

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 5th December, 2013

The House met at 9.00 a.m.

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

PRAYERS

QUORUM

Hon. Speaker: Hon. Members, we do not have quorum. I order that the bell be rung for the first 10 minutes.

(The Division Bell was rung)

Hon. Members, at exactly 9.15 a.m. we now have quorum. Business commences now.
Hon. Chachu.

NOTICE OF MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33(1)

INSECURITY IN MARSABIT COUNTY

Hon. Ganya: Thank you, hon. Speaker, Sir. I rise to seek an adjournment on a definite matter of urgent national importance, regarding insecurity in Marsabit County. I am seeking this House to discuss this issue as a matter of national importance because the situation is very bad in that county. The reports we have is that yesterday over 25 people were killed and many more injured. Our people as we speak now are refugees in Ethiopia. All the roads have been blocked and people are not able to get food supplies, the situation is so intense that we will even lose more lives.

We are being informed that communities from both sides have militias reinforced by the kings from Ethiopia and are basically going to destroy that county. As national leaders, Marsabit belongs to this country; if that county is healing a big part of this nation will be healing. What I am seeking is for the Government which is charged with national security to intervene by any means possible and any strategy required to ensure peace prevails in that county.

It is only after security is normalized in Marsabit County, in Moyale District particularly that we can negotiate what regards any other issue. What is important now is to ensure that security is reinforced for the national Government to go in with enough security men and women and use any strategy to ensure calmness is brought back to

Marsabit County and to ensure the loss of lives and property that we are witnessing everyday is stopped.

I am urging my fellow Members to support me on this and all I am seeking is for the Government to do its duty, which is basically to safeguard lives and property of citizens. This is the cardinal obligation of any nation which seeks to be called a Government. This is what I am seeking the national government to do so that peace prevails in Marsabit.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Very well, hon. Chachu, you have made your point. Do you have the requisite support?

(Several hon. Members stood up in their places)

It is overwhelming, resume your seats Members. It is true that hon. Chachu had approached the Speaker yesterday and this morning. It is obvious that the matter which he has raised is indeed one of grave national importance and therefore, averagely, based on the required support; I order that the House will adjourn for 30 minutes between the hours of 12.00 noon to 12.30 p.m. or if the House extends its sitting to 1.00p.m., it will be between the hour of 12.30p.m. to 1.00p.m. so as to debate or discuss this matter.

Whatever the case will be, if the House agrees to sit beyond 12.30p.m., then the matter will be debated between 12.30p.m. to 1.00p.m., but if the House is not so minded to extend it sitting by the extra 30 minutes, then normal business will stop at 12.00 noon to discuss this matter.

Hon. Barre Shill, I can see you have also raised some intervention.

POINT OF ORDER

RULING ON CONDUCT OF MEMBERS OF PARLIAMENT IN THE HOUSE

Hon. Shill: Thank you, hon. Speaker, Sir. Before we go to the next business, I want you to give directions. You remember yesterday, this House almost went into anarchy. This is a House of honour and respect and image is the most important thing for this House. There is a tendency for a section of hon. Members of Parliament, whenever they think some matters should not be debated, they tend to put this House into anarchy.

That cannot be accepted because we are all hon. Members of Parliament and there is a way of expressing our views. Voting is the last kind of way and I say thank you that yesterday, the other side of Parliament won because they had the numbers. That is the best way to express themselves.

Hon. Speaker, we are almost turning the way the former City Hall used to be. If we do not stop this culture, we shall be throwing chairs and stones to ourselves. Some people can even uproot these Chairs. We know that even stones can be brought into this House.

(Loud consultations)

Hon. Speaker: Hon. Members, the fact that you cannot allow hon. Shill to complete what he is saying, you are totally out of order. If you say it, you will see the door.

Hon. Shill: Thank you very much. I say this because this is august House. It is a House of honour. We have professionals here, lawyers and respectful people who have been heading companies. The image that we sent outside is very saddening.

Therefore, we want a ruling on this matter because we cannot allow a section of this Parliament to be bringing the law of the jungle. Even Somalia Parliament does not behave this way. We need a ruling on these issues before we turn the other way round.

Thank you.

Hon. Speaker: I will allow a few hon. Members to ventilate on that matter but you do not have to shout from your seat, claiming a point of order. If I hear you, or see you, or notice you shouting, so that we can restore honour and dignity, I will just do the inevitable in terms of Standing Order 107. Therefore, you must henceforth learn to raise points of order, and they will be shown here by way of interventions. Those of you who assume that interventions are similar to requests, you better acquaint yourselves with the gadgets in front of you.

Hon. A.B. Duale: Thank you, hon. Speaker, Sir. I want the Chair to give a ruling or a communication not on a Bill or report before this House, but on the conduct of hon. Members of the 11th Parliament, as far as the procedure and Standing Orders are concerned on how the business of the House must be conducted, either at Committee stage or at the full plenary of the House.

This is the House of representatives of the people of Kenya and it is a House that should be the role model for the rest of the country. As the leader of a coalition here, and the leadership of the House, we want to follow the procedure. Even in every single activity that goes through this House, the Standing Orders and the Constitution provide the way forward.

I do not want to go to what happens in City Hall, because it does not exist anymore. The only problem is that, part of the leadership in the former City Hall has decided to come here and that is the right of the people of Kenya. That is why in the last Parliament, the people of Kenya and this House decided that leadership will not be pegged on qualification. At one time, I was with the great Senator for Siaya, the hon. James Orengo and we wanted to peg leadership on degrees.

Hon. Speaker, Sir, we were wrong. The House disagreed with us and said that leadership is God given. How you behave is not God given in this House. How you behave depends on what you did prior to your coming to the Chamber - what you ate, what you drank, who you met and what caucus you did. At the end of every Motion or Bill, the Standing Orders are very clear that a vote will be taken. Yesterday, you made it very clear that the Chair does not have a vote but each and every hon. Member here has a vote.

Hon. Speaker, Sir, it is the people of Kenya who decided who will have the majority or who will have the minority. It is the Kenyan people who decided on 4th March, 2013, who will be in the Opposition and who will be in the Government.

It is the Standing Orders that state the role and the mandate of the Opposition and that of the Government. We want to make it very clear that some of us want to be role

models, at least, to our family, sons and daughters back at home, and by extension to our constituencies.

Hon. Speaker, I want a communication whether it is at the Committee stage or during plenary that this House must run through decorum. That you cannot shout from where you sit. You can shout in a funeral. You can go on Friday, Saturday and Sunday and shout in a funeral or a political rally. You can shout in your house. Close the doors, shout and you can even walk naked in your house, but the moment you enter that door, you are an hon. Member of the august House.

I remember you issuing a similar communication, but I want you to issue a firm one, that electronic system in this House gives you the power to say “yes”, through the button or to say “no”. The Standing Orders are very clear that even when you stand and say a point of order, you must cite the Standing Order. There are so many Standing Orders that have no legs or tail. They are not based on rational thinking. Let us not turn this House into a fish, goats or camel market. For us who come from the pastoral region, we are proud to be told that we are turning this House into a camel market. If you get irritated by me mentioning the word “fish”, I ate fish last night as my dinner. So, it is not your preserve. You can get irritated, we will keep on eating fish and we will keep on using the words, “fish market” because it is in the dictionary and in the English Language. So, relax in your seat.

Hon. Speaker, please give a communication to make sure that this House follows the Standing Orders.

Hon. Ng’ongo: Thank you, hon. Speaker, Sir. I fully agree with my colleagues from the other side of the House that, really this is a House of rules and it must maintain at all times, decorum that is required. I have listened to the lectures from the Leader of Majority Party, even though I thought he went a little overboard because when we address this issue, we should remove emotions. What happened yesterday, whether you lost for the first time and it was a shock to you, that really should be put aside and we concentrate on the matter at hand.

Hon. Speaker, we want to make your life easy to really be able to be in charge of this House because we elected you, with the majority and you are the Speaker of the National Assembly. You deserve respect, the same way the Chair deserves respect. We plead and request that the Chairs who preside over the Committees of the whole House need also to listen to our points of order and at times take decisions that are backed by traditions and history.

I have not seen, given that I have been in this Parliament for the last six years, where the Chair presiding refuses to listen to an hon. Member when he calls for progress to be reported. Yesterday, we realized that we did not have the majority and we thought that we could have the two leaderships of both sides. Because this matter of the Kenya Information and Communications (Amendment) Bill is so contentious, it has been in the public domain for some time and this House has been bashed, we wanted to do it right. We requested that we give ourselves one more day because this has previously happened. We had failed to realise a two-thirds majority in the past but with further mobilisation, we raised the numbers. When we realised that we did not have 233 Members, one of us – hon. Opondo Kaluma of Homa Bay Town Constituency – requested that we report progress so as to defer debate on that Bill, so that we can try and raise a two-thirds

majority today. It emerged that the Committee was not fully committed to ensuring that the agreement that they had made with the Media Council was honoured.

Therefore, as I conclude, I ask you to also make a pronouncement. This is not something new. All of us know that we should behave with decorum. We all know that the dignity of this House is our individual dignities as well. So, even as we do so, the hon. Member presiding over business of the House, especially yesterday's Committee of the whole House, in my view, failed the test of competence. That is why some of us found it difficult to behave with decorum. The presiding Chair failed to behave with decorum. Therefore, we were left with no alternative. It may look offensive but also consider our position. What would we have done, under the circumstances?

Hon. Speaker, therefore, as you make your ruling, I think the Speaker's Panel also needs to convene a meeting to listen to us. Some of us raise points of order but we are not allowed to execute it yet they could help. Whatever decision we make, especially from the Chair sets a precedent. That precedent is what we wanted to set right but we were denied that opportunity. So, as we are condemned from that side, we also condemn those who are siding with the Chair who, in my view, seemed not to have followed our Standing Orders. Standing Order No.167 is very clear. You can ask for progress to be reported. What the Chair needs to do is put the Question to a vote, so that we can vote on it. We were not given that opportunity. How else would we have behaved? Many of us have really tried to behave with decorum in this House. Yesterday was a reflection of the fact that we were pushed to the wall.

Thank you, hon. Speaker.

Hon. Speaker: Yes, hon. ole Metito.

Hon. Katoo: Hon. Speaker, I do not have much to add to what my colleagues have said. Mine is just to ask the hon. Members, and the House at large to learn to be tolerant, civilised and national leaders. They should exercise decorum at all times. Let us learn to differ in a civilised way. This is a House that allows hon. Members to differ in terms of opinion and views. However, we need to express ourselves on them without emotions and anarchy. As hon. Shill said, at the end of the day, the last resort is through voting. We need to learn to try and build consensus whenever possible.

I believe that if we had communicated well yesterday, such situation would have been avoided. I am very sure that the Departmental Committee on Energy, Communication and Information, and the stakeholders of this very important subject had reached a consensus. If we had communicated earlier enough the position that the Departmental Committee and the stakeholders had reached, maybe, this would have been the easiest Bill to deal with yesterday. We would have finished with it very quickly.

I know from precedents, having been in this House during the Ninth and Tenth Parliament, there was no single Parliament that concluded its term without a Presidential Memorandum being debated on the Floor of this House. We all know. That has always been the precedent. That is the threshold. So, what I am saying is that, maybe, we need to communicate more. We need to be more open to each other, as hon. Members. If the middle ground position that was reached had been communicated earlier, we would not be discussing this incident today. That is as a result of our failure, as the leadership of this House. We are the ones who are supposed to do the communication to other hon. Members.

Since we cannot get the two-thirds majority, which is the contentious issue here, and the Presidential Memorandum just goes as it is, then we always have the other option. When we come back in February, the Committee can bring an amendment Bill, which will give us the opportunity to amend the Act right from the title to the last clause. Doing so does not require a two-thirds majority. As long as we have a quorum of 50 Members, we will amend the Act through a normal Bill. That will even address clauses that have not been referred back to this House. So, if we had that communication, matters would not have gotten to where they got.

Hon. Jamleck Kamau withdrew the amendments with good intention. Instead of pushing them through to be defeated, and appreciating the fact that they cannot be brought back to the House for consideration until after six months, he chose to withdraw them so that he can have a chance to bring them back in February, 2014, if we are at all going for recess. So, what I wanted to say is that we should learn to communicate and ask each other what the position is and how to go about matters. I must congratulate hon. Members because they have the freedom to vote on any matter, whenever necessary.

Even when it comes to voting, we should do so in a very civilised and honourable way. I must congratulate those who did the lobbying. That was very good. We were 164 Members yesterday. The side of the House that I lead had 98 Members. The other side had 66 Members but we lost 17 votes and recorded eight abstentions. All the eight abstentions are from my side. Seventeen Members from my side voted with the other side of the House. That is what we should do because we are all brothers and sisters. We are not enemies. Therefore, I want us to lower tempers and emotions. Let us communicate with each other, so that we can reach a consensus.

Thank you, hon. Speaker.

Hon. Speaker: Let us hear hon. Jamleck Kamau.

Hon. Members, I want to plead with you that you do not go back so much into the issue of what happened yesterday. Let us address the issue raised by hon. Shill, so that we can remain on track. Hon. Barre Shill raised issues to do with decorum in the House. I do not want people to address me on the history of how you used to go about wrestling in the evening and such like stuff. Just address the issue of decorum in the House, which is what hon. Shill claimed to raise when he rose on a point of order.

Proceed, hon. Jamleck.

Hon. Kamau: Hon. Speaker, I personally take exception to a comment that was made by hon. Mbadi. Of course, he was on a point of order. So, I could not raise another point of order. He said that my Committee may not have been the committee to come up with an agreement between the stakeholders and the Committee. What perhaps he does not know is that we spent 10 hours, trying to sort out those issues between the Committee on one hand and the Media Owners Association and other stakeholders on the other hand. Negotiations went on up to as late as yesterday, at around 1.00 p.m. That is complete commitment. We wanted to make sure that we arrived at a position that was agreeable to all the parties involved.

The issue of quorum in this House must be addressed. What hon. Mbadi and the rest of the Members were talking about yesterday and this morning – the issue of two-thirds majority – is basically why the Committee decided to withdraw the amendments. We withdrew the amendments so that we can bring them back to the House for consideration in the near future. Indeed, there was a move to postpone yesterday's debate.

If we cannot raise a quorum of 50 Members in the morning, how are we going to get a two-thirds majority to pass this Bill? Such are the issues on which we must agree. We do not have to lie to ourselves. We must be able to be truthful to ourselves. We must clearly understand that what we do in this House is intended to serve Kenyans. We should do the best we can do, so that we can build a better country.

Hon. Speaker, integrity demands that you stand by your own decisions. It was, indeed, the decision of this House to pass the Kenya Information and Communications (Amendment) Bill, 2013, together with other Bills, including the other Motion that went through this House. It hurts me for this House to pass these kinds of Motions and Bills, only for some hon. Members to later on go out there and contradict the same resolutions that they passed in this House. That is absolutely not integrity. It has nothing to do with somebody being serious. That is an issue of people just trying to play politics, which is what we must avoid, so that we can steer this country to greater heights.

Hon. Speaker, when we are in this House, we all want to protect the Constitution, including the Speaker. My argument is that we are all bound by that. I have actually not witnessed any House worth its salt singing. This House is a place of debate and not singing. The House is a place of debate and not shouting at each other. We must be able to actually bring decorum of this House to that level where it is supposed to be. I urge you, hon. Speaker, to make sure that you take the necessary action in order to bring sanity back to this House so that we can continue with the business of the House, otherwise there will be no use of having any Parliament.

One more thing before I forget, indeed, there was an issue to do with the Speaker's Panel. These are people who are elected by this House. These are people that this House has confidence in and that is why the House appointed them. The only thing that we need to do is that if we need to be respected, we must first respect ourselves. If we need the Speakers who will be sitting there to take us seriously, we must also take ourselves seriously first. That is why when you say, "Order!" everybody should be quiet. When we are able to do all these things together, I think there will be a lot of decorum and order in the House. I want to urge my fellow Members of Parliament, please, let us maintain decorum and move together in one united forum. Kenyans see the way we behave in here and that is why we sometimes contribute to the mess outside there. I urge all of us that we sit together and do things together. Let us do politics outside this House so that we can steer this country to greater heights.

Hon. Onyonka: Ahsante Bw. Spika. Ningependa kuchangia hili jambo ambalo ni muhimu. Hasa ni kwa sababu wakati wa asubuhi pengine kuna jambo ambalo nilinena ambalo lilikukera kwa sababu nilikuona ukiniangalia kwa jicho kavu.

(Laughter)

Hata hivyo, ndugu Spika, ningependa kusema kuwa Bunge hili linaheshimika. Ni Bunge la wawakilishi. Sisi sote tumeteuliwa ili tulete mambo ambayo Wakenya wanatarajia yatatuliwe. Ikiwa tungependa kufanya kazi kwa pamoja na tuheshimiane lazima pawepo mazungumzo ambapo tutakubaliana kuwa kuna mambo makubwa ya kikatiba ambayo yanamkera kila mwananchi humu nchini. Lazima tufanye kazi pamoja.

Ingawa kwa upande mwingine mko wengi, tungependa wakati mwingine, kama jana, mtusaidie kupitisha sheria ambazo zitawasaidia wananchi. Kwa upande wetu

tungependa kusikia mnayosema ili tuwasaidie kuendeleza Serikali na mshikilie uongozi jinsi mnavyofanya. Hatuna tashwishi kabisa kuwa ninyi ndiyo mlichukuwa kura na kuwa ninyi ndiyo chama kinachotawala na pia mna miaka minne mbele yenu na sharti mtekeleze hili jambo.

Lakini lazima pia sisi mtuheshimu kutoka upande huo. Utaniwia radhi ndugu Spika, nikisema kwamba wewe kama Mwenyekiti wa Bunge hili ningependa kukusihi wewe kama rafiki yangu – tumefanya siasa na wewe hapo mbeleni na tukasoma nawe – uwe mtu ambaye ana roho safi ili uwe unatuangalia. Hata kama utaona tunafanya makosa ndani ya Bunge hili uwe unatuongoza na kutueleza mahali ambapo makosa yamefanyika ili tujirekebishe na tuwe na mijadala ambayo itaheshimika Kenya hii. Ahsante, ndugu Spika.

Hon. ole Kenta: Hon. Speaker, mine will be very brief. In fact, I would like to say that what transpired yesterday was a great embarrassment and nobody won. This is because when you defeat a Motion of extension of time to debate things that are important to this nation, I believe nobody won. I just heard hon. Chachu Ganya asking us to create some time to discuss insecurity in the country and it is all over the place. I think we should use our time in a better way.

However, I would like to congratulate the CORD side for what happened. I believe it is because they are organized. We should come together as Jubilee Coalition to know what we are doing. I believe most Members in this House feel that nobody really consults them on some of these issues. So, when you see something like what happened yesterday happening, there is more to all that. Let us work together from now on. Let us take our work seriously. Let us also know that it is not for the Speaker to do our work. As somebody said, we should learn to listen to one another. This is because if we do not then we all lose integrity.

We should not burden the Speaker with our own problems. We need to have our leaders talking across parties. What we witnessed yesterday is that the leaders themselves were the ones shouting most. As a lawyer, I believe that some of these things are not over. If you can argue and argue intelligently, why should you shout? What are we showing the country? I believe that we should all work together. Nobody won. For as long as you do not legislate, everybody is a loser. I believe that yesterday nobody won.

Hon. Speaker: Finally, hon. Gikaria. Please, be as brief as hon. ole Kenta.

Hon. Gikaria: Thank you, hon. Speaker. Just as my colleagues---

Hon. Speaker: Hon. Members, according to my record, that is the last intervention. The rest of you, I told you to familiarize yourselves with the gadgets in front of you. It is now that everybody is moving from requests to interventions. There must be an end to whatever begins. He is the last one on this.

Hon. Gikaria: Hon. Speaker, first of all, let me thank my colleague hon. Shill for raising this point. Honestly, as a former councillor I thought---

(Laughter)

What I saw yesterday, much as you have always been saying that we have had enough induction courses, I want to believe that we still need more induction courses to be able to handle some of these things. People seem not to understand and learn. Yesterday, it almost brought me back two years back when I was a councillor throwing stones and

chairs, but I want to plead with my colleagues that we need to sober up. We need to come as a team in this respectable House and be able to debate issues based on merit. As the Leader of Majority Party has just said, we just need to be an august House, and stop doing things that when we go out there, people look at us and cannot believe in what we do in this House.

Secondly, I want to believe that the competence of the Speaker's Panel is unquestionable. We have very competent people giving us direction every time that we are supposed to be dealing with Motions. I do not want to believe that every time I see Clerks advising the Speaker on the Standing Orders and the Constitution--- I want to believe even yesterday, the Chair was advised properly.

You have already given directions on what we are supposed to do as regards the Bill that was coming up yesterday. I want to believe that we can come together as a House irrespective of our political divide. I remember yesterday hon. Midiwo, who is a very good friend of mine, was saying he could not believe what we were doing. He was very remorseful. I want to say, hon. Midiwo, we will support the things that we will bringing so that we can be able to---

Lastly, is just to plead that today, as you have already indicated, let us have some order so that we can give Kenyans what they deserve as their legislators.

Hon. Speaker: Hon. Members, of course hon. Midiwo cannot benefit from coming late on account that he is the Deputy Leader of Minority Party wanting to speak. I am sure you will have a chance to speak later. But on this matter, hon. Members, I think I want to thank hon. Shill for raising it because it is true, what we do, how we do it, what we say, how we say it in this Chamber has greater ramifications for the country, and it is therefore important that at all times, we maintain the dignity of the House, if among other things we want the House to continue enjoying its splendid peace.

That in democracy, the majority will always have their way and the minority will also have their say. How that is done, obviously, it will differ from place to place and from institution to institution. I am sure those of you who may have visited India and seen some of their debates in the Lok Sabha, the fist fights will attest to the fact that sometimes when you read some of the newspapers in that country, people depicting the House in the manner that they do, it is a reflection of what transpires in the chamber.

Let me say this, with regard to the point raised by hon. Ng'ongo as usual, if the Speaker withdraws from the Chair, the Speaker does not disappear from the precincts of Parliament, the Speaker constantly and faithfully observes the proceedings in the House, both in committee and plenary. I want to say this, the Member that purported to raise an issue of reporting progress did it on the wrong Standing Order and it is there in the HANSARD. The Member purported to claim to rise under Standing Order No 96. Hon. Kaluma, it is very helpful to learn to listen, I am telling you. I have looked at the HANSARD, it cannot be that even the HANSARD gets it wrong. You would have to be a very interesting creature, that everybody gets it right, and you get it differently. The Member claimed to rise under Standing Order No 96; I took the liberty and that is why I have taken all these Standing Orders. He was wrong. If the Member wanted to raise the issue of reporting progress, even as hon. Ng'ongo raises measures under Standing Order No. 167, again the Chairperson has the discretion to allow or not to allow. If you, indeed, want the Chairperson in committee to move to report progress, you must rise under Standing Order No. 134, you must begin there. You see, one wrong cannot hide the

other. A Member stands under Standing Order No. 96 and the Chairperson was perfectly right to rule the Member out of order and proceed. Look at your own Standing Orders, see what 96 says, if you are in committee. If you wanted, you should have risen under Standing Order No. 134. You then proceed to move that the Chairperson reports progress under Standing Order No.167. In my view, I rule and I find that the Chairperson acted correctly and within the Standing Orders.

Hon. Members, I think I want to take the liberty to address the issue of the code and dignity in the House. As I always keep saying, particularly my good friends, the ones that have served in the Tenth Parliament, and more particularly those who paid attention in the month of January when these Standing Orders were passed, they are the Standing Orders of the House. This House can still amend them. But until they are amended, they are your own Standing Orders.

In order to address the point raised by hon. Shill, I want to read out to you the provisions of Standing Order No. 107, which deals with grossly disorderly conduct and to draw to the attention of the House that the Speaker and the Chairpersons of Committees will implement these Standing Orders moving forward.

“Conduct is greatly disorderly if the Member concerned;

(a) creates actual disorder;
(b) knowingly raises a false point of order;
(c) uses or threatens violence against a Member or other person;
(d) persists in making serious allegations without, in Speakers opinion, adequate substantiation.” This is subjective, you therefore have to live with the Judiciary’s quote, that “justice is as long as the judge’s foot”. I want hon. Onyonka, if he is in the Chamber, to listen to this, because the judge’s foot, sometimes may refer to temperament.

“(e) otherwise, abuses his or her privileges;

(f) deliberately gives false information to the House;
(g) votes more than once in breach of this Standing Orders;
(h) commits any serious breach of these Standing Orders; or
(i) acts in any other way to the serious detriment of the dignity or orderly procedure of the House.”

What does the Speaker or the Chairperson do?

Standing Order No.107(2) says:-

“The Speaker or the Chairperson of Committees shall order any Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the Assembly-

(a) on the first occasion, for the remainder of that day’s sitting;
(b) on the second or subsequent occasion during the same session, for a maximum of three sitting days including the day of suspension.”

Hon. Members, if a Member does any of these acts he or she will be deemed to be grossly disorderly and the Speaker or the Chairperson of Committee will be at liberty to administer the prescribed consequences. I think this is important in order to maintain the dignity of the House.

We may disagree hon. Members but that may be no reason for us to shout at one another. That is disorder. I am sure that as a debating Chamber, you may not like anything that your colleague either on your side of the coalition or on the opposite side may say but please allow him or her to say so that you also get your chance to disagree

even vehemently. But when you engage in shouting matches, we are not in anyway behaving in a manner that shows decorum and dignity to the House.

Therefore, hon. Members, I took the liberty to draw your attention to this Standing Order. This is not the kind of thing that we need a workshop for. We just need to actively know when we enter the Chamber that shouting at one another could be deemed to be disorderly. Raising frivolous points of order is also being disorderly. Giving false information or making allegations against your colleagues without substantiation again is being disorderly.

Hon. Members, I do know for a fact that those who are Christians have found it difficult sometimes to observe and obey the Ten Commandments but as hon. Members of Parliament, we have a responsibility to try or make efforts to observe these very simple rules.

I thank you, hon. Members.

Hon. Midiwo: Thank you, hon. Speaker, Sir. First of all, let me apologise for walking in and attempting to want to talk. I did not mean to offend you.

Hon. Speaker, the matter that you have just dealt with is important but I think that there is one thing which has been omitted or included in this discussion. I like your guidance and I like particularly the submissions by Members, particularly Hon. Metito ole Katoo although I was watching from outside.

The issue of decorum is a must if we want to conduct business but I wanted to take this opportunity to plead with our colleagues on the other side, particularly the Leader of Majority---

I said yesterday that we are approaching Christmas. Even though we have the rules of the House or the Chair or the Speaker may be right, attitude is important. When we address each other with bad attitude or face, and that is exactly what Hon. Mbadi was saying--- We do not need to annoy each other. It is six months down the line and we probably did not know one another. But now we have been together like brothers and sisters. I think we need to conduct our business as people who live, eat and do everything together.

Hon. Speaker, Sir, I am saying this because I think the matter of yesterday which seemed to offend some of us is a matter which has been addressed ably by Hon. ole Katoo that the House leadership could have ironed out.

It used to be when you were here as a Member of Parliament or as a Chair of a Committee, that when there was controversy or when there was an issue that the House could not agree on we called a *Kamukunji*, so that those things which we saw here could be addressed away from the public eye.

I want to plead with you as our leader to advise us from your memory how it works or what will make us live together in a cordial manner with one another and with each other. This is because nothing had to be rushed yesterday.

Hon. Speaker, Sir, I want to plead with you as our Speaker to address us as leaders. This is particularly the Leader of Majority Party. The tone of his voice offends half of this country.

(Applause)

It is offensive and we cannot take it lying down. There is only one Leader of Majority Party in the House and he is the leader of all of us. We have to cross that line as a country.

Hon. Speaker, Sir, you remember less than five years ago Kenyans were butchering each other. This Constitution which has created these numerous seats was passed when people were not even greeting one another in this Chamber. We had to talk. Hon. Speaker, I was with you and Hon. Duale last week burying our dear friend, Hon. George Thuo. We had to talk and sometimes sit until 3.00 a.m. and ask what we will do. Sometimes you come and your Members are not talking to you but we said that we must move forward. This one is easy. The Jubilee Government has a supermajority. Why are we fighting? You have the numbers given to you by Kenyans. It is a constitutional mandate.

I want to address hon. Duale. Please just understand that a leader who does not understand when he offends people is a very bad leader.

(Applause)

The tone of his voice is not guiding this country to Canaan. I want to plead with him as my friend that nothing stops him from inviting hon. Nyenze and going for a cup of tea which is free for them there. Just have it. If they cannot, they can walk into Mr. Speaker's Office and have tea, agree and laugh and we will all be laughing at one another.

Hon. Speaker, Sir, I really want to plead with you to help us in that regard.

Thank you.

Hon. Speaker: Hon. Members, we may now go to the next Order.

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD FOR VETTING OF JUDGES AND MAGISTRATES BILL

Hon. Chepkong'a: Hon. Speaker, I beg to move the following Procedural Motion on behalf of the Departmental Committee on Justice and Legal Affairs: -

THAT, pursuant to the provisions of Standing Order 120, this House resolves that the publication period for the Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No. 44 of 2013) be reduced from 14 to 4 days.

Hon. Speaker, the reason the Committee is requesting for that reduction is because of the delayed publication of this Bill. Although I signed this Bill on 11th November, 2013 it was only published on 2nd December, 2013. This was a delay that was occasioned at the Government Printer. I think they had too much work and so they were unable to process this particular Bill.

This is a very important Bill because it will resuscitate the Vetting Board whose term comes to an end on 31st December, 2013. If this amendment is not passed, it means that the Vetting Board will not be able to conclude the vetting of the pending 300 Magistrates. This is an Act of Parliament that was created pursuant to the passage of the new Constitution, particularly under the Seventh Schedule, Clause 23 of the Constitution.

Kenyans required that all judges and magistrates be vetted so that they can be compliant with the provisions of the new Constitution.

So, we are just seeking to reduce the number of days from 14 to four days so that we discuss this Bill. I would like to ask hon. Ochieng, a Member of the Committee, to second.

Hon. Ochieng: Hon. Speaker, I rise to second. This ought to have been done a long time ago. Instead of bringing so many amendments together, what the Members would have done earlier was to flush out the urgent matters like this particular one. Bringing so many things before the House confuses Members. I support this because the completion of the vetting exercise is long overdue. The sooner we deal with this matter the better. It has taken so long to finish this process. The stage the Board is entering is that of dealing with magistrates and yet they are so many. This is why we are saying that we need more time for the Board to ensure that this is done without them having to come back to this Assembly for further extension.

With those few remarks, I beg to second.

(Members walked out of the Chamber)

Hon. Speaker: Those hon. Members who are walking--- Hon. (Eng.) Manga, when you turn, you do not become an elephant. The moment you begin moving forward, you do not turn backwards.

(Laughter)

(Question proposed)

(Question put and agreed to)

BILL

First Reading

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

MOTION

ADOPTION OF THIRD REPORT ON AMENDMENTS TO STANDING ORDERS

Hon. Kajwang’: Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Third Report of the Procedure and House Rules Committee on Amendments to the Standing Orders, laid on the Table of the House on Wednesday, 4th December, 2013.

Hon. Speaker, the Committee laid a Report before the House considering Standing Order No.141. You know that examination, enactment and legislation are regarded as the main business of this House. The process of proposal formulation and drafting of a Bill usually is long-winded. According to the Standing Orders that were proposed by the Tenth Parliament and have been revised, those Standing Orders codified the introduction of Bills including pre-publication process, scrutiny of legislative proposals and the standards of public participation in legislative processes. All these processes have created a rather elaborate procedure to make sure that the Bills that are brought before the House are scrutinized and that the public has participated fully and have understood the intent of the legislation. When legislation is finally done, we carry not only the intention of the legislature, but the spirit of the nation in each legislation that we pass here.

The changes in our democracy, from parliamentary to presidential, have meant that Members are now in charge of the Bills. There is no longer a Government in Parliament. All the legislative proposals must therefore follow through Members. In fact, in other jurisdictions all citizens will come to Members urging them to bring this or that legislation before the House. So, Members are going to be very busy bringing in proposals every time.

If the Standing Orders were to be left the way they are, it would make Members to be very frustrated. Because of these processes that we have, Members may not find it easy to have their Bills debated within the time that they prefer them.

Hon. Kaluma: On a point of order, hon. Speaker. Could the House rule on whether hon. Ms. Shebesh is properly dressed?

(Laughter)

Hon. Members: She is cute.

An hon. Member: Were you attracted by her dressing?

(Laughter)

Hon. Kajwang': Hon. Speaker before I was interrupted with that very good commercial break, I am even more attracted to the submissions I was making that Members will find it very difficult to have their proposals disposed of in the House because of the nature of clogs that come with the elaborate procedures that we have in our Standing Orders. So, if I were to bring a Bill, by the time the Session expires for several other reasons my Bill perhaps could be in the pre-publication stage or it could be in the clog of being disposed of, one way or the other and it may well be that at the end of the Session my Bill would not have been disposed of and so it would mean that it lapses. This will lead to a lot of frustration amongst Members. We are also limited by the infrastructure that we have, including the staff that we have to process all these things.

The Procedure and House Rules Committee, therefore, brings an amendment to this particular Standing Order proposing that Bills will not lapse necessarily in the first Session after they have been published or after they have been read a First Time. That way, Members could relax knowing that if they have a Bill which is running, it will still go to the next Session. Therefore, the text that we read this morning is on subsection 2.

We propose that Standing Order No.141 be amended by inserting the following paragraph:

“A Bill that has been published, read a First Time or in respect of which the Second Reading has not been concluded –

(a) at the end of the Session in which it was published shall not lapse at the end of that Session, but shall resume in the next Session of the same Parliament at the stage where it was last interrupted;

(b) at the end of the two consecutive Sessions of the same Parliament, shall lapse at the end of the Second Session and may be republished in the same or different form in accordance with Standing Order No.114.”

The understanding here is therefore that within that Session, the Bills will not lapse, but if the Bill continues within two consecutive Sessions, at the end of it, it will lapse. This is because if we have all Bills within one whole year pending, either it means that the legislation has been overtaken by events or that the Member supporting that legislation may have run out of steam or three, there are some extenuating circumstances that are making that Bill now not palatable. If within one year a Bill has not been processed, then it would mean that there are issues which necessitate its republication for it to be given new life. We are saying that within the Session that we are in, the Bill will not lapse, but if after one year a Bill is still pending, it will lapse so that we can decongest the legislative process, the publication and the scrutiny. Therefore, we will have a more and efficient way of enacting Bills in this House.

Therefore, I urge that in terms of recommendation two, that this amendment takes effect from 4th December, 2013 and that the addendum be made to the Standing Orders containing that resolution of the House on the amendment.

I beg to move and ask my very good friend and classmate, hon. Cheboi, to second.

Hon. Cheboi: Hon. Temporary Deputy Speaker, Sir, I beg to second that Report and confirm that having had my good friend speak to this particular Report, I will be very brief, because I remember him in college, he was a very sharp young man in more ways than just the brains.

This is a fairly non-controversial issue. The issue here is to save time and cost, so that we do not have to have Bills lapsing and therefore, going to the process of republication, scrutinty and so forth. I will not speak to that because as I have said, this is not a very controversial issue, which I believe Members can quickly pass. However, most importantly, as a House, we need to take some action to make sure that our rules, like the one you spoke to quite a lot earlier on, are made stable and predictable. I believe this particular one will have absolutely no problem because it is saving the House time, costs and it is really good for this House.

We also need to think broadly on the issues of our own Standing Orders. I do not think it will be very tidy if after every few days, we as a Committee are bringing in proposals to amend these Standing Orders. We need to do it quickly. Hopefully, as I am aware, in January there will be a workshop to tidy up the entire process of the Standing Orders, so that we can make them something which we can refer to comfortably because we are well knowledgeable in them. I want to encourage the Members as I wind up, to try and give those particular areas that they think should be tidied up in the Standing Orders, so that that can be done quickly. Our Standing Orders, as I speak, even those few areas

that have already been amended, are added haphazardly into our Standing Orders. We want it to be done and printed well, so that Members can refer to them as the ten commandments of this House, as you earlier indicated.

With those few remarks, I beg to second.

(Question proposed)

Hon. Speaker: Do I see hon. Gichigi? Hon. Members, even as we debate this, it is important to also bear in mind what the Mover and the Secunder have said. I appreciate and of course, I imagine everybody else does agree that the same rules are sometimes very complicated. I would like to encourage every one of us that when you go through the Standing Orders, if you think there are areas that, in one way or another, hinder the smooth transaction of business from your own perspectives, please, feel free to propose changes to the Committee.

Hon. Gichigi: Hon. Speaker, Sir, I rise to support this particular Procedural Motion. The Standing Orders and any law for that matter, is supposed to be a living document. It is important that it moves, shakes and settles. It is important that we keep on looking at what we have and improving it.

We have had several months of use of this document that was passed by the last Parliament. We have learnt certain lessons, seen errors and have had difficulties. We have learnt a few lessons and we need to put those lessons into good use. Let us tidy up this very important document. Any time I go to Room 8 and see the volumes of documents that are printed and copied any other day, it is very clear that a lot of money is being put into use in giving us the Bills, Motions and other reports. Therefore, it would be very expensive if we keep on redoing this after every Session. Because of the new Constitution, there has been need to generate a lot of legislation. However much we are going to try in this particular Session, we could lose many Bills that are pending enactment. Therefore, lose time, research and time to cure the mischief that such proposed laws intend to cure. It is, therefore, important that we pass this Motion and keep alive the pending business of this House to continue from where we are going to leave it.

I support the Motion.

Hon. Kaluma: Thank you, hon. Speaker, Sir, for the opportunity to speak to this Motion. I stand to support the Motion because it seeks to amend our Standing Orders in the manner proposed. A look through our Standing Orders may not just require the minimal amendments proposed by the Committee. Indeed, we need to have a serious appraisal and perusal of the Standing Orders. To a larger extent, the Standing Orders, as they stand, sometimes, may stifle debate. Sometimes looking through them, a Member would easily get confused as to what Standing Orders to proceed under.

Hon. Speaker, Sir, I mentioned my reliance on Standing Order No.96, for instance. If you read it on the surface, you may think I was right. If you read it keenly with Standing Order No.134, you again question under which Standing Order you were to proceed properly. The one under which I proceeded indicated you could seek adjournment of debate on a question already put either before the House, by a substantive speaker, or the Committee of the whole House. When you look at Standing Order No. 134, it is talking of requesting a report on progress to be made on a Bill. The essence is that these things are so confusing. That is the problem we have in the House. You have

noted that on every single occasion, people are seeking directions from the Chair on matters which properly speaking, should be clarified by the Standing Orders. The Speaker is going to be overburdened.

There is another area which needs to be looked at and I am going to make very specific proposals to the Committee because I have been keen about the Standing orders. Indeed, when we were re-arraigning the Committees, we proposed that hon. John Mbadi joins the Procedure and House Rules Committee. He appears also to know a bit of traditions and how they operate. However, the current Standing Orders vest too much power in the Chair; too much power that we want to look at the extent to which we can attenuate the powers. The powers are so enormous you may fear the Chair when contributing from here. When you mentioned me today, you saw I was a bit uneasy as to whether I am going to be chased out of the House or not.

(Laughter)

We need to balance the powers of the House, if we are to have a flexible House that is capable of debating with the flexibility leadership requires. There are several other things such as the rules relating to discipline also that need to be looked into. When hon. Jakoyo Midiwo fell under the wrath of the Speaker last time, I was looking at the Standing Orders keenly and it appeared to me that the Serjeant-At-Arms would not be directed to get him out of the House, unless he declined to leave on his own volition, but this has been happening.

I will agree with the Committee and support this Motion that requests this very important Committee to really address the entire body of the Standing Orders, so that we can have room which would enable us to debate as leaders.

Thank you, hon. Speaker, Sir.

Hon. Linturi: Thank you, hon. Speaker, Sir. The issue I want to raise with your indulgence is a matter that does not touch on the issue that is on the Floor of the House, but is a housekeeping matter. This House is referred to as the august House, and a House of honourable Members of Parliament. The face of this Parliament reflects the image of the country. One thing that I am really wondering about is whether the support staff of Parliament is really serious in ensuring that Members of Parliament work in an environment that is good or is able to make them dispense their duties with comfort. I have asked this because I know Parliament spends a lot of money in the maintenance of its facilities, and if there is anybody that is in doubt, I would ask any senior staff of Parliament to come and prove me wrong. Where I am seated now and other Members, even if they may not wish to ask, when you place your finger on the working table that is before you, what you leave are fingerprints. I do not know when these tables were cleaned, or probably the maintenance materials or sprays were used to clean these tables. I do not expect this Chamber to be dirty to the extent that when you want to pick a book or write, first of all you have to dust the table with your fingers. We want to seek your guidance on how we should move and ask anybody that is in doubt to come and check all these three tables and any other. It is really dirty and dusty and we want to know exactly what the members of staff that are supposed to be maintaining this Chamber are doing.

Hon. Speaker: I think that is the Clerk's Department. The Clerk's Department, you should address that matter. It is not fair that Members should come and raise issues

to do with cleanliness of where they sit or work from. It may speak to dereliction of duty on the part of those who are supposed to clean the tables. Anyway, let us get on with the rules and procedure. Hon. Oyugi.

Hon. Oyugi: Thank you, hon. Speaker, Sir. My intervention has nothing to do with rules and procedure. I would like your indulgence because what I would like to request, you are the guiding zone. It is a matter that will be requiring your ruling or interpretation on a constitutional matter. This is with regard to the next Order we are about to embark on. So if you please, I may proceed just to request on---

Hon. Speaker: No! No! But we are in this business. You see, that is why I am telling you Members, you need to really familiarise yourself with your own Standing Orders. For instance, you cannot now jump; we are in Order No.10 and you want to address me on Order No.11, surely, that is very disorderly. Hon. Neto, if you also practise law you would have noticed that it never happens the way you want it, that you make a recourse list and you want to make summations on a file that has not been recalled.

Hon. Oyugi: I do apologise, hon. Speaker, Sir, but I will look forward to you giving me a chance when Order No.11 is called.

Thank you, hon. Speaker, Sir.

(Laughter)

Hon. Speaker: Hon. Benjamin Washiali.

Hon. Washiali: Thank you, hon. Speaker, Sir. I rise on a point of order on Standing Order No.95. Given that we have a lot of business before this House and that the matter before us does not seem to have a lot of controversies in terms of issues, could I be in order to call upon the Mover to reply?

Hon. Speaker: Well, do I get a sense in the House that---

(Applause)

On the matter of procedure, I will allow one to three contributions and then call the Mover to reply. I can see hon. Midiwo wants to speak.

Hon. Midiwo: Hon. Speaker, Sir, this is a matter that you know we were victims of and so I have to speak to it. I have to remind this House why we got to these draconian Standing Orders and how we got them. I have to rise to support the amendment.

Hon. Speaker, Sir, when you were the Chair of the Centre for Multiparty Democracy (CMD), we made several demands in the last Parliament to access this process of aligning the Standing Orders to accord with the new Constitution. The leadership of this House refused us and that is why you ended up with a book. This thing was such a secret that people wondered what the Office of the Speaker and the Speaker's Panel were trying to do with the rules. I know in more than two or three occasions you sent me to come here and try to access a copy of this. You were never given; I saw a draft copy in London. It is important to talk to this because these Standing Orders have several sections which do not accord or are not in line with the Constitution of the day. So we need to look at it.

I want to support the idea and suggestions from the Speaker's Office that these Standing Orders need to be revised and I want to beg you not to make it a secret. In the other Standing Orders, the ones of the Ninth Parliament, we took out this particular clause. In fact, I thought the Committee of hon. T. J. Kajwang' and my friend hon. Moses Cheboi, what they were going to recommend is to delete this clause. That should have been the best amendment. The way we have it now, what if a Bill lies for five years? We already have a Standing Order that states they lapse after the term ends.

Hon. Speaker, Sir, there is one other thing which you need to address and make a ruling on. The Constitution which we have today, when we chose to go for a pure presidential system, there should be no Sessions. It used to be that at the beginning of a new Session, we would invite His Excellency the President to come and address the nation and open a Session. Even our consistent use of the words 'end of Session' when we break for Christmas, I do not think it is in line with the intentions of the Constitution. It is not and we need to address all these issues. When the new Constitution was promulgated, we were on the Second Session and we ended the last Parliament with that Session. How then do we come in Parliament and begin this thing of Sessions while we did not have them in the last Parliament after the new Constitution commenced? It is important and it is put in these Standing Orders. The Standing Orders which were hidden from us are now telling us that we need to have Sessions. The Standing Orders were supposed to be in line with the new Constitution. Something is wrong. I want to plead with you, hon. Cheboi and T.J. Kajwang' that form a team. If you have difficulties, consult some people who have memory and he is there. He has the memory. Some Members like John Mbadi have memory so that we can do rules that can make us debate and can make our life easy. You cannot be a judge who sits on your chair and you declare yourself jailed. That is what we seem to have done with these Standing Orders. I want to plead that we do the right thing. The sections that are bad, you can even do them in one amendment so that our deliberations are smooth. As it were, these Standing Orders were done with some selfish motive and we cannot accept it.

I beg to support and ask the team to move us forward.

Hon. Speaker: Hon. Members, if you look at those same Standing Orders, it is important to appreciate that your own Procedure and House Rules Committee is acting in accordance with Standing Order No. 262 which States: "The Procedure and House Rules Committee may at any time propose amendments to these Standing Orders" That is what they are doing, but also if you go further to Standing Order No.264 on periodic review, I want to agree with what hon. Midiwo said that as a House we look through these Standing Orders and see which provisions inhibit debate as hon. Kaluma said, so that when I look at him he does not get scared. I want him to feel comfortable just like hon. John Mbadi feels comfortable, whether I look at him whichever way. It is important that you look at these Standing Orders and make suggestions. We would like to make the operations of the House and conduct of business as smooth as possible. It is never the intention that Standing Orders make it impossible for Members to play their roles as provided for in the Constitution. Please, I want to appeal to all of us that we each take some time to look at these Standing Orders now that we have been here since April. Those who care to participate in business of the House will have come across what they may think perhaps inhibits them in the due execution of their roles as Members of Parliament which is, legislating, representing and oversight so that we come up with

rules that make it possible for each of us to play their roles with minimum hindrances. Even as we debate this particular proposal for these amendments which are meant purely to help Members' Bills or legislative proposals which are in the process not to lapse, as was provided for in these Standing Orders, I am sure hon. John Mbadi will recall that in the previous Standing Orders, that provision had been removed. As we come to the tail end of the year, it is only fair that we do not frustrate the efforts by Members and Committees. It would be most undesirable situation. So, this is meant merely to save. This is first aid but I think in a more holistic way we need to really look through all of them and let us all come up with proposals. If you want a workshop, it will be fine. This will be important so that we know how the Speaker looks at people and how much power the Speaker should exercise. These are all very useful proposals and suggestions. So that we conduct business in utmost ease and decorum as I had earlier one stated.

Hon. Mati: Hon. Speaker, Sir, I first would like to start by congratulating you and your team for revising the Standing Orders this early. Many institutions do not revisit rules if they serve the *status quo*. I would like to start first by congratulating you and the leadership of the House for seeing the need to revisit these Standing Orders so soon after their publication. Power does not allow for the liberation of those who are led. I will start at that point. Basically, contributing on what needs to be looked at, one is the issue of participation; participation of those who are led. I know of few incidents in this last five months, we have had situations where we preach the drinking of water and serve wine because the leadership has not realized that these people are supposed to have been elected democratically and should extend the same democracy to the Members of Parliament.

I will be looking at those Standing Orders myself with a lens of democracy and participation. We need to look at the issue of the due process. We have to look at very concrete steps of how disciplinary or otherwise action is taken on any Member by the House as well as by their parties. Here we are members of political parties and you allow me to say---As one of the first early victims of the draconian laws that are promulgated in the Standing Orders, I will be standing firm to make sure that I do not become a victim of a kangaroo court process. I would very sincerely hope and pray that you would avail us a forum where we can ventilate over this. I will ask my brother and sisters to read the Standing Order carefully with participation, democratization and due process lens so that we are able to meet and put down everything on the table. That way, we can serve Kenyans.

Hon. Chanzu: Hon. Speaker, Sir, I also want to support this Procedural Motion. I agree that Standing Orders assist Members in terms of benchmarking and giving guidelines on how they should be able to conduct the business of this House.

They also make matters easier for us, as a guide on how we should operate. However, there may be a little problem, which hon. Linturi had raised. On the issue of this Chamber and the premises of Parliament, it is crazy that some hon. Members litter this Chamber. When I came to sit here, I found chewing gum. Some hon. Members chew gum and just dump it anywhere once they are through with it. We cannot blame the administration of the National Assembly for such behaviour.

During the Tenth Parliament, there was a major overhaul of the Standing Orders, which gave sufficient guidance on how the business of Parliament should be transacted. However, just recently, when we came back from the elections, there were accusations to

the effect that the Standing Orders were tailored to favour one side of the House. This is now an opportune time for us to look at the Standing Orders afresh and come up with appropriate and suitable provisions. So, the timing is right.

Therefore, I beg to support the Motion.

Hon. Speaker: Yes, hon. Wanga.

Hon. (Ms.) Nyasuna: Hon. Speaker, I rise to support the Motion.

In doing so, I would just like to make two points. One is with regard to the specific amendment that has been brought by the Procedure and House Rules Committee. It is a very welcome amendment because the process of coming up with a Bill and seeing it through the First Reading and the Second Reading is rigorous. It can be very discouraging for one to lose a Bill at the lapse of a parliamentary Session, particularly if it is a Private Members' Bill.

Hon. Speaker, secondly, in the process of carrying out a comprehensive review of the Standing Orders, the Committee should also look into the aspect of going digital. I would like to use this opportunity to inform the House that the Parliamentary Service Commission (PSC), which you chair, has approved purchase of *iPads* for all hon. Members. When we come back from recess, each hon. Member will be provided with an *iPads*, which will be loaded with the Standing Orders, Bills, Motions and everything else that a Member is supposed to go through.

This will make life very easy for hon. Members because even in terms of getting the correct Standing Order that you may want to refer to, you only need to do a search on the Standing Orders on the relevant point. Once you do the search, you will quickly have options of which Standing Order you can actually refer to as you rise on a point of order. Hon. Gichigi made reference to bulkiness in terms of paperwork. If you go to Room 8, you will find many reports. The amount of paper that the National Assembly churns out every day is huge.

So, we hope that with the adoption of a digital system, we will reduce the amount of paper that we use, so that we can have a very limited use of paper. We will not be receiving copies of the Order Paper at the entrance of this Chamber. We will be walking in with them on our gadgets. Once this happens, we will be looking forward to the Committee adjusting the rules to conform to technology. We will be reviewing the Standing Orders and making recommendations to the Committee to allow a digital system of operation on the Floor of this House. We will be looking at how to deal with situations which require paper and signatures.

With those few remarks, I beg to support.

Hon. Speaker: Yes, hon. Njagagua.

Hon. Njagagua: Thank you very much, hon. Speaker. I equally rise to support the Procedural Motion.

It should not be lost on hon. Members that all the other arms of the Government have gone digital. Those in the Executive are always on their *iPads*. In the Judiciary, High Court Judges are always on their *iPads*. So, what hon. Wanga has said is very relevant for this august House. We must also appreciate that laws are not static.

In this august House, we have Members from different fields of specialty. Not all of them are lawyers. So, when we make Standing Orders that are very rigorous, and which are not easy to understand, we lose a lot of Members in terms of debate. For instance, when an hon. Member stands on a point of order and then the Chair insists that,

that Member should indicate under what Standing Order he has risen, you lose many of us. This is something you have personally not done, and I must thank you.

Therefore, we must make our Standing Orders quite easy to understand, so that hon. Members can follow what we discuss in this House and make informed contributions.

Thank you.

Hon. Speaker: Yes, hon. Daniel Kazungu.

Hon. Muzee: Thank you, hon. Speaker, for giving me this opportunity. It looks like hon. Wanga is staying in tandem. I get the feeling that when I was talking to an hon. Member over there, she was actually eavesdropping.

First of all, we are celebrating that we now have a digital Government. All the talk out there is about the analogue to digital migration. There has been another buzz about a paperless society. If you look around everywhere, you see paper. This is a waste of public resources. Parliament needs to lead from the front in terms of saving money through incurring unnecessary costs by way of printing and distributing papers all over the place.

So, I support the idea of revising the Standing Orders because, first of all, the law we make should work for us. We make laws so that they can make it easier for us to serve Kenyans in our legislation work. Again, as I said, it is very important that we embrace technology because of obvious advantages. We are celebrating 50 years of independence. So, we need to ensure that, going forward, the rules and laws that we make are in tandem with where we are right now.

Hon. Speaker, yesterday, we had a very interesting situation here. When hon. Ababu Namwamba took pictures as you made a ruling, there was uproar. Maybe, once we revise the Standing Orders, taking of pictures in the Chamber can be accommodated. One day, when I become a grandfather, I would want to share pictures of hon. Speaker reacting to something that happened in the National Assembly many years back. Such would be something of importance for me as I do my memoirs.

So, it is important for us to look at the Standing Orders deeply and broadly to make things easy for us. Our rules and procedures should facilitate us to carry out duties.

With those remarks, I beg to support.

Hon. Speaker: Yes, hon. Washiali.

Hon. Washiali: Thank you, hon. Speaker. This is just a Procedural Motion. Therefore, I want to refresh my earlier request, under Standing Order No.95, that the Mover be now called upon to reply. This is because, in a Procedural Motion, we either say that we accept the procedures or we decline. The mood of hon. Members from both sides of the House shows that we are in agreement that we approve these procedures, so that we can go to another business.

Thank you.

Hon. Speaker: Hon. Members, again, this is a matter of procedure.

(Hon. Member approached the Chair)

Hon. Member, that is not possible. You cannot come here to seek leave to talk. You are making it impossible for me to do my work. Allow me to do what I must do now. Hon. Members, you cannot come here to seek leave to talk. You are making it

impossible for me to do my work. Allow me to do what I must do now. Hon. Members, you can see now what I was saying because the Member has not been paying attention to what was being said.

(Question, that the Mover be called upon to reply, put and agreed to)

Hon. Kajwang’: Thank you, hon. Speaker, Sir. I want to thank all Members that have spoken to the issues around the subject of amendment of the Standing Orders. I want to announce on behalf of the Procedure and House Rules Committee that we are engaging in an elaborate discussion of the entire Standing Orders to be able to bring one global and consolidated amendments so that we can have a new set of reprinted version of the Standing Orders that will enable Members to participate effectively.

As a matter of fact, we even want to translate the Standing Orders into Kiswahili so that they can be received both in Kiswahili and English which are the national languages of this country. We are even thinking of proposing that a day will be dedicated when all Members will speak in Kiswahili in this House. I hope that, that is not going to stifle debates especially from the friends from the place where I come from where Kiswahili was taught in mother tongue so that *macho* can mean something.

However, hon. Speaker, Sir, I also want to announce that the Speaker has taken leadership in this and is actually going to call an informal meeting before Christmas where we are going to improve on a lot of issues. We are going to first of all target Members of Parliament who are the primary users of the Standing Orders to generate as many of those areas as possible that we need to refresh. Thereafter, we will draw consensus that we will take to a workshop sometime in January. Our target is that when we open in February or so we should have a document which is now our own, that is of this Parliament and not of the Tenth Parliament and, therefore, Members will find it more useful and friendlier.

I, therefore, want to thank you hon. Speaker, Sir, for allowing us to debate this Motion and thank you that this Motion is carried and the amendments are effected as proposed.

(Question put and agreed to)

Hon. Speaker: Hon. Agostino Neto, you have indicated you have an intervention.

POINT OF ORDER

RULING ON PRESIDENTIAL MEMORANDUM ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENTS) BILL

Hon. Oyugi: Thank you very much, hon. Speaker. It is really humbling that at least you indulged me on this particular one and I appreciate it. I would like to rise to request you to make a ruling with regard to constitutional issues arising out of the Order we are just about to embark on. I really appreciate the fact that you gave one of the hon.

Members a chance to address the House and it was really nice to see both sides of the House move towards achieving consensus on issues of national building and in terms of legislation.

Hon. Speaker, I would like to laud very much my very good honourable friend, hon. Metito for actually explaining to the hon. Members the procedures and matters that would proceed should we as a House, for example, pass the Presidential Memorandum.

Hon. Speaker, I would request your ruling with regard to Article 115 of the Constitution. I would like to know the meaning of the word “reservation” in Article 115 (1) (b) of the Constitution. Does the word “reservation” in the Constitution mean recommendation or what does it specifically mean?

Hon. Speaker, the other thing I would like your ruling on is what the word “amendment” in light of the President’s reservation means. Hon. Speaker, the other thing I would like your ruling and direction on is, if the amendment in light of the President’s reservation is the spirit of the President’s amendment, does it then mean that we do require two-thirds majority to vote against that particular amendment? Be that as it may and of course yesterday, you did properly speak to it. You said that this House being a House of rules and procedure has already, for example, given credence to presidential amendments and they have precedents towards that extent and that our President’s reservation might, for example, mean passing an amendment in the manner that the President has proposed. I would then request if it is possible that, that particular precedent be overturned.

Hon. Speaker, you and I know very well that there are moments when precedents have been overturned and you know very well the case that gave rise to civil liberties and the 14th amendment of the American Constitution, in the case of Plessy versus Ferguson’s decision. So, then it is possible even if at all there was precedent that was created within the meaning of “President’s reservation” and “presidential memorandum”. It is then possible for this House to overturn that particular precedent.

Hon. Speaker, this is what I would request you to rule on before we really embark on the next Order. I appreciate very much what hon. Metito said, that even though we will proceed and pass the amendment in the manner that hon. Duale would appreciate and love very much, it is possible as a House that we will get back to this particular Bill and Act and amend it in a manner that is friendly to the whole country. I would like the Members of the other side to appreciate that in issues like these, of civil liberties and of moving the country forward, we should then obtain consensus the way we proceeded to do earlier on in the course of the day.

Hon. Speaker, with that thank you very much for indulging me and I will appreciate your ruling on the above. I appreciate you and thank you.

Hon. Speaker: Well, I may not have difficulties addressing that. I am sure you have looked at your own Article 260 of the current Constitution and noticed that it does not make reference to the words “reservations” or “amendments”. Therefore, we will go by their natural meanings – their meanings found elsewhere other than in the Constitution. For guidance on this matter, we will just go back to the traditions, past rulings, past procedures, how past parliaments have dealt with matters to do with presidential memorandums or memoranda. When the President refers back a Bill to the House, does the President refer back a Bill with mere comments or does the President propose his own version of the Bill with regard to certain provisions thereof?

The practice is, and has been that the President does not refer back a Bill to Parliament with an essay expressing displeasure about this or the other. The practice has been and that has been the tradition, whenever the President refers back a Bill that has been passed by Parliament for reconsideration, he does so with clear proposals, which proposals then are considered by the House. The House can amend those proposals and this has been the tradition. It can amend those proposals or pass them without amendments, but if the House wishes to do either of that, if it is passing the amendment adopting the President's Memorandum or proposals with amendments, the House will be required to meet certain threshold which is the two-thirds. This is the case both in the current Constitution in Article 115, and was also the case in the former Constitution in Section 46. Therefore, we cannot adopt a new style of doing things.

We will go by the traditions, and for the time being, those are the traditions and that is the practice; that the President has made certain recommendations or proposals to the House. Does the House agree with them, one after the other? Of course, there is a requirement that for the House to do that, it first must have a requisite quorum of two-thirds. Even before a Question is put, if the House does not have the two-thirds requirement, and it still feels that they are not comfortable with the President's recommendations or memorandum, remember the recommendations will be deemed to have been approved because the House would have failed to raise the required threshold of the vote to be taken. I think the best thing for us now is to proceed having been advised. Hon. Kaluma, that appears to sit well with you. You want to speak to it? But let me say this, even as you speak to it, I can see hon. Okoth is also agitated, hon. Wandayi as usual, yes. But do not worry, what I have given is the procedure to be followed. We can speak to it for purposes of wanting to seek clarifications but that is the procedure to be followed. So, we are unlikely to begin borrowing from the 14th amendment or the American Constitution because that has not been our practice, we also keep saying that we have our own traditions. We only borrow from others when we do not have our own. We cannot say that today we are going to sit this way, tomorrow, we shall go and borrow from the Republic of Guatemala, no, it does not happen that way. We must first of all turn to our very own before we go to the others. Hon. Kaluma.

Hon. Kaluma: We are legislators as we are indeed leaders. This matter puts us under a very difficult corner in terms of our legislative mandate. In the sense that, we debate the memorandum presented by the President. If you are going to approve, then you do not require the two-thirds majority as indeed the Speaker has ruled. If you were to reject, then you require two-thirds. Two things are evident in the House; one, the number in the House is not at the level that will allow us to make amendments or vary the memorandum of the President. In fact, we are in a situation where the only thing we can do if we are going to proceed is to accept the memorandum. I am worried on the point of leadership at two levels. I remember when the President did return the Bill with reservations and I am confirming that the President is purely entitled to do that under the Constitution. In fact, it is under Article 15. He is entitled to do that as the leader of the country. We did mobilize the nation to begin a rethink of the Bill and a committee met the stakeholders in the media, as Members of the National Assembly and indeed all the leaders across the nation. We also spoke to what we believed should be done to better the Bill. We are in a situation where a matter was expressed to the nation as a matter on which consensus is reached but due to lack of numbers in the House it cannot proceed. I

know it may be difficult under the Standing Orders for me to seek to move as I did yesterday, but I know the House has convened even during recess. I am not contemplating what could happen in the afternoon or any other day. Would I be right if by sheer leadership we postpone the further transaction, so that we carry forward the consensus already built by Kenyans and prepared by the Committee?

Lastly, there is a matter by which I am seeking your direction, in terms of how the Order Paper is structured in relation to this matter. The House by tradition and under the Standing Order knows that we can only transact those matters which are listed on the Standing Orders. The Standing Order lists that the only thing we are to discuss in the Memorandum of His Excellency the President is the refusal to assent to the Bill in issue. My reading of Article 115 gives me the idea and I would beg for your direction on it. You are a much more senior lawyer on these issues and highly respected. It gives me the idea that you may reject what the President is proposing in whole or in part. You may also, in rejecting what the President is proposing in whole or in part, introduce your own amendments. Will it be proper that an Order Paper speaking then to the issue to be dealt with is not speaking to the Bill, but merely to the memorandum? So, if we are going to have a resolution, I have looked through the Order Paper and I am seeing even proposals by other Members in terms of what could be debated, like my good friend hon. Tonui is also proposing that the Kenya Union of Post-Primary Education Teachers (KUPPET) comes in.

My view, and I would beg for the Speaker's direction on it is that what we need to have listed, under Order 11 is the Kenya Information and Communications Amendment Bill referred by the President. When you restrict it to the memorandum, we cannot do any other thing about it. My earnest request as leadership is that we do not appear to do things that annoy people, particularly when we are approaching our going on vacation. That will jolt our relationship with the entire nation and portray us not to be leaders. When we promise our people that we are going to spruce up a Bill, we want to be seen to be doing everything in that direction and not to take another path.

Hon. Speaker, Sir, I seek your direction.

Hon. Speaker: The other bit is about form. It is the practice of the House that the form indicated here is the one that obtains and does not cause any confusion at all. The Kenya Information and Communications (Amendment) Bill, National Bill No.19 of 2013 had been passed by this House. So, what this House is to debate is the memorandum. Therefore, the form adopted here by the secretariat is correct. It is what is expected. It is for that reason that if you go to the inside pages you will go to clauses that have been addressed in the memorandum. This is because you are not allowed under our rules to consider anything else in the Bill because you had already passed it on 31st October. So, it is not open to you, as Parliament, to touch any other clauses of the Bill. You can only deal with the clauses that the President has raised issues on. I think that is clear.

With regard to what promises you may have made to various groups out there, in fact, I am not even aware that promises have been made. I think I said it yesterday that it is immaterial what opinions I have as the Speaker because they will count for nothing. This is because you are the people to make the decision. It is immaterial whether I sympathise or I do not because I have no way of expressing it. It is you who will deal with this matter and not me. Please, carry along those whom you have engaged with and also explain to them clearly what Article 115 of the Constitution is capable of doing.

Where we think that we have bitten more than we are able to chew, we should also be clear to tell those whom we are eating with that we now have to vomit; that what we bit was more than we are able to chew. This is because the Constitution only allows us to do this much. It does not matter how many times we adjourn this. One way or the other, you will have to make a decision.

Hon. Members, let us not engage in these theatrics because it is not helping us. Make a decision one way or the other. I think hon. Metito ole Katoo speaking earlier on made some points which address the way forward.

I do not know whether many of you were then in the Chamber. Remember what hon. Katoo spoke about so that I do not have to keep making rulings about this or the other. I think I am clarifying the obvious. Let us only deal with the aspect of making law. In making law, you know your responsibilities. I have no doubt that all of us are really conscious of our responsibilities. It may well be the case that we do not meet the expectations of those whom we represent or those whom we promised this or the other but nevertheless, you must do what you must under the Constitution and the rules.

Let me hear hon. Cheptumo and hon. Midiwo. But please let us also address issues which make us move forward.

Hon. Cheptumo: Hon. Speaker, Sir, yesterday, you made a ruling on this matter and it was a very explicit and clear ruling. A few minutes ago, you also gave directions on this matter. After giving directions, you allowed again hon. Kaluma to raise certain issues which is good because I know how accommodative you are as our Speaker. However, my plea is that we cannot change what is very clear in the Constitution. We have a lot before us and I plead to the Chair that we move to the next stage because we are spending a lot of time on an issue which I think you have given directions twice. You will then negate the same orders and the same rulings you have given. I propose that we do respect Members of the House who would like to further debate, that we proceed to the next level of this Motion.

Hon. Midiwo: Thank you, hon. Speaker, Sir. I like the way you are guiding us. You know you are a pioneer under the new Constitution and so we plead with you to bear with us a bit. I think I had applauded hon. ole Metito on his plea to Members of Parliament. Thank God it is another day.

I just have two issues. The first one is that there is an amendment. I am not clear because I am talking for myself. If we move that amendment to this, do we still need the two-thirds majority?

Hon. Speaker: That is why I am saying hon. Midiwo that any amendments that you move, you require the two-thirds majority. Again, for you to override any of the proposals, and it is the Constitution--- We all passed it. I remember several of you going round the country campaigning for this Constitution and saying that it is very good.

(Laughter)

You passed it with a lot of enthusiasm. You said that you want to implement it. Implement it because we are the implementing Parliament.

Again, to override any of the proposals, you require the two-thirds majority. The flipside is that even where you do negate without the two-thirds majority, you would have acted in futility because the consequence is that the memorandum stands passed. I

do not know whether we are clear on this; that even if you were to negate, for instance, the very last that the House doth agree with the Committee in the said Report, if the majority were to say “No”, without the two-thirds majority, the net effect is that because you did not have the requisite majority, the memorandum will be deemed to have been passed. That is the consequence.

Hon. Members: It is a Bill and not a memorandum!

Hon. Speaker: Hon. Members, it is unlikely that you will get to learn these things overnight. It takes students of law several years to even get the basics and begin to interpret. We are not perfect, but we must make do with what we have.

Yes, hon. Midiwo.

Hon. Midiwo: Thank you, hon. Speaker, Sir. It was important for you to explain. I think you are now clear and it is clear in my mind. I think I buy your direction.

On my second issue because this is an important moment, a few months ago, we had the County Governments Bill which was referred back to Parliament by His Excellency President Kibaki. Because we needed the two-thirds majority, the Speaker made a ruling on this Floor that you only needed the two-thirds majority to defeat it but you could amend it. We amended it severally with simple majority. This was earlier this year.

That amendment was moved by Dr. Nuh, who is now the Tana River County Assembly Speaker. I remember that. Maybe, the circumstances are different and maybe something is trying to change here. However, I have an issue. My issue is that we have a new Constitution. Many of those things like those referrals which were done were done under the old Constitution. As you know, Parliament and its rules were safe under the old Constitution until after the elections. But we are now under the new Constitution. This is where I want you to indulge me, hon. Speaker. Article 115 says that the President expresses reservations. You led us through articles of the Constitution and one of them states that legislation is vested in Parliament. What we are dealing with, under the old Constitution, the President could make suggestions, but under this new Constitution my reading – I am not a lawyer – tells me that reservations cannot be suggestions. However, the point I want to put on record is that if we go through what we are about--- I know my colleagues on the other side are thrilled and they want to go through this. The President comes from their side of the House, but he is our President. If in future, after President Kenyatta, we get a rogue President--- That is the point I want to express. I think this speaks to the intention of the Constitution of separation of powers. If in future this country gets a rogue President, he will bring a simple legislation here. He will bring one-line legislation here. He goes and rejects it and brings it back here with bad intention knowing that Parliament cannot raise the two-thirds majority.

Hon. Speaker, I want to beg you because I know you have brains. Imagine what would happen to this country for posterity after we die and go. If we do what we are about to do today, some rogue President will be advised by selfish motive to bring a simple legislation which will pass following our rules, then it will be brought back saying what he wants. He will pass detention without trial and those other draconian things which we have lived through and we are thankful to God that they are behind us. If we do this, that window shall have been opened.

Hon. Speaker, before I end, what is before us, the President is doing legislation. That is what he is doing. The intention of the Constitution was to separate power. What

the memorandum should have said is, “I have reservations on this (a), (b), (c), (d) and so you as Parliament deal with it.” Then what you are saying suffices. If we do not do this, I honestly believe we will be setting the most dangerous precedent and something that is not intended by this Constitution.

The controversy here is just the constitutionality. The Chairman of the Departmental Committee said that his Committee agreed with the media. The media accepts that what they have contention on, the President did not address. The President did not address what the media had problems with. The President came up with a new thing. The media still have an issue – they will sort it out there or it will find its way here. My issue is this window we are opening for a future President. Could this be one of those moments that we could rise to the occasion and discuss this matter even away from cameras so that we can guide this country properly for the sake of posterity? We can do that. We can do that and come back in the afternoon---

Hon. Speaker: You are on a point of order. You cannot speak for that long.

Hon. Midiwo: It is okay. I am sorry, hon. Speaker, but I thought I should go on record.

Hon. Speaker: Hon. Members, you see, it does not matter how many times we address these issues. Yesterday, I drew your attention to the provisions of Chapter Eight of the Constitution which is on the Legislature. It is in your own Constitution that at the tail end of legislating, Kenyans decided that before laws come into force, they want a situation in which the President, who is not in the legislature, has a role to play which is to assent. It is a provision you put in the Constitution under Article 115.

So, I think that as parliamentarians we are at liberty to express this shock at this time, but you are still within your powers to propose amendments to the Constitution. If Kenyans decide that the President has no role in the legislative process--- Those of you who would recall, this matter was debated at great lengths even at the level of the Committee of Experts. It is not unique to Kenya that presidents assent to Bills before they become laws. However, in your own Constitution, you went on to provide that given certain circumstances, if the President does not assent to a Bill that has gone through certain processes seven days after publication, it becomes law automatically. It is there, read Articles 115 and 116.

Now you are speaking about what is already in the Constitution and saying that we could easily have some rogue President. As Kenyans, you are at liberty to make a decision as to how to address the situation of engagement or involvement of the Executive in the legislative process. Do you want the President to ever have any say in the legislative process other than proposing legislation more so at the tail end before coming into force of laws? That is the issue we appear to be discussing, but as it is the President has a role in the Constitution which is provided for in Article 115. He has exercised his function.

Hon. Jakoyo Midiwo posed a question and suggested that the President’s requirement under the Constitution was to write some treatise expressing reservations and then the House would come to amend the treatise. Then you have forgotten how we make laws. We do not make laws through the writing of dissertations or essays. The President cannot be expected to write an essay expressing reservations--- Hon. Members, you must interpret what is in the Constitution alongside the normal procedures and processes of making laws.

If the President has reservations, how does he express it? It is by way of proposing amendments clauses by clauses. It is for that reason that it is said that to address it, you must go clause by clause. We have traditions which we must follow. Do not shut your minds from what has happened in the past and just adopt your own new procedures.

Hon. Members, the President has done what he has done. It is up to you as a House to say you do not agree. If you do not agree, your own Constitution says that if you do not agree, you raise two-thirds. You cannot just say that today, because we cannot raise this must be changed. How do you know whether tomorrow you might want to agree? If you think that this clause is obnoxious, again, it is within your power to propose amendments to the Constitution, but we cannot begin to say that we cannot follow this merely because we think that today it does not suit us. That is a very selective way of doing things. So, Members, we do not need to begin debating by way of points of order, whether we are going to the next Order. What has been done has been done. It is up to you. I told you that I am a very lucky person that I do not have to make a decision in this matter. It is you who will make the decision, whether to approve the President's Memorandum in whole or with amendments. If you propose to amend, again, your own Constitution says that you must have two-thirds to reject it. In fact, you can reject the entire memorandum. Again, it is a matter of following the Constitution.

It cannot be that today, because you think that you put yourself in some corner, therefore, it cannot happen. It will happen. Certainly, with my understanding of Article 115 of the Constitution, it will happen and you must as a House, make the decision. Do you adopt the President's Memorandum? If you do, you do not even need the two-thirds. That is your own Constitution. But if you do not or if you want to amend any of his propositions, you must raise the two-thirds majority required. What is good for the goose must be good for the gander. Let us not be selective.

It is, therefore, directed and ordered that we proceed to the next Order. No points of order on this one. This should be in the Committee, Members!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Members, let us have order so that we can move to the Committee of the whole House on the Memorandum from His Excellency the President on the refusal to assent to the Kenya Information and Communications (Amendment) Bill, National Assembly Bill No.19 of 2013.

Clause 5

Hon. Members, I will propose that the recommendation of His Excellency the President on Clause 5 be approved.

(Question of the amendment proposed)

Hon. Ababu: Hon. Temporary Deputy Chairlady, sorry, I do not have my card on me. As we start to look at the recommendations of His Excellency the President, I am a bit concerned and I am happy to see my very good friend, Member for Kigumo, the Chairman of the Committee. The Committee had a deal with the media and it is a deal, which we are reliably informed was fairly acceptable. I was quite concerned that the Committee decided to withdraw that Bill. The media was looking forward, indeed, to have this House ventilate on that Bill and perhaps that Bill could have tempered some of the difficulties we are having with the Memorandum from His Excellency the President. So, as we start on this Memorandum, what is the fate of this Bill? This Bill essentially represented some kind of middle ground between the Committee and therefore, this House and the media practitioners.

I am concerned that in the absence of that Bill, if we proceed to focus merely on the recommendations of the President, one, it will indeed, be in bad faith. We will have betrayed a consensus that was facilitated by a Committee of this House; a consensus that would have sort of cooled the tempers and the concerns of the media. The freedom of the Press is cardinal in the Constitution. It cannot be overridden by any interest. I just wanted to plead with you if you could allow the Chair, my good brother and a man I have immense respect for, the Member for Kigumo, to assure the media as to the fate of the deal struck between the Committee and the media practitioners. He should also inform us why the Committee has decided to cede its responsibility to the Executive. This then amounts to the fact that this House will be watering down the work of a Committee of this House. It is the Committee of this House that bore the primary responsibility to lead the House in terms of deliberations on this matter. Why would a Committee of this House cede its responsibility to His Excellency the President, with due respect? Why would this House allow the President to make law for us?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Your point is made. Hon. Kamau!

Hon. Members: On a point of order, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We are listening to hon. Jamleck Kamau. Hon. Ababu's point of order is to get the Chair to respond. Let him respond.

Hon. Kamau: Thank you, very much, hon. Temporary Deputy Chairlady. With all due respect to my good friend, hon. Ababu, the first thing that I have to tell him and the House is that the Committee has not ceded its responsibility to the Executive in any way, whatsoever. Indeed, what happened and it is in the HANSARD we, as a Committee, sat together with the stakeholders and got some kind of agreement between us although at the end of the day, the Commission for the Implementation of the Constitution (CIC) also had their issues. All this had to happen in the ambit of the House being able to get the

threshold that is required of two-thirds. We do not want to engage in an exercise in futility. We thought that once we withdraw these amendments, it will be easier for us to re-introduce them in future as we move together. On that basis, it was done in good faith and goodwill. I am sure at the end of the day, if we can move together, these are things that can actually, later on see the Floor of the House when it will only require a simple majority.

I would like to appeal to my colleagues---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Jamleck, you have answered. I am only giving two more points of order and then I am putting the Question. Hon. Sheriff Nassir.

Hon. Nassir: Hon. Temporary Deputy Chairlady, whatever is about to happen here today is going to go against the very principles that this House stands for. Stakeholders sat down with lawmakers and they had an agreement. They had a gentleman's word that this is going to be the way forward. We would like to get a clarification and a confirmation right here in the House from the Chairperson on whether he took a lot of time and effort to sit down with stakeholders and come up with an agreement.

Let him tell the House whether that caucus that he sat down with, including the Media Owners Association and other various Government organs, were informed of your intention to withdraw your Motion because of one particular reason.

Today, if we allow this to happen, then every other single---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Your point is made.

Hon. Kamau: Hon. Temporary Deputy Chairlady, I want to tell my colleagues and the hon. Member from Mvita what we agreed and indeed, we had discussions with the media fraternity. They also knew that there was a possibility that we may not get the two-thirds majority. Therefore, when you are planning to do something, you have to look at everything in totality. Our discussions, of course, were based on the fact that we will make an amendment if we can be able to garner the two-thirds majority that is required. But on the other hand, you cannot tell me now that I have to go to them and have an agreement with them. You give me the two-thirds majority, which you do not have here in the House. Therefore, I think the key thing that we have to do here is to proceed because you have already withdrawn---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Jamleck Kamau, I understand. Hon. Nyasuna, you had approached the Chair with the suggested amendment, I believe. Could you please put a point across?

Hon. (Ms.) Nyasuna: Thank you hon. Temporary Deputy Chairlady. I have listened to the Chair of the Committee, yesterday and today. I empathize with the Committee because they spent a lot of time coming up with amendments, trying to build consensus. I also empathize with the media fraternity because their time was spent. The Committee Members I spoke to said that they were here until 1.30 a.m.

The other issue and I want to direct it to the Leader of Majority Party, my good friend, what I know is that, when particularly our colleagues in the Jubilee side want to pass anything in this House that requires numbers, they whip to the last man. The question I want to raise is: did Jubilee whip their Members to come to this Floor today or was it just a show to say that we are not going to get the two-thirds majority? I know that

from the Coalition for Reforms and Democracy (CORD) side, all of us received messages to be here today to be able to pass this Bill.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nyasuna, your point is made.

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

(Several hon. Members stood up in their places)

Hon. Members, I order that the clerks and the Serjeant-At-Arms count hon. Members present in the House. If we have the requisite 233 hon. Members, then we will go to Division. Hon. Members, I order that the Division Bill be rung for five minutes.

(The Division Bell was rung)

Order! Order, hon. Members! Please, take your seats so that the Clerks-at-the-Table can get our numbers. Please, take your seats because the Clerks-at-the-Table are now counting the Members in the House to see whether we have the requisite number in order for us to go into a Division.

*(The Clerks-at-the-Table counted
the hon. Members present)*

Hon. Members, the suggestion that I have from the Clerks-at-the-Table, which I agree with, is that you log in so that everybody can see the number that we have. Could you, therefore, please, log in, so that we can go ahead with the Division? As usual, you have 90 seconds to log in.

(The hon. Members logged in)

Hon. Members, we are now preparing to vote on the matter. Let us be clear because you know the parameters that the Constitution has given us. You have asked for a Division. We are giving you the Division but if we do not get the requisite number, you know the consequence.

Hon. Members, I trust that you have logged in. Please, now go ahead and vote.

(Loud consultations)

Hon. Members, I have said that you should go ahead and vote. What we are voting on is whether the recommendation of His Excellency the President on Clause 5 should be approved. So, can we, please, have the screen showing the voting?

Hon. Jakoyo Midiwo and hon. Nyenze, could you please approach the Chair? Hon. Members, we are trying to get a consensus on voting because you know that there is a requisite number that must be in the House before we vote. We cannot break the rules

of the House. So, we want to agree and you give us one minute to consult between the leaderships on which method we are going to ascertain the numbers.

(Loud consultations)

Hon. Members, as you can see on the screen, we are 140 in number. We need 233 Members to be able to vote on this issue. If we go ahead and vote, we will be going against what clearly is in our Standing Orders. So, hon. Members we cannot go to a vote on this issue simply because we do not have the requisite numbers. So, we will continue to the next clause.

(Clause 5 as amended agreed to)

Clause 7

THAT, Clause 7 be amended by:-

(i) deleting the proposed section 6B and replacing with the following:-

Appointment
procedures.

6B.(1) Within ninety days of the coming into force of this Act or within fourteen days of the occurrence of a vacancy in the office of chairperson or member, the President or the Cabinet Secretary, as the case may be, shall -

(a) by notice in the Gazette and on the official website of the Ministry, declare vacancies in the Board, and invite applications from qualified persons; and

(b) convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or members of the Board.

(2) The selection panel referred to under subsection (1), shall comprise of persons drawn from the following organizations –

(a) Media Council of Kenya;

(b) Kenya Private Sector Alliance;

(c) Law Society of Kenya;

(d) Institute of Engineers of Kenya;

(e) Public Relations Society of Kenya;

(f) Kenya National Union of Teachers;

(g) Consumers Federation of Kenya; and

(h) the Ministry responsible for matters relating to media.

(3) At their first meeting the panel shall appoint a chairperson and a vice-Chairperson who shall be of opposite gender.

(4) An application in respect of a vacancy declared under subsection (1), shall be forwarded to the selection panel within seven days of the publication of the notice and may be made by -

(a) any qualified person; or

(b) any person, organization or group of persons proposing the nomination of any qualified person.

(5) The selection panel shall, subject to this section, determine its own procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions under this section.

(6) The selection panel shall consider the applications, shortlist and publish the names and qualifications of all the applicants and those shortlisted by the panel in the Gazette and on the official website of the Ministry, within seven days from the expiry of the deadline of receipt of applications under subsection (4).

(7) The selection panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under subsection (6).

(8) Upon carrying out the interviews, the selection panel shall select three persons qualified to be appointed as chairperson and fourteen persons qualified to be members of the Board, and forward the names to the President or the Cabinet Secretary, as the case may be.

(9) The President or the Cabinet Secretary, shall within fourteen days of receipt of the names under subsection (8) appoint the chairperson and the members, respectively.

(10) In selecting, short listing and appointing the chairperson and members of the Board, the President and the Cabinet Secretary shall -

(a) ensure that the appointees to the Board, reflect the interests of all sections of the society;

(b) ensure equal opportunities for persons with disabilities and other marginalised groups; and

(c) ensure that not more than two-thirds of the members are of the same gender.

(11) Every appointment made under this section shall be published in the *Kenya Gazette*.

(ii) by deleting the proposed section 6(C) (2).

(iii) by deleting the proposed section 6D (2) and (3) and substituting therefor the following: -

(2) A person desiring the removal of a member of the Board of the Authority on the ground specified in subsection 1 (c) may present a complaint under oath to the President or the Cabinet Secretary, as the case may be, setting out the alleged facts constituting that ground.

(3) The Cabinet Secretary shall consider the complaint and, if satisfied that it discloses a ground under subsection (1) (c), shall send the complaint to the President.

(4) On considering a complaint under subsection (1) or on receiving a complaint under subsection (3), the President—

(a) may suspend the chairperson or member pending the outcome of the complaint; and

(b) shall appoint a tribunal in accordance with subsection (5).

(5) The tribunal appointed under subsection (4)(b) shall consist of—

(a) a person who holds or has held office as a Judge of a superior court, who shall be the chairperson;

(b) at least two persons who are qualified to be appointed as Judges of the High Court; and

(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(6) The tribunal shall investigate the matter expeditiously, report on the facts and make a recommendation to the President, who shall act in accordance with the recommendation within thirty days.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Millie Odhiambo, do you have a card because I cannot see you.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Chairlady for giving me this opportunity. I have a big issue of concern. What we have just done is that you raised the issue on Clause 5 by the President. Hon. Gladys Wanga stood up and proposed an amendment. You gave Members two interventions which were not contributions. Then you went ahead and---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gladys Wanga did not suggest any amendments.

Hon. (Ms.) Odhiambo-Mabona: Chair, can you just hear me out?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): But I just want to correct you as you continue that she did not suggest any amendments. I gave her the Floor on the indication that she was going to bring an amendment but by the time she finished her contribution, she had not suggested any amendment.

Hon. (Ms.) Odhiambo-Mabona: Then that is okay, hon. Temporary Deputy Chairlady. I am still raising my concern. My concern is that then you gave chances to Members who stood on points of order. You did not give us a chance to contribute at all. I want to know whether we have changed the rules of this House so that Members are gagged that we are not going to debate the way you are gagging the media. We want to know whether this is a scheme for you to gag us the way you are gagging the media.

(Loud shouting)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gichigi. Hon. Members, please we agreed earlier that we will allow every Member to be heard. So, let us hear the point of order from hon. Gichigi.

Hon. Gichigi: Hon. Temporary Deputy Chairlady, I would want us to take this position. In the morning when we came here, we had a discussion which was to engage each other and have a bit of decorum. It is very unfair that a Member and a second one are standing to portray to this nation and possibly to the media that one side of this House is actually privy to the amendments that were proposed and agreed with the Committee.

On my part, I fully support the amendments that had been agreed on with the Committee but the position is this: Neither this side nor that side is non-culpable. Both of us have not mounted enough numbers to sustain a two-thirds majority.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, your point is made. I will now put the Question to the Clause.

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

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

(Clause 7 as amended agreed to)

Clause 17

THAT, Clause 17 be amended by deleting the proposed subsections (3), (4) and (5) of the proposed Section 46 I and substituting thereof the following –

(3) A broadcaster licensed to distribute radio or television programme shall broadcast on radio or television such percentage of Kenyan programme as shall be prescribed under this Authority.

(Question of the amendment proposed)

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

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

(Clause 17 as amended agreed to)

((A section of hon. Members walked out of the Chamber while singing)

Clause 37

THAT, Clause 37 be amended by –

(i) deleting the proposed section 102(3) and substituting thereof the following –

(2) The selection panel referred to under subsection (2), shall comprise of persons drawn from the following organizations—

- (a) Media Council of Kenya;
- (b) Kenya Private Sector Alliance;
- (c) Law Society of Kenya;
- (d) Institute of Engineers of Kenya;
- (e) Public Relations Society of Kenya;
- (f) Kenya National Union of Teachers;
- (g) Consumers Federation of Kenya; and
- (h) the Ministry responsible for matters relating to media.

(ii) by amending the proposed section 102 as follows –

(i) in subsection (16), by deleting and replacing paragraph (c) with the following new provision –

(c) if he or she is removed from the membership of the tribunal by the Cabinet Secretary on the recommendation of a tribunal set up for that purpose under subsection (17); and

(ii) by inserting the following new subsections immediately after subsection (16):

(17) A person desiring the removal of a member of the tribunal on the ground specified in subsection 16 (c) may present a complaint under oath to the Cabinet Secretary, setting out the alleged facts constituting that ground.

(18) The Cabinet Secretary shall consider the complaint and, if satisfied that it discloses a ground under subsection (16) (c)—

(a) may suspend the member pending the outcome of the complaint; and

(b) shall appoint a tribunal in accordance with subsection (20).

(19) The tribunal appointed under subsection (18) shall consist of —

(a) a person who holds or has held office as a Judge of a superior court, who shall be the chairperson;

(b) at least two persons who are qualified to be appointed as Judge of the High Court; and

(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(20) The tribunal shall investigate the matter expeditiously, report on the facts and make a recommendation to the Cabinet Secretary, who shall act in accordance with the recommendation within thirty days.

(iii) by inserting the following new paragraph immediately after paragraph (b) in the proposed section 102(A) (i) –

(c) any action taken, any omission made or any decision made by any person under this Act,

(iv) by amending subsection (I)(f) of the proposed section 102E to read as follows

–
(f) impose a fine of not more than twenty million shillings on any respondent media enterprise and a fine of not more than five hundred thousand shillings on any journalist adjudged to have violated this Act.

(Question of the amendment proposed)

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

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

(Clause 37 as amended agreed to)

Clause 39

THAT, Clause 39 be amended by deleting the proposed subsections (6) to (15) and substituting thereof the following: –

(6) The Council shall consist of a chairperson and eight other members appointed by the Cabinet Secretary in accordance with this section.

(7) Within fourteen days of the occurrence of a vacancy in the office of chairperson or member, the Public Service Commission, shall by notice in the Gazette

and on the official website of the Public Service Commission, declare vacancies in the Council, and invite applications from qualified persons.

(8) An application in respect of a vacancy declared under subsection (7), shall be forwarded to the Public Service Commission within seven days of the publication of the notice and may be made by –

(a) any qualified person; or

(b) any, person, organization or group of persons proposing the nomination of any qualified person.

(9) The Public Service Commission shall consider the applications, shortlist and publish the names and qualifications of all the applicants and shortlisted applicants in the Gazette and on the official website of the Commission, within seven days from the expiry of the deadline of receipt of applications under subsection (8).

(10) The Public Service Commission shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under subsection (9).

(11) Upon carrying out the interviews, the Public Service Commission shall select three persons qualified to be appointed as chairperson and sixteen persons qualified to be appointed as members of the Council, and shall forward the names to the Cabinet Secretary.

(12) The Cabinet Secretary, shall within fourteen days of receipt of the names under subsection (11) appoint the chairperson and the members of the Council, respectively.

(13) In selecting, short listing and appointing the chairperson and members of the Council, the Cabinet Secretary shall-

(a) ensure that the appointees to the Council, reflect the interests of all sections of the society;

(b) ensure equal opportunities for persons with disabilities and other marginalised groups; and

(c) ensure that not more than two-thirds of the members are of the same gender.

(14) Every appointment made under this section shall be published in the *Kenya Gazette*.

(Question of the amendment proposed)

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

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

(Clause 39 as amended agreed to)

Clause 41

THAT, Clause 41 be amended to read as follows—

41.(1) A person who was a member of the board of the former body shall continue to hold office for a period not exceeding ninety days or until the appointment of the members of the Authority or Tribunal, whichever comes first.

(2) On the commencement of this Act-

(a) any person who was an employee of the former body immediately before the commencement of this Act shall be deemed to be an employee of the Authority or Tribunal on the same terms and conditions of service;

(b) all property, assets, rights, liabilities, obligations, agreements licences and the arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the former body, shall, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Authority or Tribunal to the same extent as they were enforceable by or against the former body before the commencement of the Act;

(c) where the transfer of any property transferred to or vested in the Authority or the Tribunal under subsection (1) is required by any written law to be registered, the Authority or the Tribunal shall, within six months from the date of commencement of this Act and amendments thereto or within such other period as any relevant law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Authority or the Tribunal or any person by way of registration fees, stamp or other duties—

(i) make such entries in the appropriate register as shall give effect to the transfer;

(ii) where appropriate, issue to the Authority or the Tribunal a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(iii) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

(3) In this section -
“former body” means the Commission and the Appeals Tribunal.

(Question of the amendment proposed)

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

(Clause 41 as amended agreed to)

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I call upon the Mover who is the Leader of the Majority Party.

Hon. Members: On a point of order.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Presidential Memorandum on the Kenya Information and Communications (Amendment) Bill, (National Assembly Bill No.19 of 2013) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. Kajwang'): Order, hon. Members! May we resume our seats. Hon. Munuve, the House is in session.

REPORT

Hon. (Ms.) Shebesh: Hon. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Presidential Memorandum on the Kenya Information and Communications (Amendment) Bill (National Assembly Bill No.19 of 2013) and approved the same without amendments.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Kamau seconded.

(Question proposed)

Hon. Kamau: Hon. Temporary Deputy Speaker, Sir, I want to take this opportunity to thank the Members of the House. Indeed, what happened here a while ago was actually very shameful. It is shameful that Members can politicize an issue of this magnitude. We wanted to come up with an agreeable position when my Committee went and sat down with the media stakeholders. However, as you know, we required the two-thirds majority in the House. Now that we did not get it, I want to tell all the Members that in future it is possible that any Member can bring amendments before the House at any given time and that will require a simple majority. Therefore, there was no need for this fighting and the pulling back and forth because it was not important.

Hon. Temporary Deputy Speaker, Sir, I want to thank hon. Members of this House who are here for their magnanimity and for showing a lot of goodwill so that we can proceed with this Bill.

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Members, you have made several requests and interventions. I believe that these must have been before the House resumed. Could you clear my screen so that I know those of you who want to ventilate or be heard on the Question which has just been proposed?

Hon. Members: Put the Question!

(Question put and agreed to)

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

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

THAT, pursuant to Standing Order No.30(3)(a), this House resolves to extend its sitting until 1.00 p.m.

I am doing this out of procedure because our good friend, hon. Chachu had issues on security and because the coalition that I lead believes in nation building. It also believes in this House discussing national issues and not walking out. We request this House to give 30 minutes so that hon. Ganya--- As we stand here, people are dying in Marsabit. So, the Member of Parliament and the House can discuss that issue for 30 minutes and if possible I will request my colleagues that the Bill we passed and I want the country to hear me---

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Majority Leader, I want you to be relevant to the Procedural Motion that you have moved.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, Sir, I had an opportunity to be on the “Yes” side when campaigning for the new Constitution. There were many people who---

The Temporary Deputy Speaker (Hon. Kajwang’): I will not allow you to veer from the Procedural Motion.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, Sir, I will do that in the Adjournment Motion.

Hon. Temporary Deputy Speaker, Sir, I beg to move and request the purported Leader of Majority, Hon. Benja, to second the Procedural Motion.

(Laughter)

Hon. Langat: Thank you very much, hon. Temporary Deputy Speaker, Sir. I think this work has given you a new title and I think I am very happy about it.

I just want to second what the hon. Leader of Majority Party has said, that what will be discussed is a very serious matter of security. This House must discuss that matter and find a way of resolving it.

Thank you very much, hon. Temporary Deputy Speaker, Sir. I second the Procedural Motion.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, I am having many requests on my screen for reasons which I am not very clear about. I need to know who wants to speak to what and who does not want to speak to what. So, could you cooperate with the Chair and clear the screen so that we are able to do meaningful work now?

Yes hon. Chachu.

Hon. Ganya: Hon. Temporary Deputy Speaker, Sir, I want to thank the House and the Chair for giving me this opportunity. As I speak here--

Hon. Nuh: On a point of order, hon. Temporary Deputy Speaker, Sir. You know this House is made of two coalitions namely, Jubilee and CORD and the sitting arrangement has been done and labels have been put. Is it in order for a Jubilee Member to sit on the Leader of Minority's seat and purport that he is representing the other coalition?

Hon. Temporary Deputy Speaker, Sir, I need your guidance and ruling on that. I have come to protect our turf in this House.

(Laughter)

The Temporary Deputy Speaker (Hon. Kajwang'): Could everybody, including hon. Junet be quiet? The Standing Orders which you may have refused to read say that any Member can sit anywhere in this Chamber. So, there is no Jubilee or CORD as far as I am concerned from the Speaker's Chair. From where I am seated, there is only the Majority and Minority. Even though there is Majority and Minority, the Standing Orders allow any Member here to sit anywhere he or she wants to sit in the Chamber except, of course, for leadership purposes we have designated a few seats because they are recognized by the Constitution. So, Members sitting on those seats by virtue of the Constitution may want to respect the leaders that they have appointed by vacating those seats and sitting on any other seat available to them. However, that is not a very big issue.

Hon. Chachu, you have 10 minutes but you now know that the time is very limited. You may want to reduce the time so that you allow other Members to ventilate on the matter. Every Member who will participate will have five minutes each.

You may proceed, hon. Ganya.

MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33(1)

INSECURITY IN MARSABIT COUNTY

Hon. Ganya: Hon. Temporary Deputy Speaker, I beg to move that the House do now adjourn.

I would like to thank you and the House for allowing this Motion of Adjournment. As I am speaking this minute war is going on in Moyale. People are using machine guns and other forms of artillery to kill poor Kenyans in Moyale. In this conflict, hundreds of innocent lives have been lost and property worth millions lost. Just yesterday, 25 people were killed and so many injured. There are people who are now refugees in the neighbouring Ethiopia.

As we speak now, there is no movement of people and vehicles between Moyale and Marsabit. The situation is so pathetic. Hardly any business is being conducted in Moyale Town today. The operations along the Turbi-Moyale Road which are worth Kshs13 billion have come to a standstill. This is a road which will open northern Kenya and enable us to access the Ethiopian market of 19 million people. This conflict is

spreading very fast to other constituencies, including mine, North Horr and Saku. Very soon it could reach Laisamis, if we do not act.

In the Ninth Parliament this House lost all the four MPs in the said county during such a conflict. I am afraid that today this conflict is much worse. Today people are using artilleries and machine guns. They are using weapons that were never there before. They are torching each other's homes, burning each other's vehicles and killing each other in the middle of Moyale Town. The national Government has not done enough to contain the security problem in Moyale. They are busy blaming the county government which is helpless because security is in the docket of national Government.

The people of Marsabit are Kenyans and they have constitutional rights like any other Kenyan. Their right to life and right to own property is protected by this Constitution and Government. We feel that the Government is not mutual in this matter. Otherwise, how can militia operate in Moyale Town when heavily armed? This has been going on for six months. How can militia fight in the centre of the town using heavy artillery and killing innocent Kenyans? How can communities from both sides block roads and curtail movement of people and kill each other while the security apparatus are just watching? How can pleas from leaders like me and many others to the security organs and the national Government fall on deaf ears if the Government is neutral in this matter?

Hon. Temporary Deputy Speaker, why are the elected leaders who are known to fund this conflict walking free and not arrested? This House should demand that the Government increases security personnel in Marsabit County and Moyale in particular. We need to demand that the military be deployed there to complement the efforts of the police. Finally, an independent commission needs to be established to investigate the root cause of conflict in Marsabit.

With those remarks, I beg to ask the Leader of the Majority Party to second.

(Loud consultations)

The Temporary Deputy Speaker (Hon. Kajwang'): Order, Members. I appreciate that there is a fairly happy mood in the House, but we also want to reduce the consultations so that we catch up with the business.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I am very happy that my good friend, hon. Mbadi is back. Indeed, this is a matter of national importance. This morning there was Communication under Standing Order No.107.

(Hon. (Ms.) Odhiambo-Mabona and hon. Mbadi consulted loudly)

Hon. Temporary Deputy Speaker hon. Mbadi is disorderly in his conduct. Again, my good historical friend Millie Odhiambo should give me time to contribute. The matter before us is a serious national matter---

Hon. (Ms.) Odhiambo-Mabona: On a point of order! On a point of order!

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I want you to protect me. I want you to protect me from hon. Millie Odhiambo.

The Temporary Deputy Speaker (Hon. Kajwang'): You are on the Floor and you can be heard, please.

Hon. (Ms.) Odhiambo-Mabona: Do not joke with me, you are not my---

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I am a very happily married Member of this House.

The matter before us is a serious one concerning the counties of Turkana, Pokot and Marsabit. As the hon. Member said, from where I sit I will ask the Government to bring the relevant document for approval of this House as a matter of urgency so that the Kenya Defence Forces (KDF) can come in to restore sanity.

The matter in Marsabit, as much as the Government has constitutional mandate, I want to plead with my good friends in the leadership, the religious leaders, the women leaders and the youth that we will not in the 21st Century allow our people to butcher each other. This House has a role to play. We will ask the Government to bring that approval to Parliament so that the military can be deployed in Marsabit and Turkana. We did the same thing for Tana River. It is within the Kenya Defence Forces Act and also the Constitution.

Hon. Temporary Deputy Speaker, I have been to that area looking for votes and I have many friends from there. What is happening in Marsabit is what happened 12 years ago when this country lost gallant leaders, that is, Messrs. Bonaya Godana, Abdi Sasura, Guracha Galgallo, Ngoyoni and the great lawyer, the former Member for Nakuru Town. Up to today, Marsabit is still burning.

The elections are over. Whoever became the Governor, the Senator, the Member of Parliament, Kenyans must live with the wishes of the people. Leadership is offered by the Almighty God. It is the Almighty God, through the electioneering process, who appoints men and women to steer this country. I want to make a commitment that the Government must start the process of deploying the KDF. Hon. Chachu, you can tell the quality of a leader at a time like this. At a time of crisis, that is when your potential as a leader will be known. Today the leadership of Marsabit County, despite your political affiliation and position, please, we are telling you to come to the table and save---

I second.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Abdikadir Aden you have the Floor now.

Hon. Aden: Hon. Temporary Deputy Speaker, I stand to support the Motion under discussion as brought by hon. Chachu. The issue happening in Marsabit is of great concern to all of us Kenyans. As hon. Duale has rightly put, it is an issue that calls for all of us leaders to unite. It is an issue of national importance to the extent that as we stand here to deliberate on it, there are lives being lost. There are bodies in the bushes which have not been found. That is what we are gathering from the latest news coming in from that region. The situation in that part of the country requires urgent attention. I feel very grateful that this House has found the time to deliberate these issues.

As we raise these concerns and address these issues, there are a number of issues in this country that are currently under a very aggrieved situation. I must say that in addition to the issues of insecurity that are happening in Marsabit and our call on the Government to reinforce security in that place and save lives and indeed, pre-empt similar kind of conflicts in other parts of the country that could cost lives of Kenyans, what is happening today to our media is another issue of grave concern to this country. It is through the media that issues like these come to us. It is through the good work of the media that we know everything and anything that is happening across this country. As a

nation, we must unite to stand firm and protect the dangers facing freedom of the media today.

We cannot afford to have a country where lives are being lost. We cannot have a country where blatant violation of our Constitution as regards the freedom of the media is being done. It is one other issue which we must stand very strong to protect.

I want to urge my colleagues on the other side of the House that the issue that we are dealing with today is the violation of Article 115 of our Constitution, which gives this House the authority to legislate and Article 94(1) which says that the only legislative authority in this country rests with this House and not anywhere else. If we are not careful, and I am not talking about what has come from the President, we will face draconian and emergency laws being imposed on us. We must not allow what is happening in Marsabit today. What is happening in Marsabit is unacceptable. The onslaught and the gagging that is happening to our media should also never be allowed. I must say that these two issues are of great importance to this nation and must be addressed accordingly. I rest my case there.

Hon. (Ms.) Korere: Hon. Temporary Deputy Speaker, Sir, I rise to add my voice to the issue of insecurity. It is very sad when Kenyans die and butcher each other as we watch helplessly. Our military and defence forces sit in the barracks, go to the messes, take wine and slash grass as if there is nothing else useful they can do in this country.

I want to urge my fellow leaders, Members of Parliament, Senators and Governors that the politics of yester years, where leaders incite people to fight, thump their chests and think that they are more men than others because their clansmen have butchered many people, are gone. It is pathetic and primitive. We cannot understand this in this era. I talk with a lot of bitterness because if you look at me standing me, I am a very harmless woman. I cannot even harm a fly, but just two weeks ago, a leader from my county paraded me in a meeting of leaders and said that “this is the woman who tells the Government that the warriors have guns and bullets”. The fact that I am nominated by the Jubilee Government does not make me any important in the Jubilee. I want to say to this House that my life is in danger. We take some of these things for granted. If I am gunned down when we go for the December holidays, you will just mourn. My good friend, hon. Kiriku will cry for two days and keep quiet and go back home.

The animosity we are witnessing around, even if we deploy all the military forces to our villages, is immense. Peace must start with us as individuals. I urge the leaders from the warring communities, especially the pastoralists communities where I come from, that time is up. We spend a lot of resources on this. It is a shame. Our girls are not going to school because every time our leaders stand here, they talk about security. What security? I want to tell these people that our girls need to go to school. We need to have women lawyers from the pastoralist communities. We need to fight the female genital mutilation and early marriages. This security issue is a creation of leaders, and I must say that.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Ababu Namwamba. I understand that you do not have a card. Where is your card, hon. Member?

Hon. Ababu: Hon. Temporary Deputy Speaker, Sir, I do not have it.

The Temporary Deputy Speaker (Hon. Kajwang’): You need to have an explanation for it also.

Hon. Ababu: Hon. Temporary Deputy Speaker, Sir, my apology. I do not have it with me, but efforts are being made to have it replaced.

The Temporary Deputy Speaker (Hon. Kajwang’): All right, proceed.

Hon. Ababu: Thank you, hon. Temporary Deputy Speaker, Sir. Number one, I want to send my really very deepest and sincere sympathies to the people of Marsabit County and to congratulate my very good friend and brother, the Member for North Horr, hon. Chachu Ganya, for seeing it fit to bring this matter to the attention of this House.

The matter of security is grave, important and critical. Indeed, the primary responsibility of the Government, the reason why we elect governments, primarily, is to secure the lives and property of the citizens. Therefore, number one, even as we decry the factors behind insecurity in Marsabit, there are reports and, indeed, even listening to the Member moving this Motion, that the insecurity and the problems being encountered in Marsabit are related to the last elections. They are related to sharing of positions and relations around leadership in Marsabit County. However, it is inexcusable, leadership or no leadership, elections or no elections, for the Government to sit back and watch as people butcher each other. It is inexcusable.

Therefore, Members, whether you are from the CORD Coalition or from the Jubilee, you must be indignant about this matter. You must express your disaffection with the manner in which the Executive is handling this matter. Whether you belong to the Jubilee Coalition or not, at the end of the day, you bear the responsibility of oversight. We must tell the Government, in no uncertain terms, that you have failed the people of Marsabit County just like you have failed the people of other places in this country that are suffering this same fate of insecurity.

Hon. Speaker, just like the hon. Member for North Horr has very lucidly linked this question of insecurity to elections and leadership, we ought to acknowledge, as a House that, indeed, there is a very direct connection with insecurity and how we handle our matters of national importance.

The Temporary Deputy Speaker (Hon. Kajwang’): All right, hon. Member. You have your red right.

Hon. Ababu: Hon. Temporary Deputy Speaker, allow me two minutes to wind up. I would like to wind up by saying that we may have a Government that has got no respect for the rule of law. When you have a government that has got no respect for the Constitution, it will be a government that will also not respect the value of human life. We have a Government that does not value the media and we have witnessed it here. When debating issues of the media, the right hand side of the Speaker is full of vigour and a lot of indignation. But when we are discussing matter of security, look at the seats to your right. Everybody has left the House. Only the left hand side of the Speaker is here to deal with matters of national importance. I, therefore, rebuke my Jubilee colleagues for pandering to the whims of the Executive at the expense of national good.

I support the Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Okay. Thank you for thundering. Member for Marsabit, could she have the microphone?

Hon. (Ms.) Ibren: Nashukuru, Bw. Naibu Spika wa Muda. Ahsante sana. Ukosefu wa amani katika Kaunti ya Marsabit haujaanza leo. Ulianza kitambo sana kabla ya sisi kuzaliwa. Lakini kila kitu kina kianzilishi. Vita vilivyoko wakati huu vilianzishwa na viongozi. Lazima ukweli usemwe. Viongozi ndio kila kitu. Ndio kiini cha ukosefu wa

amani katika Kaunti ya Marsabit. Vita vilianza Moyale na kufika North Horr. Vikaja Saku na sasa viko Laisamis.

Mheshimiwa Naibu Spika wa muda, kwa miezi mitatu sasa, watu wa Moyale hawako Moyale tena. Wako upande wa Ethiopia. Walitoroka wote kwa sababu ya ukosefu wa amani.

Mheshimiwa Naibu Spika wa Muda, malori manne yamechomwa na yote yanabeba rasilimali zaidi ya milioni 30 kwa kila lori.

Mheshimiwa Naibu Spika wa Muda, magari aina ya Land Cruiser yanachomwa. Mimi nalilia Serikali. Serikali iko wapi? Mbona Serikali isituangalia kama Wakenya? Kwani, sisi siyo Wakenya? Nyumba kadhaa zimechomwa. Akina mama na watoto wamekuwa wakimbizi upande wa Ethiopia. Hili jambo litaendelea mpaka lini? Gari la mwisho kuchomwa lilichomwa wakiwemo askari kadhaa pahali pale. Wale askari wanafanya kazi gani? Serikali lazima itusikie ama itueleze kwamba Marsabit siyo Kenya. Tunataka kujua ukweli wa mambo.

Ikiwa kila kiongozi atazungumza na watu wake, itakuwa vizuri. Lakini unapata kwamba huyu anajaribu kuchochea na yule anatia chumvi upande ule mwingine. Wale viongozi wanalala vizuri kwao nyumbani. Watoto wao wanaenda shule vizuri. Lakini wananchi wale waliowachagua hawana amani. Watoto wao hawaendi shule. Kule shule kadhaa zimechomwa. Shule ni kabila gani? Watoto wote wanasoma katika shule hizo, wawe Waborana, Waburji, Gabra na Rendille. Kila mtu anasoma katika shule hizo. Shule kama hiyo inachomwa. Ni shule ambayo ina maendeleo zaidi na hufanya vizuri sana katika mitihani ya kitaifa.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Barre Shill.

Hon. Shill: Thank you.

(Loud consultations)

I thank the Marsabit County Woman Representative for her passion and very serious contribution. We are celebrating 50 years of independence. In those 50 years, if you look at the people who suffer most, they live in pastoralist areas. We are told always that it is clan issues. Why it is a clan issue is just because there is a lot of poverty. There has been a lot of negligence by successive governments. There are no resources. We are fighting for resources. We cannot wait for another 50 years. I am saying that because when a pastoralist dies, it is simple. It is said that they are just fighting because of tribal disputes. But when other people die in this country, it is very serious. Let us not play double-speak. If both CORD and Jubilee hon. Members are very serious, let them travel to Marsabit and bring peace. It is not just chest-thumping and playing politics with our lives.

(Loud consultations)

Can you give me the freedom to stand, unless you want to bring stones into this House. You can even uproot the seats; the way you uproot the railway! What we are saying is that---

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

Hon. Shill: Why are you disturbing people?

The Temporary Deputy Speaker (Hon. Kajwang’): Order! Hon. Members, do not speak things in this House that excite passion and remove us from focusing on the debate which is at hand.

Hon. Members: Shame! Shame!

The Temporary Deputy Speaker (Hon. Kajwang’): Washington Jakoyo Midiwo.

Hon. Midiwo: Thank you, hon. Temporary Deputy Speaker.

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

Hon. Midiwo: You know, it is interesting---

(Loud consultations)

The Temporary Deputy Speaker (Hon. Kajwang’): Order! Everybody resume your seats.

Hon. Midiwo: Hon. Temporary Deputy Speaker, it is interesting that the guy, the hon. Member who raised the issue of decorum in the morning is the one now shouting across the Chamber. What an irony? Relax *Mheshimiwa*. You are the one who was telling us to relax in the morning.

This is a serious issue; the issue of security. In Marsabit, the facts are clear. It is the Government sponsoring the killing in Marsabit. Let me say this: It is the Government that is sponsoring the killing! When Westgate happened---

Hon. (Dr.) Shaban: On a point of order, hon. Temporary Deputy Speaker---

Hon. Midiwo: You are not the Government. Sit down! You are just a voting machine! Just sit down!

The Temporary Deputy Speaker (Hon. Kajwang’): Order! Where are these Members going to? Could I hear the Deputy Leader of Majority’s point of order?

Hon. (Dr.) Shaban: Ahsante sana, Mhe. Naibu Spika wa Muda. Ni masikitiko sana kumuona Naibu wa Wachache hapa Bungeni, kila mara akipewa nafasi, ana tabia ya kuweza kutumia Bunge kubandikia watu maneno. Nataka kuuliza ya kwamba mwaka uliopita, tulikuwa na Serikali ya Mseto. Wakati huo, kulikuwa bado na vita---

(Loud consultations)

Mnisikilize! Amezoea kutumia Bunge hili kutukana walio wengi hapa Bungeni. Si sawa!

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Order! The time being 1.00 p.m., this House now stands adjourned until 2.30 p.m. today. This is 5th December, 2013. The House so adjourns.

The House rose on 1.00 p.m.