilateral cooperation of the two countries, have seen the Government of Italy convert to grants, debts owed by the

Government of Kenya. This was done under the “Debts for Development Swap” amounting to Kshs4.2 billion.

On the number of technical and support staff of Kenyan nationality employed at the centre and the terms and conditions of their service, the Ministry of Defence currently has an officer and two technical staff deployed at the centre. The Italian Space Agency runs the centre through contracts with space services companies directly under their management. Currently, there are 185 Kenyans who are employed at the centre for purposes of administration, operations and logistics support. They are serving under a three-year contract, with their terms and conditions of service negotiated through a collective bargaining agreement. The Italian nationals engaged at the base are seconded by their respective companies, contracted by the Italian Space Agency, and undertake administrative, operations and logistics functions.

The fourth question is on why the Government of Italy has not honoured some of the Articles of the 1995 Agreement between the two governments. Furthermore, why the Government has not taken any action on the same.

The joint standing committee responsible for facilitation and implementation of the agreement, which is composed of representatives from both governments, discussed the pending obligations of the Government of Italy and agreed that they would be factored in the proposed agreement, which is due for signing.

The fifth question was, given that the activities of San Marco Space Application Centre are mainly scientific in nature and focus on space research, remote sensing, launching and monitoring of resources and telecommunication satellites, why the centre’s activities are coordinated by the Ministry of Defence and not the Ministry of Education, Science and Technology.

The establishment of the San Marco Project base (then the San Marco Equatorial Range) in 1964 was to conduct equatorial launches and offer telemetry, tracking and control support for spacecrafts and launchers. Rockets used to launch satellites and suborbital platforms are essentially missile technology. Launch bases around the world are effectively controlled by military due to the inherent risks involved in handling missiles. This mandate to coordinate space related activities falls within the Ministry of Defence and, therefore, it was assigned to it.

In question six, the hon. Member sought to know when the Government of Kenya will take full control of the management of the centre. The proposed agreement foresees a period of 20 years during which the centre will be jointly managed by both governments. Vesting of assets was stipulated to take place at the end of the first renewal of the 1995 Agreement. The Government of Italy shall transfer all its rights and properties at the centre to the Government of the Republic of Kenya upon the lapse of the proposed agreement.

On the question of finalisation of the bilateral agreement with the Government of Italy and why Parliament has not been given the mandate of approving the same, let me clarify that the last negotiations for the renewal of the agreement were completed by the joint steering committee meeting on 4<sup>th</sup> and 5<sup>th</sup> June, 2012. The Treaty Making and Ratification Act of 2012, under Section 3(4), permits the Government to enter into bilateral agreements necessary for matters relating to Government business or relating to technical, administrative and executive matters after approval by Cabinet.

Finally, the hon. Member asked when we are likely to establish our own national space agency by Presidential Order or decree or legislation to coordinate space science research and application activities in the country. Let me clarify that the National Space Secretariat was established under the Ministry of Defence vide Legal Notice No.5563 of June, 2009 as a body

that shall act as the national space agency. Its functions include co-ordination of national space-related activities in Kenya. The membership of the secretariat is drawn from the relevant Ministries and representatives of key stakeholders.

The Cabinet Secretary for Defence is set to appoint the members to the secretariat. The secretariat shall oversee its own transition to a full-fledged Kenya space agency. It is, therefore, premature to call for the establishment of a space agency when the secretariat is yet to be fully operational, and when the Government is streamlining the structures and functions of all State corporations.

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, hon. Ottichilo.

**Hon. (Dr.) Ottichilo:** Thank you, hon. Speaker. First of all, I want to take this early opportunity to thank the Leader of Majority Party for that elaborate Statement on the status of the San Marco Space Application Centre in Ngomeni, Malindi.

While I appreciate the Statement, I want to tell this House that the Statement has not given the way forward for this very important centre for this country, particularly as regards the agreement of 1995. The agreement was very elaborate that after the expiry of the agreement between Kenya and Italy, all the equipment and the services of that centre would revert to Kenya. To-date, that has not happened. So, from what the Leader of Majority Party has said – that they are in the process of re-negotiating another 20-year agreement – it means that this country will never develop its own space science technology and expertise until after 20 years.

So, why are we, as a country, giving the Government of Italy this important resource which has the potential of generating millions of dollars for this country monthly, for another 20 years? Secondly, we were the first country in Africa to launch satellites from that station. Why should we wait for another 20 years when there are Kenyans who have a lot of expertise in space science? Some of them are currently working at the National Aeronautics and Space Administration (NASA), the European Space Agency and at the India Space Agency. This country has spent billions of shillings to educate those experts. Since Kenya is unwilling to set up its own space agency, those highly trained Kenyans continue to serve other countries that are very advanced.

So, my question is: Why is the country not willing to set up a space agency quickly through a presidential order?

**Hon. Speaker:** I hope the Leader of Majority Party will give you the answers because you did not go by way of clarifications for anything that may not have been clear. I feel, honestly, that if this matter had gone to the Committee and hon. Dr. Ottichilo had the opportunity of appearing before it and discussing the issues that you have very well articulated to the members of the Executive who would have come to give responses, I think the House would have been much richer and benefitted a great deal.

Now that hon. Dr. Ottichilo has raised the question with the Leader of Majority Party, you can see now that we are only going to be limited to your exchange with the Leader of the Majority Party and not necessarily have the benefit of a Report. I believe the issues you have advocated would have benefitted the House. This is especially if you cite that there are Kenyans working in other space agencies of other countries. These are matters that I believe a Committee of the House would bring up in form of a report so as to compel the Executive to move in the direction that you are proposing.

Let me hear from Harrison Kombe.

**Hon. Kombe:** Hon. Speaker, I sought a Ministerial Statement---

**Hon. Speaker:** No! No! Not that! Sorry. It is on this one.

**Hon. Kombe:** I am sorry, hon. Speaker. I thought you were through with that one. However, still I have one question which the Leader of Majority---

**Hon. Speaker:** A question on this one?

**Hon. Kombe:** Yes. It is about Ngomeni Space Research Centre, San Marco. Could the Leader of Majority Party tell this honourable House how much the Italian Government is earning in a year in terms of dollars from that space research centre? Why can Kenya not take over that research centre so that the revenue goes to Kenya's kitty directly?

**Hon. (Maj-Gen.) Nkaisery:** Hon. Speaker, I thought that you were not able to see me. There is a lot of scientific data being collected at San Marco. This scientific data is being sold by the Italian Government and it is earning billions and billions of money. The agreement was supposed to have expired last year and I am just wondering why the Government is allowing another agreement to be signed between the Kenya Government and the Italian Government for another period of say 20 years and yet that will make the Kenya Government continue losing billions of US dollars and scientific data to the Italians. Why can we not repossess the San Marco Station after the current agreement expires?

**Hon. Onyoka:** Thank you, hon. Speaker. The San Marco Research Centre is a matter that is quite weighty for our country for the simple reason that year in, year out there have been disputes which have come with regard to it.

Hon. Speaker, as the Deputy Minister for Foreign Affairs one of the last non-negotiated agreements before we left the Coalition Government was whether or not the Kenya Government was willing to re-engage and re-negotiate with the San Marco Research facility in Italy. The issues that came up at that particular moment had a lot to do with both bilateral and multilateral issues which involved Kenya and Italy.

As you suggested, hon. Speaker, it would actually be a wonderful idea for this issue to be taken to the relevant Departmental Committee so that we can then summon the Ministry of Foreign Affairs, the Italian Ambassador to Kenya, and the management of San Marco so that the presentation is later provided to the House. That way, as you said ably, Kenyans will actually get to know what exactly the San Marco Research Centre is all about.

**Hon. (Eng.) Rege:** Hon. Speaker, I want to congratulate hon. Dr. Ottichilo for raising this issue again. The Departmental Committee on Energy, Communication and Information in the Tenth Parliament, of which I was a member, did a very comprehensive research and came up with a very comprehensive Report. I have discussed this matter with the current Chairman of that Committee so that we look at this Report again together with the Chairperson of the Departmental Committee on Education, Research and Technology. The Report is there and I am the one who signed it.

It is a very important discussion that we need to look at. Right now, with the Longonot Satellite Sub-station sold to Orange, the Kenya Government does not have any facilities for monitoring security along our coastal waters or generally the land mass of Kenya. When the Committee brings the Report, we could discuss this matter.

**Hon. (Eng.) Gumbo:** Hon. Speaker, one of the highlights of my stay in the Tenth Parliament is when I visited this Ngomeni Centre, the satellite launching centre. The saddest thing about this facility is that much as the University of Rome and the Italian Government have drawn a lot of money from it, the poverty around Ngomeni is unbelievable. I had the privilege to join the Committee which visited this facility during the Tenth Parliament. It is a lost opportunity

for our country if such an important facility can be here with us and yet we are not drawing as much benefit as we should from it.

I want to agree totally with hon. Onyonka that this matter is so important that we need to engage the relevant Committees of ICT, energy, education and other related ones. This is because space science and satellite technology is important for us in terms of addressing food security issues, maritime issues, flood control and mitigation and so on. We must find a way even if it is not through the Ngomeni Satellite Station, but through a satellite programme that can help us address these issues.

**Hon. Speaker:** Let us hear the hon. Leader of Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, Sir, this matter is before three Departmental Committees; Energy, Communication and Information; Administration and National Security and Education, Research and Technology. So, what hon. Ottichilo wanted was a brief status. I am sure this Statement will help him to interrogate the Committees further.

Secondly, I had the privilege of serving in the Committee that was investigating the San Marco issue in the last Parliament. I am sure the Report of that Committee, which I had the pleasure to serve together with hon. James Rege, who was my able Chair and my colleague, hon. Eng. Nicholas Gumbo will bring out all this information. Those were good old days. We were in the same Committee and we investigated this issue.

Hon. Speaker, hon. Ottichilo raised fundamental issues about the equipment at Ngomeni Space Centre. At least, we are far much better because we have the National Space Secretariat which is under the Ministry of Defence. If Parliament brings very good recommendations, that institution can replace the Italians at San Marco. I am sure there is a new agreement which is being developed after the 14<sup>th</sup> June deadline.

Hon. Speaker, Sir, hon. Harrison Kombe asked me how much the Italians are earning; I cannot answer that question. I have answered the question that was sent to me by hon. Ottichilo. That is the question that I forwarded to the Ministry of Defence.

It is very interesting; hon. Nkaissery has raised a question on why we should wait for 20 years. I want to tell the House and the country that hon. Nkaissery was a former Assistant Minister for Defence and this was done when he was at the helm of this ministerial position. On 5<sup>th</sup> June, 2012, he was a very able Assistant Minister. So, he should tell us why he signed the extension for one year.

With regard to what hon. Onyonka asked, yes, I am sure the bilateral agreements are going on and I am sure on the bit on extension, it is only hon. Nkaissery who can tell us what took place. The Committee can bring a recommendation before that. Hon. James Rege said that there was a very rich investigation done by the previous Parliament and the Committees can pick up from there. I suggest that we can invite the Ministries of Defence and Foreign Affairs to shed light on this matter. On what hon. Gumbo asked, I agree with him that the Committee on Energy, Communication and Information can handle the matter.

That is the status report and I wish to lay it on the Table. Hon. Ottichilo and other Members can get copies of this Statement so that we can interrogate the Executive better. We can even call hon. hon. Nkaissery to tell us why he gave the extension.

*(Hon. A.B. Duale laid the document on the Table)*

**Hon. Speaker:** Obviously, since hon. Nkaissery has been mentioned, I think it is only fair that he is given a chance to say a word.



**Hon. (Maj-Gen.) Nkaissery:** Hon. Speaker, you cannot allow the Leader of Majority Party to mislead the House.

**Hon. Speaker:** Hon. Nkaissery, I have not allowed him to mislead the House. Just say what you may have to say instead of saying that I should not allow him to mislead the House.

**Hon. (Maj-Gen.) Nkaissery:** Hon. Speaker, the Statement by hon. A.B. Duale implies that I was party to the signing of the agreement. As far as I am concerned, when I left the Ministry in March this year, that agreement was not signed. It is wrong for hon. A.B. Duale to keep on misleading the House, without being serious and factual. He should bring factual information to the House instead of claiming that hon. Nkaissery was part and parcel of that arrangement. Yes, I was an Assistant Minister but I was not substantive. It should be remembered that, that was a Coalition Government.

**Hon. Speaker:** Hon. Nkaissery---

**Hon. (Maj-Gen.) Nkaissery:** Let me finish, hon. Speaker. We cannot allow this man to mislead the House.

**Hon. Member:** That is un-parliamentary language.

**Hon. (Maj-Gen.) Nkaissery:** But he is a man, is he not?

*(Laughter)*

**Hon. Speaker:** Hon. Nkaissery, you are not allowed to use that language here. The hon. Member referred to you as hon. Nkaissery. So, surely, in equal---

**Hon. (Maj-Gen.) Nkaissery:** Hon. Speaker, I withdraw. He is hon. Aden Barre Duale and he is a friend of mine. But he should not mislead the House. He needs to withdraw that I was part and parcel of the team that signed the agreement.

**Hon. Speaker:** But hon. Nkaissery, you are not appreciating that you were a junior Minister in the last Government. I thought hon. A.B. Duale talked of a date of June, 2012. Now, you say that you left your then junior occupation in March this year.

**Hon. (Maj-Gen.) Nkaissery:** Hon. Speaker, if that agreement was signed in 2012, then it was hidden from me because I am not aware.

Thank you, hon. Speaker.

**Hon. A.B. Duale:** Hon. Speaker, the document I have laid on the Table of this House is from the Executive; it is from the Ministry of Defence. It is dated 4<sup>th</sup> June, 2012, when an extension was done for this project to go on until June, 2014. If my memory does not fail me, the bloated Grand Coalition Government then, which exited in March this year; one hon. (Maj-Gen.) Nkaissery, the Member of Parliament for Kajiado Central, was an Assistant Minister for Defence. That document is from the Ministry of Defence and he cannot run away from it because it was a Grand Coalition Government and as an Assistant Minister, he was supposed - he was supposed to take both the assets and liabilities. I am sure hon. Ng'ongo can help me because he was supervising him. Hon. Ng'ongo was the supervisor of this Minister.

**Hon. Speaker:** Hon. Ng'ongo, you were supervising them. Is that correct also?

**Hon. Ng'ongo:** Thank you, hon. Speaker. First of all, the Leader of Majority Party should not be allowed to get away with this. He is very much aware that the month he is referring to I was a very able Backbencher in this House. I was appointed to the Government in September, to be precise on 21<sup>st</sup> September, 2012 and I served for six months. During that time, I did my duties diligently. But a more fundamental issue is coming up and to keep on referring to

hon. Nkaiserry, I think is not fair. Hon. Nkaiserry is not in the Executive right now and you can only discuss him if there is a substantive Motion before the House.

By allowing the Leader of Majority Party to keep throwing hon. Nkaiserry's name, I think it is misleading the public. It is wrong!

**Hon. Speaker:** There is no need for anything substantive. Hon. Nkaiserry, you were a Minister in that Government. Minister included the Deputy or Assistant Ministers or junior Ministers.

**Hon. (Maj-Gen.) Nkaiserry:** Thank you, hon. Speaker. I want hon. A.B. Duale to tell this House; in any agreement, somebody must append his signature. I want him to tell this House if the signature appended to that document is of hon. (Maj-Gen.) Nkaiserry, if not he must withdraw and apologize.

**Hon. Speaker:** Just the last one, we do not need to belabor this point. Hon. Nkaiserry, you are not on trial. The fact that you served or you did not serve or you may have been somewhere else when the signing was being done, or you might have been asleep or it could have been all manner of things, the point is, you served in the Government.

**Hon. A.B. Duale:** Hon. Speaker, this is a man I respect a lot. He is the Chairman of the Pastoral Parliamentary Group; a very serious caucus. I only made a reference to Maj-Gen. Nkaiserry when he was a Minister. But, if I go further, this is a House of debate. By then there was something in Government which was called collective Cabinet responsibility. Whether hon. Yusuf Haji, who is a great Senator from my county, who was by then the Minister for Defence, or anybody else signed a document on behalf of Foreign Affairs Minister; hon. Wetangula or hon. Prof. Ongeru, hon. Nkaiserry was part and parcel of that Cabinet responsibility. I only made the comment in reference to a document I received. I have a lot of regard for him as a great leader from the pastoral community and he has served the country in the Kenya Defence Forces, which today we are proud of since they are serving in many parts of the world.

**Hon. Speaker:** Next Statement.

#### RECRUITMENT BY KENYA DEFENCE FORCES

**Hon. A.B. Duale:** Hon. Speaker, Sir, the next Statement is a short reply from the Ministry of Defence and it was sought by the Member of Parliament for Ainabkoi Constituency on the ongoing recruitment by the Kenya Defence Forces. The Member asked specific questions and I have specific answers for him as follows:

(i) On whether the recruitment advertisement complied with Section 28(2) of the Kenya Defence Forces Act, requiring consultation with the Public Service Commission on the criteria for recruitment; yes, the KDF consulted the Public Service Commission on the subject matter in a meeting held on 22<sup>nd</sup> August, 2013 alongside the Commission on the Implementation of the Constitution and the Law Reform Commission and, therefore, complied with the provision in the said section.

(ii) On whether the chances allocated per county were advertised at least 30 days before the recruitment as required under Section 28 (3) of the Kenya Defence Forces Act, disclosing to the public precise information in relation to strength and composition of Kenya Defence Forces could be prejudicial to national security as provided under Section 49(1) and 49(2)(a) and (c) of the same Kenya Defence Forces Act. Section 49(3) of Kenya Defence Forces Act provides that "classified information," means any information whose unauthorized disclosure would

jeopardize national security; such information relates to strategy, doctrine, capability and capacity and the deployment of KDF”.

(iii) On whether actions of the Defence Council are in contravention of Article 232(1)(i) of the Constitution with respect to affording to all adequate and equal opportunity; the Defence Council adheres to the dictates of Article 232(1)(i) and the distribution of the ongoing selection of recruits is premised on:-

(a) As evidenced in the advertisement, all the 47 counties down to the division level, were allocated recruitment centers which exhaustively catered for regional and ethnic balance such that all Kenyans are afforded equitable opportunity to join KDF. At the recruitment centers, the candidates’ identification cards and particulars are checked to ascertain whether they belong to the area that is covered by the recruitment centre.

(b) Both men and women are given equitable opportunity to be recruited. Selection for both genders is subject to candidates presenting themselves at the designated centers and offices.

(c) Under Article 241(3)(a) of the Constitution, KDF is expected to apply and efficiently deliver on its responsibility for the defence and protection of the sovereignty and territorial integrity of the Republic of Kenya. Accordingly, persons selected for employment must be capable of delivering on this important mandate.

I want to read to the Members why KDF recruitment has a bearing on the height of an individual. The High Court of Kenya in Kisii, Petition No.181 of 2010 wherein the petitioner challenged use of the prescribed physical conditions as eligibility criteria for recruitment: In dismissing the petition Hon. Judge Musinga ruled as follows:

“It must be borne in mind that the work of our armed forces is not ordinary civil employment. Our armed forces must be given the liberty to recruit only those Kenyans who are fit for the job. The preamble of our Constitution recognizes the Almighty God as the God of all creation. We must also acknowledge that the Almighty God grants different gifts, qualities and capabilities to different people, so that they can excel in different jobs or/occupations. Those who may not qualify to join the armed forces on the basis of the stipulated requirements may be eligible in other fields”.

The other day the debate was about some counties producing people who are very short, and might not quality to be recruited.

(iv) On whether the action of the Members of the Defence Council was in contravention of Article 73(1)(i) of the Constitution that requires the authority assigned to State officers to be exercised in a manner consistent with the purpose and objects of the Constitution, the Defence Council acted as required and within the dictates of the Constitution and spirit by conducting recruitment in a fair, transparent, equitable and professional manner.

The recruitment exercise entails selection process wherein the candidates who present themselves are subjected to vigorous physical examination, further medical examination, aptitude test as well as scrutiny of academic certificates and identification documents to confirm their suitability to serve in KDF.

(v) On whether the Defence Council in failing to adhere to Section 28 of the Kenya Defence Forces Act on the advertisement was in breach of Article 73(2)(b) of the Constitution requiring objectivity and impartiality in decision-making, this was covered in the second question.

(vi) On the total number of recruits to be enlisted showing chances available in the country, the process is still ongoing and I am sure once the recruitment exercise is over, the country will know how many men and women were recruited to join the KDF.

Thank you, hon. Speaker, Sir.

**Hon. Speaker:** Hon. Chepkong'a, you are the one who raised the Statement.

**Hon. Chepkong'a:** Thank you, hon. Speaker, Sir. The Leader of Majority Party has made a great attempt to respond to the serious Statement I requested. Again, as I said earlier, this was not a pedantic Statement in which I was requesting an answer. This is a serious Statement about the law, and I expected the Kenya Defence Forces to have taken it extremely seriously. To merely quote Justice Musinga, who happens to be a former classmate--- He has heavily quoted matters of God; as you know this is not a moral question, neither is it a divine question that requires divine intervention. This was a Statement that required legal intervention. Section 28(3) of the Kenya Defence Forces Act contains mandatory terms that do not give them leeway.

Let me just read for the benefit of the Leader of Majority Party. Section 28(3) states: "The Defence Council shall advertise the chances allocated per county as least thirty days before recruitment".

From the little law that has been bestowed on us by God, as Justice Musinga may have said, and the cases that have been decided in this country, it is very clear that this is a mandatory provision, which requires the KDF to comply. Forget about Sections 48 and 49 that do not give them an opportunity---

**Hon. A.B. Duale:** On a point of order, hon. Speaker, Sir.

**Hon. Chepkong'a:** No, this is a serious clarification.

**Hon. A.B. Duale:** Hon. Chepkong'a wants to use the law to suit himself. He is basing his argument on Section 28(3) of the Kenya Defence Forces Act and he is avoiding Section 49(1) and (2)(c) of the same Act. Is he in order to read Section 28(3) without Section 49(1) and (2)(a) and (c)? He should read to the House Section 49(1) and (2)(a) and (c) as much as he wants to read to the House Section 28(3).

**Hon. Chepkong'a:** Hon. Speaker, Sir, I have read both. Sections 48 and 49 do not say subject to Section 28(3). They do not make reference to Section 28(3). This is a mandatory provision. Parliament meant that the KDF or the Defence Council must observe them at all times. So, is the Leader of Majority Party in order to give us a Statement that he knows is contrary to the law? In fact, it is in contravention of the law. I may be in order to seek an adjournment of this House to discuss this very serious matter. As you know, this affects Kenyans. I have just seen hon. Olago Aluoch, who is a senior counsel, just walking out of here. We know, of course, where he comes from and he is very tall. I have seen people from Mandera who are extremely tall; they are like hon. Duale, who is from Garissa. I do not see where short people come from in this country. I know the presenter, who is an accused person at the International Criminal Court (ICC), does not qualify to be employed by the KDF. We give exemption to that one, but with respect to many other Kenyans, we have very many Kenyans who are qualified. So, we cannot be given that as something that negates Section 28(3).

I am seeking a clarification as to whether the Leader of Majority Party is faithful to the law. The law is very clear. In fact, Section 28(3) does not say "subject to Sections 48 and 49". There is nothing secret about employing people. In fact, the section is couched in a way as to eliminate people who have been cheating people. We had 5000 people, for instance, in my constituency competing for five positions. This was because they did not know how many positions were available. If they had told us that only five positions were available, maybe the people who ran very fast would have stopped midway and said: "Let us leave the five to go on".

The recruitment of members of the KDF is not a charity sweepstake business. This is a very serious business and touches on the lives of the people. So, unless the Leader of Majority Party is insisting that I should go to court--- We can even ventilate this matter in court and you will see that we will obtain an injunction. I belong to the Jubilee Government, but we are not going to take a breach of the law very lightly.

**Hon. Speaker:** Hon. Chepkong'a, you have said it and you prosecuted your matter quite ably; now that Section 28(3) of the Kenya Defence Forces Act, which you read is couched in mandatory terms, this House should do something different. The Leader of Majority Party has given you the Statement which he got. You are, perhaps giving him more information, but what else can he do? The House should look for ways of dealing with matters of this nature; that section is mandatory that the Defence Council, or whatever council, shall advertise and indicate to every county the positions available, so that when people turn out in their droves to go and race, they know that they are racing for two, three or four positions. When there are 5,000 people as you said, and they are only racing for five positions, really they should know. These are the youths of this country. I am imploring the House to look for ways of dealing with matters of this nature. You have heard the Statement. The House should deal with the matter differently through the Statement. I can see that hon. John Mbadi is agitated. How many ran?

**Hon. Ng'ongo:** Hon. Speaker, Sir, I did not get that one. Anyway, let me address my issue. I fully agree with you. Sometimes I ask myself the logic of asking the Leader of Majority Party some of these questions. I had thought that a straightforward question as this one that touches specifically on a department or a ministry like the Ministry of Defence, should have been referred to the relevant committee, so that all these issues should have been addressed at the committee level. The committee would have found out why Sections 28, 48 and 49 were not followed. Sometimes I even ask myself how relevant the Kenya Defence Force Act is to our Constitution. If you look at Article 23 of the Constitution, it talks about how to limit the rights that we enjoy, including the right to fairness, where even a short person should be considered. Recruitment has to be specifically limited. The law provides that you have to state why you are doing so, and clearly spell it out. The Kenya Defence Forces Act was passed before the Constitution was passed. This matter does not have to be referred to a committee. The Committee---

**Hon. Speaker:** Hon. Mbadi, the only point I think you got wrong is that the Act was passed before the Constitution.

**Hon. Ng'ongo:** Was it passed after? Well, that is a correction.

**Hon. Speaker:** What is currently called the Kenya Defence Forces is provided for in the Constitution. So, this Act was passed to comply with what is in the Constitution.

**Hon. Ng'ongo:** Hon. Speaker, Sir, that is a good correction. I agree with you totally.

The point that I need to get back to is that the Committee on Defence and Foreign Relations needs to take up this matter and find out why these provisions in the law were violated and if there was discrimination. To be honest, recruitment into the forces in this country is a problem. We must accept that it is a problem. Even if you leave out the issue of legality, there is even the issue of corruption. A lot of our constituents complain that there is a lot of corruption in the recruitment process. This needs to be addressed and it is only the Committee that can do that.

**Hon. Speaker:** Is there a request to refer the matter to the Committee? Do I hear a request, hon. Chepkong'a or hon. Duale?

**Hon. A.B. Duale:** Hon. Speaker, Sir, first, I had the opportunity to be in Parliament when this Kenya Defence Forces Act was passed, but I am sure it was one of the laws that we passed at

night. I agree with you that the Committee on Defence and Foreign Relations should look at Section 28(2) and (3), and also Sections 49(1), (2)(a) and (c) and (3). This is not the first time. It has never been done in the history of our country, during 50 years of Independence. I am sure the retired Majors who are in this House will agree with me that there is no one time when the number of slots per county or per constituency have ever been notified. So, it is not something that is happening this year.

As hon. Mbadi has said, it is good that the able Committee on Justice and Legal Affairs looks at the law, and if it is for this House to change it. On the numbers, there is a post that the Parliamentary Service Commission advertised and 15,000 Kenyans applied, yet there were only three positions. So, there is nothing wrong with this. About 55,000 Kenyans can run and five can be picked. Every day, when we were vetting commissioners to constitutional offices, for one position, over 100 people applied.

So, I think that is not wrong, but I will agree with you that when the substantive Speaker asked about this matter last week when you were away, it was hon. Chepkong'a who said that this was an urgent matter, and that it should go to the Committee. I am sure the good judgment of Justice Daniel Musiga elsewhere holds water. If you are short and you cannot join the army, then you can join another profession. You can even join KKV.

*(Laughter)*

**Hon. Chepkong'a:** Hon. Speaker, I would like to thank the Leader of my Majority Party. As you know, we belong not only to the same coalition but to the same party.

**Hon. (Ms.) Kajuju:** You are now mending fences!

**Hon. Chepkong'a:** I am being told by hon. Kajuju that I am mending fences but we have never been enemies.

**Hon. Speaker:** Hon. Chepkong'a, use the microphone so that I can hear what you are saying.

**Hon. Chepkong'a:** Sorry, hon. Speaker. Maybe I was speaking slowly because hon. Kajuju was interfering.

I totally concur with hon. Duale that this matter be referred to the Committee and we will look at the law. I am sure it was passed when there were lights in this House. It was not too dark not to see it. So, I want to thank hon. Duale for passing this law anyway, which opens up the recruitment and makes it transparent. You know what we are looking for is transparency and accountability. I think that is all. We are not seeking to blame people. We are just looking at a situation where we can say there was fairness when the people of Ainabkoi or Garissa were taken. So, we would be happy with that. We would not want to know the total number of the defence forces. That will be revealing our strength to our enemies.

**Hon. Speaker:** Very well, hon. Chepkong'a. I would like to state that when you brought the request for a Statement I asked you whether you did not want it to be referred to the Committee, and you said that you wanted the Leader of Majority Party to respond to it because, in your view, it was urgent. Becoming wiser after the fact is also not very bad. So, the matter is referred to the Departmental Committee on Defence and Foreign Relations as well as your own Committee to look into the issues you have raised.

On the Order Paper, there is hon. Hassan Dukicha, who is requesting a Statement. He is not around? Where is he?

**Hon. Members:** He is at The Hague.

**Hon. Speaker:** All right. His request is then dropped because this Order Paper came out earlier. Remember the communication I made here last week for Members to know that their requests will be coming at particular times. Responses will be posted for Statements to be responded to tomorrow between 9.00 a.m. and 10.00 a.m., or at such period that does not exceed one hour tomorrow morning; other Statements will be responded to between the hours of 2.30 p.m. and 3.30 p.m. on Thursday afternoon. That is going to be the procedure for the benefit of those of us who may have been away doing other things like hon. Dukicha, who appears to be away now. Let us observe this. Responses will be for one hour on Wednesday morning and for one hour again on Thursday afternoon. That is going to be the procedure we are going to adopt, but requests for Statements may be made on any day provided that they are approved.

Let us move to the next one. According to the Order Paper, it is hon. Protus Ewesit Akujah.

## REQUESTS FOR STATEMENTS

### DELAYED APPOINTMENT OF CHIEFS COUNTRYWIDE

**Hon. Akujah:** Thank you, hon. Speaker. I rise to request for a Statement. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the delays in appointment and deployment of chiefs countrywide. The absence of these officers, especially in areas prone to insecurity has had an adverse impact in terms of governance and eradication of criminals. In some locations, offices have remained vacant for more than four years despite advertisement having been done and interviews conducted.

Hon. Speaker, in his Statement the Chairperson should inquire and report on the reasons for delay and when the appointments and deployment of chiefs countrywide will be done. Two, state the measures to be taken against officers who are delaying this process.

Thank you, hon. Speaker.

**Hon. Speaker:** Yours is to the Chairperson of the Departmental Committee on Administration and National Security. The Vice-Chair, hon. Lentoimaga is here. Your card is not in.

**Hon. Lentoimaga:** Thank you, hon. Speaker. Actually, the hon. Member is a member of our Committee, but I intend to give an answer to that request because that is a very weighty matter. It actually affects almost all of us. So, I intend to bring an answer to the House three weeks from now.

**Hon. Speaker:** Hon. Ewesit.

**Hon. Akujah:** Thank you, hon. Speaker. Despite being a member of that Committee, I think I have been frequenting the Office of the President, where these positions exist, but I have not got any answer. Three weeks for me is too long a time. Maybe two weeks will do. Thank you.

**Hon. Speaker:** In two weeks you will take part in the deliberations of the Committee but, of course, you will have to declare any interest you may have other than the interest to serve your constituents. I think two weeks is reasonable, hon. Lentoimaga. You can do that.

Next is hon. George Peter Kaluma. Yours is from the Chairperson of the Committee on Delegated Legislation on the enforcement of traffic amendment rules. Even before you take to the microphone the Chairperson had, of course, indicated to me that he was delegating his

position to you. So, I do not know. I think you may be the one seeking this Statement. It is indicated as hon. Kaluma.

*(Laughter)*

Hon. Kaluma, that microphone is not working. You can speak from that other side.

#### ENFORCEMENT OF TRAFFIC RULES

**Hon. Kaluma:** Hon. Speaker, Sir, the CORD Coalition, just as the Jubilee Coalition, from time to time reorganizes the membership in various committees. I currently stand removed from the Committee on Delegated Legislation. This is an issue the CORD Coalition is addressing. So, I am at liberty now to raise an issue with the Committee.

Hon. Speaker, Sir, pursuant to Standing Order No.44(2)(c), I wish to seek a Statement from the Chairperson of the Committee on Delegated Legislation regarding the legality and enforcement of the following delegated legislation:- the Traffic Rules, 1993; the Traffic (Amendment) Rules, 1999; the Traffic (Amendment) Rules, 2007 promulgated by Legal Notice No.45 of 2007; and, the Traffic (Amendment) Rules, 2008 promulgated by Legal Notice No.118 of 2008.

Hon. Speaker, the enforcement of the four mentioned delegated pieces of legislation has engendered high levels of corruption at weighbridges across the country.

In his Statement, the Chairperson should inquire into and report to the House on the following:-

- (i) the (i) Legality and rationality of the Traffic (Amendment) Rules, 2008 promulgated by Legal Notice No.118 of 2008, and the preceding delegated legislations;
- (ii) the (ii) Legality of the criminal/traffic charges brought against vehicles on account of axle load weight, where the subject vehicles are within the lawful gross vehicle weights;
- (iii) The legality of the letter issued by the Kenya National Highways Authority on 25<sup>th</sup> May, 2012, requiring dummies/dead axle on a vehicle to be ignored in computing the allowable maximum gross vehicle weight across Kenya and granting weighbridge operators discretion to consider lift axles as dummies/dead axles for purposes of computing the gross vehicle weight;
- (iv) Suggest amendments to the Traffic (Amendment) Rules, 2008 and the preceding delegated pieces of legislation to make them consistent with the Traffic Act, Chapter 403 of the Laws of Kenya;
- (V) Proffer measures to be taken to comply with the East Africa Community Vehicle Load Control Act, 2013; and
- (vi) The legislative measures to eradicate corruption at the weighbridges across the country.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Pukose, you indicated that you are now holding brief.

**Hon. (Dr.) Pukose:** Thank you, hon. Speaker, Sir. I am holding brief for hon. Cheptumo who is the Chair of the Committee on Delegated Legislation, who commits himself to give the report to the House and hon. Kaluma in two weeks' time.

Thank you.

**Hon. Speaker:** Hon. Kaluma, note that.

Yes, hon. David Wafula.



## RESETTLEMENT OF SQUATTERS IN TRANS NZOIA COUNTY

**Hon. Wekesa:** Thank you, hon. Speaker, Sir. Pursuant to Standing Order No.44(2)(c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Lands concerning resettlement of squatters in the country, particularly in Trans Nzoia County.

In the past, the Government has been resettling squatters in Trans Nzoia County while ignoring the plight of existing squatters in the county.

In the Statement, the Chairperson should inquire into and report whether the Government has resettled all squatters in the country and if so, how many are from Trans Nzoia County; why the Government in its policy for resettlement of squatters does not consider giving priority to squatters who originate in the areas earmarked for their resettlement; when the Government plans to seek the approval of Parliament to replenish the Settlement Fund Trustees to facilitate their resettlement and the plans by the Government to resettle all squatters in the country, particularly those in Trans Nzoia County.

Thank you, hon. Speaker, Sir.

**Hon. Speaker:** That Committee has permission to hold meetings with the leadership in that docket. I wonder whether there is a Member of the Committee who is present. If none is present, then the Leader of Majority Party can undertake to communicate that information. Yes, hon. A.B. Duale.

**Hon. A.B. Duale:** Hon. Speaker, Sir, the Departmental Committee on Lands has a serious matter which it is supposed to report to this House this week. They are having a meeting at Continental House, Second Floor. I will pass the message and report to the Member on the way forward. Maybe the report will be made after two weeks.

**Hon. Speaker:** Is that okay with you, hon. Wafula?

**Hon. Wekesa:** Yes, hon. Speaker, Sir.

**Hon. Speaker:** Yes, hon. Shebesh. The microphones on that line are not working.

**Hon. (Ms.) Shebesh:** Thank you, hon. Speaker, Sir. I rise under Standing Order No.86---

**Hon. Speaker:** Can I finish with the Statements?

**Hon. (Ms.) Shebesh:** Yes, hon. Speaker, Sir.

**Hon. Speaker:** Yes, hon. Nassir. Again, you are in the line whose microphones have gone dead.

## KILLINGS OF CLERGYMEN AT THE COAST REGION

**Hon. Nassir:** Thank you, hon. Speaker, Sir. Pursuant to Standing Order No.44(2)(c), I wish to seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the recent killing of clergymen within Kilifi and Mombasa counties.

On 8<sup>th</sup> October, I requested for a Statement from the Chairperson of this Committee regarding the killing of some Muslim Sheikhs and the Chairperson had requested one month to be able to give us an answer. There have been hatred and negative sentiments regarding killings of religious leaders.

On the morning of 20<sup>th</sup> October, 2013, Pastor Charles Mathole of the Redeemed Gospel Church in Mombasa and Pastor Ibrahim Kithaka from the East African Pentecostal Church in Kilifi were killed almost simultaneously. This has made a number of churches within Mombasa

believe that it is a religious attack. This was in addition to the burning of the Salvation Army Church, which is in my constituency.

In his Statement, I would like the Chairperson to inquire and report on the above request and the previous request for Statement that I had made. He could combine these Statements so that we can know the reasons behind the recent attacks on religious leaders. Could the Chairman also tell us the immediate measures that the Government is taking to apprehend those behind those attacks? He should also tell us the steps the Government is taking to ensure there is peaceful co-existence amongst communities based on religion and ethnic backgrounds countrywide. I do not see the Chairperson but the Vice-Chairperson is here.

My request is whether these Statements could be consolidated and we get one comprehensive answer within the very long timeframe that they had requested of one month. I would like to remind the Chairman that he has less than 18 days left.

Thank you, hon. Member.

**Hon. Speaker:** The Chairman is not here but the Vice-Chair, hon. Lentoimaga, is here; or, he has also taken his leave? Is there anybody from that Committee? Hon. Leader of Majority Party, could you inform them?

**Hon. A.B. Duale:** Hon. Speaker, Sir, they will bring an answer in three weeks' time. Before, there was the extra-judicial killings of---

**Hon. Nassir:** Hon. Speaker, Sir, the Leader of Majority---

**Hon. A.B. Duale:** Hon. Speaker, Sir, if the hon. Member for Mvita could maintain his cool, I am not answering the question. We will get a detailed report to the House on whether there are extra-judicial killings or not. I will be very happy if the hon. Member appears before the Committee. He should make sure that anybody with information on this matter from his constituency also appears before the Committee.

Hon. Speaker, Sir, the son of the great man must have patience because it pays. He will have his time. With the permission of the Speaker, if he can tell the bishops and all the stakeholders in Mombasa to appear before the Departmental Committee on Administration and National Security, then the country will get the facts on what the religious leaders were saying in Mombasa. The Member should also appear before the Committee.

**Hon. Nassir:** Thank you, hon. Speaker. I would like to re-emphasize to the Leader of Majority Party that the timeframe we are requesting was a month from 8<sup>th</sup> October this year. That is the time that was requested by the Chairperson, Departmental Committee on Administration and National Security. Over and above that, the Leader of Majority Party has said that if we have any witnesses, they should appear before the Committee. I will definitely be privy to some information and in the event that I am informed about the Committee meeting, I will definitely attend it in order to give the information. If the Committee needs any assistance, they can table it because this is a House of records. They should say that they need people to appear before it and give information and we will try to assist in that.

**Hon. Speaker:** Of course, the Leader of Majority Party is conscious of the fact that, that Committee is heavily engaged in other activities.

**Hon. Nassir:** I believe so, hon. Speaker, Sir.

**Hon. Speaker:** In fact, I was wondering whether your Statement should not be directed to the Leader of Majority Party because he can move faster than the Committee. But since you have directed the matter to the Committee, let it go to that Committee.

**Hon. Nassir:** Thank you, hon. Speaker, Sir.

GUIDANCE ON UNAUTHORIZED DISCLOSURE OF  
PARLIAMENTARY COMMITTEE PROCEEDINGS

**Hon. (Ms.) Shebesh:** Thank you, hon. Speaker, Sir. I am rising under Standing Order No.86 that talks about the proceedings of a Select Committees. This Standing Order says:-

“No Member shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the House.”

I want to read that Standing Order together with Standing Order No.180(c) that talks about the Chair of a Committee being the spokesperson. I am raising this issue because we have seen in the media many Members either as Members of Committees--- I want to say that I fell prey to this over the weekend at Elgeyo/Marakwet where the issue of Gladys Boss Shollei was thoroughly discussed in a rally. I fell prey to the mistake which I am quoting.

Hon. Speaker, Sir, there has been a tendency by Members to discuss deliberations of Committees before the Committees have completed their investigations and before the report is tabled before this House.

I seek guidance from the Chair on this issue because many Members are new and may not know by now all the Standing Orders and their provisions but, most importantly, in relation to speaking on an issue of national concern. For example, the issue of Westgate Mall is of national concern. This is speaking conclusively on that matter when this House has not concluded its investigations and neither has a report been laid.

Hon. Speaker, Sir, I am raising this matter because it is not only the Chair of the Departmental Committee on Administration and National Security who has spoken on an issue that I believe has not been concluded. I can quote many examples. I have quoted the case of Gladys Boss Shollei which is under investigation by the Committee. This matter was discussed substantially in a rally.

Hon. Speaker, Sir, even my good friend, hon. Kajuju – and I am proud of her *Miraa* Committee - has gone on to speak about the issue even as they are still investigating it. I believe that this is not being done in order to raise profile but it is being done because Members are not aware that Standing Order No.86 does not allow us to speak to the media on an issue that has not been concluded and making conclusions when the report of the Committee has not been laid in this House. I seek guidance so that I do not always fall prey to the media by raising issues that are serious and are before this House.

**Hon. Speaker:** I think you know the people who cannot speak from their positions. Hon. David Ochieng, are you rising on the same issue?

**Hon. Ochieng:** Thank you very much, hon. Speaker, Sir. I am on a point of order. I rise under Standing Order No.216---

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

**Hon. Speaker:** Hon. Millie Odhiambo, you are out of order. Kindly, avoid attracting the wrath of the Chair for interrupting hon. David Ochieng who is also on a point of order. Why do you get copies of the Standing Orders? I thought the purpose was for you to read them. You should not read everything but you should read the basics so that you do not--- Hon. Ochieng is on a point of order. Is yours more superior? It cannot be.

**Hon. (Ms.) Odhiambo-Mabona:** But hon. Speaker---

**Hon. Speaker:** Hon. Millie Odhiambo, do not engage the Chair with the sideshows. Yes, hon. Ochieng.

## CLARIFICATION ON ROLES/FUNCTIONS OF DEPARTMENTAL COMMITTEES

**Hon. Ochieng:** Thank you, hon. Speaker. I rise under Standing Order No.216 (5) on the functions of the Departmental Committees of this House. I also rise under Article 95 of the Constitution on the role and functions of the Committees of this House with regard to the ongoing investigations into the affairs of the Westgate Mall attack in Nairobi. The events of that day cannot be gainsaid. However, I rise to seek the indulgence of the Chair on how best this House should proceed on matters such as this.

Hon. Speaker, Sir, this is a matter that touches on the very core of the national security of this country. The way this House goes about investigating the matter is very important not only to this House, but to the whole country. I do not want to challenge the competence of the Committees of this House to inquire into or investigate any matter. I also do not seek to limit the purview of what they can do. It has been ruled before that Committees of this House can inquire and investigate anything under the sun as long as it falls within Standing Order No.216. Yesterday, we were told that a number of bodies were recovered from Westgate Mall. It has happened before. Parliament is already carrying out investigations on this matter. I want to be guided on whether Committees of this House should engage in what I will call “primary investigations”. Should we allow this House to take evidence, for example, on what transpired before, during and after the attack in terms of knowing what needed to have been done, who did what, who did not do what and where?

Hon. Speaker, Sir, I want you to guide this House on whether this House has the relevant competence. For example, do we have the competence to engage in forensic investigations? Do we have competence to engage in taking evidence from persons we summon to appear before us on a matter such as this? Do we have the equipment, as a House or as a House Committee, to engage in these investigations?

What is happening now is that, those who are listening to us out there may think that this House is engaged in activities meant at covering up the happenings at the Westgate Mall. They are not convinced that we want to do an honest job. A number of interests are competing in this issue. We have the integrity of security apparatus in this country. Our KDF has done a good job out there. They did a good job in Somalia and even Angola, but now what we are engaging in threatens to besmirch the good name of our forces. If we engage with the media everyday on the issues we are investigating, we will not make it. The President of this country has made a commitment that he is going to open up an inquiry into this matter. Could the Chair guide this House on whether the Committee on Administration and National Security and the one on Defence and Foreign Relations can wait until the relevant special agencies; the ones that are currently carrying out investigations can do their work and this House can play oversight role.

Hon. Speaker, what happened in Kenya on 21<sup>st</sup> September, 2013 is not a common criminal activity. We have had incidents that have been investigated by the National Assembly but under very clear circumstances. We can compare this with what happened in America in the Twin Tower attack. In that country, the Congress and the Senate had agreed they were going to have an inquiry into that matter so that hon. Members withdrew from the process. They waited for the special agencies to do investigations and report the findings to Parliament. Parliament can then look at the report and if there are any loopholes, they can be addressed then.

Hon. Speaker, I would request also that we allow bodies that are created in this country under the Constitution to do their work. We have the Independent Policing Oversight Authority (IPOA), commissions and independent offices as indicated in Chapter 15 of the Constitution

which can also do investigations. Why do we not allow these bodies to investigate then Parliament comes in at a time when it can do the oversight? The interest in this matter include ensuring that our security apparatus are allowed to operate and the right of the victims to know the cause of the attack and what happened during that time. The public needs to know the relevant institutions that are charged with investigations. Finally and most importantly, as Parliament we must help this country prepare strategic action in future, in case such happenings take place.

Hon. Speaker, one or two days after the incident, instead of allowing public institutions to do their work, we took up the matter and said we had started investigation and we were already giving statements on what happened.

Hon. Speaker, I seek your guidance on this matter.

Thank you.

**Hon. Speaker:** Hon. Members, the hon. David Ochieng had approached the Chair and drew my attention to the issue he wanted to raise. As you may well appreciate, it is a grave matter. So, do not be excited. We will give as many of you as possible a chance to say one or two things. But please, remain focused. Do not go to what you think we should do as a country because we need to address the issue of the role played by the House *vis-à-vis* the roles played by other agencies of Government; for instance, the police and those who do forensic investigations of all manner and kinds. For, example, are we likely to also begin doing DNA tests as Parliament? Are we going to do postmortem examinations? I do not mind us addressing this issue so that we can see how best we can guide ourselves. Therefore, avoid a situation whereby we may be seen to act in vain.

I think that is what hon. David Ochieng is trying to seek guidance on. So, as usual, Leader of Majority Party takes precedence over all of you, followed by the Leader of Minority Party; in that order. Then others will catch my eye.

**Hon. A.B. Duale:** Thank you hon. Speaker. Today is a good day and I want to pick from where hon. (Ms.) Shebesh and hon. Ochieng left. I think we are within the mandate of Article 95 of the Constitution and Standing Order 216. Therefore, this Parliament has the powers to investigate. We will not mortgage our constitutional and Standing Orders powers to any other institution.

In the first instance, I happen to have been in that meeting at Elgeyo/ Marakwet, but I am sure I do not fall within the category of hon. Shebesh. A number of my friends were in that meeting and we lived within the Standing Orders. If you get the clip of the Elgeyo/ Marakwet Rally, you will find that I did not commit anything wrong. The Standing Order that hon. (Ms.) Shebesh quoted is very important for us; if you make a very humble communication. When a matter is within the purview of a Committee and the House, hon. Members cannot discuss it in political rallies, funerals and even in their caucuses. We need to get that very clearly; whether it is in the House or in the Committee. So, that has been an issue.

Secondly, when Committees carry out their investigations, part of their recommendations goes to other State agencies. We know Parliament has no infrastructure to do forensic audit or to do any test, but it has powers in its Committees findings to direct the Director of Public Prosecutions to carry further investigations. Parliament has power to tell the Ethics and Anti-Corruption Commission, the Auditor-General, the Police Service Commission and the Criminal Investigation Department to do investigations. The fact that we do not have the capacity to conduct DNA or forensic examination would not make us tell the Executive to institute a judicial

inquiry. If the President wants to institute a judicial inquiry today, tomorrow or next day, that is within the Executive. Parliament has no business there.

Hon. Speaker, I want to divert and go back to what hon. Shebesh raised. As the hon. Member for Garissa Township, I do not want to cede an inch of what Article 95 of the Constitution and Standing Order 216 give because those powers – I am sure today we have received a very comprehensive report of a forensic audit between NCPB and the Erad Supplies Company. If you look at the recommendation of the Public Investments Committee (PIC), it is directing other agencies. So, we do not want to go to Westgate Mall incident. I am sure the Committee on Defence and Foreign Relations and the Committee on Administration and National Security are our colleagues, they are up to the task through their leadership.

Hon. Speaker, in the last Parliament, at one time we also overstepped and the then Chair gave a communication. We want you to give a communication so that we live by the rules. We need a fair and independent report. Our mandate is to play oversight role, legislate and represent our people. None of us will cede an inch of that. Therefore, we do not want to go to the Judiciary because they have their mandate. The Executive has its mandate and the Legislature under your able leadership, has a mandate. So, we want the Chair to give a communication to the effect that hon. Members have a boundary. They can only go so far, particularly on matters that are under investigation.

I think that is the direction we need so that we play this game; football with the linesmen and the referees as per the Standing Orders and the Constitution.

**Hon. Speaker:** Leader of Minority Party.

**Hon. Nyenze:** Thank you, hon. Speaker, Sir. I think it is good for you to make a ruling on this issue because what hon. Shebesh and hon. David Ochieng have raised is very important in that we have seen committee chairmen rushing to clear some names even before conclusion of investigations and that is wrong. A case in point is when the Chairman of the Departmental Committee on Administration and National Security issued a statement and he was shown on television saying that there was no looting at Westgate and then on the same evening, we were shown a clip of soldiers carrying paper bags. I wondered whether it was food that was taken inside there.

**Hon. (Ms.) Kajuju:** Those were exhibits.

**Hon. Nyenze:** I am told by some Jubilee Member that those were exhibits, but anyway---

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

**Hon. Speaker:** Who is this “some Jubilee Member”?

**Hon. Nyenze:** I am sorry, hon. Speaker. It is Kajuju and she is my friend with all honour.

**Hon. Speaker:** She is honourable also.

**Hon. Nyenze:** Honourable Kajuju. Thank you very much, hon. Speaker, Sir. I think it is good for you because you lead the National Assembly, to give a ruling because as hon. David Ochieng, hon. Shebesh and the Leader of Majority Party, whom we have given opportunity to respond to everything have said, it is good for Members of Parliament not to misuse the powers and privileges that they have been given by the Constitution and by the Standing Orders. It is also good to know our limitations, in that we are not experts in areas of investigations. It has been said by the Leader of Majority Party that it is good to direct and recommend investigations by EACC, CID, police and those people who are trained to do such work. Most of the Members here have no security training but I am lucky I have. I know what is latch and loop because I have been trained in fingerprints. However, most Members do not know what they mean and for something like forensic investigations, it is difficult and we do not have that.

Hon. Speaker, I just want to say that committees have the power and the mandate to investigate and do everything possible. They also have the mandate because they are part of the three arms of the Government. In fact, we are the second arm of the Government after the Executive.

**Hon. Angwenyi:** We are the first.

**Hon. Nyenze:** I am told by hon. Jimmy Angwenyi that we are the first. So, that power is there but let us also know that we are not experts and we should not be seen to make statements that will border on ignorance. That is because we are not experts in some areas or we will be seen as sycophants or as people trying to protect a certain class of people. I watched when Members were trying to defend the gracious lady Gladys Shollei and some Members went overboard. You know, it is good to defend someone but it is also good to let due process of the law take its course. There were very many other people who were sacked. The Director of Kenya Bureau of Standards (KEBS) is a gracious lady. We go to the same church. She is called Mrs. Oduor. She is our choir mistress and she is a true Christian. When she was laid off, nobody raised a finger here. I do not swear but I can stand here and say that she cannot take anything that does not belong to her. But then she was sacked. When we were taking tea in the dining hall, someone told me that we have to create space for the people who voted us. So, she lost her job and when it comes to Gladys Shollei, 40 Members of Parliament came out fighting for her. Nobody fought for Mrs. Oduor apart from a few of us and because of the tyranny of numbers, we lost. I just want to tell you Members of the National Assembly that it is good to unite this country when we are impartial and not tribalistic. We should stand for the truth. The chairs of the committees and members of the committees should be impartial and stand by the truth because we are called honourable Members.

Hon. Speaker, so, my humble submission is that you make a ruling today on areas where we should not exceed or go beyond. That is because unless you do that, Members will keep on repeating and they will ridicule this House. We will be seen as puppets and protecting some people and not protecting others because either we have self interests or they come from our tribes. What of that Turkana who does not have someone here? What of that Pokomo and people from marginalised tribes or Ogieks, like hon. Jimmy Angwenyi is saying? We have to treat all Kenyans equally.

My last shot, hon. Speaker, because I know you will give a ruling, is that there has been systematic sacking of members who belong to CORD zones and I have counted them. Surely, this Jubilee Government should check on that because it is creating instability.

Thank you very much, hon. Speaker, Sir and I stand corrected.

**Hon. Speaker:** Leader of Minority Party, you have now decided to debate other things. They are not going to be helpful to the issues at hand.

**Hon. Nyenze:** Sorry, Sir.

**Hon. Speaker:** You see, it is not going to be helpful to the issues raised by hon. David Ochieng and hon. Rachel Shebesh and that is why I said that we should keep on refreshing our memories on these things just like the way we read the Bible. You say you go to some church and when you see things happening, also as an elected Member, come and raise them here. Represent even those ladies who teach Sunday school and other things. Represent all of them. Every part of Kenya is represented here. We have 290 constituencies and 47 counties. Surely, there are 12 Members who represent special interests. So, if you look at Article No.95(1), it is very clear. Those special interests are supposed to be represented by those 12 nominated Members. Perhaps, you are giving them a wakeup call that there is something happening which

should be of interest to them. I duly recognise hon. Gladys Wanga on this. Please, let us be relevant to the two issues raised by the Members.

**Hon. (Ms.) Nyasuna:** Thank you, hon. Speaker and I thank my two colleagues, hon. Shebesh and hon. David Ochieng for raising very critical issues at this time. I really look forward to your ruling and that you will clarify the matters raised. On the matter raised by hon. Shebesh, as we have seen in the last two weeks, Members and particularly chairs of committees have been speaking out on issues that are under investigation. It ends up really embarrassing this House. It even ends up putting us in a very awkward place. We saw last week the Chair of the Departmental Committee on Administration and National Security saying that the KDF soldiers did not loot and then later on, we saw pictures showing them carrying paper bags and now the Committee is reduced to the level of now investigating whether those were exhibits, bottles of water or phones inside there. That is not what the Committee was supposed to really be embarking on.

Hon. Speaker, when this House adjourned after the Westgate attack, there were very difficult questions that were asked. We asked: Did the Intelligence do their work? These are questions that we are expecting answers to and not answers to what was in a paper bag somewhere.

Hon. Speaker, Sir, that leads me to my second point on the point raised by hon. Ochieng. I am sure the Member is not saying that this House does not have power to investigate because that is clearly stated in the Constitution. What we are saying is: What is the scope of our investigations? We are leading to that as well. How far can we go? We cannot go to forensics or post-mortem to check whether the bodies that were found were truly those of terrorists. That is work that can be done by another institution. But what we are looking for are answers to those critical questions that we raised on the Floor of this House after the Westgate attack. When we adjourned, we asked: Did the Intelligence sleep on the job? Did the police not act on the information when they were given?

Hon. Speaker, Sir, I think you will be advising in relation to when we embark on investigations as Committees of this House, is it then important to have very clear terms of reference, so that we are not going all over the place looking at what was in the paper bags which we cannot know.

**Hon. Katoo:** On a point of order, hon. Speaker, Sir. I support what hon. Shebesh has said on Standing Order No.86, that no one is supposed to discuss a matter which is before a Parliamentary Committee. It is for the simple reason that the Standing Orders say that when Parliamentary Committees are prosecuting an issue, they have the powers of the High Court, meaning that discussing anything that is before a Parliamentary Committee is *sub judice*. Therefore, in that respect, that brings me to what this House is doing. Even the Members of this House should not discuss matters that are before Parliamentary Committees. That is *sub judice* and they should hold their horses and wait until when the Committees have finished their investigations and tabled a report here. What I am hearing from the Members should be matters of debate when the report is tabled before this House.

**Hon. Speaker:** For avoidance of doubts, so that you do not get excited and I had already said it, the matter you are discussing is at the liberty of the Chair. It was brought up through a point of order. I said I was going to give as many of you as possible a chance to ventilate and express their views. We want you to come up with something that guides us. We do not want to become a laughing stock.



**Hon. Langat:** Hon. Speaker, Sir, I want to say something on what hon. Shebesh has talked about. First of all, you said you were going to make a ruling and it is your discretion. That is why we are speaking to it, so that we can convince you to make a good ruling. On the issue of whether Members should speak about matters before the Committees, if you are talking as Members of that Committee, then I would agree to it. So that if you are a Member of the Committee on Justice and Legal Affairs and you are in possession of some information which you have not finalised, then you should restrict yourself. But to give a blanket ruling that all the Members of this House should not do their rallies, in my view – and I would be quoting hon. Raila - democracy will be on trial. We must balance between what we do in the House and what our communities also expect us, as politicians, to do. Honestly speaking, we cannot say that tomorrow, if I have a rally in my constituency---

**Hon. Speaker:** Hon. Langat, Standing Order No.86, does it talk about Members of a Committee commenting?

**Hon. Langat:** Hon. Speaker, Sir, I also read the heading of that section and it talks about Select Committees. So, if you follow from the heading, I would want to convince you that your ruling should be restricted to the membership of a specific Select Committee, so that we do not really gag democracy in this House. I also want to request you that when you are making the ruling, it is normally said that this House will not act in vain. You should also look into how that Order will be implemented if you say that no Member of this House should speak about such issues and all these---

*(Hon. Dido walked across the Floor)*

**Hon. Speaker:** The Member who has purported to walk across, that is out of order! But you are pardoned because I suspect you are getting agitated. Please, do not repeat that. Is it hon. Ali Rasso?

**Hon. Langat:** Hon. Speaker, Sir, he was trying to assist me. Thank you for your understanding. I was just mentioning about Standing Order No.86, whose heading says: “Proceedings of Select Committees not to be referred to”. To me, it would appear that the Standing Order is talking about the membership of a specific Select Committee.

**Hon. Speaker:** Hon. Langat, you have read the heading and there is a very small portion of about four lines. Can you read the entire provisions, so that you may be understood by the others correctly?

**Hon. Langat:** Hon. Speaker, Sir, as I have said, the heading of that section is: “Proceedings of Select Committees not to be referred to”. It reads:-

“No Member shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the House”.

**Hon. Speaker:** You are persuading me to find that the “Member” there refers to the Members of the Committee?

**Hon. Langat:** Of that specific Select Committee. That is what I am trying to encourage you to find that it refers to a Member of a Select Committee. Having said that, as a Chair of a Committee, maybe we need to be very careful, so that we do not issue Statements that appear to give conclusions before the Committee has done a report. I agree with that section. I thank you and urge you to rule that it is only the Members of a particular Select Committee.

**Hon. Speaker:** I can see hon. Mbadi with his copy of the Standing Orders. You want to add to this debate? I can see hon. Ganya, hon. Wandayi, hon. Junet, hon. Gumbo and the Member for Kisumu. Let us be fair to the others and just go to the two issues.

**Hon. Ng'ongo:** Hon. Speaker, Sir, I want to speak to the two issues that have been brought and that are linked to each other. First of all, the issue about proceedings of Select Committees is a very fundamental issue. We need to ask ourselves why it became necessary that such a provision was put in our Standing Orders. It was because if you sit in a Committee and you have the privilege of knowing the proceedings of a Committee, it would not be right to come out and start debating it or putting it to the public before the report is finally tabled in the House. So, as hon. Langat spoke to it - and I think these are some of the mistakes that are in these Standing Orders - it was supposed to stop the Members of the Committee from taking advantage of their sitting in Committees to debate a report of a Committee before it is tabled in the House.

National issues are so wide and at any given time, you realise that a matter will somehow be under some Committee of the House. If we make a blanket ruling that any matter that is seized of by any Committee cannot be referred to, that would be gagging all the Members of this House. When I saw the comments about the gracious lady, Mrs. Shollei, even though I do not agree with the Members who are championing the line of thinking that she is so innocent, I do not agree with them totally, but I did not see anything wrong with them supporting her unless they were referring specifically to the findings of the Select Committee.

I do not agree with them. I wish they asked me. There is a lot to it. This matter should be investigated thoroughly. The Auditor-General is investigating it. The Ethics and Anti-Corruption Commission are also investigating the matter. That lady may not be as innocent as she looks. However, that is a matter for another day.

**Hon. Speaker:** Hon. Mbadi, you know, you sit in the Budget and Appropriations Committee.

**Hon. Ng'ongo:** Yes, and that is why I have not discussed the matter in detail, hon. Speaker.

**Hon. Speaker:** So, it is unfair for you to allude to---

**Hon. Ng'ongo:** Hon. Speaker, I want to leave it at that.

**Hon. Speaker:** Hon. Mbadi, since you are on your feet, let me point out that it would also be unfair for you to give an opinion of innocence or guilt but can you address the point that Committees of the House can be attended by any hon. Member of the National Assembly, so that we can begin seeing the generality of Members as opposed to strictly Members of the Committee?

**Hon. Ng'ongo:** Hon. Speaker, you are right. Actually, in a nutshell, this particular provision in our Standing Orders stops us from discussing the proceedings of the House. If any Member refers to the proceedings of a Select Committee, he or she is out of order. So, that is what we need to determine.

Finally, I want to respond to the issue raised by hon. Ochieng. I agree that, as Members of Parliament, we need to try as much as possible to protect the dignity of this House. There are comments that if we make may put us in a very awkward situation but the Constitution, in Article 95, gives us oversight authority. Secondly, Standing Order 216, which hon. Duale referred to, gives this House the power to investigate, inquire into and report on all matters. Standing Order 203 provides that the Committee may, with the approval of the Speaker, engage such experts as it may consider necessary.

So, my only concern is that, as a House and as Committees, we need to provide enough time for various Government agencies to finalise the investigations before we are seized of matters. This is something on which I think, as Committees, we need to exercise caution. However, the power to investigate any matter is given to this House. So, we need to balance the two.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Members, even as we address this issue, let us try to address the possibility of how far we can extend the meaning of the words “inquire into, investigate on all matters---” so that as we make a ruling, we can be in agreement with the thinking of those Members.

Yes, hon. Jimmy Gethenji.

**Hon. Gethenji:** Thank you, hon. Speaker. I wish to, once again, address the points made by hon. Mbadi, which are very valid. In fact, he read them out in the same sequence I had prepared to raise them. In addition to Standing Order 216(5)(a), we have Standing Order 216(5)(e). Standing Order 216(5) states as follows:-

“216(5) the functions of a Departmental Committee shall be to-

(e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House”

Hon. Speaker, I would want hon. Members to address their minds to the matter of oversight. “Oversight” does not necessarily mean post-mortem or after the event has happened. “Oversight” can be simultaneous and in tandem. Indeed, the Joint Committee of Administration and National Security and the Committee on Defence and Foreign Relations, which I chair; is presently engaged and seized of the matter of the oversight of the investigation into the Westgate Shopping Mall terrorist attack.

It would be dishonest of us not to wish to interrogate the events surrounding that attack when the media has a free-hand to publicise all manner of fabricated stories, including the illegal airing of forensic evidence, which is the CCTV footage that was obtained directly from the security forces. God knows how that was done! Over and above, that forensic evidence has been aired on national, international and the social media. We want to gag ourselves in terms of addressing the matter of Westgate as the media makes all forms of accusations, including making reports that are completely devoid of facts.

We know that on *Mashujaa* Day, the fourth body of the terrorists was recovered from the rubble at Westgate yet the media has been peddling the story that all the terrorists escaped. We are seized of the matter within the Committee. We are investigating. We are ensuring that our oversight function is fulfilled. However, at the same time, we must be cognizant of what is happening in the media. The campaign being carried out by the media is not only glorifying the *Al Shabaab* but it is also traumatising our children who watch images of Kenyans being shot over and over again as those images are replayed over and over again during 7.00 p.m. and 9.00 p.m. news bulletins in our living rooms in every corner of this Republic. This only furthers the objective of terrorism because those images continue to terrorise the minds of Kenyans in their own homes.

So, as Parliament, we should not sit here and start debating or even questioning whether or not our oversight role is lawful or correct as we continue watching the images that are being splashed in the media. I would go further to suggest that this House must recognise the fact that we are in a state of war against the *Al Shabaab*. Kenya is on a war footing. Those people who do not facilitate and assist in ending this war but rather facilitate the objectives and furtherance of

the terror campaign are not with us. In the words of George W. Bush, during his war on terror, “if you are not with us, you are against us”.

So, if you are not in the fight against the terrorists, then you are with the terrorists, who are against us. So, we need to interrogate ourselves, and not point political fingers at each other. That will not serve the purpose of protecting our citizens, our lives and our properties. That is not what we do here. Political finger-pointing is the game that those people want us to be drawn into. The media is leading that game. I would wish the media to desist forthwith from publishing images of Kenyans being killed by the terrorists. I would wish the security forces of this country could investigate how that CCTV footage was leaked or procured from the people who had custody of the same, and how they were allowed to be aired on national television.

Hon. Speaker, I rest my case.

**Hon. Speaker:** Please, I want to encourage you to be brief. It is not that I would have any difficulties in making a ruling on this; it is not complicated at all. However, it is good to hear as many opinions as possible now that hon. Millie Odhiambo has been insisting to be rising on a point of order.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Speaker for giving me this opportunity. When you directed me I sat very faithfully and quietly. The main issue that I wanted to raise had to do with something hon. Shebesh had raised. I had no way of knowing that it was linked to what hon. David Ochieng said. That is why I was insistent. Thank you nonetheless for giving me this opportunity. Now that the debate has been opened, I want to agree with hon. Gethinji to some extent that in terms of our oversight role it is concurrent especially if you situate it within the doctrine of separation of powers. When the other arms are doing their work, we can proceed with ours. There is nothing that can stop us from doing that.

I want to speak to what hon. Rachel Shebesh highlighted. She talked about Standing Order No.86 which states that no member shall refer to the substance of the proceedings of a Select Committee. One thing that we forget when discussing this is the word “substance”. There is nothing that stops us from discussing so long as we do not go to the substance. If you can persuade the House that we are not going to the substance of the debate, it follows closely on the issue of *sub judice*. I think it borrows very largely from the doctrine of *sub judice* that if you do not go to the substance of what is being discussed then you can actually discuss.

Hon. Speaker, while giving us direction on this matter I would like you to underline the words, “substance of the debate”. This is because we are not stopped from discussing. We just cannot go to the substance. I know it will be tricky but, yes, you can speak without going to the substance.

I am also a little concerned about what hon. Gethinji is talking about in relation to media coverage. I think we cannot gag the media. If we think there are ethical ways that the media should be reporting, it is incumbent upon us as a House to provide by law those ways in a manner that does not limit the constitutional right of both uses of social media and mainstream media.

Hon. Speaker, while you are giving us direction in relation to what hon. Shebesh has raised, could you also give us direction on the issue of the doctrine of “he who comes to equity must come with clean hands”. I was very perturbed when hon. Rachel Shebesh came here and confessed that she was speaking in Elgeyo/Marakwet and that she is an old Member and that she knows the rules of the House. She abuses the rules of the House and comes for direction here! If you are serious about bringing honour and restoring dignity to this House, then follow the rules.

You cannot abuse the rules and then come and seek protection. He who comes to equity must come with clean hands.

**Hon. Speaker:** Very well. I hope we are not going to the Judiciary where some of us have some background really.

**Hon. Angwenyi:** Hon. Speaker, I rise to contribute to this Motion on two or three accounts. One, you cannot gag Parliament from discussing issues unless they touch on matters of substance like my sister said. If we were to be gagged, we have no business being in this House. Also, if we were to be gagged and we let the committees operate without timelines then some important issues for this nation may not be resolved.

The second issue is that although we have the oversight role to play in this country we cannot micromanage other sectors of Government in this country. I neither expect us to be involved in matters of discipline say of the Executive or the Judiciary nor do I expect them to be involved in matters of discipline in Parliament. So, while I would like us to guard and protect the rights of Kenyans we must also respect other institutions, the Executive and Judiciary. The matters presently in the public domain, we involved ourselves too early in those matters. If an institution was trying to mete discipline on one of the officers, we moved in too quickly. In fact, it betrays us. We should have declared our personal interest in that matter. We went into that matter so early.

Hon. Speaker, although we do investigations we have got Government institutions that can thoroughly do investigations at our direction. For example, if we cannot do forensic audit we could ask an agency of Government to do that job for us. We could even hire a consultancy from outside to do that job for us.

We know that we must protect our communities, voters and what not, but who will be there to protect the Njemps? Who will be in this House to protect the Ogiek? Who will be in this House to protect the Suba? So, let us not look at issues from the angle of our tribes, clans, or regions. Let us look at matters with impartiality. We must give the other branches of Government time and space to operate. It looks like we do not have much to do here and that is why we want to indulge ourselves everywhere. We want to know how much money a Minister spent to buy confectionary in his office.

Although we have got all these powers, we are not unlimited. Just like my sister has said, let us not gag the media. The day we will do that, that will be the day we will have destroyed this Parliament. The day we will gag our media, we shall have destroyed this Parliament. I am telling you, beyond measure. If you have a strong Executive, it can muzzle us like nobody's business and nobody will report about it.

Those are my remarks and I hope you will decide that the members referred to here are members of that Select Committee because they are the only ones who know the substance. If I am not a member of that Committee, I would not know the substance and so I can talk about it.

*(Laughter)*

**Hon. Speaker:** The hon. Peter Kaluma. Is that him?

**Hon. Kaluma:** Thank you hon. Speaker, for the opportunity to address the issue. This is not unique to our Parliament. But any debate or Motion in any Parliament, anywhere in the world, will often take a partisan interest. People belong to parties whether in presidential system or parliamentary system.

The hon. (Ms.) Rachael Shebesh raised the issue and I am happy it was followed quickly in sequence by hon. David Ochieng. I am balancing the two issues raised by the two hon. Members; there is a very critical balancing act to be undertaken. That is the danger I was struggling to raise last week when of course, I did not communicate my intentions.

Hon. Speaker, we have reached a point as a House, where we want to be seen to be investigating everything under the sun, including rumours and even imagining who wants to protest against what and who could be funding them. We are sitting to investigate those issues. The danger is that, if we permit that situation, then essentially by dint of the provisions of what hon. Shebesh quoted, we are going to be gagged completely in our role as politicians. So, I would suggest that in as much as we are hon. Members and we want to be a National Assembly, let us agree that we do not have some competences on some issues. That would require that our timing in terms of how and when we intervene in the exercise of our oversight role, becomes very clear.

Hon. Speaker, look at the situation at Westgate Mall tragedy. The President communicated to the nation and the entire nation agreed that the one single voice that was uniting the whole nation in grief of the situation was the President's voice. The President indicated that he was going to form a commission of inquiry to deal with the matter; and we run in. We are investigating the issue and at the same time calling State agencies. We have no power to gag the media from reporting what our children are saying. If we had waited for the commission of inquiry; remember under the Commission of Inquiries Act, they have power to stop publication by the media. So, let us agree in principle that the National Assembly does not go into those very specific issues, even in the exercise of our investigations.

Hon. Speaker, any national assembly anywhere, or any parliament anywhere deals with general policy guidance and general policy investigations. May I request truly that we do not hear from the Floor of the House that the Committee on Justice and Legal Affairs was supporting anybody. We were entitled to intervene on a matter affecting the Judiciary. The House will confirm that once the matter went to court, the Committee retreated and we said we will wait for whatever the court is doing. I do not think it is an issue that we could not intervene. I am worried about wholesome stoppage. We are national leaders in this Parliament and we are also politicians. Unless an individual is going into the substance and the very merits of discussions going on in a Committee of the House, he should be left to do so.

Hon. Speaker, in my view, I would like to suggest that it is not just about Select Committees. Committees of this House are Parliament. When you stop Members of a Committee, by dint of the fact that any Member of Parliament can sit in those Committees, all hon. Members should be stopped. You engage in politics giving a lot of confidential information to the villagers who voted for you forgetting that you belong to a committee that is dealing with very deep issues of national importance. I would request that this is something that you can give directions based on the powers of the Standing Orders vested in your office.

Hon. Speaker, I know your office is busy, but some Statements are coming to this Floor which should not be permitted at all, if there is proper scrutiny. Other agencies can deal with them thoroughly and in good time, otherwise we are competing. We are in a situation where we have the power to intervene on the Westgate Mall issue, but at what stage? We are now intervening at a time when we are going to question whether this was a terrorist or a civilian who died in the Westgate. We are here in a sitting very happy saying we want to deal with it. If we were to deal with it at the right stage, we would be asking for reports from various agencies with the requisite competencies to deal with the issue. How come we are not talking about generalities

and policy directions, but instead we want to deal with those deep issues which we do not have competencies to handle? By the way, if we continue in the manner we are doing, we are going to be embarrassed constantly as national leadership.

I beg to support.

**Hon. Speaker:** Well, as I give hon. Johnson Sakaja a chance to make his contribution, I just want to draw your attention to some parallel investigations that happen. A suit is filed, somebody is claiming that he or she wants divorce from their wife or husband and they make all manner of allegations as the reasons for the divorce. I am sure most of you would know some of the reasons that are advanced. But the plaint or the petition would be picked by some media house and there is nothing you can do about that. So, media houses go and publish the report that a certain philanderer somewhere is being divorced by his spouse. They can even go and state the issues they have seen stated in the petition. There is nothing much you can do about that. But to begin saying that this guy is what he has been alleged to be or not to be, you are now going into merits.

This is the area I want us to begin to balance because there are things that obviously as Parliament, we must get seized of because they are so grave and national that it would be strange that Parliament would not be able to express itself.

**Hon. Sakaja:** Thank you, hon. Speaker. We are in a system that embraces the doctrine of separation of powers and the very reason why Parliament is called Parliament. I think I might have heard you saying this at some point. It comes on the same route as parlance; which is to debate or discuss.

Hon. Speaker, we also know that we have come from a place where freedom of speech has been gagged for a long time. I do not think any attempt to go towards that direction should be embraced by this House.

Hon. Speaker, if you look at those specific provisions of the Standing Orders at the face of it, it is clear. No Member of a Select Committee should discuss the proceedings of that Committee. But is it enforceable or possible? We have more than 20 committees. If you actually decide that we will not talk on anything being discussed by committee, then we cannot talk about anything. Right now the Departmental Committee on Energy, Communication and Information is talking about coal. If I discuss coal on television tomorrow, I will be on the wrong.

The Departmental Committee on Justice and Legal Affairs is discussing a certain matter; we are discussing taxation in the Committee on Finance, Planning and Trade. And when you say about substance; what else do you discuss, apart from substance of an issue?

Hon. Members were going out there but they were not saying that the Value Added Tax (VAT) is bad; they were saying VAT will raise the prices and will do such and such. So, really, that Standing Order should be interpreted correctly. It is offensive for the whole reason of having a Parliament that is supposed to represent the voices of the people. The only reason why we are 349 Members of Parliament is because 40 million Kenyans cannot be here. So, there is a matter that is of interest to Kenyans and the reason why we have representation.

As representatives of the people, we must be allowed to discuss that. So, in my reading of that provision, I think it relates to hon. Members of that Committee, but not really the substance because everything we discuss is substance.

Secondly, on the issue raised by hon. Ochieng, I think Parliament must play its rightful role. When the Standing Orders speak about “to investigate and inquire into a matter,” we must

understand that in the right context. We cannot say that we will only look at areas within our individual and hence collective competences.

Hon. Speaker, I think you remember the many hon. Members in the Tenth Parliament. In the year 2009 or 2010 I was called by the Tenth Parliament because it was investigating how to deal with the issue of delimitation of boundaries and how to redraw constituency boundaries. If Parliament had an attitude that it has no competences to deal with the issue of boundaries, we would not have Article 89 as we do right now. So, this House should not shy away from dealing with issues because that specific competence does not exist. If we look at issues, for example, the issue of security or we want to play an oversight role on the Judiciary, I think we must understand clearly that, yes, there is separation of powers. Parliament cannot determine whether the Judiciary has ruled correctly or wrongly on a matter because that is breaching that separation. But Parliament can, in playing its oversight role, discuss whether the administration or the conduct of that particular office is being run in line with the Constitution.

Hon. Speaker, in the same manner, when you look at the Westgate Mall issue, Parliament is not trying to say whether those people were *Al Shabaab* men or they were from Eastleigh; who was shot or how many were not shot. Parliament can investigate because it provides the budget and appropriates for those agencies. It can investigate the matter in which certain agencies have conducted investigations, but not the content or the findings of their work. This is because even in the separation of powers, you do not allocate responsibilities of one entity to another. So, I would just like to appeal to hon. Members that let us not shy away from our responsibilities.

Let us also not gag ourselves because if we say that we will not talk about something being discussed by a Committee, we will not talk about anything. If I go to the village, and I want to talk about vaccination and I am told that the Health Committee is discussing about vaccination, should I keep quiet about it?

Hon. Speaker, Sir, kindly, even as you give us guidance, I am sure you will be alive to those facts.

**Hon. Speaker:** I think I am sufficiently well addressed. But let me hear what hon. Chachu Ganya---

**Hon. Member:** One more hon. Speaker!

**Hon. Speaker:** Hon. Members, remember the Chair has to balance many things, including recognizing the hon. Member representing the largest constituency in the Republic; hon. Chachu Ganya.

**Hon. Ganya:** Thank you very much, hon. Speaker, Sir. I know you are a very considerate Speaker. I really want to appreciate that you gave us time to ventilate on this issue. Even though we are speaking about two Standing Orders, the fact of the matter here is very substantive. This is an issue of national interest because it is about our security. So, I do appreciate this.

To me, the issue under Standing Order No.86 is the process. Any investigative role of Parliament is a task or a process which has to be done to its logical conclusion. However, when the leadership of the House makes pronouncement about very critical issues before that process is completed then it is an issue for this House. To me this is the process. Until the process is completed, done to its logical conclusion or investigations are done fully by Parliament, we should not make pronouncements which will have a major impact on this nation.

On whether Parliament has the capacity to investigate some fundamental and critical issues, this Constitution does not expect us to be experts. That is why we are not even required to have any formal education for us to be elected to this House. We are an Assembly of the Kenyan



people reflecting the face of Kenyans be it a nuclear scientist, a lawyer like you, a scientist like me or any other person like a watchman. All these professionals can be elected to this House by their people. However, the same Constitution gives us powers to investigate, debate and resolve critical issues of national importance and even play a major oversight role on the Executive. That is why the provisions of Standing Order No.203 come in. The Standing Order says that with the approval of the Speaker, you can engage any expert from anywhere in the world who can inform or investigate and through that we make some recommendations in the interest of this nation.

Hon. Speaker, Sir, that is my contribution. Thank you.

**Hon. Kamau:** Thank you, hon. Speaker, Sir. Indeed, I want to look at this matter from a different perspective. That is the way it is and perhaps the way it should be.

Standing Order No.86 says:-

“No Member shall refer to the substance of the proceedings of a Select Committee---”.

If you go to the definitions or interpretation of who a “Member” is on page 2 of the Standing Orders, you will find that a “Member” means a “Member of the National Assembly”. As it is right now, I think we are in a fix because that is the interpretation of a Member.

However, the way it should be can be set by this House. I fully believe that the only people who need to be talked about here are Members of that specific Committee. This is a question of a butterfly in somebody’s hand and asking whether it is alive or dead. The answer depends on you. If you say that it is alive, I will fix it and it dies. If you say it is dead, I will revive it and it flies away. So, the answer to me is that it is upon the House to come up with the necessary amendments. However, the way it is right now strictly speaking, it prohibits all Members. That is the way I see it.

The other matter hon. Ochieng raised has been ably captured by my colleague and I do not want to repeat that. Therefore, I reiterate that Standing Order 203, indeed, gives this House powers to call experts on any matter from wherever we can. I think that should be the way to go.

Thank you, hon. Speaker.

**Hon. Speaker:** I urge everybody speaking to be brief. You should take one minute. You should allow me to also appreciate regions. I will ask myself the region, party or county the Members who have contributed are from. If you look around and see somebody from your county has spoken then---

Hon. David Ochieng, who contributed on this matter is the Member for Ugenya. Hon. Wandayi likes getting excited. I would like to recognize Hon. Ng’eno. Hon. Members, remember that for you to discuss the substance of a matter before a Committee, you must really be seized of a lot of information. So, we are not saying that if the Departmental Committee on Energy, Communication and Information is going to discuss the recent findings in Turkana County, those Members who go to rallies in Turkana cannot talk about what oil and water could do. That is no substance really. Even as you address me, that is not what is prohibited.

**Hon. Kipyegon:** Hon. Speaker, Sir, I am also very grateful that I have got this opportunity to speak on this matter. Under Standing Order No.86, we are allowed to investigate on any matter under the sun. The question of whether we are professionals in these fields should not arise.

I believe that the people who elected us saw something in us which made them do so. When we were selecting Members to particular Select Committees, the Whips, the Leader of Majority Party and the Leader of Minority Party based their selection on the qualifications of those Members. So, most of the Members of the Committees investigating the Westgate matter

have relevant qualifications. So, it is not correct when a Member claims that maybe we do not qualify to discuss those matters.

I would also like to comment on the matter that hon. Shebesh has raised. Sometimes we have political obligations and parliamentary obligations. We need to discuss matters which are in this House when we are in this House. When we leave this Chamber and go to our constituencies, we need to address the political obligations. Like most of the Members have said, almost all the matters in this country are now within the Committees. If you look at all the Committees, you will find that they are addressing each and every case including marriages, land and any matter within this country. If we were barred by that restriction, we would not be discussing anything out there. So, I would like to say that all the matters that we are seized of, we only leave the substance or the substantial part of it and discuss the political aspect.

Hon. Speaker, Sir, I was part of the Members who discussed a matter in Marakwet East Constituency in the presence of hon. Ichung'wah and hon. Shebesh. Hon. Shebesh was also one of the Members who discussed this particular matter.

*(Applause)*

However, we based our findings not on the fact that the matter of Shollei had been seized by any Committee. They were only proposals by the Committees including the PAC, the Departmental Committee on Justice and Legal Affairs which I belong to---

**Hon. Speaker:** Hon. Ng'eno, you are now giving me that story. Can you address me on the issue as to whether we should discuss or not? I am not interested here in knowing who was excited, who was dressed how, who said what and who was fitted with what kind of paraphernalia in the village.

*(Laughter)*

Please, just state whether we should discuss and if we should, up to what point.

**Hon. Kipyegon:** Hon. Speaker, Sir, I stand guided. At times, we are obligated by the situation and the happenings in the country that we cannot avoid to discuss such matters. I believe that even though the Standing Orders of this House bar us from discussing those matters, reading the Standing Orders clearly, what I think we should avoid is the substance part of it. Otherwise, we cannot stop Members from discussing matters which are of national interest. There are some issues which when we look at them, although some people are talking about procedures and the due process of the law, we know the due process of the law. There is a Member who said that if you want equity, you must come to equity with clean hands. It is on the same breath that I can also say that if you want equity, you must be ready to give equity.

When we talk about matters which are in the public domain, these are matters which we must and are obligated to look at in tandem with that particular principle. Otherwise, we will discuss some of these issues which people are talking about when the time comes. We will have time to discuss them but let us look at the issues which are of national importance and avoid gagging the media and this Parliament. If we want to gag this House based on the fact that matters are before Committees, then it is like we are saying that we should not look at other issues from the public perspective.

With those remarks, let us also look at the public perspective, which we also represent and we need to discuss those particular issues.

**Hon. Speaker:** Hon. Ichung'wa and as you speak, please, do not tell us about the happenings at that function, but let us also appreciate that there have been Parliaments in Kenya for the last 50 years. This particular Standing Order was not imported in January this year. It has always been there. Also, it is good for me to inform the Members that the Chair is not without remedy. Those of you contributing saying: "do not do this because it is not enforceable," I can assure you that I can enforce any of those issues that appear to be bothering you. So, it is enforceable. There are many ways of enforcing it. A Member who disobeys is out of order. Obviously, then there will be the usual consequences. So, do not have problems about whether it is enforceable. I am the one to enforce. So, do not worry about that. But I am not saying here that we must gag anybody. Let us see what limits there are. The Members must obviously comment on issues, but then we must also find limits, so that we do not even prejudice the investigation being done by the Committees.

**Hon. Ichung'wa:** Hon. Speaker, Sir, I really do not want to get into the debate of what was said and not said as hon. Ng'eno said while we were in Marakwet. But I must confirm that, indeed, I was there, but I did not speak to the issue. This is precisely because I am very conscious of the provisions of the Standing Orders in relation to matters that are before this House and more so, before a Parliamentary Committee.

What you have said it true that you have remedy to all these problems and I would beg you to have the remedy to this problem that we are facing now. I was, indeed, glad when I saw the Chairs of the Committee on Defence and Foreign Relations and the Committee on Administration and National Security speak with a lot of authority that the KDF did not participate in any manner of looting at the Westgate. I was equally perturbed a day after that to watch on television officers said to be KDF officers participating in what looked like looting at the Westgate.

Many Members have spoken about the substance of the debate and I do not think there is more substance than passing judgment on a matter that is being deliberated upon and a matter that is of an investigative nature as that of the Westgate. I found the position taken by the two Chairs of the Committee on Defence and Foreign Relations and the Committee on Administration and National Security to be totally out of order because that matter was investigative. The Committees ought to be deliberating on issues as to what led to the attack at Westgate and whether or not there was actual looting. Therefore, for the two Chairs to be prejudging and pre-empting debate and the resolutions that would come out of the deliberations of those Committees is totally out of order. I beg that if we are to stick to the rules and procedures that we have set in this House, we must, as a House, stand firm. Whether it is one of us or a Chair of a Committee who goes against the provisions of our Standing Orders, we must be the one to lead by example and show the people of this country that we respect the rule of law by respecting our own rules and procedures.

**Hon. Speaker:** Hon. Ali Rasso. Which other county is that? Hon. Ali Rasso is not from Siaya County. Please, be brief, so that I can give the other Members a chance. Take one minute each, please. By now, you appreciate that I have taken sufficient views.

**Hon. Dido:** Hon. Speaker, Sir, what I have realised as a new Member of this House is the freedom of all the Members to attend all the Select Committee sittings. That means that the Members are privy to a lot of information from the different Committees. Had the Members of this House sat back and waited without beginning investigation or inquiry into the Westgate matter, it would have appeared that we are waiting for trial or investigation by the media. This would have resulted into so much speculation. As a Member of the Committee on Defence and

Foreign Relations, I do not wish to say how much information we are privy to, but so long as the Members have access to the Select Committees sittings, as they walk away, there must be some rules or traditions that this House must put in place, so that they do not go out there to discuss what they hear in Select Committee sittings.

Two issues that we are already seeing, both in the House and in the media, is the issue of looting by the KDF and the National Intelligence Service (NIS) slept on the job. But that can only be proved through investigation and inquiry by talking to those who are holding substantive offices. Even the issue of saying that the KDF officers looted, clearly, if one looks at the television clip, and having been a soldier, I draw quite a different conclusion to that, that if people are on a looting spree, they do not match on a single file, carrying paper bags in their hands and holding rifles in a particular manner. So, I will leave that for another time but I think Standing Order No.86 talks about freedom of all Members to attend the proceedings of select committees. Hon. Speaker, Sir, because Members have access to sitting in different committees, I think you cannot rule that it is only those Members of particular committees who can talk about the proceedings of those committees.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. ole Kenta. Also very briefly please.

**Hon. ole Kenta:** Thank you, hon. Speaker, Sir. I wish to actually agree with hon. Shebesh and hon. Ochieng because you have said that this is a House of rules and Standing Order No.86 is very clear that: “No Member shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the House.”

So, I think what we should actually get to understand is that Members are not prevented from actually discussing issues as long as it is on the peripheral side of things. However, when it comes to making pronouncements that are actually meant to be a decision of that Committee, then I believe it is preempting what the Committee is supposed to do. As you all know, these committees actually have the powers of the High Court and they have the authority under Article 125 to call experts and that is buttressed by Standing Order No.203 to call for evidence and until those professionals and experts have given their stories or even facts, you cannot go out there and say this is it. I think this country needs people who respect the law.

Hon. Speaker, Sir, so, I believe that if the rules are there, then there are sanctions which must actually be given. This is because it is actually embarrassing for this House or Members especially the Chairman to speak on behalf of the KDF or anybody else before the evidence is in. I believe even if there is an element of sycophancy, I believe sycophancy should also be tempered with a little bit of wisdom.

*(Laughter)*

So, I believe for purposes of showing Kenyans that we are mature in what we are doing, we should also act within the rules that we have set. Thank you, hon. Speaker.

**Hon. Speaker:** Hon. James Wandayi. Also one minute.

**Hon. Wandayi:** Thank you, hon. Speaker. I will be very brief. On the matter raised by hon. Shebesh, clearly a plain reading of Standing Order No.86 will leave you with no option other than to hold that the term “Member” refers to every Member of this House. Therefore, in your ruling, I will expect you to hold that way. This is because it was really perturbing indeed when some of the accounts from Marakwet were such that some Members were actually threatening to come to this House and deal with some members of the Judicial Service

Commission for having acted against a certain member of staff. That can only mean that we have thrown all the rules through the window because the issue of Gladys Shollei was not so serious as to excite Members of Parliament to the extent of threatening action against members of the JSC through a petition that has been forwarded to this House by a member of the public. That really puts this House in a very messy situation.

Hon. Speaker, Sir, on the matter of Westgate, we have all agreed that the Westgate affair is a grave matter. That it is a grave matter cannot be overemphasized. The Westgate crime is not an ordinary crime. Ordinarily, if it was a criminal matter that happens every other day, the CID would have been given the mandate to investigate it. This is a case where the police, KDF, the Minister in charge of security and the NIS are all being questioned. Their actions or inactions are being questioned. It only follows that the route that was proposed by the President is the best route to follow and, therefore, it would have been advisable that this House gives the proposed judicial commission of inquiry the chance to delve into these matters deeply before it is seized of the matter. This is because it was suspect when the two committees with a lot of zeal took up the matter. Again, you find that the members of the Committee - in fact the Chairmen of the two Committees - fall over themselves to embrace people they are supposed to be investigating.

Hon. Speaker, these kinds of actions put this House into disrepute. They put this House into a very serious situation in the eyes of the public. Therefore, I want to conclude by saying that this Parliament cannot be seen to be investigating everything under the sun. There is a limit to which it can go in as far as investigations are concerned, more so preliminary investigations. I hold that this matter of Westgate be left to experts and, in fact, this House needs to urge the President to follow through his promise and appoint the commission of inquiry to put this matter to rest, otherwise the rumours, innuendoes and speculations will continue and this House will be part of those speculations.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. George Muchai.

**Hon. Muchai:** Thank you, hon. Speaker for allowing me to contribute to this discussion and particularly before you make a ruling on the same. A lot of what I wanted to say has been said by hon. Jamleck Kamau particularly when he made reference to Standing Order No.2 on interpretation with regard to the term "Member". However much as I agree with hon. Kamau and the immediate speaker who has spoken to this issue, I wish to invite your attention to Standing Order No.89(1) which speaks to the issue of matters *sub judice* or secret. This Standing Order provides that: "Subject to paragraph (5), no Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret."

Paragraph 2 of this Standing Order gives what is *sub judice* and it states that: "A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination."

However, hon. Speaker, I wish to invite your attention to Paragraph 5 of this Standing Order. It makes provision in the following manner: "Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the House or a Committee." In this regard, I do not share the views that Standing Order No.86 requires amendment because Standing Order No.89(5) thereof opens the door for any Member to seek the leave of the Speaker to speak to any matter before this House or before a Committee of the House. So, I take the position that Standing Order No.86 refers to any Member of this House but any Member at the same time under Standing Order No.89(5), is free to seek the leave of the Speaker to address or to make reference to any matter before the House or before the Committee.

Thank you, hon. Speaker.

**Hon. Speaker:** The only problem is that they may not seek my leave when they are in the villages since I do not preside over political rallies. I may not give permission for people to go and do things in rallies.

*(Laughter)*

**Hon. Speaker:** Hon. Junet.

**Hon. Nuh:** Thank you, hon. Speaker, Sir. We are in a Parliament where much of the work is done through committees. For those who care, you have emphasized so much from that Chair on the need for people to attend committee meetings and to take part in committee proceedings, so that we can have very good reports tabled on the Floor of the House.

The only problem we have is that, while we had an induction course for Members of Parliament we did not have one for committee chairpersons. I suggest we hold an induction course for all of them. There are committee chairpersons who think they are alternate Cabinet Secretaries in this House.

*(Laughter)*

They want to take roles that are supposed to be played by Cabinet Secretaries. Some of these Cabinet Secretaries are so competent that their CVs *inatoka hapa mpaka Kisumu*; it is that long. One chairman whom I have seen to be competent is hon. Jamleck Kamau, who chairs the Committee on Energy, Communication and Information, of which I am a Member. This is so because he was a former Minister and knows the work of a Minister.

**Hon. Speaker:** There is a point of order.

**Hon. Chepkong'a:** On a point of order, pursuant to Standing Order No.83 and No.107. Is the Member of Parliament for Suna in order to make sweeping allegations against chairpersons of very able committees in this House, when he participated in electing a number of them? He states that some of them behave like Cabinet Secretaries.

I would like to inform my good friend, hon. Nuh, that I have been in Government before and I have not seen any chairperson purporting to be a Cabinet Secretary here. In fact, they happily participate in committees as chairs. So, that is a sweeping statement; it is frivolous and, in fact, he should be ruled out of order for making serious allegations against other Members like himself. He could probably have been a chair, if he had sought that position. I would probably have thought of voting for him, but he never sought it.

Thank you, hon. Speaker, Sir.

**Hon. Speaker:** Hon. Nuh, you may continue.

**Hon. Nuh:** It is true, hon. Chepkong'a was in Government, but he was not lucky to have been a Minister. He does not know how a Minister works and behaves when he has the powers.

For example, there are issues the chairperson needs to deliberate with his Committee, but you will see him going out in public defending a Ministry, a department of Government or an organization. That is not his domain; his domain is to make sure the matter is prosecuted in the committee and a report is brought to the House, we discuss it as full House and reach a conclusion.

The reason we need to have an induction course for the committee chairpersons is because there are two chairmen who came out to defend the Kenya Defence Forces against allegations of looting in Westgate Mall.

**Hon. Speaker:** Let us not go that route. As you address that point also consider the fact that chairpersons are the spokespersons of committees. When I make this ruling, I will want it to encompass all the issues that you have raised today.

**Hon. Nuh:** You are right; the chairpersons are the spokespersons of the committees. When we handle deliberations in committees, the chairperson is supposed to bring the reports of our findings to the House, whether we were investigating, overseeing or whatever other work we were doing, but when a chairperson comes out to defend certain issues even before the Committee has concluded its report, that defeats the logic of dealing with them.

The chairperson may go further to prosecute the same matter in a *matanga*, or make Statements like: “we are going to sack some people working in the Judicial Service Commission,” and maybe the committee has not concluded its work. What happens in a case where the committee feels otherwise and says that those people should stay in office? You will remain with a label on your face as a Member of that House.

Hon. Members should remain united; most of those who speak in *matangas* are the ones who do not speak in this House. We do not know why they choose to speak out there on weekends. This used to be the domain of certain groups of Members. Now, other Members have taken over; it is also my domain since I talk a lot at *matangas*.

**Hon. Speaker:** The last one to speak on this issue is hon. Jude Kangethe. Speaking in funerals and any other public announcements should be left to hon. Nuh.

(Laughter)

**Hon. Njomo:** Thank you, hon. Speaker, Sir. First I will address the issue raised by hon. Ochieng on whether the Select Committees have the right to conduct private investigations on matters raised in this House. Almost every Committee is conducting one or another investigation, and they have the right and the powers to do so. We should not try to stop them; they have to investigate for them to conduct their supervisory roles and to make sure that things are run in a transparent way.

What the Committees cannot do is primary investigations because of lack of infrastructure, laboratories and the technical knowledge. They have the powers to make sure that the right organs of Government that are supposed to do investigations do their work. As Members of the Public Accounts Committee, we conduct investigations on different matters from Departments of Government. We do not go on the ground to do primary investigations but we use the Auditor-General, CID and other organs of Government to conduct investigations and use the information we get to prepare reports to bring to this House.

The other issue is the one raised by hon. Rachel Shebesh on whether we should discuss matters that are being handled by the Committees. My take on this is that matters being investigated by Committees are the hottest in the country. They are matters that are close to hearts of very many people and are being discussed everywhere. If we were to say that Members of this august House will not discuss these matters, we would be gagging Parliament. As much as we do not want to gag the media, we also cannot gag Members of Parliament.

In my opinion, as Members of Committees, we have the privilege of getting information that is not available to other people. We are able to get substance and this is what we should not

discuss outside the Committee, the privileged information we are able to get as Members of Parliament. When we are discussing matters that are available to everybody, then that should be right thing to do, otherwise we shall not be able to do our politics effectively, because everything will be handled by Committees and then we will have nothing to talk about.

Thank you, hon. Speaker, Sir.

**Hon. Speaker:** Very well. It is only fair to point out the provisions of Standing Order No.180 on the duties of committee chairperson. If you look at the way the wording is; “Subject to the provisions of these Standing Orders and the directions of the committee, a chairperson of a committee shall...” so they may perform all the other things that are available, including discussing matters that have been resolved by the Assembly. A Committee can direct the chairperson to do certain things, only that they must be limited by the other provisions of this Standing Order. For instance, when discussing substance, that will be considered to be going against other provisions of the Standing Orders.

To be able to make a considered ruling, I deliberately wanted us to listen to as many opinions as possible. Let me give a ruling on this matter on Thursday, 24<sup>th</sup> October, 2013 at 2.30 p.m. I will consider everything that you have said.

Let us go to the next Order.

## MOTIONS

There is a Motion by hon. Jamleck Kamau. It is party-sponsored and takes precedence; you may prosecute it.

*[Hon. Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. Kajwang') took the Chair]*

### STATE/PUBLIC OFFICERS TO USE ECONOMY CLASS AIR TRAVEL

**Hon. Kamau:** Hon. Temporary Deputy Speaker, I beg to move the following Motion:-

THAT, aware that the Government has limited financial resources, given the new governance structures that have occasioned devolution of funds; noting that public and State officers constitute a significant part of the Government; cognizant of the fact that the Government has to cater for their official duties, including transport and other facilitation within and outside the country; conscious of the need to reduce the burden on the taxpayer; this House resolves that all State and public officers, including officers of constitutional commissions, county governments, State corporations and departments, with the exception of the President, Deputy President, the two Speakers of National Parliament and the Chief Justice, using air transport during official trips within the country should travel in Economy Class, and travel no higher than business class on international flights, unless they meet their own costs for an upgrade; and that this decision takes effect immediately and all respective Accounting Officers take necessary action to implement without exception.



Hon. Temporary Deputy Speaker, this House has a duty and obligation to curb wastage. This House must be able to institute measures that will cut down on costs. This Motion aims at making sure that the Government saves on some unnecessary expenses. If you look at travel within this country, you will find that all the leaders in the Government, including those in parastatals and other State agencies as well as those in constitutional commissions travel in Business Class.

Hon. Speaker for those travelling in business economy it is like more than double the cost. Looking at these costs that occasion the taxpayer a lot of pain, I think it is the duty of this House to make sure that corrective measures are taken so that we are able to save on some of these unnecessary expenses.

It is also clear that with the advent of the new Constitution there were so many new bodies that were formed. This includes extra Members of Parliament from the previous 222 Members to the current 349 Members. Constitutional commissions now form part and parcel of the current administrative affairs of the Government. Further, we have 47 Governors and Deputy Governors and County Executives who were not previously there. Indeed, there are so many officers who are currently in office. We have Senators who were not there before. We have Ward Representatives whose roles are now more enhanced; it is not like the former councillors that we used to have. It, therefore, behoves this House to ensure that the expenditure that this Government undertakes is not wasteful.

The Tenth Parliament that I served set the stage. It made a resolution that for Members of Parliament travelling within the country they would have to travel Economy Class. In fact, the resolution was that for any flight less than two hours--- As I speak right now, Members of this House while travelling within Kenya actually use Economy Class unless they upgrade for themselves. If you look at the wage bill of this country you will realize that it is too high. I thought it is important for us to come up with ways and means on how we can cut down on some of these things.

The National Assembly appropriates money to all Government agencies. Parliament must make sure that this money that is given to various State departments and State agencies is used properly. I can quote a few instances where CEOs or heads of parastatals or chairpersons of constitutional commissions have come before various Committees of Parliament ostensibly to defend their budgets. However, part of their budgets has a component on travel. When Members of this House pass these budgets and give them to the various stakeholders, at the end of the day you find that the State agencies are actually misusing Government resources. They first of all book themselves and their secretaries and personal assistants into business class while Members of Parliament get into the Economy Class.

Hon. Temporary Deputy Speaker, Sir, it is time those other State officers in this country emulated this House and its hon. Members, and also travel Economy Class. I do understand and know that, perhaps, there are very many people who think that, maybe, their class is above Economy Class. If, indeed, that is the position, it is a very simple exercise; upgrade yourself at your own cost. This will actually save this economy a lot of money.

Hon. Temporary Deputy Speaker, as a responsible Parliament, we must make sure that we actually lead from the front. It is time that this House makes a move, stamps its authority and clearly tells Kenyans and State officers that they must be able to curtail expenses that are not necessary. Honestly speaking, why would I not use Economy Class when I am travelling a distance that will take me only 45 minutes? Why do I want to go Business Class instead of Economy Class and spend more than double the amount of money I should spend when I travel

Economy Class? These are the issues that make some of us feel extremely unhappy with the way things are going in the Executive.

Hon. Temporary Deputy Speaker, it is the practice of other countries and organisations, specifically the United Nations and developed countries. The practice is that any flight taking less than five hours, they use Economy Class. But in this country, we are not doing that. We are saying within the country, let nobody make a mistake; I am not talking about within Kenya. The farthest you can go from Nairobi is Mombasa or Kisumu, a journey that takes about 45 minutes. The point is that you can persevere in the Economy Class. If you are actually uncomfortable with Economy Class, upgrade yourself with your own money, and not Kenyan taxpayers' money.

Hon. Temporary Deputy Speaker, I want to plead with hon. Members to look at this Motion critically and support it. I would like to propose that the Accounting Officers themselves are the ones who are going to be held accountable for this. This is because for every vote there is an Accounting Officer, a person who is responsible for how expenditure is incurred in their agencies.

The Principal Secretaries in the Ministries are normally the Accounting Officers. If you go to the constitutional commissions, we have the Accounting Officers as the respective Chief Executive Officers. It is these people who will ensure that directives are followed; that will save money for this country. A country which at this time is suffering so much from the high wage bill must make sure that bill comes down.

Hon. Temporary Deputy Speaker, I have been able to calculate and get some rough estimates. If this House passes this Motion, and if the resolution is followed--- There is no reason why it should not be followed. This House will make this country save over Kshs10 billion annually. Actually, it is not little money that we are talking about; it is a lot of money. It is money that can build so many roads in this country, including roads in hon. Njagagua's area; he talks about roads all the time. These are the issues we are talking about. It is time for this House to come out and say that we must lead from the front in curbing excessive expenditure, or which is not necessary.

Hon. Temporary Deputy Speaker, let me go a little bit into international flights. This Motion seeks that for any international flights, civil servants above a certain class should travel Business Class, but not above Business Class. We have First Class and Business Class. For the Chair's information and that of hon. Members and the general public, a ticket for Business Class costs three or four times the cost of Economy Class. That is extremely high.

I am told that during the recent trip to China by His Excellency the President, while the President was travelling in Business Class, there were some Cabinet Secretaries who travelled First Class. You wonder what kind of Accounting Officers we have in this country. These are things that we should not see in this country. It is time we said that we cannot continue with these excessive wastages that we are witnessing. This House has the authority and mandate to solve this.

Hon. Temporary Deputy Speaker, Sir, this House has the Committee on Implementation. Anybody who flouts a resolution of this House will be held accountable by this House. This House has all the powers to make sure that, that resolution is implemented. I know for sure that if Members of Parliament support this Motion, it will result in a lot of saving for this country. This is money which can be used in other areas.

Finally, I would like to ask Kenyans that if this House passes the resolution, they keep an eye on its implementation. This is because we are talking about Kenyan taxpayers' money. If a State officer is travelling in Business Class, he or she is using your money as a taxpayer. If he or

she is using that money, as a taxpayer, you need to ask who has given this person authority to use your money as a taxpayer in wasteful manner. I believe that it will be of benefit to many people in this country if other Members of Parliament come up with other measures that will help the Government cut down on costs and use the money saved for development. I believe that we will move in the right direction if that is done.

Hon. Temporary Deputy Speaker, Sir, with those few remarks, I request hon. Chepkong'a to second my Motion.

**Hon. Chepkong'a:** Thank you, hon. Temporary Deputy Speaker, Sir. I rise to strongly second this Motion by hon. Jamleck Kamau. I must congratulate this Member for bringing this Motion, which is very timely.

Hon. Kamau is a hawk-eyed Member. He believes in being thorough in expenditure and we support him. That is what this country needs to do. He has just mentioned a figure of Kshs10 billion but it could even be more. If you look at the amount of money that we spend internally on Ministers, Governors and others State officers, you will find that it is a lot because they all fly Business Class.

This Motion is not meant to in any way cut anybody to size. I would like to quote the former President of the United States of America (USA), Abraham Lincoln. He said:-

“With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in---”

Hon. Temporary Deputy Speaker, Sir, this is an opportunity for us to do what is right. We have no malice against anybody. In fact, we want to ensure that the taxpayers get value for their money. This is one of the Motions that are envisaged under Article 95 of the Constitution. This Motion gives the National Assembly power to deliberate on the issues and concerns of the people and resolve them. This is one of the concerns of the people of this country. We must be able to save money, so that we can invest it in more worthwhile ventures and projects that will bring this economy to where other economies are, especially those of the developed countries.

We cannot afford to fly Business Class. I would like to give you an example. There is a paradox which I cannot prove how empirical it is. However, I am told that it could originate from this country. A President and his entourage flew to the USA and *The Washington Post* carried an article, whose headline read, “Beggars Arrive in a Concord at JFK International Airport.” You are going to America to borrow money and you are arriving in a Concord. That is a paradox. We cannot afford that.

Secondly, while I was at a telecommunications company, we once paid for senior people in the company to travel to Beijing and they flew First Class on British Airways from Nairobi to the UK and then to Beijing. We paid Kshs1 million each for four of them. In that, we said that the British Airways did not need to charge anybody any money for the whole month because they had made sufficient profit. How could four people pay Ksh4 million for a return flight to Beijing? That was wasteful spending and we cannot afford it. You can probably pay Kshs400,000 to Beijing and we can invest the Kshs700,000 in our roads, which are in dilapidated state. I am sure that is still happening up to today. I was shocked and I went back to the board and said that we were not going to pay for anybody to travel First Class. That was not going to happen because it was wasteful; we were not using money in an effective, efficient and economical manner.

So, I am urging this House that we pass this Motion with the speed of the concord, and commit this resolution to the Committee on Implementation to follow it up and ensure that it is implemented to the letter. We are not a talk shop. This is not a talk show; we are serious in what

we are saying. We are playing our oversight role of ensuring that Kenyans get value for money. We are not introducing a new theory in this country. We are seeking to just economize the little resources that God has vested in us in this country. It is important that this Motion sponsored by Hon. Jamleck Kamau be passed so that we can put in place procedures that will ensure that we use resources well. Some of us have been flying internally using our own resources, as you know which are very little, and it disheartens at times that you find a senior Government official sitting on 1C or 2C or something like that, yet the Member of Parliament who approved the appointment of that person here sits on 23E somewhere there. You feel very embarrassed as your constituent looks at you and wonders where you are supposed to be. We cannot have two power systems in a country in which some people are second rate citizens and others are first class citizens. We all belong to this country and we care so much for this country to ensure that we spend money in an economical way, so that we can develop this country.

I note that the Members are geared towards contributing to this Motion and I wish we could speak from our hearts. This is not a matter that we want to take lightly. I want to congratulate hon. Jamleck Kamau for bringing this Motion. Nobody should read any malice in this. We are practising charity in the House and we care so much for this country.

With those remarks, I second this Motion.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Kajwang’): A point of order has been disturbing the Member who is seated to my right. I am sorry I am unable to reach you. Just rise and we will give you the microphone. Let us see if we can give you the microphone. Just let us be able to see if we can give you the microphone.

**Hon. Bunyasi:** Thank you, hon. Temporary Deputy Speaker, Sir, for your generosity. Unfortunately, the issue I wanted to raise was sensitive but now it has been overtaken by events. So, I wish to withhold whatever was my point of order.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you for being gracious to the National Assembly.

*(Laughter)*

All right. Let us continue. Can I have Junet, the Member of Parliament for Suna East? Have the Floor.

**Hon. Nuh:** Hon. Temporary Deputy Speaker, thank you so much for giving me an opportunity to speak on this Motion. I stand to support this Motion. I would like to thank the Mover, hon. Jamleck Kamau, for bringing it at the right time, although it is a bit late. This is a matter that has affected this country so much.

Hon. Temporary Deputy Speaker, we have to agree that we are living in a poor country. We have to agree that we are living in a Third World country. We have to agree that we are living in a country where 50 per cent of our population lives below the poverty line. We are living in a country where our population cannot afford one dollar per day. It is very immoral for people who have been bestowed with authority by the same poor people who are living below the poverty line to fly First Class. This is because power belongs to the people. Those people gave you those powers. You collect taxes from them and then you go and fly First Class and Business Class to Kisumu City, Mombasa City or Arusha, which is a two-hours flight.

Hon. Temporary Deputy Speaker, that is the highest immorality that any public officer can do in this country. This is because you have left your village and you know very well that your village is very poor and you end up flying on a ticket of Kshs700,000 or Kshs1 million. I do not think there is a bigger immorality than this that can happen in our country.

Hon. Temporary Deputy Speaker, number two, as has been alluded to by the Mover, if we implement this Motion we are going to save over Kshs10 billion. You remember very well that recently the Value Added Tax Act was amended so that we could collect more taxes, and that amendment is going to give us Kshs10 billion. Look at that. That made the price of milk go up. That made the price of *mkate* go up. That made the price of *ndizi* go up and now if we implement this rule of public officers flying Economy Class when they are going on flights of less than two hours, we will also raise Kshs10 billion. Look at that comparison. That tells us that if we take many such austerity measures then we are going to reduce our taxation level by a big margin. There is a lot of wastage happening in this country. If it is addressed, a lot of our people will get benefits in form of taxation relief.

Hon. Temporary Deputy Speaker, when you see the extravagance and wastage of money in our country you get shocked. I can authoritatively say here that a third of our budget every year goes to waste and now we are discussing a budget of Kshs1.6 trillion. How much is a third of that? It is almost Kshs600 billion, if not more. If Kshs600 billion can go to waste every year, I do not think the Government needs to look for money anywhere else.

Hon. Temporary Deputy Speaker, we do not need to borrow from China World Bank or International Monetary Fund (IMF), if we can put in place measures to reduce wastage. Wastage cannot be eradicated because we have people living on it. But if we can put measures in place to reduce it even by 50 per cent, I can assure you this country will be--- I cannot assure you that it will be a First World country, but it will attain the middle level income we are thinking about and the Vision 2030 will definitely be achieved.

Hon. Temporary Deputy Speaker, I stand here to support this Motion and I would like to say that hon. Members should think out of the box as hon. Jamleck Kamau has done. There are other issues that we can save money on. Let us address those issues and make sure that our country develops.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you. This evening is a very difficult one in terms of technology. I do not want you to go back to where we have come from, the school-like way of trying to be recognized.

Let me just try my best to be able to bring as a many hon. Members to speak to this subject as I can in the few minutes that we have .

Hon. Member for Nyeri Town, hon. Nyokabi. I am looking at gender.

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Speaker. I am the hon. Member for Nyeri County not Nyeri Town. Hon. Murugi is the Member of Parliament for Nyeri Town.

Thank you for giving me the opportunity to speak on this Motion and to support what hon. Jamleck Kamau has brought to the Floor of this House. I think we need to congratulate him; it is an important Motion, it allows us really to reflect on cost-cutting measures in this country, especially as relates to travel. I like the Motion because we are encouraged all the time to treat taxpayers’ money as though it was our own money.

Hon. Temporary Deputy Speaker, a lot of the officers who travel First Class, if you ask them to travel with their families, you will be surprised. The First Class will disappear

immediately and they will quickly join Economy Class like everybody else. But when they are travelling on taxpayers' money, where nobody is watching, they do so First Class and other higher classes.

I think we are being called upon to really be economical in travel. But even more importantly in this era of ICT, I also want the Mover to go further and question travel. Do we really need to travel that much? We are in a country celebrating 50 years of Independence and every other day we run to the USA and Europe to benchmark--- All manner of words are used to justify unnecessary travel.

This is an era of ICT and there can be teleconferences and online conversations. I am not even sure that we need to travel as much as we do. Fifty years after Independence, we have enough lessons of our own. If you want to learn about truth, justice and reconciliation, you probably do not need to go to South Africa. We have got enough lessons right here at home, which can help us to make better laws and policies. We also need to question some of the travels that occasion a lot of expenditure.

Hon. Temporary Deputy Speaker, it is also important to note that in First Class--- I have had occasion to peep into First Class and what I saw there were princes and princesses. You wonder why public officials would like to travel together with children of kings and queens in this world. It is time everybody accepted their positions in life. If you are in a royal group, and you belong to the Economy Class, on taxpayers' money, please, quickly take your position in life; you belong to the Economy Class. This idea of making oneself a prince at the expense of taxpayers' money need not be supported.

Even as I look at this Motion and support it, as a County Member of Parliament, I do have many other demands. For example, we see budgets for water and drugs for diseases like diabetes, cancer and others being slashed. We see really critical budgets and the amount of money that is used on one ticket; this money should really be spent under those critical budgets.

It is also a challenge to the Mover of this Motion to bring a Motion on flowers. I am also worried whether in an economy like this we need fresh flowers supplied to every Government office every day. This is a Third World economy. I am worried about those flowers. Who exactly are they supposed to entertain? This is a country that has no money. This is a country that needs pen and paper to write important and quick things. To beautify our offices with flowers or large bouquet every day, live large and fly First Class--- The more First Class you enjoy, the more flowers and large carpets you need in your office. The list is endless. If we will cut down on costs, let us cut down on the cost of travel today. Let us also cut the flower budget very soon. Let us cut on budgets that really make our public officers live large at the expense of the taxpayers.

I think the luxurious living is not for our country. Luxurious living is what we may acquire one day if the oil in Turkana is prospected properly. We have a lot of oil which will make us live like sheikhs. Maybe, we could review the Motion at that time. However, it is time now to curb expenditure because we are living on taxpayers' money and we are developing our country with inadequate development resources.

Hon. Temporary Deputy Speaker, Sir, for today, I support the Motion for cutting the travel budget. I also urge that the public officers feel the mood of the House that we are going to slash unnecessary expenditure for more urgent matters to be addressed.

I support this Motion and congratulate the Mover. Thank you, hon. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Nominated Member, Isaac Mwaura, I only have two or three minutes for you. Do you really want to take this chance or would you like to contribute next time we reconvene?

**Hon. Mwaura:** Thank you, hon. Temporary Deputy Speaker, Sir. Let me take advantage of the two minutes because you do not know about tomorrow. I rise to support this Motion because it is timely.

I would like to say that the people who travel on First Class also introduce a mismatch in terms of protocol. You will find, as hon. Members have said, that when you are on an international flight, as I was recently, Principal Secretaries travel First Class while Members of Parliament travel on Business Class. So, they come down to you and you cannot even use that time to catch up on policy issues. It is wrong. What is it that one gains from getting the First Class treatment? It is just pampering individuals’ egos.

As a country, we need to make sure that we have proper policy. As it has been alluded to, people who have no money have a lot to spend, but people who have a lot of money know how to spend that money. They have priorities and, therefore, they have no opportunity for wastage. Maybe, that is the secret between the rich and the poor. This is because the rich know how to appropriate their money properly while the poor think that they have too much around. That also raises the questions that we have been asking ourselves about the budget-making process.

You will find that most of the budgets that we approve in this House are actually wish lists of civil servants who want to find ways of stealing money from public coffers. One of the ways of doing this is through foreign travel, where you enjoy yourselves and you also get huge per diems. This is not a priority. This Motion really speaks to the fact that---

The other day the Auditor-General pointed out how we waste our money and he proved some of us wrong. If you look at the Budget of Kshs1.6 trillion, you will find that it is another big wish list of civil servants. If you look at the money that was spent in the last financial year, you will find that it was only Kshs920 billion. People should not find excuses in issues of absorption. The thing is that our budget-making process is inflated, and it is inflated to benefit only a few. The process creates billionaires and beggars; it is the beggars who finance the large lifestyle of senior public officials.

Hon. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support this Motion.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, we have come to the end of today’s sitting. Therefore, the House stands adjourned until tomorrow, Wednesday, 23<sup>rd</sup> October, 2013, at 9.00 a.m.

The House rose at 6.30 p.m.