

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 8<sup>th</sup> October 2015

The House met at 2.30 p.m.

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

### PRAYERS

### PETITION

#### REMOVAL OF MAJ. (RTD.) M.S. MUTIA FROM NPSC

**Hon. Speaker:** Hon. Members, this is Petition No.24 of 2015. It is conveyance of a petition regarding the removal of Major (Rtd.) Muiu Shadrack Mutia as a Member of the National Police Service Commission (NPSC).

Hon. Members, Standing Order No.225(2)(b) requires that the Speaker reports to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my office is in receipt of a petition regarding the removal of Major (Rtd.) Muiu Shadrack Mutia as a Member of the NPSC. The petition is signed by one Simon Katee on behalf of a Community Based Organization (CBO) by the name Juhudi Community Support Centre and alleges that Major (Rtd.) Muiu Shadrack Mutia has consistently failed, neglected and/or refused to attend to his duties as a Member of the NPSC. The petitioners are further alleging that Major (Rtd.) Muiu Shadrack Mutia is said to be physically incapacitated and can no longer discharge his functions as a Commissioner.

The petitioners are, therefore, praying that the National Assembly:-

(1) Resolves that this petition discloses grounds for the removal of the said Commissioner under Article 251(b)(c) of the Constitution, and;

(2) Recommends to His Excellency the President to form a tribunal to investigate the said Commissioner.

Hon. Members, provisions of Article 251 of the Constitution on the removal of a member of a constitutional commission from office and Standing Order No.230 shall, therefore, apply in respect to this petition.

In this regard, I must clarify that the duty of the Committee shall be to guide this House on whether the petition meets the threshold of the grounds for removal of a member of a constitutional commission as spelt out in Article 251 of the Constitution.

This petition, therefore, stands committed to the Departmental Committee on Administration and National Security for consideration. In accordance with Article 251(1) of the Constitution and the Standing Order 230(4), the Committee has 14 days to report to the House its consideration of the said petition.

For avoidance of doubt, once the Committee tables its report, the House will have 10 days to decide whether or not the petition discloses valid grounds for the removal of the said Commissioner.

Thank you.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Thursday, 8<sup>th</sup> October, 2015:-

The Veterinary Surgeons and Veterinary Para-Professionals (Code of Ethics) Regulations, 2015 and the Explanatory Memoranda.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for the following constituencies for the year ended 30<sup>th</sup> June, 2014 and the Certificates of the Auditor-General therein:-

Kiambaa Constituency;  
Laikipia North Constituency;  
Laikipia East Constituency;  
Mukurwe-ini Constituency;  
Juja Constituency;  
Rangwe Constituency;  
Kesses Constituency;  
Jomvu Constituency; and,  
Limuru Constituency

### NOTICE OF MOTION

#### DECLARATION OF POACHING AS NATIONAL DISASTER

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

THAT, aware that tourism in Kenya, which is largely wildlife-based, generates approximately 12 per cent of the country's Gross Domestic Product (GDP) and creates over 18 per cent of wage employment; further aware that poaching has brazenly continued to target Kenya's wildlife and that elephants and rhinoceros are key flagship species facing threats of extinction; deeply concerned that Kenya has become a major hub for smuggling and exporting illegal ivory, rhino horn and other illicit wildlife products from the region to other regions particularly the Far East countries; noting that although the Government has employed various measures to protect wildlife, these measures have not borne much fruit in combating the poaching menace in this country; cognizant of the need to protect this important resource for future generations, this House resolves that the Government declares poaching menace a national disaster and institutes long-term measures to mitigate the vice.

### STATEMENTS

#### BUSINESS FOR THE WEEK COMMENCING 13<sup>TH</sup> TO 15<sup>TH</sup> OCTOBER 2015

**Hon. A.B. Duale:** Hon. Speaker, pursuant to Standing Order No. 44(2)(a), on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the Business appearing before the House the week beginning Tuesday, 13<sup>th</sup> October 2015.

The House Business Committee met on Tuesday, 6<sup>th</sup> October 2015 to prioritise the Business of the House. On Tuesday, next week, the House will consider the following Constitutional Bills:-

1. The Small Claims Court Bill, 2015, should we not conclude it today.
2. The Court of Appeal (Organisation and Administration) Bill, 2015.
3. The Petroleum (Exploration Development and Production) Bill, 2015.

Hon. Speaker, Members will recall that we extended the timelines for constitutional Bills by 12 months of which two months are almost elapsing. It is the view of the HBC that we should prioritise the Bills with constitutional timelines, which concern county governments for which consideration of the Senate will be required. An analysis by the HBC shows that out of the 21 Bills that need to be passed, 14 concern the counties. These include:-

1. The Community Land Bill, 2015
2. The Landlords Bill, 2015
3. The Physical Planning Bill, 2015

The HBC has urged the Departmental Committee on Lands to table its reports on these emotive and sensitive Bills preferably by Tuesday, next week. Further, the HBC is concerned that four of these Bills with a timeline are yet to be published and received by the National Assembly.

These include:-

1. The Culture Bill, 2015
2. The Judiciary Fund Bill, 2015
3. The Succession Bill, 2015
4. To actualize Section 17 of the Sixth Schedule of the Constitution concerning the restructuring of the Provincial Administration.

Hon. Speaker, we urge the Constitutional Implementation Oversight Committee (CIOC) to rise to the occasion and engage all the relevant stakeholders to ensure that these Bills are published in good time.

The Commission for the Implementation of the Constitution (CIC), by way of a letter addressed to the Clerk of the National Assembly, has indicated that they have concluded these Bills and forwarded them to the Attorney-General.

Hon. Speaker, in addition, there are 47 Bills awaiting Second Reading. In this regard, and so as to conclude most of these Bills within this Session, the HBC is proposing two strategies.

First, we will be proposing a Procedural Motion on the limitation of debating time on some of these Bills so as to allow expeditious consideration during the Second Reading.

Second, the HBC will be introducing a Motion asking the House to sit on Thursday mornings preferably during the month of November.

The following is the schedule for Cabinet Secretaries appearing before the Committees on Tuesday, 13<sup>th</sup> October, 2015:-

(i) The Cabinet Secretary for Interior and Coordination of National Government will appear before the Departmental Committee on Administration and National Security at 10.00 a.m. to answer questions from the following Hon. Members: Hon. Mohamed Adan Huka, MP;

Hon. Bernard M. Kitungi, MP; Hon. Yusuf Chanzu, MP; Hon. John Nyagah, MP; Hon. Roba Duba, MP and Hon. John Omondi, MP.

(ii) The Cabinet Secretary for Transport and Infrastructure will appear before the Departmental Committee on Transport, Public Works and Housing at 10.00 a.m. to answer questions from the following Hon. Members: Hon. Aramat, MP; Hon. Kamoti Mwamkale, MP; Hon. Raymond Moi, MP; Hon. Olago Aluoch, MP and Hon. Alfred Keter, MP.

(iii) The Cabinet Secretary for Environment and Natural Resources will appear before the Departmental Committee on Environment and Natural Resources at 11.30 a.m. to answer questions from the following Members: Hon. (Dr.) Wilber Ottichilo, MP; Hon. Hassan Dukicha, MP; Hon. Shakilla Abdalla, MP and Hon. James Mwangi Gakuya, MP.

Finally, the HBC will re-convene on Tuesday, 13<sup>th</sup> October, 2015 at the rise of the House to consider the business for the rest of the week. I now wish to lay this Paper on the Table of the House.

Thank you.

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

**Hon. Speaker:** Next Order.

## BILLS

### *Third Readings*

#### THE PARLIAMENTARY SOCIETY OF KENYA BILL

**Hon. Speaker:** Hon. Members, the debate on this Bill was concluded yesterday in the Committee of the whole House. What remains is for the Question to be put, which I proceed to do.

*(Question put and agreed to)*

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

#### THE NATIONAL EMPLOYMENT AUTHORITY BILL

**Hon. Speaker:** Order, Hon. Members! Those who are standing like the Hon. Member for Mbita, take your seats so that we can transact this business. Again, Hon. Members, what remains here is for the Question to be put. I proceed to do so in the following manner.

*(Question put and agreed to)*

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

For purposes of the House knowing where this Bill is, I had been requested and I have acceded to Hon. Sakaja explaining some aspects of this Bill to the House so that the House appreciates where we are.

Yes, Hon. Sakaja.

**Hon. Sakaja:** Thank you very much, Hon. Speaker. Hon. colleagues, I would like to thank you for voting in support of this Bill. Very quickly, I would like to inform those who may not be in the know that this Bill, originally, the National Youth Employment Authority Bill, is a Bill that seeks to establish mechanisms which will streamline the job market in this country to create job centres in the country to address the issue of unemployment which has majorly affected our young people.

This Bill has taken a while to come to where it is. Initially, it was a Bill that concerned counties but because of the stage we are in, in the House, we felt very strongly and I agreed with the Committee that we remove those provisions so that the Bill passes, otherwise it would lapse because of the length of the Session if it had to go to both Houses. As soon as we pass it, which we have done today and I am hoping the President is going to assent to it, we are bringing in amendments to make sure that these job centres are in each and every county, and that the county governments are involved.

On top of the job centres, it is creating opportunities for internships for young people in institutions of higher learning like colleges, polytechnics, universities and for many other purposes.

I am glad that the Speaker was gracious enough to give me the time to explain that. I also heard concerns by Members who said that we had removed the name “youth” so, it is no longer looking at the youth, but I was persuaded by the Committee that since unemployment is such a huge problem and it is affecting very many people including those who may not be youth, in as much as the youth make up 70 per cent, let us not limit it to only those who are below 35 years. So, even those who are above 35 years should be able to access the services of the National Employment Authority.

Once again colleagues, I am humbled and grateful especially to the Departmental Committee on Labour and Social Welfare led by Hon. Were.

Thank you very much.

**Hon. Speaker:** Very well. The thing that I need to confirm with the Legal Department of the National Assembly is that all those clauses which would have made it a Bill concerning counties have been removed. Once they confirm that, we will present it for assent as soon as possible.

Next Order.

### *Second Readings*

#### THE MAGISTRATES' COURTS BILL

*(Hon. (Dr.) Shaban on 1.10.2015)*

*(Resumption of Debate interrupted on 7.10.2015 – Afternoon Sitting)*

**Hon. Speaker:** Again, Hon. Members, debate on this Bill was concluded. What remains is for the Question to be put, which I proceed to do in the following manner.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

THE HIGH COURT ORGANIZATION AND ADMINISTRATION BILL

*(Hon. (Dr.) Shaban on 07.10.2015)*

*(Resumption of Debate as interrupted on 07.10. 2015)*

**Hon. Speaker:** From the records, the Member for Lugari, Hon. Ayub Savula, was on the Floor, and he has a balance of eight minutes. If Hon. Ayub Savula is in the Chamber, he gets the first chance. The Member for Lugari is not normally known to be in the Chamber at this early hour. Therefore, his chance is forfeited. However, the record shows that he has contributed for two minutes.

Before I give the Floor to the Leader of the Majority Party, it is also fair to mention the names of the Hon. Members who have so far contributed to this Bill. They are the Mover, Hon. Naomi Shaban; the Seconder, Hon. Samuel Chepkonga; the Leader of the Minority Party, Hon. Francis Nyenze; Hon. John Waiganjo; Hon. Ibrahim Saney; Hon. Joseph M'meruaki; Hon. Millie Odhiambo; Hon. Ferdinand Wanyonyi; Hon. David Ochieng'; Hon. Samuel Moroto; Hon. Dalmas Otieno; Hon. Joyce Akai Emanikor; Hon. Mike Onyura and Hon. Ayub Savula. This is to ensure that the listed Members do not say anything on this one.

The Leader of the Majority Party, the Floor is yours.

**Hon. A.B. Duale:** Hon. Speaker, it is good that you mentioned those great Members who did their bit yesterday. For those of us who are here, today, we will have our chance to contribute.

As I said yesterday, this is another arm of the Judiciary that, within the reading of the Constitution, must undergo reforms. Here, we are dealing with High Court, in terms of organization and its administration. This is one of the legislations to be enacted by Parliament as required under Article 261(1) of the Constitution. As you will recall, this piece of legislation was supposed to have been passed by 27<sup>th</sup> of August, 2015. It went through the First Reading in the National Assembly on 19<sup>th</sup> of August, 2015. It is one of the Bills in respect of which the National Assembly granted extension of time for their enactment by one year, which will lapse on 27<sup>th</sup> August, 2016.

What is the importance, the objectives and principle behind this Bill? Why do we want to reorganize the administration of the High Court? The High Court is an important organ. It has been described as the cornerstone of the Judiciary. In order for it to have smooth operations and effective administration that can create and facilitate efficiency in the conduct and management of the judicial function of this court, the framers of the Constitution found that Parliament must enact legislation as required by the Constitution under Article 261(1). A big percentage of Kenyans who access the Magistrate Courts also go to the High Courts of Kenya for judicial service.

The High Court draws its mandate from Article 165(3) of the Constitution, hence described as the cornerstone – a very fundamental institution within the Judiciary. This Bill wants to give effect to Article 161(1) of the Constitution, which provides that the High Court of Kenya shall consist of a number of Judges as prescribed by an Act of Parliament. Thus the High

Court must be organized and have an administrative structure to be prescribed by Parliament, through this Bill.

This Bill particularly deals with the composition and structure of the High Court, its business calendar as well as its decentralisation. How will the High Court take judicial services closer to the people across the country, oversee its administrative functions and manage its performance? How do we resolve a dispute that arises within this court? The Bill provides a dispute resolution mechanism.

Hon. Speaker, the High Court is very important to Kenyans. That is why this Bill, in Clause 4, provides for the constitution of the High Court by a Principal Judge with not more than 200 Judges. Even this Bill says that the President of the High Court will be the Principal Judge, and that the maximum number of judges that it will have should be 200. These are the powers given to the Judicial Service Commission to conduct a judicial need assessment and recommend a caseload formula for determining the number of Judges requires. This House still has the power to increase the number of judges of the High Court from 200 to 300.

The Bill, in Clause 6, seeks to create the Office of the Presiding Judge of the High Court and provides for his responsibilities, how he is expected relate with the other judges in terms of administration and management of the High Court; his orderly and prompt conduct of the business of the court and how the election of the Principal Judge shall be conducted, pursuant to Article 165(2) of the Constitution. For the first time in the history of Kenya, the Office of the Principal Judge is well stipulated in this Bill.

Hon. Speaker, the Bill, in Clause 10l, provides when the High Court should sit and when it shall have recess. This should be made public to Kenyans, litigants and everybody else who uses the High Court. Just like we have the Calendar of Parliament, Kenyans must know that it is their right to know when the High Court will sit and when it will be on recess by looking at the calendar of the Judiciary. Like we have our Parliament Calendar, it is the right of Kenyans to know when the court will sit and when it will be on recess within the calendar of the Judiciary.

Hon. Speaker, under this Bill, the court is proposed to have three sittings every year and a recess between the sittings. So, there should be three sittings of this court. It also provides for the holding of the sittings in particular buildings designated by the Chief Justice (CJ) as the overall Chief Executive Officer (CEO) of the Judiciary. The authorisation of the sitting of this court will only be done, not by the Principal Judge, but by the CJ any day and any time.

If you look at Clause 14, and I just want to look at the highlights, this Bill is important to the Members of this House. The people who access justice through the corridors of the courts are people that we represent. That is why I want to thank the CJ. Since Independence, it is only today that we have a High Court sitting in Garissa and Kitale. He opened one in Tana River the other day. These are the legacies that the Chief Justice, Willy Mutunga will leave as he prepares to retire pending the expiry of the period granted to him by the Constitution.

Clause 34 provides for the use of English and Kiswahili as the official languages of the court and the use of other languages including the Kenyan sign language, namely, the Braille and other forms of communications. A lot of translation goes on and I am sure majority of Kenyans can speak in Kiswahili. This Bill proposes that the official languages of the High Court will be English and Kiswahili. Sign language, Braille and other communications will be provided.

Clause 36 gives power to the court to punish in terms of contempt of court and defines how an offence of contempt of court can be interpreted, the procedure for its trial and the penalty provided.

I am sure a number of my colleagues spoke to this Bill and in conclusion, these are some of the important pieces of legislation this House has undertaken in the 11<sup>th</sup> Parliament as provided for in the implementation metrics and timelines for this Constitution.

**Hon. Speaker:** Let us have Hon. Makali Mulu.

**Hon. Mulu:** Thank you, Hon. Speaker. I want to support this very important Bill which basically discusses how High Courts should be organised for purposes of ensuring that there is effective and efficient administration of justice.

Various studies have confirmed that access to justice in this country, more so for the poor, is a tall order. When we see attempts to streamline that process so that the operations of the High Court become smooth, it is quite important. I also want to appreciate the HBC for the way they have sequenced these Bills. We have just finalised discussion on the Magistrates' Courts Bill and now we are discussing The High Court Organisation and Administration Bill. From the statement by the Leader of the Majority Party, we have been informed that it is more likely that next week, we will be discussing The Court of Appeals (Organisation and Administration) Bill. The way they have been sequenced is very important for purposes of facilitating access to justice.

This Bill has very important provisions which will go a long way in ensuring that Kenyans benefit from this arm of the Government. Clause 12 discusses in details how High Courts will be established in every county. This is a very important move in that Kenyans, in all the 47 counties, will have access to the High Court within the counties. This will reduce transport costs and save time for Kenyans which can be used to do other economic activities.

Clause 11 is very important. It gives the Chief Magistrate the power to create different divisions within the High Court. In a number of counties, some divisions are not available. I am happy that divisions like the Family and Children Division will be created in all the counties. We will have Criminal Divisions and as we move forward, we need to move an amendment to ensure that in most of these counties, we have a division dealing with land matters, which are thorny issues in this country.

Clause 14 is also very important to me. It provides that there is a leadership and management team for each station. This will ensure that even as we administer our High Courts, this is not done by an individual or the Presiding Judge, but by a team. This means that there is teamwork and the Presiding Judge gets opinions from other officers of the court. It is proposed that after every quarter, this team must sit and discuss how to manage or administer these High Courts and this is quite important.

Clause 26 discusses alternative dispute resolution mechanism. It provides that even as these High Courts are being managed, there is a provision for alternative dispute resolution mechanism. This is quite important because it will ensure that all the cases do not get to the courts and are not listened to by the judges. This is likely to reduce case backlogs and Kenyans will have their cases determined in a timely manner. At the same time, justice will be delivered to them. We are all aware of the common saying that "justice delayed is justice denied". Under this provision, Kenyans will access justice timely.

I want to read Clause 28, which is very important. It says:-

"There shall be a uniform record keeping system in the court specifying the form, style, storage, maintenance and retrieval of records".

The issue of registries in the courts created a rich opportunity for rent-seeking. Court officers would at times hide files or make sure that files are not easily accessible and because of looking for your file, they would demand that you facilitate that process by giving some bribe. If this



uniform way of keeping records is going to be implemented, then it means that any time you walk to a High Court, you will access your file within the shortest time possible. The file can be retrieved without wasting much time. That way, we will minimise the opportunities for rent-seeking. So, this provision of ensuring that files are properly kept is very important.

Hon. Speaker, I would recommend that we move to the next level where we automate file keeping. I am aware of microfilming where you put files in a soft form. In that case, by just a click a button, you are able to access a file and Kenyans can get these files without bribing anybody.

The other clause which is important in this Bill is Clause 29. In Clause 29, this Bill makes clear provision of performance management system. This is the way to go in this country. We need Kenyans to start appreciating the whole concept of performance management system where we have performance contracting and appraisal of individual performance. By doing that, we will ensure that the targets which have been set for these judicial officers are monitored and evaluated to make sure that they are achieved in time. Where people do not achieve the set targets, then reasons could be provided why they have not been achieved.

The other issue is on the Judicial Code of Conduct. This was mentioned yesterday by Hon. Dalmas Otieno. Clause 30 says that every judge of the court shall sign and ascribe to the Judicial Code of Conduct. This is from the supply side that judicial officers will be signing to adhere to their code of conduct but, signing to make sure that you adhere to your code of conduct does not guarantee that you will deliver in terms of your performance.

We need an independent review mechanism. This could be within or outside the Judiciary to make sure that we have a team of experts who can look at performance of judges and say whether they are meeting the expectations as per their terms of reference or expectations of Kenyans. If not, it would make recommendations so that these judges are advised accordingly. Some may not be meeting their expectations because of lack of capacity.

We are aware that when some of them remain in one station for long, their capacity is not continuously built. It is important that we also come up with a programme on how to build capacity of these judges to make sure that they factor in some of the new approaches to delivering justice. In that case, they will be helping this country.

So, I am recommending that in Clause 29, there might be need for another paragraph or another sub clause to ensure that we have that independent review team which will help the Judiciary perform better in delivering services to Kenyans. That will go a long way in ensuring that access to justice in Kenya becomes a critical matter.

With those remarks, Hon. Speaker, I support with amendments.

**Hon. Speaker:** Yes, Hon. Irungu Kang'ata.

**Hon. Kang'ata:** Thank you, Hon. Speaker. I rise to support this Bill. I have had the occasion to look at this Bill. It is a good piece of legislation. I have noted in Part (b) which is on the organisation of the court that we have introduced the concept of a principal judge. That means that judges will now have the opportunity to have one of their own who will be in charge of various issues that pertain to judges. That is very important. We have also, by statute, established precedence. That is, the more senior you are as a judge, the more privileges you will be accorded.

I have also noted that in Part 3 on the administration of the court, we have created the position of the Registrar of the court. We have set out clearly the functions of the Registrar. Further in part 4, I have noted that for the first time we have clearly spelt out the need for providing power to the court to send parties to alternative dispute resolution mechanisms. We all

know that very many matters are handled using alternative dispute resolution mechanisms. I would imagine, for instance, even chiefs handle matters which--- They have this tendency of ignoring proceedings before the chiefs. This is a good clause where such matters which have been handled outside the court can be admitted or even the court can as well send parties for alternative dispute resolution mechanism.

Finally, I have also noted that we have established clauses dealing with contempt of court in Part 5. Presently, contempt of court is punishable under the prevailing English Law. So, it means that we are yet to decolonise ourselves in that we are still relying on foreign laws. One is forced to keep reading the new developments in contempt law in England for you to know the present contempt law that is applicable to Kenya. So, by expressly coming out with clauses that deal with contempt in an Act of Parliament of Kenya, it makes work easier for very many practitioners of law.

However, allow me to comment on some few areas that I would propose that we improve in this Bill. One, I have looked at the way the High Court has been developing various jurisdictions or handling various matters. I feel that the High Court, generally in Kenya, has been overextending its mandate. The principle of separation of power is clearly settled in the Constitution. It has been applied against Members of Parliament. Let me not dwell on that subject but, the same way it operates *vis-a-vis* the Executive and Parliament, is the same way it ought to operate in respect to a court of law. For instance, we all know that we have a court order or injunction that is directed to your Office, Hon. Speaker. You never know one may as well cite you for contempt if we pass this Bill the way it is without an amendment.

I would, therefore, propose that we clearly use this law to state that there is no injunction that can be issued against Parliament when a matter is being actively considered by Parliament. Once the matter has been finalised that person is entitled to go to court for judicial review.

In Kenya, when it comes to matters regarding judicial review, that is the power of the High Court to countermand laws or a resolution of Parliament. We have an open door policy. Any litigant is entitled to move the court to do so but, in other jurisdictions which are even more progressive than ours, for instance, France or Israel, it is only a politician who can do it. For instance, a member of the opposition or a parliamentarian is the one entitled to go for judicial review. The reason is that what is being done in this Parliament is very important that the person who ought to question that issue is a fellow legislator. Be that as it may, I am not proposing that we fetter Kenyans the power to approach the court for judicial review. However, we need to make it systematic. We say "No". Allow Parliamentarians and county assembly to debate and then thereafter if you have an issue, you can go to court and overturn that decision. So, I would be proposing that we use this law to ensure that our mandate is not interfered with by the High Court.

I have looked at another clause that deals with the way the jurisprudence of the High Court should be developed. That clause says that the High Court is going to come up with jurisprudence in a manner that accords respect to ensure the political, social and economic needs of this country have been taken care of. That is good. I support that clause. This is taking into account that we all saw a judgement that was made by the High Court allowing people who are supporting man-to-man relationships to form an NGO or a caucus. Such ideas are foreign to us. They are ideas which are retrogressive. They do not take into account that a vast majority of Kenyans are opposed to gay relationships. I would, therefore, be proposing that we change that clause. We provide that when you are developing jurisprudence, you must do two things:

Respect the religious views of the majority of Kenyans and respect the culture of the majority of Kenyans.

Otherwise, we may reach a situation, where we will see judgments coming from the High Court where you can as well bring things like euthanasia and abortion without any restriction. We are, for instance, going to see a judge allowing people to smoke or use drugs like they have done in other jurisdictions. We are treading on dangerous grounds. We are now going to the era of neo-colonialism that has been brought through the undemocratic arena of the courts. Unless we the Parliamentarians who have the people's mandate, use this law to ensure that such ideas do not come, we shall have taken this country to the dogs. I have no problem if those ideas were to come through the people, that is, if it is through a referendum. I saw that Ireland, with a renowned catholic country voting for gay rights. That can make sense but I am opposed to two or three judges sitting in Milimani Courts and allowing gays to come here and make love to our boys. I disagree with that. To that extent, we must use this law to check those people.

Another area we must check using this law, is a situation where you find a judge who is a generalist judge. He does not have expertise in that issue. Let us say, for instance, it is an economic dispute. When you take an economic dispute, in my own assessment, I would imagine a person who is presiding over such a matter ought to have learnt some little economics. We, therefore, need to come up to a situation where we give the Chief Justice the power when he is doing the assignment of judges or even the JSC, they take into account whether that person is trained in that area. If, for instance, we have matters relating to labour, do you have a post-graduate course or a Masters Degree in labour matters? We all know that tax law is a very complicated area. Is that judge who is handling such a matter trained in economic matters or in tax law matters? Otherwise, you will find a situation where people are taking matters before a judge who does not understand that area, and he is not humble enough to get expert evidence on that subject. He may, therefore, give a judgment which has grave repercussions for this country because of lack of knowledge.

With those few remarks, I will bring in some amendments to ensure that one, our African culture is retained. Two, to ensure that expertise is also taken into account as matters are being assigned to specific judges.

**Hon. Speaker:** Yes, Hon. Gideon Ochanda!

**Hon. Ochanda:** Thank you, Hon. Speaker. On the issues of organisation and administration of our courts in this country, one wants to look at a number of things that have bedeviled us for a long period of time. What are the main issues when you look at the administration and organisation of the courts that we are trying to address? We have had a long history of issues related to ethics and corruption. We also have a long history of issues related to disappearance of files and lengthy times taken before determination of cases. We have had long history of cases where, when a judge or a magistrate arrives at a conclusion somewhere in Meru, it is different from another judge in Busia when the matter is of similar nature. These are some of the things when we are looking at the organization and administration of our courts, we really want to solve. Is the structure that we are coming up with addressing some of these issues?

I want to believe that this Bill to an extent, attempts to do that, but there are a number of areas that for purposes of amendment need to be addressed. For example, when we are talking about issues of appraisal of officers, I believe it is not in this legislation. When a file disappears and a Registrar who is supposed to be in charge of it is found to be liable, what happens?

The other thing that this Bill is adequately looking at, and in my view is very clear, is the issue of alternative dispute mechanisms. This was missing in the Magistrates' Courts Bill which

I believe we should look at on its own. Back to the High Court one, there is a provision for alternative dispute mechanisms. We are becoming a litigious country. Every manner of things are ending up in court. It means that our courts are going to be overwhelmed from time to time with issues that could easily be handled differently. This is why this Bill is very important when it provides for different ways on how we can look at disputes. My only problem is with Clause 26 that is talking about rules of alternative mechanisms. I want to believe that these are necessary. We need to have rules that guide the processes on how we get to alternative ways of settling our disputes but these rules in the Bill are left open. We need to know exactly who is to come up with these rules. I remember in this country there was a time when the Chief Justice came up with a ruling that rules were supposed to be done by Chief Magistrates but the Chief Magistrates did the rules and said that rules had not been done. I think we need to be very clear in terms of who exactly is supposed to do these rules and at what point these rules are supposed to come. Otherwise when we are providing space for alternative dispute mechanisms and we are saying rules are to be done when we do not know when they are to be done and by whom then I believe that there is something that is amiss in that area.

The other thing that the Bill comes up with, which in my view is good, is the issue of a High Court Advisory Committee. This committee is useful particularly when we are looking at the issues of policy, practice and training but then there are many other matters that go with the whole administration. How do we look at the administration and issues on things that are mentioned like files disappearing, issues to do with long periods of time being taken before determination of a case? In my view, the composition of the committee is fine, but it needs to be composed of more other people outside the Judiciary, so that they are able to listen more to issues that are coming from outside. The Office of the Ombudsman needs to have representation in this Committee because there are many complaints that relate to issues of administration in the Judiciary.

So, I believe that when we come to the issue of the High Court Advisory Committee, there needs to be an amendment that can help us deal with these things.

The other thing that I want to bring out is connected to the issue of alternative dispute resolution mechanisms which need to be relating to the lower courts and the higher courts. What happens when a matter that was handled by the Magistrates Courts through an alternative way of settling disputes gets through to the High Court? What happens to what comes from the High Court and finally goes to the Court of Appeal? These are some of the things that I want to believe need to be looked at as we look at this Bill.

I support the Bill with amendments. Hon. Speaker.

**Hon. Speaker:** Yes, Hon. Yusuf Chanzu

**Hon. Chanzu:** Thank you, Hon. Speaker for giving me the opportunity to support this Bill, the High Court Organisation and Administration Bill, National Assembly Bill No.47, 2015. I support this Bill because it is high time we had our records properly kept. You do not have to move from office to office looking for your records and judgments. It also requires that these offices should be computerized and properly managed by qualified people.

The statement that this is a money Bill within the meaning of Article 114 of the Constitution is true. Its implementation will occasion additional expenditure in creating effectiveness and efficiency in the running of our courts. It will also require that we have properly qualified people, both in the Office of the Registrar and the Office of the Chief Justice.

Part II of the Bill provides for the jurisdiction of the court, responsibilities of the principal and presiding judges, order of precedence of judges of the court, quorum of the court, the sittings and the recess of sessions.

Clause 4(b) provides for the constitution of the court by a principal judge and not more than 200 judges to be appointed. This is in accordance with Article 166(1)(b) of the Constitution. This is a large number of judges and, therefore, it will take a bit of time to constitute the court since people will have to be properly trained before they are deployed, in view of the changes that have taken place and in order to conform to the requirements from the Head Office here in Nairobi. This is a national function but we now have 47 counties as opposed to the eight provinces we had before. Therefore, it means that there will be need for expansion. In every county, we will require, at least, one judge so that matters can be resolved quickly and expeditiously.

As we discussed the magistrate courts yesterday, we said that even if the magistrate courts were to function well, if the upper level courts do not function well, it will amount to nothing. Courts at every level must be functional. In this regard, funding is an important element. It is very important to create synergies amongst the various offices, namely the Office of Registrar, the offices of the Judges and the offices of the Principal Magistrates. We are talking about the composition of the structure, the sittings of the High Court, its decentralisation, administration and performance management as well as the alternative dispute resolution mechanism. The alternative dispute resolution mechanism is supposed to be more efficient since it will be dealing with specific matters. Some matters will be profession-specific in nature. For instance, if there is a dispute relating to engineering and construction, or one relating to medical issues, an arbitrator who is a profession in that field will listen to the dispute, assess the project and receive evidence from people. This will be done in-camera to ensure that the identities of the witnesses are shielded, unlike in the High Court where hearings are conducted in public.

The alternative dispute resolution mechanism is less costly. It will take little time to resolve a matter as experts will be presiding over the hearings. Once an award is given, in order for the judgement to be enforced, the claimant will have to file it with the High Court. This means courts will need to have experts in various professions to assist in enforcing such determinations. We will avoid cases like the one involving former Speaker ole Kaparo, whose petition took more than 10 years to be resolved by court. The poor are party to it. Even us we avoid cases which are likely to last long because we have not had enough personnel to deal with them.

This brings me to the matter of integrity. When courts sometimes make ruling on matters motor vehicle accident, the compensation claims of the victims are paid to their advocates. When they receive the money, the advocates treat it as their money. They spend all the money on costs and ensure that the victims of the accidents end up getting nothing. Sometimes victims of accidents are asked to pay extra costs to the advocates. Therefore, the issue of integrity is very important. The Office of the *Ombudsman* is very important. The bad conduct of some of the advocates should be reported to that office so that they can be resolved.

The importance of computerisation of records is something that we cannot overstate. We need to have records kept so that any time we want them, they can easily and speedily be retrieved. Sometimes you go to court at Nine O'clock and you have to wait until midday because your file cannot be located. Therefore, you embark on a long journey back home. You go back to court in the afternoon only to find that the records are still not there. The issue of missing records leads to people asking for bribes for them to help locating the records.

In Government offices that deal with payments, there are officials who sit on people's files because they want to be bribed before the files can resurface.

Therefore, public registries should be computerised to ensure that information is accessed at the touch of a few buttons, so that matters can be expedited without wasting people's time. That way, everybody will be able to concentrate on what they are supposed to do. Issues of compromise and penalties accruing because of delays will be minimised. The systems will be more efficient and the Government will run faster. Even the international disputes that we have had in some of the contracts that we now have with Chinese, British and Japanese companies will be easier to resolve.

With regard to the issue that we are dealing with in the international courts, we shall have records in place and it will be easier to get back to them. If the records had been there, they would have been relayed showing how the matters we are dealing with, of international nature, came up. We need a lot of reforms in the sector for efficiency.

With those remarks, I support the Bill.

**Hon. Speaker:** Yes, Hon. Gunga Mwinga.

**Hon. Chea:** Shukrani sana, Mheshimiwa Spika, kwa kunipa fursa hii. Nimesimama kuunga mkono Mswada huu.

Kwenye Mswada huu, kuna baadhi ya vipengele ambavyo ni lazima nivisisitize. Katika Kifungu cha 34, inaonekana kwamba lugha ambazo zitatumika katika Mahakama Kuu ni Kiingereza na Kiswahili. Mambo haya pia bila shaka yatakuwa na changamoto zake. Moja ya changamoto hizo ni kwamba miongoni mwa wale watakaotumia mahakama hizo, haswa majaji wetu, kutakuwa na umuhimu wa kuhakikisha kwamba wanapata mafunzo mwafaka ya lugha yetu ya Kiswahili. Ijapo Kiswahili ni lugha kongwe, mara kwa mara mambo hugeuka. Ili kesi ziweze kusikizwa na kutatuliwa vizuri katika mahakama zetu, kuna umuhimu wa kuhakikisha kwamba maafisa watakaotekeleza majukumu hayo watapata mafunzo mara kwa mara.

Mhe. Spika ni wazi kwamba katika kila kaunti ya Kenya, kuna umuhimu wa kuwekwa mahakama. Hii itasaidia wengi haswa waliokuwa wanaenda safari za mbali kutafuta haki. Ikiwa mambo haya yatakuwa, na ninaamini yatakuwa kwa sababu tayari tumeona yakitendeka, wananchi wetu katika Jamhuri ya Kenya hawatakuwa na matatizo ya kutafuta haki.

Jambo lingine ningependa kugusia ni lile ambalo Waheshimiwa wenzangu wamegusia haswa kuhusu utatuzi wa kesi Vile sheria yetu ilivyo na hali ya utatuzi wa kesi katika Kenya, ni kwamba yule ambaye atakuwa ameshinda, ameshinda na yule ambaye amepoteza kesi huwa ashapoteza. Lakini ikiwa kama vile ambavyo kifungu cha 26 kimezungumzia, kwamba kutakuwa na nafasi ya mahakama kuleta mawiano ambapo watu watakaa chini na wazungumze ili waweze kutatua kesi, ni mambo ambayo yatasaidia wengi haswa wale wenye matatizo.

Kifungu cha 26(3), kimezungumzia utumiaji mbinu ambazo ni za kitamaduni kutatua mizozo. Tunajua wazi kwamba katika Jamhuri yetu ya Kenya katika mahali ambapo watu wanaishi, kuna baadhi ya mambo yanaenda kulingana na tamaduni za mahali hapo. Itabidi watu kukaa chini na kuona wale wataalam katika hali hizi wataweza kushughulishwa vipi katika masuala haya ndiyo mizozo iweze kutatuliwa. Hili ni jambo muhimu kwa sababu mara nyingi utaona kwamba kesi zinafika mahakamani na kuna vipengele fulani ambavyo hutumiwa na unaona labda mtu amepoteza kesi ilhali mtu yule alikuwa na uhakika fulani.

Mhe. Spika, jambo lingine ambalo limesumbua hali ya haki katika Jamhuri ya Kenya ni wingi wa kesi. Mara nyingi unapata watu wanaenda mahakamani wakitafuta haki lakini kesi zinazidi kuahirishwa mara kwa mara kwa sababu ya ukosefu wa majaji au sababu zingine. Ikiwa leo hii sheria yetu ambayo tuko nayo tunazungumzia kuhusu majaji kama 200, na wasaidizi wa

mahakama ambao wanaweza kusaidia katika suala hili, ikiwa mambo haya yote yatapita, yatatusaidia vilivyo kuhakikisha kwamba haki inapatikana na haki inafaa kupatikana mapema.

Sina mengi ya kuzungumza lakini ningependa kusema kwamba huu ni Mswada mzuri. Ni muhimu tuunge mkono, upite ndiyo hatimaye wananchi waweze kupata haki zao.

Shukrani sana, Mhe. Spika.

**Hon. Speaker:** Hon. Moitalel ole Kenta.

**Hon. ole Kenta:** Thank you, Hon. Speaker. I would also like to add my voice in support of the Bill. I believe it is a timely Bill. The Bill is going to be effective for both the dispensers and consumers of justice.

For a long time since the Judiciary was introduced in Kenya, we have had many problems especially when it came to the management of cases. The organisation of the High Court that is envisioned in the Bill is clearly a very important step. The appointment of the Principal Judge in itself spreads the responsibilities beyond the Chief Justice. It will create efficiency and ensure timely dispensation of justice.

The other very important issue on organisation is the introduction of presiding judges who will be in the new courts that are spread all over the country. When we take justice to the counties, then justice will be closer to the people and useful to the ordinary person. It will be cost effective both to the court and to the consumers of justice. It will be easier for those who are disabled both economically and physically to access justice. It is very important to look at that aspect.

It is also important to note that in the new arrangement or organisation of the court, the Presiding Judge will be in charge of the subordinate courts. This will destroy the malaise that is seen at the moment.

The other important thing in this Bill is that there will be uniformity in the dispensation of justice. If there is need for appeal, anybody who has been prosecuting cases in the lower court, will have a nearer place to take his or her case for appeal. This will save them time that is required. It is important that we all support this for the benefit of our people.

The other important thing is that there will be a strict calendar to be followed by the courts. There will be the aspect of courts hearing a case anytime or any day. That is very important because there has always been the problem of delay of cases. This has cost us a lot. Definitely, it will be a great step forward the moment cases are heard day by day.

Hon. Speaker, there is also the element of establishment of divisions. Looking at the High Court, the only place we have divisions for purposes of family and children, most of them are in Nairobi. The moment you take them to the counties--- We also have busy stations outside Nairobi like Kakamega, Kisumu, and Mombasa which have the same case load as Nairobi. So, the introduction of such divisions all over the High Court when need arises is very crucial. It is important we support it.

The other issue is on distribution of stations of the court. As I have said, there will be a Presiding Judge appointed by the Chief Justice. The most important thing is that the Deputy-Registrar will be responsible to the Presiding Judge in the discharge of the functions of the Office such that it is not just a matter of cases but a matter of administration so that the running of the courts can be more efficient. This will enable us have professionals running the administration. It is something we should all support.

The other very important issue is on the circuit courts. Originally, the courts were stagnant and only in one place. The moment we introduce circuit courts, although these were there before especially the District Magistrates' Courts, which used to go to the people. Because

of geographical problems, preferential problems and social problems people might not access justice. People in this country will be assisted the moment we have mobile courts.

We also have the establishment of the High Court Advisory Committee which allows them to co-opt any other person as a member. This is very important because we have always had an isolated court that was a kind of a no-go zone for ordinary people. However, now that we are establishing the Advisory High Court Committee, it will ensure that the court hears and knows what the feeling on the ground is. It is going to assist in bringing people closer to courts and demystify what the courts do and what they are.

Hon. Speaker, Clause 26 is also very important. The introduction of an alternative dispute resolution is very important. We have found that we waste a lot of time every year. In fact, somebody said that cases can be delayed even through a litigant's lifetime, especially when there is a very good lawyer who wants his client to benefit. If we look at it in this manner, I believe we should encourage that, and more so if there is an arbitration clause in any subject matter that comes to the High Court. We have seen that in an agreement there is an arbitration clause that somebody will still go to court first. This has always wasted the court's time because it is referred back to arbitration. So, it will be a *ping pong* kind of game. It is very important that is done.

Many Kenyans suffer because clerks and registry people are compromised to ensure that files do not appear before the judges. This has caused a lot of suffering. They do not get justice. Some quit because they cannot afford the litigation process. I believe that the moment you computerize the systems, that will end that problem. The files will not get lost. They will be accessible. That will save a lot on that.

There is also the case of performance contracting in Clause 29. In the past, we had duty judges. There was one particular judge who was being used by the regime. He was called Dugdale. He was a duty judge for more than two years. I now believe that this Bill is going to operationalize most operations of the court. It will create a situation where the judges will do their jobs. If they do not do their jobs then, definitely, they will not have performed and they will definitely be removed from presiding over the courts.

There is also the important issue of protection of judges and judicial officers from personal liability such that, when they are carrying out their duties, they will, at all times, be protected so that they do not suffer from the vagaries of judicial dissatisfaction and all those kind of things.

There is also the issue of contempt of court. Most of the time, you will find that people in this country do things contrary to what the courts have decided. It is very important - but I am not saying that they should interfere with parliamentary business. In fact, I would strongly object to that. They should never, at any one time, give orders that they know will never be realized. That is because we do not act in vain. But where the litigants are ordinary people - and I believe that the sanctity of the orders of the courts - they must be protected where they do not digress from their original purpose.

Having said all that, the other issue which is very important is the introduction of giving evidence through other means other than physical appearance. We should join the 21<sup>st</sup> Century and also automate and have televised cross-examination wherever somebody is sued so that it can save time and money.

With those few remarks, I support the Bill. Thank you.

**Hon. Speaker:** Hon. Nicholas Gumbo.



**Hon. (Eng.) Gumbo:** Thank you, Hon. Speaker for giving me the opportunity to contribute to this Bill, which is the High Court Organisation and Administration Bill, 2015. This Bill aims to give effect to Article 165 of the Constitution of Kenya, 2010, particularly with regard to setting out the number of judges of the High Court, the organisation and administration of the High Court, the manner of appointment of the principal judge who will essentially be like the president of the High Court, the jurisdiction of the court with regard to criminal and civil matters and jurisdiction with regard to determination of fundamental rights among other things and, of course, with regard to the limitation of the jurisdiction of the High Court.

This is important because much as this Bill is in pursuit of accessing justice to the people of Kenya, I want to say that even as we contribute to this Bill, it is important that we also highlight some of the deficiencies that, as we go to the Third Reading we, as a House, should pronounced ourselves over. I have in mind, for example, the tendency of Kenyans, particularly those that hold constitutional offices, to rush to the High Court with regard to attempt to injunct the institution of Parliament on matters that are before us. The principle of separation of powers, ideally, ought to operate in an environment where each of the three arms of Government must respect the roles of each arm. The functions of Parliament are very clear and are spelt out in our Constitution. Sometimes, I get very concerned when, for example, we try to do a matter in this House which is clearly provided for in the Constitution and then, somebody purports to go to court to seek orders. As we go through this Bill, which is on the organisation and administration of the High Court, it is also important that we spell it clearly that it would not be right for example, when a Motion is before this House, for anyone to purport to go to court essentially to injunct the institution of Parliament. If that were to happen, then what we would be looking at is a situation where all the other arms then would be subordinate to the courts in so far as institutional paralysis of this sort is concerned.

The provision for allowing a case load study assessment to determine the optimal composition of the High Court is important. That is because much as this Bill provides for up to 200 judges of the High Court, that is obviously the upper limit. But, again, it should be important that we undertake an optimal assessment so that much as access to justice is important, the need to access justice cannot be blind to the existing realities in our country.

Clause 7 basically tackles the High Court organization and reporting structures. This is important within the High Court structure so that we can avoid the jurisdictional clashes and ambivalence in so far as how far one division of the High Court can go and the latitude allowed to the judges of the High Court.

I have noticed that Clause 11 endeavours to establish divisions of the High Court. There is the family and children' court, the commercial court, the civil, criminal, constitutional, human rights and judicial review. This clause will require some amendment because, in my view, we are living in very fast changing times and we must be alive to the realities of our times and emerging issues. If you look at what is going on, some of the major litigation issues we have had in recent times involve, for instance, disputes between major international telecommunication companies and disputes involving major companies with a lot of financial muscle in the energy sector. As we establish the divisions of the High Court, it is very important that we again start to have specialised divisions of the High Court. For instance, when we have a dispute, one of the issues we have grappled with in this Parliament since we came is this: Suppose today somebody goes to court to challenge, for example, one of the major telecommunication service providers on the eight parameters of quality of service, do we really have judges in Kenya today with the competence to determine the validity of that argument and its merits so that the litigant that

appears before court can feel sufficiently represented? It is felt that a lot of times, some of the major telecommunication service providers in Kenya actually take customers for a ride. But then, what is the recourse that customers like you and I have with regard to getting justice? Yes, the penalties have been provided but do we have people who will undertake the assessments so that we are able to know to what extent of liability and the extent to which those who have appeared before the court can seek and get remedy?

In Clause 12, the criteria for determining the distribution of stations should be clear and unambiguous. Over time, we have had the Judicial Service Commission (JSC) coming up with High Court stations. When we passed the County Governments Act, it had been proposed that every county should have a High Court station. That may not have happened because probably there was not enough time to do that. However, even if after we have done that, is it good enough to just stop at the county level? Could we go a little bit deeper and find out if we can have other criteria to determine how and where we can establish High Court stations?

When I spoke about the organisation of the magistrates' courts, I said that the qualifications and appointment of the administrators are not clear. However, this Bill has gone a step further and is very clear on the qualifications of the Registrar of the High Court. As we go into the Third Reading of the Magistrates' Courts Bill, we should set the academic qualifications and experience required for one to be appointed an administrator of a magistrate's court.

The High Court Advisory Committee, which deals with policy, practice, training and capacity-building is important. Just as we have said, the issues we deal with as a society keep evolving. A mechanism for capacity-building is important to enable our judges to deal with and effectively handle contemporary issues.

The general provisions with regard to case management and record keeping are important. In the era of ICT, we should not hear of cases of missing files because that is an impediment to the delivery of justice.

Hon. Speaker, with those remarks, I support the Bill. I will be proposing amendments to enrich this Bill. I thank you.

**Hon. Speaker:** Hon. Timothy Wanyonyi.

**Hon. Wetangula:** Thank you, Hon. Speaker, for giving me this opportunity to also add my voice to this important Bill. Having read through this Bill, there are several things I notice that if properly dealt with, will bring reforms to the courts and improve the discharge of justice.

Clause 28 deals with keeping of court records. This is an area which is a hindrance to the discharge of justice because many times, records are not properly kept. Disappearance of court files is so common. It is also the source of corruption whereby some rich or corrupt individuals cause court records to be interfered with. I believe electronic systems will improve the system of keeping court records. It will also create efficiency because somebody looking for court records can get them at the touch of a button. It will even be easy for people doing research to access court records to improve their services.

The other area is Clause 26 which deals with alternative dispute resolution mechanisms. Our justice system is one of the most expensive in the world. Most people avoid the courts because of the cost of justice. When litigants pay so much to access justice, most of them will find it expedient to let the matters go. However, alternative dispute resolution mechanisms will create access to justice for people who may not be able to afford the cost of judicial service. This will also improve the performance of the courts. It can also reduce the case backlog in the courts. Many times, we have so many pending cases while some cases take so long to get finalised. This mechanism will improve performance and create a better avenue for resolving disputes. Some

disputes can be dealt with at this level. Sometimes, those are provided for in law. Clause 26(4) provides that:-

“Where an alternative dispute resolution mechanism is a condition precedent to any proceedings before the Court, the Court shall, by order, stay off the proceedings until the condition is fulfilled.”

This is very important because, sometimes, when people enter contracts, they provide a way of resolving disputes when they arise.

In other jurisdictions, precedence is taken very seriously. Even the appointment of judges to preside over a case or the appointment of the Chief Justice (CJ) is done based on precedence. That means that the next senior-most judge must be the CJ of that judicial system or the one appointed to be the principal judge. Instead of going through the process of election, we should just follow that rule. That is a better way to handle things. For example in India, the CJ is always the next senior-most judge in the Supreme Court. So, it is always known who the next CJ will be. If that policy is implemented properly, it will bring a lot of order in the judicial system and minimise some of the wrangles that we witness some times.

Clause 34 is on the languages used in court. Some consumers of justice, especially the deaf and blind, may not be able to understand the language being used in court. We need to promote the use of the Kenyan Sign language and Braille to enable those people to also access justice. It is good for them to understand the proceedings in court. This is a way of providing for affirmative action to ensure the disabled also access justice.

Clause 30 talks about ethics and integrity. It provides that judges must sign and ascribe to the Judicial Code of Conduct. This is very important because, right now, we have what people have been describing in the media as “activism” in the Judiciary. If judges can adhere to this Code, they will discharge their duties and exercise professionalism. Judicial “activism” is whereby a judge overthrows his judgment or vacates it without considering precedents.

The other important provision is Clause 23 where we have the High Court Advisory Committee. One of the functions of the Committee is to improve the capacity of the judicial officers. Sometimes, judges are appointed to the Judiciary without even being trained. They are given assignments immediately and that, sometimes, hinders or slows down the process of dispensing justice because the judge is not conversant with the proceedings in the courts. He or she needs to acquaint themselves to what is going on and so, that advisory committee will provide a leeway for capacity building of judges and the staff in the Judiciary.

Hon. Speaker, the other one is Clause 16 on the role of the Chief Justice. This area is about harmonising the judicial and administrative functions of the court. Sometimes, there is a disconnect between judges and the administrative staff working at the Judiciary. This will bring order in the management and administration of the judicial system and make the performance efficient.

This is a very important piece of legislation. It is going to create reforms in the Judiciary. I believe it is a way of trying to improve efficiency in our courts.

With those few remarks, I support the Bill. Thank you.

**Hon. Speaker:** Hon. Ali Rasso.

**Hon. Dido:** Thank you, Hon. Speaker, for giving me this opportunity. I rise to support this Bill. At the outset, justice delayed is justice denied. I believe that denial of justice has been with us for a long time. Through such laws, the bar is clearly raised for the timely dispensing of justice and for the orderly conduct of our court system.

Making the court the arbitrator and referee by being fearless and acting without favour or prejudice to deliver justice has been a sticking point for the Kenyan court system. Currently, the distribution of High Courts throughout Kenya has, to an extent, alleviated the problems that Kenyans were facing in dispensing justice. In the old days, the people of Marsabit used to go to High Courts in Meru or Nyeri to seek justice but, with the opening of a High Court in Marsabit, I believe justice has been brought closer to the people.

In the Kenyan court system, there are two laws; the law for the rich and that for the poor. It is something that we should not run away from. Going into the clauses of the Bill, I will start with the guiding principle. I am happy this has been included in the Bill. I consider this to be the rules of engagement because it has included the values, independence of the court system and the court adhering to the Constitution. These principles have not been laid out before and so, the court has been used for activism, political correctness and populism in delivering justice to the Kenyan people.

The other area which I wish to speak to is the transfer and deployment of judges. I believe in this statute, it has been said how a judge can be transferred from one area to another. What has been happening is a judge over-staying in an area for 10 or 20 years and he becomes the embodiment of that court system. I believe through that, justice has not been fairly dispensed to many Kenyans in this country.

The other area is the circuit courts. Including them in the Bill is really valuable to this piece of legislation. It is very important for the court to become flexible and reach all corners and hamlets of this country for Kenyans to seek justice.

The other area is qualification for the appointment of the registrar of the High Court in the administration of the court. This has been stipulated, but three years is a short time for an individual to be a registrar of the High Court. Most of my colleagues who have spoken before me have spoken on alternative dispute resolution. A famous judge once said: "I am not God to judge the truth, but I make fair judgement from what the parties present." Courts should be a point of last resort in terms of settling disputes. I believe building an alternative dispute resolution mechanism into our court system is very important. Traditional dispute resolution mechanisms have been with us for a very long time and continue to be with us. If this is built into our court system, it will save the court's time and save this country's resources. Having it is really important.

The other area is the budget. Our courts have not been performing well. They have not been delivering timely justice. They do not assemble on time and do not have the necessary infrastructure to carry out their duties. All this is because of budgetary constraints. A court station can be opened somewhere and it does not have even the basics. With this Bill, we will put the courts on the spot if the necessary funding is available.

The other area is welfare of judges and judicial officers. Like it has been observed, welfare and morale of individuals working in institutions shows the lustre or gold lining of that institution because they will perform to the best of their ability based on how well individuals are looked after. Therefore, I believe in the area of mentoring, peer review and promotions that have been put in this Bill, there will be progression in improving the functions and the authority of a court system.

Hon. Speaker, finally, there is protection of judges and judicial officers from personal liability. Currently, in this country, it really does not matter when individuals do not abide by the mainstream thinking. When they are not following populism ideas to deliver judgement, they are

seen in different lenses. I also believe that their function as judicial officers is service to this country. Kenyans must see the court system as a fair arbiter wherever they appear before it.

With those remarks, I beg to support.

**Hon. Speaker:** Hon. Alice Ng'ang'a.

**Hon. (Ms.) A.W. Ng'ang'a:** Thank you very much, Hon. Speaker.

I rise to support this good Bill. Having come from a place where people think going to court is going to be jailed; a place where when they hear of court, they think somebody is trying to trick them and that they will not find that justice when they get there, this Bill will help. Some even fear when they are told to go to court to look for justice. That is why the saying goes "justice delayed is justice denied". As it is now, this Bill is going to make justice accessible in all areas of this nation. That means that the services of courts are going to be nearer to the people. The divisions in all areas will save those people who travel for long distances to look for justice.

It is good to know the functions of courts, the functions of the president of the court and the functions of the registrar. Once they know their functions, work will be done easily. We have heard and seen that files are missing most of the time people go to court, and it is the day they have been requested to be there. They are then given another day and yet, they are not sure whether their files are going to be found when they go back there.

With this Bill, proper record keeping under the Registrar is laid out very clearly. As other hon. colleagues have said, it is good to make sure that we go digital. That way, the records are all listed down so that they can be found easily once a case is coming up for hearing.

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

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

Hon. Speaker, it is also good for monitoring and evaluation so that the courts can also know whether they are achieving their purpose. A court can be there, doing its duties and it does not know whether it is achieving its mandate. It is good they are monitored and evaluated once in a while to see whether they have achieved their target. This Bill lays out the functions of the Registrar. The Registrar has an assistant or the Deputy Registrar who will be helping him or her to administer the job that they are appointed for. Whereas the Registrar has the duty to appoint the staff, he or she has the power to transfer staff from one area to another. It is good those mandates and procedures are laid out carefully once they are given out.

Hon. Speaker, this Bill also talks about the code of conduct which judges have to sign. It is good for integrity to be maintained and to make sure that they are the eyes of the Judiciary once they are seated there. We also need to clearly define the roles of the Judiciary, the Executive as well as the Legislature, so that none of us oversteps the mandate of what they are required to do, Hon. Speaker---

**Hon. Walukhe:** There was a change of Chair.

**Hon. (Ms.) A.W. Ng'ang'a:** Hon. Deputy Speaker, I am sorry. That is so that we can know what every person is mandated to do. It is wrong when one arm of Government over-executes its duties and starts talking about another arm of Government. It is also good for the Judiciary to know where their mandate stops because they have, at times, gone over-board. You have heard them trying to stop us from debating what we are supposed to do here at the legislation level.

It is also very good to know that once this Bill is passed, you will not have to travel far and wide to look for the courts. They will be readily available even at the county level where everybody can air their grievances and are heard that easily.

This Bill also helps us when it comes to management. The court will be managed and we are going to have effectiveness, efficiency and accountability. So, we will not hear that the aggrieved is the one who has been penalized at the end of the day. We have known some cases that have gone on for many years. Some people even die when their cases are still going on in court. This dispute resolution mechanism will help people because all cases do not have to be taken to court. At least, there is a mechanism somewhere where you can sit, agree and get a solution between parties, rather than both of them rushing to court. When everybody rushes to court, we have so many pending cases at the High Court.

This Bill also talks about the timelines where we will know when courts are supposed to go for recess. It is good because everybody will know that they have taken a break. It is also good to know when the sitting of the court is on.

They have established a committee to oversee that all those courts are running smoothly. With a schedule like that on, when you know the calendar of the court, somebody does not have to travel when the courts are not sitting. Somebody or lawyers will not cheat because members of the public, even at the grassroots level, will know when the recess is supposed to be taking place at the High Court.

This Bill is also good because we will know who the president of judges is. We will also know the functions of that president and how the elections will be held and how that president can be removed. All that has been stipulated in the Bill.

So, when all these changes are enhanced, we are going to have a smooth running of the High Court. It is really going to help the Republic of Kenya to go through the process of providing justice to this nation, so that our people cannot say that there is no justice. With proper management and administration, I know we are going to have a smooth sailing and running of that organization.

Thank you very much, Hon. Deputy speaker. I support.

**Hon. Deputy Speaker:** Hon. Joyce Akai.

**Hon. (Ms.) Emanikor:** Hon. Deputy Speaker, I am in for the next Motion. I contributed to this one yesterday. Thank you.

**Hon. Deputy Speaker:** Hon. Members, please, remove your cards if you have already contributed on this Motion, so that we can know who has not. Hon. Rachel Nyamai. I am just going down the list as the names appear on the screen.

**Hon. (Ms.) R.K. Nyamai:** Thank you Hon. Deputy Speaker, for giving me this opportunity to add my voice in support of this important Bill, which is one of the pieces of legislation that have to be enacted by Parliament as required under Article 261(1) of the Constitution.

I perused through this Bill and I have seen that it is a very important Bill. At a glance, it shows us the composition of the court, how the High Court should be structured, how the sittings of the court should be done, how centralisation of the High Court should be done, how matters of administration have to be handled and how issues of management need to be handled properly and in a standardised manner.

I have also noted that it has a very good clause on dispute resolution. As I support this Bill, I have realised that it gives a very important role to monitoring and evaluation which we know that in contemporary situations in all our institutions, is a very important function. People

are able to know where they are, where they would like to go, challenges that they are facing and the opportunities available that the institution can use. I see monitoring and evaluation as a very important matter that has been adequately addressed.

Also, on Clause 6, this Bill has tried to ensure that there is proper order within the High Court where the roles and the responsibilities of various individuals have been properly stipulated. Also, the order of hierarchy in terms of who presides and qualifications of the presiding judges has been done very well. Nothing happens smoothly when there is no order. This Bill has tried as much as possible to ensure that roles and responsibilities have been properly assigned to those who should be assigned.

Other Members have spoken about the issue of having a proper calendar. We know that there are citizens of this country who have suffered by being given the wrong information especially by advocates and lawyers who are presiding over their cases. This Bill, in Clause 10, has provided a clear structure of court sittings. It shows when they are supposed to happen and when they supposed to be on recess. There are three sittings and in between we have recesses which are properly put. At the same, it also gives the Chief Justice the freedom to bring up a sitting even when it is not happening; meaning that, in case of any eventualities, a decision can be made.

Also within this Bill, and more so focusing on Clauses 11, 12 and 13, it clearly shows that standardisation is being done within all areas even as much as we advocate for decentralisation. At least, there will be a High Court station in each county and matters of delays and waiting to be given a date will also be handled when we have decentralisation. Also, at the same time, we are ensuring that we have clear standards such that ethics are not followed within one area and also not being followed in another court. It also provides for reasonable and equitable access to the service of the High Court for the citizens of our country.

I also appreciate that this Bill provides for an advisory body which gives people an opportunity to think for themselves, but being guided by proper policies, practices and proper management as stipulated. So, it ensures standards and, at the same time, the realisation that Kenya is not an autonomous institution - we are in various counties and that the people within the courts are also able to make decisions. Based on the situations that they are in, the advisory body is able to advise the presiding judge.

I would also like to point out Clauses 25 and 26 of the Bill, where we are focusing on administering of alternative dispute resolution mechanisms that are being provided, bearing in mind that Kenyans are from various cultures. We are from various tribes that are recognised within our country. Instead of bringing about delays, this Bill gives an opportunity to people to think through their own structures and to provide solutions as a people. This helps in ensuring that matters are not delayed for too long within the courts. Matters that can be settled at family level or matters that can be sorted between communities are sorted through alternative dispute resolution mechanisms, instead of waiting for the court to make a decision.

Also, matters of integrity of the registry and work of each station or division and ensuring uniformity in keeping records within the court is something that is highly appreciated. We will ensure that we have equality in all the courts within the counties. The court must abide by the standards that have been provided in terms of ensuring proper record-keeping and ensuring that there is a system within all the courts.

I feel that this also brings about continuity especially when changes happen in cases of judges or even the presiding judges being transferred from one area to the other.

This Bill also takes care of the fact that the judges are human and they are bound to make pronouncements that may bring about decisions that may cause liabilities. Clause 33 of the Bill provides for protection of the judges in cases where they may make utterances which may cause personal liability for the acts done or ordered by the judge. So, I feel that this is good because our judges also need to be protected.

This is a very important Bill that will bring law and order, standardisation, and it will ensure that our high courts are properly managed.

With those remarks, I would like to support the Bill.

Thank you very much.

**Hon. Deputy Speaker:** Hon. Juma.

**Hon. (Ms.) Juma:** Ahsante sana Mhe. Naibu Spika kwa kunipa nafasi hii nichangie Mswada huu wa Mahakama Kuu. Mwanzo, nataka kusema kwamba naunga mkono Mswada huu. Nafurahi kuwa Mswada huu umeweza kuja hapa Bungeni hususan kwa sababu napenda sana kutetea haki za wanyonge. Wakenya wengi wako katika hali hiyo. Pia, Wakenya wengi hawana njia ya kupata haki katika nchi hii. Wananchi wengi sana huteseka sana kwa kukosa haki hapa nchini.

Kitu cha kwanza ambacho ningetaka kuangazia ni kwamba Mswada huu unaongeza idadi ya mahakama kuu humu nchini. Hivi sasa, mahakama kuu nchini ni 20 pekee. Zikiongezeka, huenda kila kaunti itapata mahakama kuu moja au zaidi kutegemea ukubwa wake.

Mhe. Naibu Spika, sheria hii, kama nilivyosema, itapeleka haki karibu na mwananchi. Mara nyingi, walala hoi huwa wanashindwa kwenda katika mahakama kwa sababu ya ukosefu wa pesa za usafiri wa mara kwa mara. Kwa hivyo, mabwenyenye ama wenye kudhulumu watu wengine ama wenye pesa ndio wana nguvu za kwenda mahakamani. Wakenya wengi hukosa kupata haki katika mahakama kuu za humu nchini. Kwa hivyo, hili ni jambo ambalo limenifurahisha.

Jambo lingine ni kwamba, kutokana na kuongezeka kwa mahakama, itabidi tuongeze bajeti za mahakama humu nchini ili tuweze kujenga mahakama kuu nyingine ili wananchi waweze kufaidika kama sheria hii inavyosema. Licha ya maswala tofauti ya kisiasa, nawaomba Wabunge wenzangu kuwa wakati wa kutayarisha Bajeti, tusaaidiane ili senti ziweze kupatikana ili mahakama nyingi yaweze kujengwa ndio Wakenya wengi waweze kufaidika, hususan walala hoi.

Mhe. Naibu Spika, watu wengi huteseka kutokana na masuala kama ubakaji wa watoto wadogo na wanawake na kudhulumiwa kwa wanawake mabwana zao wanapofariki. Mara nyingi, watoto mayatima hunyang'anywa urithi wao, na kadhalika. Kwa hivyo, hili ni jambo la busara.

Jambo lingine ni kwamba, mwananchi ataweza kupeleka kesi yake katika mahakama kuu na akishindwa, anaweza kukata rufaa hapo hapo – si lazima asafiri kwingineko. Mimi nimeleta Miswada mingi hapa Bungeni kuhusu watoto wa Kiislamu waliodhulumiwa katika baadhi ya shule za upili za umma humu nchini. Kwa mfano, hivi sasa, kuna kesi katika Kaunti ya Isiolo lakini kukata rufaa imebidi kesi hiyo ipelekwe Kaunti ya Meru. Hii inamaanisha kwamba ni lazima mashahidi wasafiri na walale mahotelini. Kwa hivyo, sheria hii itawasaidia mwananchi.

Mhe. Naibu Spika, kuongezeka kwa mahakama kuu kutafupisha muda wa kusikilizwa kwa kesi na mahakama. Kuna kesi ambazo zimekuwa mahakamani kwa miaka kumi ama zaidi. Katika hali ilivyo sasa, mmemfanya mwananchi mlala hoi kutumia pesa nyingi – pesa ambazo hana – kufuatilia kesi hiyo. Kwa hivyo, wanaoshinda kesi mara nyingi ni wale watu ambao wana pesa.



Kifungu cha 26 kinazungumzia mbinu zingine za kutatua mizozo. Kwa kweli, hili ni jambo nzuri sana - ni jambo nzuri kuliko yale ambayo nimeshayazungumzia. Kupitia mbinu hiyo, mwananchi anapokuwa na kesi, hatohitaji kuwa na wakili. Kama tunavyojua, mawakili huitisha pesa nyingi sana kuanzisha kesi yoyote. Mara nyingi, inabidi mtu alipe angalau Ksh50,000 kuanzisha kesi. Mwananchi wa kawaida hawezi kuwa na hela hizo. Kwa hivyo, kifungu hiki kinachozungumzia mbinu hiyo kitamuwezesha mwananchi kwenda kujiwakilisha mwenyewe mbele ya mpatanishi ili aweze kueleza kesi yake. Kesi yake iweze kusikilizwa bila yeye kutumia pesa nyingi kuajiri wakili.

Mhe. Naibu Spika, sheria hii itaongeza nafasi za kazi katika Mahakama Kuu. Wazazi waliuza ardhi na rasilmali nyingine za familia zao na kuwaelimisha vijana wao katika vyuo vikuu. Nafasi za kazi zitakapopatikana, vijana hao watapata ajira. Hivi sasa, wengi wa vijana ambao wamehitimu katika vyuo vikuu hawana kazi. Vijana hao wanaishia kufanya kazi ya kusukuma mikokoteni na kazi nyingine ndogo ndogo. Baadhi yetu wanaweza kusema kwamba kama nchi, hatuwezi kulipa wafanyikazi zaidi kwa sababu gharama ya ajira katika sekta ya umma iko juu lakini tukiwa na wafanyikazi wengi, na ikiwa haki itapatikana kwa wepesi na kwa haraka, tutaweza kuokoa fedha nyingi zinazopotea kutokana na kucheleweshwa kwa utendaji haki na mahakama zetu – hali ambayo inaumiza uchumi wetu. Kwa hivyo, badala ya kuendelea kupoteza pesa kupitia hali hiyo, nchi yetu itaokoa pesa.

Mwisho, ningependa kuwahimiza wale ambao watakuwa wanawaajiri mahakimu wakuu wahakikishe kwamba watu kutoka makabila tofauti humu nchini wameajiriwa pale nafasi za ajira zitakapotokea. Hususan, wananchi katika eneo la Pwani, ambako nimetoka, wanaona kwamba wanatengwa katika masuala ya kitaifa. Mara nyingi, tunasingiziwa kwamba hatujasoma. Lakini ningependa kulihakikishia Bunge hili kwamba vijana wengi katika eneo la Pwani, hususan katika Kaunti ya Kwale, sasa wamesoma. Wazazi wamejizatiti kuwaelimisha vijana wao. Kwa hivyo, kuna vijana wa kutosha nchini kote waliohitimu kutoka vyuo vikuu. Vijana hao wanafaa kuajiriwa nafasi za kazi zitakapopatikana.

Kwa hayo machache, naunga mkono Mswada huu.

**Hon. Deputy Speaker:** Patrick ole Ntutu, the Floor is yours.

**Hon. ole Ntutu:** Thank you, Hon. Deputy Speaker, for giving me the opportunity to add my voice to the debate on this very important Bill.

The principal objective of the Bill is to give effect to Article 165(1) of the Constitution, which is our mandate. The Bill seeks to provide for the organization and administration of the High Court to ensure its smooth operations and administration, so as to facilitate efficient conduct and management of the judicial functions. The Bill provides for the composition of the High Court. For a long time in this country, since Independence, we have not changed much. We have been following the colonial way of running the courts. That is why courts are only meant for the rich. If you cannot have a good lawyer, you cannot present your case properly to the judges. It is only the lawyer and the judge who know what they are doing. This Bill has actually tried to simplify things for the *mzee* or *mama* in the *kijiji* who goes to court to seek justice. They can be able to access justice in a better way.

This Bill has a lot of good things. It has been structured in such a way that everybody now knows their functions. The presiding judges and the registrar know what they are supposed to do; which is very important. For a long time, we have had only 20 High Court Judges in Kenya. With our growing population, it means that not everyone would be able to go to the High Court to seek justice. Many people lose cases because they do not know their way out. This Bill has provided a clear way of doing things.

On establishment of divisions, we all agree that in this country, there are certain regions that are highly populated. For example, Kisumu, Mombasa, Machakos and other places are highly populated such that they require more courts than others. Obviously, the establishment of new divisions in this Bill will go a long way to solving the problem.

This Bill brings a lot of sanity in terms of the courts timetable. For a long time, our people did not know when the courts are in session or when the judges are on leave. This Bill has provided the dates and so, everybody knows when they can go to court and have their cases heard. With regard the distribution of court stations, it is clear that the CJ shall, in consultation with the principal judges, facilitate reasonable and equitable access of services of the court and establish, at least, one court station in every county. That is fundamental. Under our Constitution, everybody is required to access a high court in their counties, so that their cases can be heard there. This will reduce travel costs from the villages to Nairobi or Mombasa.

This is a very good Bill. However, if Parliament will not provide enough funds, then they will not be able to do all these things that we have stated in this Bill. The most important thing is for us to avail funds to accommodate the new order as provided in this Bill. The other important thing that this Bill has provided is the protection of judges from liability that normally happens when someone loses a case and they go to court. Normally, this is left to the judge and the magistrate. That is why, sometimes, they are not free to give effective and efficient judgement. An effective and efficient court reduces cost, time and money. That will go a long way in helping this country to move forward.

With those few remarks, I support the Bill. We will move a lot of amendments so that we can make sure that our high courts work properly to deliver the services to the people that we represent.

**Hon. Deputy Speaker:** Let us have Hon. James Ekomwa. Hon. Members, we agreed that I will follow the list. Hon. ole Metito, I have seen your request has come on. So, you will be the next after Hon. Ekomwa.

**Hon. Ekomwa:** Thank you, Hon. Deputy Speaker. My name is Ekomwa. It is difficult. Lomenen is the right one, but they are all my names.

Thank you for giving me this opportunity. I rise to support this Bill. The Bill has come at the right time. This meets the mandate of this Parliament. The Constitution gives us the mandate to pass such Bills so that justice is done to the people of Kenya. After we pass this Bill, we expect to have order in our judicial system. We have made peculiar observations in the way justice is administered in most courts in Kenya. This nation belongs to all of us; the poor and the rich. We expect justice to be exercised equally to every Kenyan citizen. Courts are not only meant for the rich, but also for the poor and they should afford it. Justice should not be so expensive for the poor to access. It must be afforded by all the citizens. I am pleased to support this Bill because we expect changes in the administration of justice in Kenya.

More often, we have sadly observed that Kenyans would prefer an international court at the expense of the local courts. That is because we have no order in our courts. We do not expect corruption to be found in our courts. Even if it is there, it should be minimal. If you get evidence of corruption in our courts, what will a common *mwananchi* do? He will not have trust in the courts and the courts will not be attractive. When we pass this Bill, Kenyans will be encouraged to take their cases to court.

I come from Turkana, the furthest corner of this country. In this Bill, I have seen a component of creating new divisions in our courts. I want to ask the Members of Parliament, magistrates and lawyers whether it is logical for us to establish courts in different areas just

based on numbers? What are we considering? In a specific location, you will find that all the people are believers and do not commit crimes. On the other hand, you will find that in a specific location or village--- For example, in Turkana or the furthest corner of Tana River, all people are criminals. So, we should not establish courts simply based on population. We must consider the aspect of the crime rate.

The issue of cattle rustling has been bypassing the courts. It is an extremity for courts. A crime is a crime. We have a Government to protect the lives and the properties of the people and the Government should not have an excuse. Justice is exercised in courts. I represent the people of Turkana and, even as we establish new divisions, we should minimize cattle rustling and conflict. If it is possible, we should have a high court in every location or division in Pokot and Turkana. We will appreciate this because we have been denied justice for so long. We have not had courts in this region for so long. People in the cities have enjoyed justice. We are all protected by the Constitution of Kenya and we should get those services like all the other Kenyans. Even as we establish more courts in cities, we should establish double the number in the marginalized areas. We passed the Equalization Bill - we are now equal and we are very happy. We have enough money to build courts even in every location. That should not be a reason of denying us justice.

I have also made a very sad observation. When you file a case in our Kenyan courts and when your name is, for example, Lomenen or Kinyanjui, judgement is already made before seeing the facts of the case. Once your name is seen, you are judged to have come from a certain community and already, a "judgement" is made. Someone says that "because this person comes from my community, I must favour him or her". We must stop that and be objective. Our courts should do what they are not supposed to do and not what they are supposed not to do.

**Hon. Deputy Speaker:** There is a point of order by Hon. Kenneth Okoth.

**Hon. Okoth:** Thank you, Hon. Deputy Speaker. In this country, we have heard claims of one's last name betraying one. Is the honourable Member in order to speak about a branch of Government so declaratively in a way that he is not substantiating or giving examples and records; to say that if your name is Mr. Kinyanjui or Mr. Lomenen, you get a different form of justice? Is this a way to impugn a whole branch of Government fairly? He is out of order unless he has specific cases he can give. We should give our courts the benefit of doubt. We should oversee them in a proper manner, but not make blanket statements like that. Is he in order?

**Hon. Deputy Speaker:** Hon. Lomenen.

**Hon. Ekomwa:** Hon. Deputy Speaker, I am maximally in order. Let me ask my honourable brother---

**Hon. Deputy Speaker:** If you are maximally in order, can you give evidence of what you have just imputed?

**Hon. Ekomwa:** Hon. Deputy Speaker, some of the issues that have failed this nation include denial. We cannot sit here as Members of Parliament and deny that there is no corruption in Kenya. That denial is what has failed us. We must confront the disease. Let me ask these questions: Why did we leave the courts of Kenya and go to the International Criminal Court (ICC)? Why did we not trust our own courts? It is because some people felt that there is corruption and no fairness in our courts. That is why they went to Netherlands instead of trusting our own courts. I cannot withdraw a fact.

**Hon. Deputy Speaker:** Is the unfairness based on the names of the persons?

**Hon. Ekomwa:** Hon. Deputy Speaker, I was making an analogy. When you make an analogy, it is not a reality. I was just giving an example.

(Laughter)

**Hon. Deputy Speaker:** Okay. So, do not take him seriously. You may continue.

**Hon. Ekomwa:** Thank you, Hon. Deputy Speaker for protecting me.

(Laughter)

I will be pleased if we pass this Bill as early as possible because it will assist Kenyans. It is our role as Members of this Parliament to bring order in the nation. We are here to make laws. There is no other arm of the Government in this nation that makes laws. Once we make laws in this Parliament, our laws must be respected. The laws we make are not supposed to be interfered with by other arms of the Government. We do not interfere with the roles of other arms of the Government. We respect the role of the Executive and Judiciary. The Judiciary must also respect our role as Parliament because it is a constitutional mandate. I support. Thank you.

**Hon. Deputy Speaker:** Hon. ole Metito.

**Hon. Katoo:** Thank you, Hon. Deputy Speaker. Let me also add my voice to those in support of this Bill. The fact is that it is very difficult to say what has not been said by my colleagues who have contributed earlier on. This is a very straight forward Bill. Let me talk about management and not the legal point of view. It is all about management. The title of the Bill is self-explanatory. It is about organisation and administration of the High Court. So, am concerned about the management point of view of the High Court. I like the overall principle which comes up with a clear and elaborate structure for the High Court. Those of us who are students of strategic management say that structure follows strategy. Therefore, the strategy that this structure is going to follow is one that will facilitate the smooth running of the operations of the High Court, and ensure that the end product is efficiency, effectiveness and high performance.

From the very many clauses in the Bill, I was able to point out seven issues from the management point of view. All of them have been spoken about, but let me highlight some. One, the High Court is being structured in order to reflect our current management system of governance, where we have a devolved system. Therefore, we are talking of devolving hearing of cases. What is being talked about is having, at least, a high court station in every county. That is devolution under the management of the governors. When we get a high court in every county, it will translate to further subordinate courts in all the sub-counties. That will bring efficiency and, at the same time, cut costs.

As it is now, we have mobile courts. That is becoming expensive and, again, as somebody said, indeed, justice delayed is justice denied. You find that a county has, say, 12 sub-counties and the mobile courts keep on going round to those sub-counties. Therefore, it takes over three months to go to another sub-county. If we get those high court stations in every county, then the mobile courts will not be stationed at their sub-county level. If they will not be in all the sub-counties, at least, two sub-counties will share one mobile court. That will reduce costs and result into efficiency.

From the management point of view and with this structure, we will now have proper record-keeping. This has been talked about by many speakers, but the cardinal point here is to have a database of records of the high court. If you devolve it to the county level, you will still have database that links all counties. We are now in a technological era. We should digitise those

records. You could have a network that is connecting the databases of records of high courts in all the 47 counties. If need be, we should have a central point - for instance in Nairobi - serving as a back-up of those records. Therefore, should a file, for any reason, be deleted by unscrupulous people, it would be easier to retrieve it. Look at what is happening today at Maseno University. Students or disguised local people burnt the whole administration block of the university to ashes. I do not know who they are yet. Investigations will tell us that. If we did not have a back-up for recovery of the very important records in that institution, then that would be a big waste. Therefore, with this structure of devolving the management of the Judiciary to county levels, it is good that we digitise our record-keeping, have a database in every county and a back-up in Nairobi as a central point for recovery of the files. At times, you see those on the Bar being more digital than even those on the Bench. Therefore, it is important that even our judges are brought to this speed of technology.

The third point is a little bit legal. It is about contempt of court. That has come up in every speech that has been given this afternoon in this august House. That is because of several examples. It is now in the public domain. Look at the cases, especially the one that caused the teachers' strike. We had the Teachers Service Commission (TSC) and Kenyan National Union of Teachers (KNUT) going to court now and then and each one disobeying a court order. So, every time, it was said that there was contempt of court by the parties.

In light of this and with respect to separation of powers, as we go to the Third Reading of Bill, we should clarify the jurisdiction of contempt of court such that you go to court as a last resort or arbiter. When there is a matter that is active in one arm of the Government - be it the legislature or the Executive, you cannot be enjoined to stop. The court should have jurisdiction on that. There should be jurisdiction on the contempt of court that this matter is live in this other institution. If you are not happy with end result, then you can go to the Judiciary as the last arbiter.

Number four is the appearance in court. It has been said that you can appear in person or your advocate can appear on your behalf. It should also include that you can appear by use of technology. We are in the 21<sup>st</sup> Century. We should reduce congestion in court. We should as well reduce time spent by personnel in court. Therefore, there should be an allowance for you to appear through video link, video conferencing or tele-conferencing. Let us make use of technology. We have a fibre optic cable which can accommodate all the uses of technology.

My fifth point, which is very important and has been spoken to by my colleagues, is about the calendar of the courts. It is important that the calendar of the courts brings openness and transparency. You can hear a lot of clamour that we extend the school terms to cover what has been lost in the teachers strike. This is because the calendar of this term is known. That helps in planning. Even the calendar of this House is now in the public domain, and that helps a lot in planning and bringing about openness; in this way you will not say this case was listed in the court when I was away or the court was on recess. That is very important.

Since I am running out of time, let me talk of the last two. One is the issue of advisory bodies. These advisory bodies are very important. They bring cohesion in the management teams of the courts. They also bring about sharing of knowledge and experiences. Those management teams bring unity and ownership of decisions made; this is very important.

Lastly, alternative dispute resolution. Let us respect the cultural ways of resolving disputes.

Hon. Deputy Speaker, thank you and I beg to support.

**Hon. Deputy Speaker:** Hon. Abass Mohammed.

**Hon. Mohammed Abass:** Thank you, Hon. Deputy Speaker, for giving me this opportunity. I beg to support this Bill. The Bill is very important and has given an opportunity to the many Kenyans who could not access judicial services. The Bill provides for establishment of at least one station in every county. It is actually a very important measure that this Bill has introduced. Many Kenyans used to travel very far to get justice in other places of the country. It also provides dispute resolution mechanisms. In many instances, minor disputes that could be sorted out within the communities used to end up in courts. In most instances there used to be a lot of misjudgments. Most of our judges are not conversant with the community resolution mechanisms and they misjudged because of failure to understand the procedures. This Bill now provides that system and one other thing is that it also protects the judges; that is a very good move. In the past, they used to take responsibility for whatever judgment they made, especially in past governments where judges were not giving fair hearing and treatment.

One other thing is ethics. This is a very important thing. Most of the Kenyans up to now believe that for those who cannot afford to get lawyers and other people to represent them, judgment is for sale in courts. But now that there is ethics and work performance contracting, this will also open up the judicial services and most Kenyans will access services. One other thing is giving a station. In the past, when the High Court went on recess, most Kenyans were not able to get timely and fair hearing. Now that this Bill gives an opportunity for the Chief Justice to establish measures for disposal of urgent matters on a priority basis during recess, this is a good move.

One other thing that this Bill should include and we will need to bring an amendment is that most Kenyans have hearing problems. There is need for sign language. The other thing is some Kenyans have problems in translating. When prosecutors are presenting their defence, they face language barriers. I think this has been excluded from this Bill and we need to bring an amendment; all courts must have sign language persons to assist those who have hearing problems.

The other issue is giving judgment in Kiswahili and English has made most people disadvantaged. As a result, we need to include other vernacular languages where possible, or get somebody who understands the law to translate the language used in court. In the past, ordinary Kenyans would translate and some of the translations would misguide the judgment makers. Many Kenyans have gone to jail because of wrong translation and misjudgment.

One other thing is that the Bill creates the family court. Most of the family courts and Kadhis' Courts are subordinate to the High Court. It is high time that we promoted family courts, Kadhis' Courts and other subordinate courts to be able to do their judgments under the High Court.

The other thing is that in the past we used to hear of files missing and judgments would take so long until a certain time when Kenyans died and others were judged posthumously. Others spend many years and a lot of money seeking justice. Now that the courts have been standardized, this will sort out delays in hearing cases.

The other thing is that the Bill does not limit the rights and freedoms of the people; it gives the freedom to be heard and the right to make appeals. However, justice and judicial services in Kenya are very expensive. The cost of hiring a lawyer is very high. The Bill should also provide funds for purposes of helping poor Kenyans, those who cannot afford to hire lawyers, so that they can be given an opportunity to be heard. The Kenyan courts should now be accessible and we must give Kenyans the opportunity to appreciate that they can get a fair hearing in a court.

With those few remarks, I beg to support.

**Hon. Deputy Speaker:** Hon. Mary Seneta.

**Hon. (Ms.) Seneta:** Thank you, Hon. Deputy Speaker for giving me this time to also support this Bill. I want to say that this Bill is timely in that it provides for an establishment of at least one station in every county. We know that most Kenyans when it comes to seeking justice, spend a lot of money travelling from one place to another. But this Bill is creating stations in counties, which will be accessible to every Kenyan.

This Bill also provides for alternative dispute resolution mechanisms, which means that for those who will not be able to seek justice from the courts, they will be able to use other alternative dispute resolution mechanisms.

Another thing that this Bill has provided for is performance management systems in our High Courts. It has provided a performance contracting and evaluation system where our judges in the High Court can be monitored. We know that most civil servants do not deliver effectively because of the performance management system.

Another thing that this Bill has created is a proper record management system where all records will be kept. There is a record automation system in courts. In many cases, we find that many Kenyans lose their records in courts and most of them waste a lot of time before a file is found. This Bill creates a unified and standardised system where all records will be kept well. A storage system is also introduced and every court in this country will have a section where records will be kept well.

This Bill also seeks to introduce measures that will enable us to know every judge's role. The Bill provides for roles for everyone in the High Court; it also provides for a calendar of events for the High Court. There will be a system which Kenyans can trust, and one that will quickly deliver justice to the citizens of this country.

I support this Bill.

**Hon. Deputy Speaker:** Charles Njagagua.

**Hon. Njagagua:** Thank you, Hon. Deputy Speaker, for giving me this chance to contribute and support this Bill that is premised on the High Court's organisation and management.

For starters, what we are doing is not new. Those who are legal practitioners will tell you that we have had court registries, registrars, judges of all divisions, namely civil division, criminal division, commercial division and the children's court.

Today, we are re-enforcing the element of the independence of the Judiciary as an arm of Government. We are also making sure that as per our Constitution, each county gets a judge or a High Court. What makes this law beautiful is that the High Court, or the presiding judge, in every county will get a chance, where the need will arise, especially where the county is vast, to create various stations called "circuits". The presiding judge will provide for circuit judges to visit various sub-counties or the constituencies to dispense justice as quickly as possible. We all know that justice delayed is justice denied. When we have various circuit judges visiting various sub-counties or constituencies, it will mean that justice has been taken closer to the people, dispensed faster and cut down on costs. Take a case of where the High Court is in Nakuru and one has to travel all the way from Kajiado to get to the High Court in Nakuru. That means a lot of money is spent on transporting witnesses, time is lost on the way and this makes courts inaccessible to many Kenyans who do not have the means.

The issue of calendar of the court is not something new to those of us who are practitioners. We have recesses in April, August and December. This necessitates a timetable for

the court and the judges, so that they do not shift their recesses whenever they like, just as Parliament has its own calendar. Nobody can tell us to go on recess. We sit down and agree on our calendar. The same thing is happening in the High Court.

The other beauty about this Bill is that it has given a ceiling of about 200 judges. As of now, there are about 170 or so judges. It means that there is still room for another 30 judges to be employed. This is going to create employment because each judge will have his handlers, drivers, security men, secretaries and stenographers. This is going to create employment for Kenyans and that is what everybody is craving for. We need to have more people employed to do the work that there is.

My concern is about the seal of the High Court, as provided in Clause 37, which will be kept by the Registrar. Duplicate seals mentioned in Clause 37 will be kept by Deputy Registrars. My fear is that if we have rogue Registrars and Deputy Registrars, the seal and duplicate seals could be used at different times to give an impression that one order was issued by a particular judge and the Deputy Registrar issues another order. We could have various orders on one matter. I believe that the people, or persons employed to the positions of Registrar and Deputy Registrar are persons of high integrity, and that will not happen. That is a section we could relook at when we go to the next stage in order to safeguard the seal and the duplicate seals in different hands.

There is also the issue of the advisory committee. This will be tasked with formulation of recommendations on the judicial policy. This means the Judiciary is not going to be a one-man show, where the presiding judge or the Chief Justice wakes up one morning and makes policy decisions that are going to affect Kenyans and the procedure of the High Court or the court system. With the advisory committee in place, it will mean that decisions will be well-thought out. Issues will have been discussed by a team, and the policy that will emanate from such discussions will be something that will have been discussed by a number of persons. I am certain that it will be for the benefit of Kenyans.

The Bill is very clear that in matters of representation, one can appear in person or he can be represented by counsel. This removes the issue of rogue persons - those who are not qualified to act as advocates of the High Court - from representing other people. To that extent, I give thumbs up to this Bill.

Lastly, there is the issue of an alternative dispute resolution mechanism. This is going to cut down on costs. We all know that when matters go for arbitration they take less time and are less expensive. When they go to alternative dispute resolution there is that element of secrecy. The matter is only known between the litigants and the persons sitting on the tribunal in the alternative dispute resolution mechanism. This is unlike an open court system where the court is open to everybody, you are sure when it is being dealt with at the alternative dispute resolution centre; that is arbitration. There is the element of secrecy that your matters will not spill over to the public.

I support the Bill.

**Hon. Deputy Speaker:** Yes, Hon. Oticho.

**Hon. (Ms.) Oticho:** Thank you, Hon. Deputy Speaker, for the opportunity to contribute to this very important Bill. This Bill speaks to the administration and reorganisation of High Courts. It is a very important Bill in the sense that for any institution to succeed, it is not only about the leadership, but there has got to be supporting structures, systems and policy. This Bill is important because it brings that much needed order. It assigns responsibility that a High Court



shall be headed by the presiding judge, that there shall be judges and a Deputy Registrar who will be in charge of administration.

Hon. Deputy Speaker, I will randomly contribute to a number of clauses in the Bill. I will start with Clause 26 which speaks to dispute resolution. This will help decongest courts and prisons. Some of the issues are so petty; they are issues that can be resolved outside the court. By providing the alternative option in dispute resolution, I am sure most of the cases will be solved outside court and we will release Kenyan citizens to contribute towards developing this country instead of languishing in prisons over small issues that would have been better solved outside court.

I would also like to contribute to the point on access to justice. Clause 12 speaks to this, and it is good in the sense that it provides a timeframe within which a matter must be concluded. As it has already been said, “justice delayed is justice denied”. In this country, there are sub-counties or constituencies that are the size of a county and courts are so far that Kenyans have to wait for so long to get justice. Having worked in the Judiciary - I am a product of the Judiciary – I know that we used to have mobile courts and judges had to travel to areas like the North Eastern, Mandera and Isiolo where my friend Hon. (Ms.) T.G. Galgalo, comes from. I remember having gone to Turkana. This Bill should ensure that a court is established in every county, and that Kenyans everywhere can access justice.

I would also like to support the proposal by Hon. Lomenen that in future, going forward, we should have a court in every sub-county. I am lucky I have a High Court in Busia County but it serves the whole county, and only people who are near the county will easily access services; people from Amukura or Kwangamur might have to travel all the way to Bungoma to seek justice. If I had a court at the sub-county of Amukura, I think the people of Teso South would be more proud and feel that this country is doing some justice to them.

I would also like to speak on the issue of the welfare of judges. Having worked there before, I know this is a category of people who work so hard. These are learned friends who work so hard; I have seen judges leave office at 9.00 p.m. and beyond. It is the only institution where I have seen judges carrying briefcases that do not carry money but big volumes they have to peruse throughout the night to write judgments. The proposal that the Chief Justice can establish committees to look into issues of working conditions, peer review, promotion and improvement of welfare of judges is critical. It is a good thing and it should happen as soon as possible.

I would also like to support Clauses 33 and 36 that seek to protect judges. You cannot sue a judge for a duty he has performed, or a judgment he has given just as the National Assembly is protected that for matters I speak in this House, I cannot be sued. Clause 29(2), states that if you threaten a judge or intimidate him for whatever judgment, you will be in contempt of court. This will protect and give them the confidence to make fair judgment without fear of any legal consequences that could be taken by anyone against them.

Hon. Deputy Speaker, still Clause 36 is a good thing as it sets out that you will be penalised for disobeying court orders or directions given by courts. In future, organisations like the Teachers Service Commission (TSC), when they fail to comply with court orders, somebody should take them to court and put them in jail. The law says that you will not get anything less than two years, or you will be fined Kshs2 million for failing to comply with court orders. This is a good provision.

I like this Bill particularly because besides providing for the two official languages that will be used in courts, it seeks to facilitate the use of other languages where appropriate, taking

into consideration persons with disabilities. Therefore, sign language and Braille are recommended in a proposal in this Bill.

As I conclude, Clause 31 says that adequate resources must be allocated for effective discharge of court functions. At this point, I would like to tell this House that in future I hope it will give the Judiciary sufficient funding. It will be unfair to victimise an institution by virtue of institutional differences; just because we do not agree with the Judiciary on one issue or another we victimise them by reducing their budget. This law is very clear. We want justice for the people and we must provide sufficient funding for the institution to discharge those responsibilities efficiently and effectively.

I would like to conclude by saying generally this is a good Bill.

I support this Bill, and urge all hon. Members to support it.

**Hon. J.K. Ng'ang'a:** Thank you, Hon. Deputy Speaker.

I rise to support this important Bill. This Bill has been overdue for a long time. I hope you will agree with me that many Kenyans have been deprived their rights through delay of justice. Many Kenyans have suffered a lot. I would like to start by thanking the Jubilee Government for coming up with such a noble Bill to support and to remember the suffering that the ordinary *mwananchi* has been going through. Many Kenyans have suffered and lost properties because previously there was no proper administration in the Judiciary. Corruption was very rampant in the Judiciary. No wonder one colleague said that sometime back, many Kenyans lost confidence in their judicial system and that was why they preferred the International Criminal Court (ICC) to their own judicial system. That is why some of us are suffering at the hands of a white man.

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

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

Hon. Temporary Deputy Speaker, having said that, I would like to go back and ask ourselves: Why did Kenyans lose confidence in ourselves? It is time we came out clearly, openly and say that enough is enough when it comes to corruption. We should wipe out corruption in all systems or arms of the Government; when this Bill is passed many Kenyans will have confidence in getting justice when they go to any court. They will be confident and sure that their grievances will be heard and listened to and judged properly.

Hon. Temporary Deputy Speaker, I say this because many times the judicial system has been said to be a preserve for the rich, and the mighty. But for the ordinary *mwananchi*, it is wasteful thinking and hoping that one day God will hear his prayers.

I would also want to say that it has come at the right time. It is high time we moved further and made sure that promotion of judges is fairly done. There should be no bias. Many people in the judicial system have given up because they have worked in one position for a long time without being considered and they end up being corrupt.

As I wind up, it is wise for us now to come up with a way where the ordinary *mwananchi*, who cannot pay for the services of a lawyer, will have an equal right and the Government should come out clearly to appoint some lawyers who will be paid by the

Government to represent the ordinary *mwananchi*. He does not have to go and hire a lawyer. Just like in medicine you can go to a Government hospital and if you can afford, you can go to a private hospital. Even in the education sector, there are those who take their children to Government institutions and some to private institutions. It should apply likewise in the Judiciary so that justice can be seen to be done to all. By doing that, we shall create more employment for the young lawyers who graduate every year and other support staff.

With those few remarks, I support the Bill. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Seme.

**Hon.(Prof.) Nyikal:** Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to support this Bill. The establishment of a High Court together with the whole judicial system is the basic foundation of the rule of law; in this case, it is in compliance with our Constitution. I have sometimes thought that if I was asked to name three institutions that will rid us of the evil of corruption that has so much affected our country, I would mention the judicial system, the police and probably the office of the Director of Public Prosecutions (DPP). So, a proper and working system with a proper hierarchy of courts is essential.

This Bill brings into line the effects of the Constitution particularly Article 165. I am particularly impressed by the jurisdiction on the interpretation of the Constitution. On and on again in this House, we have had issues that point to the interpretation of the Constitution. So, if we have a High Court that is assigned that jurisdiction, we are on the right track.

Similarly, we know that we are making national laws, county laws and we often know that there are laws that are made in this House and may have to be interpreted, whether they should have gone to the Senate or not. This is an area which the High Court must address itself to. This Bill puts that in place. That is something that this country needs.

I am happy that Clause 12 of this Bill talks to the distribution of courts in every county. This is an achievement that when we get there, every Kenyan will feel the impact of having a High Court nearby. I know that there have been circuits where judges go round, but I do not think this can be as effective as having a High Court in every county. On top of that it still provides for the circuit which means it will be moving within the counties.

Again, this Bill aligns itself to the principles of governance in our Constitution; of equity, justice, integrity and the principles of the public service as set out in Articles 10, 159 and 232 of the Constitution. These are very important Articles in our Constitution. From civil societies' standpoint, these were the main issues that brought a lot of problems in the previous Constitution. To bring them in and give the High Court jurisdiction over them is really commendable.

Part II and Clause 4 in particular, the organisation of the court system and the work assessment for the judges is an important thing. Many times, in the past, we have had complaints from advocates of the High Court, of judges being overloaded and unable to clear cases. Now, we have a system that will assess how heavy the workload of a judge is and make recommendations on what should be done.

Clause 8 gives the hierarchy and what I would call a pecking order. I like it. Any system must have clearly set out order and hierarchy. This comes out pretty well; we will have principal judges, presiding judges and the High Court Registrar. If implemented as indicated here, they will go a long way in improving the justice system in this country.

I know we have had the court users' committees. Coming into this Bill and being looked as a major administrative instrument is important. I know you must have been a member of many court users' committee. We have had complaints from the advocates and we have had them

seeking to stage a strike. Why would that happen if there is a court users' committee that will address the issues that are of concern to them?

It is commendable that we have in Clauses 9 and 10 clearly set out procedures of the court, including the calendar of the court. The flexibility that the court can sit anywhere, so long as the appropriate conditions have been met, improves that flexibility and is important, particularly when we have circuits; judges cannot say that they cannot go to this place. So long as there is a place that is appropriate, Kenyans will get justice.

Setting out divisions to look at the areas of law enhances the competence with which people receive services. I am particularly concerned and impressed with having a family division, children's division and a constitutional and human rights division. The family and children's divisions to me are such an important division. There are so many issues in this country. Many families cannot go to court to resolve issues by getting quality judgment. If we have divisions that specifically deal with family issues, we will develop appropriate competences.

We need the Constitutional and Human Rights Division because of our Constitution. A lot of issues that will need interpretation will come up.

The court administration structure is impressive. I am impressed with the clear structures put in place, the job descriptions and responsibilities of each officer of the court are clearly set out. With this, there should be no inefficiency. In any case, it will be easy to address such inefficiency if it occurs.

Clauses 19 and 20 give clear qualifications for, and the duties of, a Registrar and a Deputy Registrar of the High Court. This will ensure that we know the capacity of people in those positions and what to expect of them.

The establishment of an advisory committee is extremely important except that we will need to get into the membership of this committee some well-informed lay person, who will represent the consumers of court services.

The provision for reconciliation and alternative dispute resolution mechanisms is very important. It will save time and money. However, it is important to look at the rules. I am particularly concerned with the area of child sex abuse. If you leave it that there are alternative dispute resolution mechanisms, people will sit down and all these things will be swept under the carpet, because people will agree. We will need to provide rules for such areas to ensure that no criminal offences are swept under the carpet.

I like the provisions on record keeping and integrity of registries. Hon. Temporary Deputy Speaker, you know the importance of having information better than us. Africa has not done very well in development merely because of record keeping and access to those records, so that decisions are made on the basis of facts. In this digital era, we should make court records very easily accessible.

I am impressed by the provision for regular performance evaluation and performance contracting. This, if implemented, will avoid the painful vetting processes that we have gone through. To develop a code of conduct and monitoring mechanism for compliance will take us a long way.

The provision that a judge other than the one who listened to a case can read out the judgment is progressive. I have heard many cases where people wait for months because a particular judge has to read the judgment in a case they were hearing.

With those remarks, Hon. Temporary Deputy Speaker, I support this Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for Kibra.

**Hon. Okoth:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. The first thing is that I am very proud to be a Member of this House, because you can see the set of Bills and issues we are dealing with in this period, from the Magistrates' Courts Bill, which we have disposed of, to the Small Claims Court Bill that is coming up, to this High Court Organisation and Administration Bill. They fall within a bracket of issues that are in our Constitution: fair administration of and access to justice.

In this month as we discuss these issues, the 70<sup>th</sup> United Nations General Assembly (UNGA) has just been concluded in New York. Members of the community of nations agreed on a new set of development goals, the Sustainable Development Goals (SDGs), also known as the global goals. One of them is really important and unique in a way. The SDGs are supposed to help us talk about things like equality, equity and governance across the world. It is in this context that Kenya is one of the leading countries that signed on and steered the arguments, arrangement and negotiations that led to the development and adoption of the SDGs.

Goals numbers 16 and 17 are key goals that talk about access to justice as a key pillar of the SDGs. There is no development without justice, so to speak. So, I am proud that this august Assembly is doing its part in making sure that the vision and dream in our Constitution is brought to life through a set of laws that will make sure that we have a well-functioning and well-organised Judiciary, where our people can access justice.

Some of the key gains touch on both the Magistrates' Courts Bill and the High Court Organisation and Administration Bill we are discussing right now. This Bill has provision for the establishment of divisions to make sure there is specialisation and increase of efficiency in the administration of justice. In places like Mombasa, you might need an admiralty court. In other places, you may need special family divisions to specialise and speed up determination of cases. A few months ago we passed the Protection Against Domestic Violence Bill. That law has great potential. Once we think about the proper establishment of family and children divisions of the High Court, where we can resolve many of the issues being addressed under the Protection Against Domestic Violence Bill, we can hope for a situation where those divisions will be efficient. The divisions can give priority to resolving family matters that put family members in grave situations. Often, it is about children and women, but sometimes even men are affected. So, we are making some gains here.

This same Parliament last year passed the Matrimonial Property Bill and the Marriage Bill. The theory and letter of the law and the spirit and practical realisation of the benefits of the law in impacting the lives of our people will be realised through well-organised court systems.

I want to emphasise in particular issues such as succession and inheritance cases where quick settlement of cases at local Magistrates' Courts or High Court stations that are decentralised to each of the counties can make it easy to lodge an appeal, and also get a case resolved quickly instead of waiting and trying to reach a court that is far away. So, we are making good steps there.

In cases of customary marriages, and this has been tackled in a ground-breaking way in the Magistrates' Courts Bill, people who enter into customary marriages and have conflict within those customary marriages will not be at the whims of chiefs and elders. They can appear in front of judicial officers who must keep records and follow certain procedures to dispense to them justice and resolve their issues even if there are issues of land held under customary marriage. That is very important and we are making progress.

Even if we will make these gains, I have a few concerns that I want to raise, and that we must think about in the amendments coming up at the Committee of the whole House stage, or in future amendments to the other set of Bills that we will pass.

First of all, we need to come up with a Legal Aid Bill that is complete, effective and well-budgeted for by this House. Other Members have already spoken to it, but I do not think it is an issue we can over-emphasise. We must make sure that poor people have access to justice. Where people face complex court cases, they should have access to a well-funded public defenders' division of the court, with well qualified lawyers who are accessible and can help them. Alternatively, there should be a framework to support civil society, NGOs and CBOs to provide these services and to be encouraged to be partners in the administration of justice in our country.

The second concern I have, and this touches on one of the other Bills we passed earlier, is to try to limit the purview of the Magistrates' Courts based on Articles 47, 48, 49 and 50 of the Constitution. I find this ironical. It is like giving with one hand and taking away with the other. A key feature of our Constitution is that we have a Bill of Rights that guarantees economic, social and cultural rights; this is Article 43 of the Constitution; Articles 47, 48, 49 and 50 speak to the issues of access to justice and the right to fair trial among other issues. These are constitutional protections. These also fall under the Sustainable Development Goals that we are talking about, yet at the same time we are saying that we will limit the purview of our Magistrates' Courts. I find that ironical and contradictory. This is a major concern because all public servants swear to uphold the Constitution, and to protect and promote human rights, including the access to justice. That is a little peculiar and it might be something worth keeping on record and looking at in future to correct.

Hon. Temporary Deputy Speaker, I find that the proposed fines for contempt of court, especially in the High Court and in the Magistrates' Courts are a little bit too low. We have reached a point where we need to be a country of rule of law and courts must be respected. The sense of impunity where people can disrespect court orders is too much. The fines for offences are something we need to look at. I will give you an example. If you followed any of the recent news items, it seems to have become fashionable to disobey court orders. You hear claims of witness tampering, witness procurement and fixing allegations against the International Criminal Court (ICC) on the post-election violence. It is interesting that if anyone was paying attention, they would know that this would amount to committing an offence under the laws we are passing here today, including the Magistrates' Courts Bill that passed Second Reading and the High Court Organization and Administration Bill that we are tackling right now. Those would be punishable. Unfortunately, the punishable offences, for instance in the case of the Magistrates' Courts Bill, is only imprisonment for a term not exceeding five days and/or a fine not exceeding Kshs100,000. We know there are people in this country for whom five days in jail or Kshs100,000 is too little. So, we really need to beef up the consequences of disobeying and disrespecting our courts, whether they are Magistrates' Courts or High Courts to very high level, so that people do not joke with our court system.

Last but not least, I want to focus on the issue of distribution of these courts. We are working in a system of devolution that responds to our historical experience in this country of access to services of all kinds, from healthcare, education to justice. It has been mentioned and I want to reiterate--- For instance, you might take it that Nairobi County is a well endowed and a gifted county in access to Government services but in reality it is not. When you think of young people, families and mothers who are residents of Kariadudu, Kariobangi or Gatwekera in Kibra Constituency, you will find that their access to the court system is very restricted. It is not

enough for a county like Nairobi to have one High Court division to handle the population and number of cases in Kibra. So, we should make sure that there is a provision to make sure that Nairobi has enough High Court divisions and stations as well as Magistrates' Courts to serve the needs of our citizens. Even as we plead for the courts to be brought closer to the people in places that have never been served, we live in the shadow of power yet we fail to access the Government services that we need.

With those few remarks, I beg to support and I am proud of this House.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Isiolo.

**Hon. (Ms.) T.G. Ali:** Thank you, Hon. Temporary Deputy Speaker. I stand to support this High Court Organization and Administration Bill, 2015. This is a very nice Bill. When I looked at Clause 12, I was very happy because I looked at having a court in each of the counties or constituencies. I come from Isiolo County where we have three sub-counties that are about a distance of 300 kilometres from the county headquarters. They only have one court. Garbatulla is about 300 kilometres from the headquarters and Merti is about 270 kilometres. Most of the time, accessing justice is hard for the rural communities, especially the pastoralist communities, who are not able to travel 300 kilometres to go and report cases of rape, early marriage or defilement. If we have these courts in these respective areas, especially in the sub-counties and the rural pastoralist areas which are hard to reach, that will be the best thing that can ever happen.

Many times, many of these communities who come from these areas feel that they are not part of this country. They think that there is no law and order that can reach them because of the bad state of the roads and the distance to courts. If these courts are provided, these communities will be very happy, in that they will feel that they belong to this country. For the first time, the Government will have recognised that there are communities that need to be given an opportunity to access justice. Having these courts will also promote a feeling of ownership. When our people are taken to court, they think that, that is the end of the world because they believe that it is a foreign institution that is not very kind to them. If we have these courts near them, they will feel that they are part and parcel of the country. Their children will also be employed and they will feel part and parcel of this country. Having these courts will also help us enforce law and order, and have peace in these parts of this country. So, I support the Bill.

I also looked at the reorganisation or the judicial transformation programme that is currently going on. We know there is computerisation in many courts. The transformation and computerisation in most registries in this country will help reduce corruption. We have heard of cases where many files disappear in court. You cannot even get information. So, we need to extend the computerisation programme to all areas of this country, so that people can access justice.

I remember some two years ago, the issue of mobile courts was adopted. I remember my county was one of the beneficiaries. As much as we continue to build more courts, it is important that we also operationalise mobile courts, especially in hard to reach areas. That requires resources. If the Judiciary is given enough money, some of the areas like the hard to reach areas will benefit because mobile courts will be operational. Most times, these mobile courts come to our areas once in a month or sometimes once in two months' time. This should also be enhanced. In areas that are hard to reach, let us have these mobile courts work properly.

Alternative dispute resolution mechanism is very important. Many traditional communities, especially in the rural communities, have a value system which is very strong. This should also be recognised and put as one of the alternative mechanism to ensure that we solve disputes in this country. If alternative dispute resolution mechanisms are properly put in our law

system, it will help many communities. It should also be given resources. Elders should be given an opportunity to help in resolving some of the disputes we have in our counties.

Hon. Temporary Deputy Speaker, I know that the issue of monitoring and evaluation is critical in our courts. I know that the moment we finalise with the structuring and putting in place registries, we will have accountable officers; we will be able to hold officers responsible for things that they do currently. It is important to note that there is a lot of corruption going on in courts. That will come to zero the moment we computerise our courts. I will also suggest that the computerisation programme continues, and we ensure that it also gets to the rest of the country.

I would also want to talk about use of language. I know we use Kiswahili and English in our courts. In some areas you will find that a person from the local community, that is in a particular court is a person who is supposed to be doing translation only. Accessing some parts in court becomes very difficult most of the time. Many of the courts, especially in our pastoralists areas, have staff who are from other parts of the country, including subordinate staff. That is causing a lot of issues in communities. It is important that we also have people from local communities to be part of the court system.

Finally, efficiency and effectiveness of our court system can only be gauged if we ensure that we have proper working structures and systems. I will call upon Parliament to ensure that the judicial system is properly resourced. I remember money was reduced in the last financial year. Resourcing of courts is very critical, especially by the Exchequer. Cutting the budget for the Judiciary will make some of the marginalised areas more marginalised and their human rights infringed on. So, we need to support this, so that justice gets to all parts of the country.

Hon. Temporary Deputy Speaker, I would also want to talk about the last one. It is the issue of disobeying court rulings. I remember that for almost one-and-a-half years we have had people going to court, some to seek injunctions. That has been the saga and many of the operations in some of the counties are becoming very difficult. It is important we know at what point we are going to obey the law and the courts, so that some functions in the counties can go on.

With those few remarks, I support the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang<sup>7</sup>): Member for Mbooni and Member for Awendo, you are next on my queue, but I only have nine minutes left. Are you able to share these nine minutes between the two of you, if you do not mind? Member for Mbooni.

**Hon. Kiso:** Hon. Temporary Deputy Speaker, thank you for giving me this opportunity and I think that time is adequate for the two of us to share. I will just take a few minutes, say three minutes and leave the rest to my colleague.

Hon. Temporary Deputy Speaker, the best thing this country ever received since Independence is devolution. This Bill that I rise to support shows that this country is now moving towards the right direction to ensure that even justice is devolved to the very areas that we are talking of, which are our counties. Some of these areas have been marginalised for quite a long time. They have historically been disadvantaged for various reasons and justice has been administered selectively with regard to regions. There has also been lack of infrastructure; those are the reasons that have contributed to poor delivery of justice in some of these regions.

This Bill says we are going to have subordinate courts within our counties. This will help ease congestion within our main courts. It will also ensure that the cost of accessing justice is also reduced to the local *mwananchi*. It will quite significantly contribute to creation of employment one way or the other.



I find this Bill appropriate and we need to support it. We really must consider the fate of the ordinary *mwananchi* who lives in regions that have been disadvantaged. We need to deliver justice to all persons in the country, especially those who have been unfortunate to access it for various reasons.

Secondly, I must speak about the issue of administration of records, which is a very key thing. In this country so many matters are pending in court simply because the relevant files cannot be traced. Therefore, administration of justice and how it is managed within courts is also a problem. We all know what happened in Maseno University. Assuming that fire had gutted the entire registry of the High Court, what kind of damage would we be experiencing in this country? So, such occurrences can have quite a number of multiplier effects in terms of administration, minimising risks, ensuring that judicial services are effectively and efficiently administered in time. We know that justice delayed is justice denied.

Lastly, I must talk about alternative dispute resolution (ADR) mechanism, which is key and significant. This country is one in which every person believes that they have to run to court when they are really aggrieved. We may not sufficiently be able to satisfy all the judicial needs of all Kenyans. Therefore, we must create some kind of alternative mechanisms, especially on arbitration and how we are supposed to administer justice.

In a nutshell, this Bill has come at the right time. We need to support it, so that we can see effective administration of justice within our country. I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Member for Awendo, I only have some two or three minutes. If you can use those three minutes, that will be very fine.

**Hon. Opiyo:** Thank you, The Temporary Deputy Speaker---

**The Temporary Deputy Speaker** (Hon. Kajwang'): I am sorry. I am sure you must be watching another clock but I am using a digital clock, which is not synchronised to that other one. So, I only have four minutes.

**Hon. Opiyo:** Hon. Temporary Deputy Speaker, I will speak and probably spare some minutes for my colleagues who want to contribute to this very important Bill.

**Hon. Members:** In three minutes!

**Hon. Opiyo:** Hon. Temporary Deputy Speaker, I stand to support this Bill. First, you know very well that access to justice in this country has been a big issue. We have areas that are far flung from courts and access has been difficult. This Bill provides that every county will have at least one division of the High Court. This is a very laudable thing to happen to the people of Kenya. However, I think that may not be enough. With the fullness of time, we shall have to review and probably make courts present in every sub-county owing to the fact that counties, sometimes, have very large jurisdictions. Of course, access does not only imply distance from the courts. The justice system should be affordable.

Hon. Temporary Deputy Speaker, this brings me to say that we must find a way of capacitating the Office of the Ombudsman, so that all Kenyans are able to access legal services. In most of the rural parts of this country, when a right is infringed, somebody will think of many things, including the cost before taking a matter to court. We have been having a challenge in this country of cases dragging on for years on end. When we were speaking about judicial reforms, we had in mind looking at ways in which we can shorten the period within which cases are presided over. I want to add here that the matter that has been included in this Bill, of alternative justice systems, will also go a long way in helping our people to access justice.

Even as we struggle to make courts available in every county, the Judiciary must be alive to the fact that this will involve some cost, and Parliament will always try to avail funds to the Judiciary. Last year, we were treated to absurdities by the courts when we were told that some courts in this country were built using as much as Kshs800 million and some Kshs650million. We must exercise some frugality in managing resources, especially within the Judiciary.

Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you very much.

Member for Lugari, you are on my list but my records state that you spoke on this Bill on 7<sup>th</sup> October 2015 at around 6:28 p.m. for two minutes. You had eight minutes left, which should have been used today but when the Speaker called you, you were not available in the Chamber. According to the Standing Orders, you are unable to reclaim that period of time.

There not being a speaker willing to contribute to this Bill, I now call upon the Mover of the Bill to reply.

**Hon. (Dr.) Shaban:** Thank you, Hon. Temporary Deputy Speaker. I want to take this opportunity to reply and thank all my colleagues for being very eager to enrich the High Court Organisation and Administration Bill of 2015.

It is obvious that Kenyans are crying for justice, and it is obvious that the Government, more so the Judiciary, which is one arm of Government, is willing to make sure that justice is dispensed at the right time.

As we discuss this Bill, reforms are going on in the Judiciary. Once this Bill becomes law, it will enrich the organisation and administration of our high courts.

With those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you. I now order that this Bill appears on the Order Paper of Tuesday for purposes of taking a vote.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, the time being 6.30 p.m., this House stands adjourned until Tuesday, 13<sup>th</sup> October 2015, at 2.30. p.m. It is so ordered.

The House rose at 6.30 p.m.