

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 13<sup>th</sup> October 2015

The House met at 2.30 p.m.

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

PRAYERS

PETITION

### RESETTLEMENT OF SQUATTERS IN MERU COUNTY

**Hon. Speaker:** Hon. Members, please take your seats. This is Petition No.25 of 2015. 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 jointly signed by Mr. Joseph Mugambi and Ms. Ruth Nchurubu, on behalf of 215 members of the Ntirimiti-Subuiga squatters in Meru County. The petitioners claim that they were evicted from their land parcels No.2806/3 Subuiga Bosnia Meru and No.2822/3 Ntimiri Settlement Scheme, where they had been settled by the Government in 1991.

Hon. Members, the petitioners are, therefore, praying that the National Assembly through the Departmental Committee on Lands:-

- (a) inquires into the circumstances under which the squatters were unjustifiably evicted from the land, which they had been allocated by the Government in 1991; and,
- (b) intervenes in the matter of the Ntirimiti-Subuiga squatters, with a view of having 215 homeless families, currently living in deplorable and inhuman conditions, settled on part of the land parcel No.2806/3 that had initially been allocated to them.

Pursuant to the provisions of Standing Order No.227(1), this petition stands committed to the Departmental Committee on Lands for consideration. The Committee is encouraged to engage the National Land Commission (NLC) and the Ministry of Land, Housing and Urban Development with a view to exploring a viable solution to the delicate issues contained in the petition.

Thank you.

I can see Hon. Boniface Gatobu. Do you want to say one or two things on this petition?

**Hon. Kinoti:** Hon. Speaker, I want to thank you sincerely for considering this petition. In fact, Ntirimiti-Subuiga Slum is where I have grown up as a squatter and it is important to mention that there is a wildlife corridor that has been set aside by the Government and has been lying idle for 20 years till now. We really wish as you directed that the Committee on Lands would move with speed and consider that petition and many other livestock-holding land totaling about 20,000 acres in Buuri Constituency that is lying idle whereas squatters are living in very deplorable conditions.

Thank you, Hon. Speaker for your favourable consideration.

**Hon. Speaker:** Yes, Hon. Kajuju.

**Hon. (Ms.) Kajuju:** Thank you, Hon. Speaker. I want to join my colleague, Hon. Gatobu by saying that this is a very important matter that has been brought before the House to deal with historical injustices. We have seen people who have spent their entire lives in court because of matters of land. Meru County has had issues of land disputes and it is unfortunate that the Cabinet Secretary who took over from Charity Ngilu is not ensuring that we get title deeds in Meru County. So, I beseech my brother, the Chair of the Committee on Lands, to ensure that he expedites this petition so that we can settle these people because there are families that have been rendered homeless. They are destitute and they need to be settled because they are also Kenyans. That is my humble plea.

Thank you, Hon. Speaker for that opportunity.

**Hon. Francis Waititu:** Thank you, Hon. Speaker for giving me this chance to contribute on squatters. I support squatters in Meru County. The issue of squatters has been very difficult in this country. Personally, I speak as one of them having been brought up in the Village Market with a group of people who later went to Githurai. If you look at the squatters of today, you will find that they were evicted from coffee farms. If you look at Kiambu County, you will see that it is cosmopolitan. We have different tribes who are squatters. We have the Luo, Luhya and others who are squatters there. I would like the Government to look into the matter of squatters.

We thank the Deputy President because I have seen him handling squatters' matter especially during this time of the *El Nino*. We thank him sincerely because of visiting squatters and trying to remove them from where they are. I have seen cases even in Gatundu North - the Member of Parliament is here with me - where we had very many squatters living in the forest. I support that petition and ask the Government to not only think about Meru but to go round the country and help them. It is not right for Kenya to have squatters very many years after Independence.

I support, Hon. Speaker.

**Hon. Speaker:** Very well, for avoidance of doubt so that when petitions are read out we know what is required of us, our own Standing Order No.226 provides as follows and you better note this:-

“The Speaker may allow comments, observations or clarifications in relation to a petition presented or reported and such total time shall not exceed thirty minutes.”

So, it is comments, observations and clarifications on a petition. We can allow comments to talk generally about the entire country but they will not be relevant to a particular petition. This is just to limit. I can see that Hon. Alex Mwiru, the Chair of the Committee on Lands also wants to comment. It has been referred to your Committee. I wanted to further remind the House that once a petition has been referred to a Committee, Standing Order No.227(2) says that it shall be reported on in not more than 60 days from the time that the prayer would have been read out.

Hon. Mwiru, I know you have quite a number of this kind of things and many other things that you are handling but I am just about to clamp another ban because there are too many petitions and Bills that have not been reported on.

Just before I came here, I saw a petition that was presented here by the Deputy Speaker in June, 2014 and it has not been reported on by the Committee on Agriculture, Livestock and Cooperatives. It becomes necessary that when Committees are not bringing in reports we will have an administrative ban, that they will never be allowed to leave the country because people

must work. This will ensure that when they leave the country they must tell us what is it that they are going to do when they are not bringing their reports to this House. Bring the reports and then you can be allowed to go and do whatever other business you may wish to do in foreign land. We will have to do that. We have a lot of pending work that is not being acted on.

I am aware that the Committee chaired by Hon. Alex Mwiru is dealing with quite a number of Bills which touch on land and which also have got constitutional deadlines and will require to be considered by the other House. However, even the other Committees are also supposed to be working on theirs. We are not seeing reports. So very soon, if you get affected by the ban just know that it is because something you were required to have done has not been done. For some of them I can see that the Committee has not had quorum to adopt reports. A Committee of 29 Members does not have quorum to adopt reports. I also hear that Committees find it difficult to adopt reports in Nairobi and that it becomes easier to adopt reports when they go to the Coast. Let us adopt reports. I am not saying that people should not travel to other parts of the country but, please, when you have to adopt reports, adopt them so that they can be presented. You can, in the meantime, be going to the other places as the House is benefiting from your reports.

Hon. Mwiru, you want to comment on this? I know it is your Committee that is supposed to handle this matter.

**Hon. Mwiru:** Yes, indeed, Hon. Speaker.

Hon. Speaker, I want to commend some of my colleagues who have commented on this particular issue. It is, indeed, not a matter of Subuiga only in Meru County. This Committee is faced with an enormous task in terms of the same subject. As a committee, we are trying to see whether we can bring some legislation on how to handle squatter matters in this country because it is quite an emotive issue. Following your comments, I would like to assure you that I have never had any problem with quorum in my Committee.

I also want to thank your office and that of the Clerk for always supporting this Committee even in such serious issues to make sure that we deliver. On this particular one, we are going to deliver within the stipulated timeframe, in terms of consideration of the petition and bring a report to the House.

**Hon. Speaker:** Next Order!

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Performance Report of the Independent Policing Oversight Authority for the period of January, 2015 to June, 2015 prepared pursuant to Section 30 of the IPOA Act, 2011

The Report of the Auditor-General on the Financial Statements of Chama Cha Uzalendo Party for the year ended 30<sup>th</sup> June, 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for the year ended 30<sup>th</sup> June, 2014 and the Certificate therein in respect of Kuria West, Suna West, Kigumo, Ndaragwa, Othaya, Kieni, Githunguri, Gatundu North, Kinangop, Gichugu, Nyeri Town, Olkalou and Mwea constituencies.

Hon. Speaker, the Reports of the constituencies are important to the individual Members from the respective constituencies. I urge the Hon. Members to have a look at them and see what

is contained therein before their teams are summoned to appear before the Public Accounts Committee (PAC).

**Hon. Speaker:** Is there something else, the Leader of the Majority Party?

**Hon. A.B. Duale:** Hon. Speaker, Hon. Jakoyo Midiwo was wondering about the existence of Chama Cha Uzalendo. We have two Members from that party in this House namely Dr. Munyaka and Eng. Musyoki. Therefore, the party is alive and kicking.

**Hon. Midiwo:** On a point of order, Hon. Speaker.

**Hon. Speaker:** What is out of order?

**Hon. Midiwo:** Hon. Speaker, is Hon. Duale in order to draw your attention to a conversation which never was? It was not even on the HANSARD. Hon. Duale is becoming too notorious. He also alleged that I know of only one political party. I also know of “just another problem”, which they call Jubilee Alliance Party (JAP). Therefore, I know of many political parties.

*(Laughter)*

Hon. Speaker, I thought the Leader of the Majority Party – which is generally a minority – would take the opportunity, as he read out the list of Reports from the constituencies to, at least, tell the anxious Members of this House where our Constituencies Development Fund (CDF) money is.

*(Loud consultation)*

It is his job, as the person representing the voice of Parliament, to do so. We know that there are issues but it is good to know if there is an issue. We want to know where our CDF money is.

Thank you.

**Hon. Speaker:** Hon. Members, it is said that conventional wisdom suggests that experience makes the best teacher but I think it all depends on what type of experience. If one is experienced in making statements when they are seated from some corner, and they want the first timers to think that, that is the way it is done, that will not be taken to be experience. The Member for Kitutu Chache North should be told that, that is not the way it is done; just like Hon. Midiwo wants to raise the issue of the CDF money by asking the Leader of the Majority Party to respond in some way and yet there is the Select Committee on the CDF under the stewardship of somebody who is a Member of this House. That is the person who should respond to the issue raised by Hon. Midiwo.

Next Order!

## NOTICE OF MOTION

### ESTABLISHMENT OF POLICY TO GUARANTEE MINIMUM RETURNS ON AGRICULTURAL PRODUCTS

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

THAT, aware that agriculture is the backbone of the Kenyan economy; further aware that the agricultural sector is required to provide employment to

more than 30 per cent of the citizenry; cognizant of the fact that most of our neighbouring countries are also agriculture-driven economies and that free trade has become more pronounced especially in the East African Region; concerned that the cost of production in our neighbouring countries is reported to be less as compared to the Kenyan cost of production; further concerned that this scenario will lead to a loss of revenue due to importation of these cheaper products; alarmed that the long term impact is detrimental to the economic development of the state, and further noting that there is no specific policy that cushions our farmers against losses caused by weather vagaries such as flood, drought, frost and hailstones which in turn affects free returns; this House resolves that the Government immediately establishes a policy to ensure that minimum return on local crops and animal products are safeguarded and to consider exemption of Value Added Tax (VAT) on farm inputs and other materials used in the production of animal feed and fertilizer.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Member, before we go to the next Order, I want to recognise pupils seated in the Public Gallery from the following institutions: St. Michael School, Makadara Constituency and Ngei PAG Educational Centre, Starehe Constituency. They are welcome to Parliament.

Next Order!

## PERSONAL STATEMENT

### FALSE ALLEGATION BY STAR NEWSPAPER

**Hon. Midiwo:** Thank you, Hon. Speaker. I rise to make the following Personal Statement pursuant to Standing Order No.84.

On page 3 of *The Star* Newspaper today, 13<sup>th</sup> October 2015, in their usual *Corridors of Power* column, it has been reported that the Chairman of Orange Democratic Movement (ODM), Hon. John Mbadi and myself, have been doing business with the National Youth Service (NYS), an allegation which is not true. In fact, they say that word around town is that we have won some tenders at NYS despite our party leader, Hon. Raila Odinga, demanding the sacking of the Cabinet Secretary, Ms. Anne Waiguru for the loss of billions of shillings.

**Hon. Members:** It is not billions!

**Hon. Midiwo:** It is billions. Why are you arguing? Are you the investigators?

**Hon. Speaker:** Hon. Midiwo---

**Hon. Midiwo:** I wish--- I am sorry, Hon. Speaker.

**Hon. Speaker:** Hon. Midiwo, Standing Order No.84 says that there is no debate. This is the problem of the so-called experience.

(Laughter)

Proceed.

**Hon. Midiwo:** I wish to categorically state that I have never done business with the NYS at any given time nor am I currently doing any business with the Government of Kenya. I also wish to say that the story is offensive and is meant to paint me in bad light. The newspaper

should have, at least, as a matter of courtesy, called me to ascertain the facts before publishing the story. I do not practise corruption neither do I believe in it. I will take up the matter if they do not apologise.

Today, my lawyer sent a letter demanding an apology and a correction from *The Star* Newspaper, failure of which I will take them to court.

I thank you.

**Hon. Speaker:** Very well. Hon. Midiwo rose under Standing Order No.84 to make a Personal Statement. There is no debate.

Next Order.

## BILLS

### *Second Readings*

#### THE HIGH COURT ORGANIZATION AND ADMINISTRATION BILL

*(Hon. (Dr.) Shaban on 7.10.2015)*

*(Resumption of Debate interrupted on 8.10.2015)*

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

*(Question put and agreed to)*

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

Hon. Members, another aspect of the Order Paper which I need to draw your attention to is that all businesses which have two asterisks denote that these are Bills with constitutional timelines. That is important so that we understand why we are dealing with these Bills. These are the ones that will require participation of the other House.

Next Order.

#### THE SMALL CLAIMS COURT BILL

**Hon. A.B. Duale:** Hon. Speaker, we have agreed that whatever he wanted to move will not be moved. He wanted to limit the time but I said that it is good opportunity for Members to speak to these Bills so that as many Members as possible get an opportunity because of the numbers.

Hon. Speaker, I beg to move that the Small Claims Court Bill, 2015 be now read a Second Time.

The Small Claims Court Bill, 2015 is ideally meant to give effect to Articles 48 and 169 of the Constitution by establishing small claims courts in order to resolve disputes informally in a less expensive way and very expeditious manner in accordance with the principles of the law and natural justice.

The importance of this law in terms of providing greater access and speedier administration of justice especially to the poor and the marginalised persons cannot be explained better. People go to great pains with regard to how they access justice. The amount of resources used in law has also become a lot and many people are unable to access justice. Majority of Kenyans are unable to access justice because of their economic status. For that matter, the desire to establish small claims court arises from the frustration associated with the traditional court system which is very slow, expensive, complicated and above all too adversarial to provide litigants with the justice that they desire.

The Small Claims Court Bill will deal with the issue of the expensive justice system, the complications that it comes with and the adversarial aspect in terms of giving litigants the justice that they desire.

In line with the Constitution, Clause 3 of this Bill provides for the guiding principles to this court as prescribed under Article 159(2) of the Constitution. This clause proposes the adoption of particular procedures that are fundamentally appropriate in ensuring *inter alia*, a timely disposal of all proceedings before the court using the least expensive method and above all, giving equal opportunity to the access of judicial services.

Clause 4 of this Bill is the one that establishes the Small Claims Court as a subordinate court pursuant to Article 169(1) of the Constitution. Sub-clause 2 of the Bill empowers the Chief Justice as the Chief Executive Officer (CEO) of the Judiciary by a Gazette notice that he will give, to designate any court station as the Small Claims Court with specific geographical jurisdiction. So, the Small Claims Court is not a court that will be there forever. It is a court that under the discretion of the Chief Justice, through a Gazette notice, can be established in a particular geographical jurisdiction.

To ensure effectiveness and in view of the nature of the cases that are expected to be handled by these courts, Clause 5 of this Bill proposes the appointment of an adjudicator. The adjudicator's function is to preside over the proceedings of that court. As such, an adjudicator must be a person who shall be an advocate of the High Court of Kenya with, at least, five years' experience in the legal field. So, once the Chief Justice, through a Gazette notice, establishes the Small Claims Court, this is a court that we expect will deal with small issues and small disputes in villages; the kind of disputes that are always handled by our traditional elders. I am happy that one of the senior elders in this House is a man I respect very much. I want to thank FORD (K) for nominating one of the elders to this House. The many disputes that they used to handle are now being made formal so that poor Kenyans in the villages can access justice in a more formal, speedy and less expensive way.

Clause 6 of the Bill empowers the Judicial Service Commission (JSC), in line with Article 172(1) of the Constitution, to appoint adjudicators, registrars and other officers of the court as may be deemed necessary. Again, the JSC, as the custodian of all the human resource and the financing of the Judiciary, has been given powers. At any time when the Chief Justice realizes the need for this court in a particular geographical area in the country, he has also been given, under Clause 6, powers to recruit the adjudicators, registrars and any other court official. This is in line with the judicial service officers designated by the Chief Justice to act as adjudicators.

Clause 8 of the Bill proposes the qualification of the person to be appointed. I do not want to dwell much on that. Clause 9 talks about the responsibility of the Registrar *inter alia*; what he is supposed to do, the acceptance, transmission, service and the custody of the documents of this court. Clause 15 proposes parties to the proceedings before the court.

The Small Claims Courts in other jurisdictions have demonstrated the benefit which can be derived from simplified procedure. So, the Small Claims Court is not something that is being introduced in this country. It has worked in other jurisdictions. One of the most important fundamental benefits of this court is the simplified procedure. It is intended that the plaintiff will conduct most, if not all of their cases, without a legal representation. So, there is no legal jargon. You will not look for a lawyer and you will not have legal representation. You appear before the adjudicator over a small land dispute in a village between two people, what elders say in their opinion is how that land issue should be handled. So, there are no lawyers here. I am sure many Kenyans will access the Small Claims Court.

Clause 20 of this Bill proposes prohibition of legal representation of the proceedings. So, if you are a lawyer, and I want Hon. Ochieng and other lawyers who are in this House namely Hon. Kajuju and Alice Wahome to hear me--- If you look at Clause 20 of this Bill, you will find that it prohibits the use of legal representation. So, lawyers can go and look for their money in the other courts. When it comes to---

**Hon. (Ms.) Kajuju:** No!

**Hon. A.B. Duale:** Of course, you provide service. Hon. Kajuju is saying “No”. She will have her time. We are not in Meru prayer rally but we are back in the House. In the good rally in Meru, she was the boss but here, we have to follow the Standing Orders. She is my very good friend and she is the last person I want to have an altercation with.

Clause 20 specifically prohibits legal representation. So, lawyers are not allowed in the Small Claims Court. I do not expect an amendment from our colleagues from the legal sector. You can do your business in the Magistrates Court, High Court---

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

**Hon. A.B. Duale:** That is my opinion. You can bring an amendment but I am saying we do not expect it. You can do your business in the Magistrates’ Court, the High Court, the Court of Appeal and in the Supreme Court but in the Small Claims Court, it is a transformation of what the elders were doing. So, Clause 20 says it prohibits the hiring of a lawyer or any legal representation.

**Hon. (Ms.) Kajuju:** *Pro bono* is allowed!

**Hon. A.B. Duale:** *Pro bono* is allowed but we will see it when it comes to the Third Reading.

Clause 21 proposes that small courts shall facilitate the use by parties of indigenous languages and indeed, Kenyan sign language. That is very important. That if you are in Garissa, it will be dealt with using the language of the people of Garissa. So, Hon. Kajuju, you cannot represent somebody in Garissa because you do not speak the language of that area. If it is Narok, you have to look for the elders who speak Kimaasai.

Section 21 says that the parties will use local languages and sign language is allowed. They will have a very simplified procedure in filing of the claim.

Clause 23 recognises the principle of allowing filing of a claim orally to an officer of the court. So, the element of affidavits and those complications are not there. You walk from your house, you come to an officer, he takes your issues and the following morning you are in court. So, there is no payment for affidavits. This is very good and I am sure that I will be the first person to access this court. This court is bringing back the African dignity where there is no money and where the filing is not through affidavits. The jurisdiction of the court should strive to provide simple, inexpensive and above all, speedy means of making a determination of claims brought by litigants.



To this end, the law proposes under Clause 34 that all proceedings before this court to be heard and determined on the same day or on a day-to-day basis. If, for example, Hon. Chris Wamalwa is my neighbour and I sell his two cows, it should not take 50 years for Chris to get his cows. We should go to this Small Claims Court with the elders there and the adjudicator. If it is true that I have taken his cows, I must return them within two days.

Under Clause 34, you have a maximum of three days to finish the case. Many small disputes that happen in our villages and which the lawyers make a lot of money from will now be handled in a less expensive and less tedious manner. For example, for you to hire a lawyer like Ahmednassir Abdulahi, Kanjama, Paul Muite, Hon. Kajuju or Hon. Alice Wahome, you have to go to a bank and borrow money. These are people who are serious. When they represent you, you win the case. If Hon. Kajuju or Hon. Alice Wahome represent you, you are 90 per cent sure that you are going to win. So, you have to spend. However, today we are saying that there is a court which you will neither spend money nor need a lawyer. I am sure my good friend, the Deputy Whip for the Minority Party will contribute in support of this.

Hon. Speaker, the Small Claims Court will have enforcement powers. A judgement is worthless if it cannot be enforced successfully against the judgement data. To this end, a special simplified enforcement procedure has been proposed under Clause 37 of the Bill which is divorced from the normal enforcement procedures used in the normal civil courts in order not to take away the gains that we want to give to the people who access this court.

In view of the fact that this proposal seeks to address a fundamental question of access to justice by every Kenyan despite their situation and status in the society, I am of the opinion that the passage of this law will go a long way in demonstrating the Government's concern for the individual's legal rights as envisaged in the Constitution.

Hon. Speaker, with those many remarks, I ask the Chairman of the Departmental Committee on Justice and Legal Affairs, Hon. Chepkong'a who is a lawyer like many of his colleagues here, to support this Bill. He should tell his colleagues that this is the only court where lawyers are not allowed to attend. So, if it will be in Kibera, please, do not confuse it with Milimani Law Courts because there will be no business there.

I beg to move and ask Hon. Chepkong'a, on a light touch, to Second.

**Hon. Speaker:** Hon. Chepkong'a, I do not know whether the Hon. Leader of the Majority Party wants you to disown your profession.

**Hon. Chepkong'a:** Thank you, Hon. Speaker. I rise to Second. From the outset, I confirm what the Hon. Leader of the Majority Party has stated. There are very many lawyers, including those in this House who have been lobbying me to have the legal profession returned back to the small courts. However, I have resisted that for good reasons. As I second, I want to mention a few things.

First, this is a court that is created pursuant to Article 48 of the Constitution which states:

“The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.”

Secondly, Article 169 of the Constitution creates various courts and confers jurisdiction, functions and powers to these courts that have been created. This includes the Small Claims Court which is a subordinate court as anticipated in the Constitution.

What the Hon. Leader of the Majority Party has mentioned is, indeed, true. This is a very informal court and it has been stripped off technicalities. This is a court that was previously known as the District Magistrates' Court. It was presided by Articled Clerks, that is, people who had not studied law as a profession but who had been an appendage to the legal profession. They

have been clerks that have been assisting lawyers in their offices and have gained experience as a result of the association with lawyers. As a result of that, they have qualified to be known as Articled Clerks. They were given the opportunity to preside over these courts when this country had very few lawyers to preside over these courts. This is because at that time formal education in terms of the legal profession had not taken root in this country.

However, we are graduating over 1,000 lawyers every year from the Kenya School of Law. It has, therefore, become necessary to ensure that we formalise that court to allow for lawyers to sit in those courts. However, we are looking at lawyers who are of three years standing. The proposed Bill proposes that it should be lawyers of, at least, five years standing but the Committee felt that that is too high a threshold in courts that are very informal in their nature. This Bill seeks to change the presiding officer of the court. The presiding officer will not be known as a magistrate; rather he will be called “an adjudicator”. So, we are moving away from formal courts to some informal processes.

This court seeks to limit its pecuniary jurisdiction to a maximum of Kshs100,000. However, the Committee felt that because of inflationary issues, Kshs100,000 is too small a figure. We are proposing to increase that to Kshs200,000 because of the nature of the shilling having depreciated. It is, therefore, intended that the jurisdiction in terms of pecuniary be increased from Kshs100,000 to Kshs200,000.

This court seeks to introduce the Alternative Dispute Resolution (ADR) mechanism in which the adjudicator will request the parties to seek alternative forms of settling their conflict in terms of their claims. So, ADR has now been formalised in this particular legislation. Therefore, it will be incumbent upon the adjudicator to allow the parties in the first instance to see whether they can resolve their issues through ADR before they come to the Small Claims Court if the claim is below Kshs200,000.

As the Leader of the Majority Party has mentioned, the language that will be used will be informal. For example, if all the parties are Kalenjin, they can use the Kalenjin language to prosecute their case and there will be an interpreter to the adjudicator, if the adjudicator does not speak the language of the affected parties. So, this is a very informal court.

As you know, most of these claims arise out of very informal processes. I have known of transactions that are conveyed during the night and where parties give about Kshs200,000 when people are not seeing them. We have seen such transactions taking place. It is so informal that when there is disagreement there is no formality in terms of what was written as a contract. So, you allow the parties to tell us what time of the night it was, how it was exchanged or who may have seen the parties meeting. It is conducted in an informal way. I have seen parties meeting in very informal processes. This court will also allow the administration of oath to that particular ethnic group.

Hon. Speaker, as you know, the problem with Africans is that they do not believe in the Bible or the curse that originates from the Bible. If you swore a witness today with the Bible or the Quran, more likely than not, they will always speak a lie because they do not believe that the Bible has any impact in their lives but, if you asked them to swear by their mother and children, you can be sure you will obtain the truth. So, this court will be administering such kinds of oaths to ensure that people speak the truth and we move away from the formal process where you use the Bible or affirmation. So, we use the paraphernalia that is known in the African culture. If swearing by the sword, we get the sword so that we give it to the person to swear by it so that they can speak nothing but the truth.

The reason why the jurisdiction of lawyers has been ousted in this Bill is to ensure that the parties get the full benefit of ensuring that they prosecute their cases in a language and in such an informal process that they understand themselves. As you know, Hon. Speaker, you are an expert and you have experience in these matters - you had the District Magistrate Courts. Those were very informal courts that were managed more often than not by very old people and they used to take their time. These are the sort of courts we are anticipating in this Small Claims Court.

So, we are proposing a number of amendments that the Committee has sought to ensure that this Bill becomes relevant to the needs of the people. We have sought to reduce the qualifications with respect to the adjudicator. We have also sought to ensure that the provision for interpreters is provided. We have also suggested that a party can come with someone to assist that particular person. If he is worried, he can come with somebody to assist him.

Hon. Speaker, I notice that my time is past and, therefore, I second.

**Hon. Speaker:** Before I propose the Question, allow me to recognise the following pupils seated in the Speaker's Gallery. They are girls from Maseno Girls Boarding Primary School, Kisumu West Constituency, Kisumu County. There are also pupils from Thitha Primary School, Mwingi Central Constituency, Kitui County. You are welcome to Parliament.

*(An Hon. Member walked on the aisle  
with bottles of water)*

The Member who is walking should take his seat so that we can dispense of the business. Do not become a supplier of water.

*(Question proposed)*

**Hon. (Ms.) Wahome:** Thank you, Hon. Speaker. I rise to support this Bill. It is timely and as you have stated earlier, we are meeting the constitutional deadline. The Leader of the Majority Party, while moving this Bill mentioned our names severally together with my learned friend, Hon. Kajuju. I want to confirm that procuring legal services is costly because you are procuring justice but I have a few things to say about the Small Claims Court. When I look at the local limits described in the Act, it is proposed that it will be established by the Chief Justice but I think so far we have physical facilities and once this Bill is passed, the Small Claims Courts can immediately be established.

We are coming up with this pursuant to Article 169 but one of the key areas that Hon. Duale was referring to was the fact that there will be no technicalities. We would like to contribute in terms of lack of technicalities so that we come up with a court that will move away from the normal civil procedure and practise rules that become very technical and have been part and parcel of the delayed processing of our cases in courts. Of course, some claims have been lost because of these technicalities and, therefore, I am happy that we are putting some emphasis on the fact that this court is not being set up to borrow technicalities from our courts.

Hon. Speaker, I have a challenge with section 20. Yes, we are removing the advocates from this court but we are introducing representatives of the claimant. I see mischief and danger in this particular provision where the court can allow duly authorised representatives. We must be very clear that here we are bringing brokers who will start practising as advocates and representatives of the claimant.

*(Loud consultations)*

I would like to move an amendment to remove the authorised representatives unless the claimant is suffering a major challenge. There is a lot of noise in the Chamber but I am saying that in terms of a representative, you will remove the advocates but you will bring other cartels and small advocates in the name of representatives. So we must get away from that. I would like to move an amendment on this.

On pecuniary jurisdiction of Kshs100,000, considering that the adjudicator who is proposed by this Bill is an advocate of five years, we either bring that down or allow enhanced jurisdiction to something like Kshs500,000. It is still a small claim but I am happy that the Chief Justice has been given permission by this Bill to enhance jurisdiction by gazettelement as and when it may become necessary because of possible inflation and time spent. So, I am happy to support this Bill but that is a fundamental area.

In terms of processing claims, in my view, we need to come up with specified forms so that when a claimant arrives in a court there will be clerks who will list down the claims because most of our people have not gone to school. How will they draw the claims? The claimants must be assisted by the court. The forms must be specific and list the manner of the claim or its nature so that as the court proceeds to process, the claim is very clear and the claimant will understand the two.

I am happy to remove advocates from this court and so there is no particular claimant who will have undue advantage over the other.

Hon. Speaker, this court is proposed to be in every sub-county. That is a good thing. I know that maybe there are a few sub-counties that do not have physical facilities but they should not be disadvantaged further because courts can be mobile. Instead of the proposed helicopters, we can facilitate the Judiciary to come up with mobile clinics specifically for purposes of these claims, so that the courts can be nearer to the people. One of the things we are trying to do is to remove the courts from the complainants. If I am going to travel 10, 15, 20 or 30 miles away, I will have to use money for transport. However, the fact that these cases are expected to be concluded within a day or continuously is something we must appreciate. The adjudicator is expected to complete such cases very quickly.

It is good to still remind the Judicial Service Commission – because this court is established by the Chief Justice – that the country is still concerned by the manner in which judgements are being made by our courts. We still have judges presiding over their own cases. They continue to sit without any jurisdiction because their time in the Judiciary has expired. They must forthwith stop practising or administering justice until their cases are determined. I hope I did not digress.

I support the Bill.

**Hon. Speaker:** Hon. Gunga Mwinga.

**Hon. Chea:** Thank you, Hon. Speaker, for this opportunity. I rise to support this Bill.

The passage of this Bill will eventually see access to justice being taken care of. There are a few salient features which come out of this Bill that I wish to point out.

One of the features is the issue of procedure. One of the reasons why litigants lose their cases in court has always been the question of procedure. There have been very many technicalities in the ordinary courts, where you find that because of lack of knowledge, litigants lose their cases.

Under Part IV of this Bill, Small Claims Courts have been encouraged to adopt a simple procedure that all parties are conversant with. If you proceed further to Clause 17 of the Bill, you will see that the Court has been given power to control its own procedure in the management of its affairs. If the question of procedure, as has been addressed in this Bill, is well-taken care of, matters will be sorted out amicably and these other technicalities will not exist.

The most important thing in this Bill is that the adjudicator has been encouraged to ensure that parties arrive at a consensus. Consent is quite important in the determination of matters. When a matter is solved by way of consent, the parties will most likely agree and will go back to their original positions because the acrimonious way of handling matters has not been employed.

Another thing that has come out in this Bill is the issue of the language of the courts. Ordinarily in our courts, we have been using English and Kiswahili. Under the provisions of Clause 21 of the Bill, the Small Claims Courts have been encouraged to employ the use of indigenous languages. I foresee a situation where parties before court in various parts of this country will use their vernacular languages. This is quite important because at times, the use of Kiswahili or English hampers justice. This is a very important development in the practice of law.

The other thing I wish to point out on the question of procedure is the rule of evidence. In this court, it is encouraged that strict rules of evidence should not be employed. The question of a court insisting that the author or maker of a document has to appear before court no longer arises. With the absence of these strict rules of evidence, matters are likely to be sorted out well and justice is likely to be attained.

Another issue is the expeditious disposal of these matters. It is stated in this Bill that any matter that is presented for hearing either has to be concluded on the same day or the hearing has to proceed on a day-to-day basis. As a result of matters not taking too long before they are concluded, we will avoid situations where files disappear from the court registries and cases of evidence getting lost along the way. If matters are going to be heard on a day-to-day basis, justice is likely to be dispensed with very fast and that is what Kenyans want to hear.

In conclusion, I wish to agree with my fellow Members who have contributed to the issue of the adjudicator. Clause 5 of the Bill creates the Office of the Adjudicator. I agree with that but the qualifications, as has been stated, are really high. If an adjudicator must have had five years' experience in the legal field, it may be difficult to get such people. For a small claim of Kshs100,000 and below, and in a situation where some of these claims, as has already been said, used to be handled by people who did not even have knowledge in law, in my view, even an advocate who has practised for two or three years can adequately handle such matters.

With those few remarks, I support the Bill.

**Hon. Speaker:** Joseph M'meruaki.

**Hon. Muthari:** Thank you, Hon. Speaker. I rise to support this Bill.

This Bill is very important as it is meant to fulfil what is required by our Constitution under Articles 48 and 169. The Small Claims Courts are important because their informal nature is going to make justice accessible and inexpensive to the majority of the people as is indicated in this Bill. Justice is difficult for majority of the people. Some people travel long distances. Having Small Claims Courts in every sub-county will make justice accessible to the people.

The fact that the Bill proposes that proceedings go on until a matter before court is determined will ensure that people have fair hearings and speedy determination of issues, so that the affected people can access justice in time.

Since the Small Claims Courts will be dealing with matters of small contracts involving the sale and supply of goods and services, being informal in nature will help. It may involve what is done by the Meru council of elders, namely, the *Njuri Ncheke*, whereby their determination of a matter in most cases is usually fair, leaving people feeling that justice has been done. That is a place where you are not likely to encounter cheating as it happens in the ordinary courts. This will give credence to the Small Claims Courts and it will be good for the majority of Kenyans. In my constituency, someone may have to travel long distances to get justice.

The fact that this Bill does not allow representation by someone of the legal profession will make it easy because the use of smart and cunning lawyers may deny other people justice. Also, the appointment of the officer of the court - the Adjudicator - makes it friendlier.

The other thing is about the adjudicator of courts. This Bill is making it friendlier so that whoever is presiding on the matter is somebody many people will be comfortable with.

This jurisdiction is giving consent to parties. According to Article 18, in the exercise of jurisdiction of this Act, the court may also consent the parties. They can adopt flexible ways of dealing with matter before the court. This is good. As we look at this Bill, it helps in terms of how the matter is handled at that particular level for the common good.

Also, the proceedings of the court, given the time that has been stipulated for determination cases, will make the judicial process cheaper and accessible. This will provide the opportunity for all who are concerned.

With that, Hon. Speaker, I would like to support this Bill which has come at a good time and it fulfills the constitutional requirements that all the citizens can have access to justice fairly. I support.

**Hon. Speaker:** Hon. Richard Makenga.

**Hon. Makenga:** Thank you, Hon. Speaker for giving me this opportunity to contribute to this very important Bill. At the outset, I would like to say that this Bill is timely. It is meant to formalize alternative dispute resolution which has become very expensive. The small courts will be able to address issues that are prohibitive to access to justice for those who cannot afford the high cost of litigation. This Bill will also address issues of compensation where small issues can be resolved in those lower courts.

The introduction of adjudicators in those lower courts will create some kind of employment because the locals will be appointed to serve in the lower courts. They will be given preference. They will use the local language in those courts. I believe the locals will interpret the law very well and people will be served well.

This Bill enhances the exercise of justice for small claimants who have lost a lot of money. In some cases, people spend a lot of money seeking justice. The lower courts will be inexpensive and people will be able to access justice.

I would like to say that the lower courts will be accessible in a devolved system because they will be established in the sub-counties. The lower courts will be established in the sub-counties. People will access justice. They will not travel long distances to district headquarters to access justice.

This Bill also addresses the issue of compensation. In my area, we have cases where *boda boda* riders cause accidents. The passengers end up being injured and go to courts to seek justice. They spend a lot of money; sometimes more than their compensation claims. So, the lower courts will address that. I think those that will be seeking that kind of justice will access it with ease.

Article 15 of this Bill is very relevant. It talks about ordinary persons making the claim from a certain limit of the jurisdiction of the court. This is very relevant. It also talks about the subject matter of the claim which should be within the local limits of jurisdiction. This is very relevant and I find that the common *mwananchi* would be able to access justice with ease.

Finally, I would like to say that the small claims court is a concept that is obviously a low-cost model of justice. This will demystify the court process which is often seen to be for the rich people. So, those courts will serve even the common *mwananchi*. So, the people who will be serving in those lower courts should be identified within the locality. They should be qualified and competent to serve our people with diligence.

**Hon. Speaker:** Hon. John Nakara

**Hon. Nakara:** Thank you, Hon. Speaker for giving me the opportunity to contribute to this Bill. At the outset, I support this Bill. Having the court is another avenue to explore other means to solve problems and dispense justice within a short time. Other courts take long to administer justice to people who have small claims. Because of that, our magistrate and high courts are full of small claims cases. Because of that burden, judges are not performing to the expectations of the citizens. Our courts are, indeed, full of small claims cases. We want to relieve the high court and magistrates' courts from dealing with small claims cases so that they can handle bigger cases. The small claims cases need to be handled by the small claims court.

The removal of legal representation in that court is a relief to the people who have no money. Getting justice in this country is very expensive. The people who are poor and cannot afford legal expenses cannot get justice in this country, let alone get closer to justice because they have no money to engage an expert in law or an advocate. This is a relief, especially to the poor people. The small claims court gives everybody a room to represent themselves and argue their case before the adjudicator to receive justice.

Hon. Speaker, our prisons and jails are full of people who have been jailed because of small claims cases. The normal capacity of our prisons and jails has been over-stretched. That is because of the presence of people who are jailed for small claims cases. They could have solved those problems in a short time and then go back home after understanding each other. However, because of lack of small claims court, everybody takes their case to the high court or the magistrates' court. Therefore, people are filling our prisons just because of small claims.

Hon. Speaker, I want to agree with the hon. Member who has said that the qualifications given for the adjudicator to administer those courts are very high in terms of experience - five years are too many. The courts should consider that when they are recruiting the adjudicators, they must have some basic understanding of the law of the land. Most of those small claims are within the society and the locality. Because of that, the adjudicator must have some knowledge or understanding of the locality. I do not want to encourage tribalism, but an adjudicator of the court must have familiarization of the locality in order to administer justice the right way.

With regard to language, as Hon. (Ms.) Wahome has said, sign language is very important. There are people in this country who are not getting justice because of language. If we could get people who are going to interpret the cases in those courts, then the deaf and the dumb can get justice. There will be somebody to interpret the spoken language into sign language for them to access justice. That would be very encouraging. Using the language of the locality is very encouraging because some people lose their cases because they do not understand the legal language. When we use the local language, that particular person can respond and even argue with an advocate because he understands the language that is used in the court.

Hon. Speaker, with regard to partnerships in businesses, I know that some people have lost their properties and money because of lack of arbitration. An adjudicator would arbitrate the case and make the parties in dispute understand each other and continue with their businesses. However, because there are no arbitrators, many businesses are being broken into and many partners lose their money or capital. Having the small claims court in a local area can help people who are doing businesses to understand each other whenever there is a problem between them.

With those few remarks, I stand to support.

**Hon. Speaker:** Hon. Gideon Ochanda.

**Hon. Ogolla:** Thank you, Hon. Speaker. Where we stand today in terms of the judicial processes, one of the main problems we have is the whole issue of access to the courts. When we talk about a court, many Kenyans see jails straightaway. They do not look at a court as a process or a place where they can adjudicate their matters. What they see is a case that has been pre-determined and so, when a matter goes to court, that means jail straightaway and nothing else.

This Bill comes at a time when we want to recognize the gains that the new Constitution has brought out in this Country. The Constitution is very clear in terms of making sure that access to justice is made simple and procedures and technicalities are reduced in a manner that every Kenyan is at a place that can handle their matters whenever they have any dispute any time. I want to believe that this Bill is going to address that. This Bill also brings in a lot of informal arrangements in terms of handling issues to the extent that it is putting aside issues like the strict evidential arrangement in court; and giving the Chief Justice (CJ) the space to introduce procedures like the use of telephone. This is a good way to go in terms of accessing justice.

With regard to the whole issue of non-judicial approaches to disputes, many times people resort to different ways; either in terms of taking the law into their hands because they cannot access the courts, or trying to deal in arrangements that are not judicial. Many people have been losing their lives because of little disputes which I want to believe those courts are going to handle in good time. If you let adopt issues of simple procedures, it will help. The lock-jam that we have in courts is caused by cases that are fairly small. If you compare this to how we look at our development economics, a lot of contribution in terms of our economy is from very small peasant farmers or peasant dealers of different things. When they are put cumulatively together, they contribute a lot to this country. This is exactly where our courts find themselves in. There are too many small cases that when they are cumulatively put together, they cause the lock-jam in terms of the traffic of cases in courts. I want to believe that this piece of legislation is going to address that and help us move in terms of speed that matters take in courts. Many a times, we have seen very simple matters take more than two years or five years in court. That has really been unfair to Kenyans.

In a similar manner, people end up in jails out of small issues that could have been easily sorted out in a very different way. As we look at this, from my side, I want to believe that there are a lot of issues in the Bill that will have to be amended. One is that when we have made the court to be as simple as it is portrayed in the Bill, the next thing is to get it out of the precincts of the normal courts the way we know them. For example, many of our people do not want to access the normal court houses because of some of the things that I have mentioned. But if we locate them at the sub-county levels, sometimes, it is even better that we get them completely out of the precincts of the normal judicial court areas or court premises such that they operate like the probation offices or the children's offices that are handling a lot more issues that could be ending in courts, but are not.



Hon. Speaker, the other thing that is important to look at is the whole issue of removing legal representation and replacing it with an un-described representation. This is not very nice. The best that we can talk about here is either we move to the next of kin or say no representative at all; such that the courts are accessible and are very direct the way the intention is. So, the whole issue of representation, in my view, does not make a lot of sense. Again, if we are not careful, it is going to open doors to quacks that have been operating as lawyers when they are not.

Another thing that is important and that we need to look at here is this: When we talk about small, how small is small? This is something that also needs to be looked at very seriously because as we look at the magistrate's courts, the simplest or the level of cases in terms of monies that are supposed to be involved, we see the magistrate's courts get up to the level of Kshs3 million. So, in as much as the Chair of the Departmental Committee on Justice and Legal Affairs was talking about Kshs100,000, it needs to be enhanced to capture a bigger bracket of a bigger population that is really suffering because the alternative ways of how they can settle their disputes are not very clear.

I support the Bill with amendments. Thank you.

**Hon. Speaker:** Hon. Joseph Kahangara.

**Hon. Kahangara:** Thank you, Hon. Speaker for giving me this opportunity to support this Bill. We are all in agreement that justice has been denied to very many ordinary Kenyans for various reasons. One of the reasons is that the process has been very expensive. With the reforms that we are now seeing in the Judiciary, the introduction of the small claims courts will bring some relief to the ordinary Kenyans. Justice is going to be dispensed very fast and, of course, it is not going to be very expensive.

The area I am interested in is where we are saying that Kenyans can seek redress in the small claims courts because we have seen situations where police officers have been taking advantage when our people do not know where they are supposed to go and report some matters. Officers have been taking Kenyans to courts with all sorts of charges obtaining and those kinds of things. But we can now see an opportunity where Kenyans can go to court. Where the Bill says that the courts are going to be established mainly in all sub-counties, it means that our people in the rural areas will be able to access the same in their areas without travelling long distances.

The courts are going to have a simplified way of filing. It can, sometimes, even be oral and in the language that is being used. The languages that are used in courts normally are not only out of reach in terms of understanding by the ordinary Kenyans, but even by learned people who are not lawyers. They do not understand them. So, when we say that even the local language can be used in trying to solve those matters, it means that our people will now have an opportunity of seeking redress. Those matters are going to be handled very fast because they can be finished within a day. Ordinarily, we have seen cases taking even up to 10 years in courts. But when you say that in the small claims courts matters are going to be sorted out within a day or within the shortest time possible, it means that justice will no longer be denied to our people.

There is the issue of legal representation by lawyers. I support the idea considering that many Kenyans cannot afford to pay lawyers. But I also agree with Hon. Alice Wahome that, that may remove lawyers and introduce brokers because there is no proper description of the representation that we are talking about. In that case, any amendment brought to that effect is something we will support.

I am also of the view that it is important to increase the pecuniary jurisdiction of the court from Kshs100,000 to, probably, something like Kshs500,000. That is because there are many matters that Kenyans will be seeking redress on, and which will be beyond Kshs100,000.

When we say that this particular court is going to deal with persons and not companies, it means that we will have opportunities of having matters settled quite fast without interference, and without other cases coming up here and there and without the many adjournments that we have seen in many courts.

I am in support of this particular Bill because I believe it is an opportunity for Kenyans to seek justice or redress where they have not been able to do that. With that, I support the Bill. Thank you.

**Hon. Speaker:** Hon. Ibrahim Saney.

**Hon. Saney:** Thank you, Hon. Speaker. It is a constitutional requirement that the State shall ensure access to justice for all Kenyans. Should any fee be required, it should not be prohibitive and so high to the extent that it will impede the dispensation of justice. The establishment of the small claims courts will be the most appropriate way of ensuring that, that constitutional requirement is met especially for marginalized areas - those Government forsaken parts of this country where courts do not really exist.

The idea of small claims courts is not new. It was first mooted in 2007 by the former President of this country, having realized that many Kenyans go through a very tedious process and hustle around to get justice on petty cases. I believe this Bill, whose intent and purpose is mostly to ensure that claims are adjudicated informally, inexpensively and according to established principles of law and natural justice, will ensure that Kenyans access justice in a very cheap way.

This Bill will further ensure that the Consumer Protection Act of 2012 is enforced. So, it will help to complement that Act and we will realise more benefits than what it espouses by taking courts closer to rural communities.

With regard to the pecuniary jurisdiction of the court, I believe that the requirement that its mandate is limited to only Kshs100,000 is a bit on the lower side, especially with the knowledge that there are so many cases that require around Kshs1 million. It is no longer difficult getting Kshs1 million these days. I would prefer or suggest that the pecuniary jurisdiction of that court be taken slightly to near Kshs1 million, if not Kshs500,000. I believe Kshs100,000 will be so much. In as much as those courts will be required to clear the backlog in our Judiciary, Kshs100,000 is very little. The court will handle many cases in a very short time.

**Hon. Speaker:** Hon. Saney, I thought the title of the court is small claims courts and it has provision that the Chief Justice--- It is always fair that you read the entire Bill. The Chief Justice has jurisdiction and discretion to increase the jurisdiction of any specific adjudicator. So, even as you contribute, please, do it from a position of information and knowledge.

**Hon. Saney:** I stand guided, Hon. Speaker. The fact is that, for the first time, we will have adjudicators handling cases in the small claims courts instead of magistrates and judges. That will, no doubt, clear the backlog that we have in our Judiciary. I am also impressed that those courts will uphold the principle of expeditious disposal of cases. With the decentralization of those courts to the sub-county level, I believe we will have fewer cases in a station and people will get justice as quickly as possible.

One other thing that further impresses me is the fact that there is an elaborate dispute resolution mechanism. I also like the fact that strict rules of evidence will not be so much binding and cases will be handled in a very informal manner. This being a subordinate court, people will

interact informally and they will be able to reconcile and sort out most of their cases. The use of local languages is also a good thing. It is a sign that Kenya is a diverse community. We will be able to show-case our diversity by using our local languages.

That aside, in as much as I appreciate the extent to which we want to decentralise the Judiciary from Nairobi to the sub-county level and further to divisions and other administrative units, the biggest challenge facing this country is the interpretation of the Constitution. We have had issues where the courts have interfered with the other arms of the Government. The Judiciary, sometimes, interferes with the role of Parliament. We are not able to tell the mandate of the Senate as a House of representation. Our Senate has replicated the Committees in the National Assembly. The Senate Committees are doing duties that are supposed to be done by the National Assembly. The Senate has 28 Committees just like the National Assembly. They are probing Kenya Airways (KQ) and they have been dealing with Westgate matters. I believe it is time the Constitution is interpreted very well so as to give every institution its rightful mandate.

With those few remarks, I support the Bill.

**Hon. Speaker:** Hon. Cyprian Iringo.

**Hon. Kubai Iringo:** Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Bill. At the outset, I appreciate the work that the Leader of the Majority Party is doing by trying to push these constitutional Bills for which we sought extension. We should struggle to finalise these Bills before the short extension that was given by the National Assembly expires.

I support this Bill because it covers a lot of issues. It promotes precise and expeditious resolution of small cases. The number of cases in Kenya, whether small or big, is so high compared to the number of courts in the country. Given the limited number of courts and the strict jurisdiction always practised in the courts, it becomes very difficult for some people, especially those who are not versed in court procedures, to get justice within the right time. Some of them do not understand court judgments because they do not follow what happens in court. Therefore, those courts will save litigants time and costs because we shall have more courts in the sub-counties.

The provisions of the Bill are quite flexible to the extent that there is room for the CJ to look at each individual's small case on its own merit. An adjudicator will be given either a number of cases or a single case to handle on its own merits. Litigants in those courts will feel satisfied because there is no limitation on language. In other courts, illiterate people or people with impaired hearing do not understand some things. They walk out and ask what was said in the court. This Bill addresses the challenge of language. The language to be used in those courts will be a language understandable to the adjudicator, court officers, respondents and litigants. That flexibility is very good.

Secondly, there is the provision that the courts will be mobile. The courts can be taken nearer to the people. To move the adjudicator and his team to the village where litigants are might be cheap than bringing a whole clan or so many people to the courts. Therefore, we need to provide that the CJ will have the jurisdiction to decide where each case will be listened to instead of designating a particular building where all the litigants will be going. The court can be flexible like it is these days where judges or magistrates drive all the way to the prisons for case mentions, instead of transporting all the prisoners to the law courts. That really saves on time and costs.

On the issue of the qualifications of an adjudicator, I agree that an adjudicator must be somebody who is learned. However, the adjudicator should be a person of integrity and well

versed in the community's problems. That is because small cases will always arise between people of the same community, village or clan or between relatives. Therefore, we need an adjudicator who is versed in the issues which affect a particular people so that he has some background information which cannot be measured by the level of education, but by the level of understanding of that community. I feel five years' experience is too much to ask of an adjudicator. We can have an adjudicator with one or two years' experience in the practise of law, but has the background of a community, which is very useful in addressing cases.

We have removed so many stringent rules like proof of innocence or total proof of a litigant's claim. Filing a claim orally is welcome because there are people who do not know how to write. Such people can narrate their cases orally. They can say how they are aggrieved and how they would want their cases handled. A court officer will write the case down. This will become cheap. It will save litigants from paying a lot of money to advocates. It will make it easy for a litigant to follow his case. Because of the limitation of having cases submitted orally or being written by somebody else, we need an adjudicator and officers of high moral integrity who are ready to write exactly what is said or to follow what has already been said.

There is the use of sign language. It is quite acceptable because we have so many people who are not able to speak and just know sign language. Therefore, for their cases to be done to their satisfaction, they need somebody who can articulate sign language properly to explain exactly the case and the judgement which can be appreciated by the complainant.

Hon. Speaker, Clause 29 of the Bill says that proceedings before the court can be conducted by telephone, video tape or any other electronic means. This is a bit tricky because you can prosecute your case on telephone or video tape when nobody sees who talks. We might be going the wrong way. Clause 29 should be looked into critically so that we do not go the wrong direction where somebody will sit in Nairobi and address a court somewhere in the village and people do not know if that is the person addressing the court. I feel that needs to be amended.

There is the issue of swearing and it is quite tricky. We need a window. There are communities whereby, if you swear by your fathers, clansmen or your namesake, they find it more binding than swearing by the Bible. There are people who swear by the Bible in courts and when they sit down, they say that the Bible belongs to the white man. They believe in the traditional way of swearing. The manner in which we swear in the small claims courts must also be limited to the traditional ways of the people.

I can see my time is up and so, I will say that this Bill will go a long way to ease congestion in our courts and give justice within the shortest time possible. It will come up with answers to questions and issues in a more applicable way; which will be satisfactory and acceptable to our communities who are not well versed with the court procedures in our current situation.

Thank you, Hon. Speaker. I support.

**Hon. Speaker:** I wish to recognise and welcome to Parliament the Young Women Leaders from Kwale County sitting in the Public Gallery. *Karibuni Bunge la Taifa*.

Let us have Hon. Chrisantus Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Speaker. I rise to support this Bill. Indeed, this is a very critical Bill because of the constitutional time-frame and also pursuant to Articles 48 and 169 of the Constitution. It is the responsibility of the State to ensure that justice is accessed in a reasonable manner. One of the critical issues about this Bill is about the issue of representation. We support that we do not want representation in this Bill. If it comes at the Committee of the

whole House stage, we are going to oppose it because it is one way of increasing the cost of access to justice. If we are going to allow this, we are going to have issues. It is actually going to negate the principle of those courts.

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

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

Hon. Temporary Deputy Speaker, the other issue is that of expediting the process. We are told that within a maximum of three days, the matter should have been determined or if possible, it should even be determined within the very day. We know very many cases. We have heard people who have gone to court and it take years or months for their cases to be resolved and yet, they are small issues that do not actually need to take that long time.

Another critical issue which we should look at when we move to the Committee of the whole House is that of Kshs100,000. It can also be settled in form of goats. An example is the pastoralist communities. It does not need to be in form of cash. We will have to give an alternative or an equivalent of the claim. It does not need to be in cash terms because if somebody has animals like goats or cows that he can give, he does not have to go to the market to look for someone to buy so that he can pay the claim in terms of cash. That can be like in the traditional days when claims were being settled using crops or animals that the people had. I can see Hon. (Ms.) Soipan is happy because in the case of the Maasai community, they will not have to go to the market.

We do not need an affidavit. Currently, you have to get an affidavit and that increases the cost. So, if it can be recorded orally, it is going to expedite the time that will be used for a determination to be made. It is going to be quicker and the cost implication is going to be low.

There is also the issue of the local language. This is very good. If you come to the Luhya community, we have elders who understand the language very well. They are going to get jobs in interpretation because we are talking about the local language. The fact that the local language is going to be accepted means you will have to get a local person to interpret. So, that again is going to help us in expediting the process.

This Bill also has a provision where people are given an opportunity to settle disputes. Currently, there is the issue of consent. Registering consent in terms of settlement takes a lot of time but, in this case, the process is expedited. You finish within a day or a maximum of three days and the issue is sorted out.

On the issue of distribution, the proposal is that those small claims courts must be established in every sub-county. A sub-county is an equivalent of a constituency. I am trying to imagine. I am told that my friend Hon. Chachu Ganya's constituency is big like the western region. If, indeed, that is true, there is a big challenge especially in those areas which are marginalised or are sparsely populated. We have to move from a sub-county to a lower level like a location where the chief is. Again, we will have to make a provision for a mobile court within the constituencies. One day, they can be in a certain ward and then move to another ward.

I really like this Bill and I know my people of Kiminini Constituency are going to be very happy. Majority of the disputes that we have in the grassroots fall under the jurisdiction of those small claims courts. So, I thank the Leader of the Majority Party for moving with speed to make sure that this Bill is debated. We have land boundary disputes. They are very common in the

constituencies we represent. We have issues to do with dowry negotiations and adultery. You realise that those courts have been there since the old days when elders were used to sort out the issues. We have heard that from our brothers from Meru - *the Njuri Ncheke*. In the Luhya community, we have the Luhya Council of Elders - and I am seated next to the Chairman. So, when those people come in, they will move with speed and resolve those issues. It is said that justice delayed is justice denied. With this Bill coming into practise, it is going to help the poor people who cannot access justice.

Hon. Temporary Deputy Speaker, there is the issue of appointment of an adjudicator. In the provision, it says that an adjudicator must be an advocate of the high court with legal experience of five years. When we move to the Committee of the whole House, I am going to bring an amendment to reduce that time-frame. You cannot say that somebody must be an advocate and give the requirement of legal experience of five years. This is not acceptable. When you look at the amount of money we are talking about of Kshs100,000, at least, so long as somebody has qualified from the law school and is an advocate of the high court, he should be allowed immediately to be appointed as an adjudicator. In any case, you have done internship. So, we do not need those five years. Again, in the spirit of employment for the youth, we do not want experience. Once you leave law school, you should be allowed to be appointed as an adjudicator. So, when we move to the Committee of the whole House, I will bring an amendment to the provision for the appointment of the registrar. It says that the registrar must be a qualified advocate of the high court and must have three years of experience. We do not need the requirement of the three years. We are going to bring more amendments so that so that once you have cleared the Kenya School of Law, you can simply be appointed as a registrar.

On the issue of the pecuniary jurisdiction of Kshs100,000, many of my colleagues here have talked of increasing it. For now, let us leave it at Kshs100,000, see how the cases are going to be and then afterwards, we can bring an amendment. After all, we are even told that the Chief Justice can exercise discretion. So, we do not need to increase that amount for now. Let it be Kshs100,000. Let us not move to another level and, instead, let us see how it moves on. If there will be need, then based on that empirical study, we can increase it.

I have talked about the issue of accessibility and scope. We want to look for a way of incorporating the elders. I have gone through this Bill and I need some guidance with regard to any clause which talks about the elders. That is because some time back, I heard the Chief Justice say that we have some petty claims which the councils of elders in our homes can sort out. I am talking about issues such as dowry and marriage as a whole. We need to see how to incorporate the elders because we know very well from the traditional days that disputes were being sorted out by the elders. However, in this Bill, I have not seen any provision where we can do that integration based on what the Chief Justice had mentioned earlier.

I request my honourable colleagues to support this Bill. We should move with speed in order to achieve our target before the lapse of the one-year extension that we sought.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member for Chuka/Igambang'ombe, Hon. Onesmus Njuki.

**Hon. Njuki:** Thank you, Hon. Temporary Deputy Speaker, especially for getting the pronunciation of Chuka/Igambang'ombe right. Thank you for giving me the opportunity to contribute to this Bill which has a constitutional deadline. It is one of the Bills whose deadline we extended before we went for recess.

In this country, justice is a very elusive thing to most of the Kenyans. One, it is because of the cost. Two, it is because of accessibility either in terms of physical distances or congestion.

I like the title of this Bill - The Small Claims Court Bill. Our courts are congested with issues that can easily be sorted without having to go to very big courts. They take very many years to be resolved because of the kind of the judicial system we have. I come from a county that is made up of three constituencies which are very expansive, but they only have two courts. In that case and most of the time, our people normally end up going to neighbouring counties for justice or to attend courts. In a rural set up, most people do not speak fluently or do not understand Kiswahili and English. Some who understand feel that it may be complicated for them and they will, therefore, not get justice. You can imagine when you go to a court which is in a different county and whose people speak a different language that is more or less related to yours. It is assumed that the interpreter who is there will understand your language. In most cases, we normally have mis-interpretations during those interpretations. Therefore, justice is usually not done.

Hon. Temporary Deputy Speaker, one of the things that the Small Claims Court Bill is going to do is to establish the courts in every sub-county. That could translate to every constituency. We are going to decongest those courts so that we can have cases being heard and determined within a very short time. We can get justice delivered in good time and avoid cases that drag on for a long time. Sometimes, the victims can even die without justice being delivered. Therefore, any *mwananchi* or local person will actually fear being taken to court. What happens in that case? Because of the fear of the court, they end up having their rights violated because they have the phobia of going to court. That is not a human right. So, this Bill will go a long way in ensuring that the Constitution we voted for in line with human rights is going to be observed. It is going to play a very big role in bettering the lives of our people and improving the quality of their lifestyle.

Then there is the issue of language. I have heard so many people talk about language. I want to echo the words of one of my friends who said that some words in vernacular, sometimes, do not mean the same thing. They do not have actual interpretations in the foreign languages like Kiswahili and English. The fact that those courts are going to allow use of local vernacular language even by the court clerks is going to help so much in ensuring that we are very close to having the right interpretations, especially because of the language barrier that exists within a community. Language evolves just like the community evolves. Today, if a woman or a man of the 1990s speaks their native language to a person of 10, 15 or 18 years, they may not understand what is being said. They may be using vocabularies that may not be conceptualized by the young people. Therefore, having an interpreter who has mastered the local language and especially one who has taken time to learn the culture will actually help in ensuring that the language no longer becomes a barrier in the delivery of justice in those courts.

Clause 34 talks about the speed of delivery of justice. I like the fact that the case can be heard and determined within the same day. We are aware that there are cases which have lasted for so many years in this country. Most of the time, justice is normally delivered when it is already too late. You get an award when you cannot utilize it. You get an award when some of the people who were in that case have died. Sometimes, that justice is even lost when you are old and it gives you the shock and you die. The fact that a maximum period of three days is what is given by the establishment of those courts is a very good thing for justice to Kenyans in this country.

As it is in the community, we have many kangaroo courts. They are kangaroo by the fact that they are not recognized by the Constitution. Some of them came up as a result of cultural and religious diversity. Pastors have become judges; reverends have sometimes played the role of the magistrates and determined very sensitive cases; especially cases to do with marital

problems between couples. This is putting the work of giving legal justice to people who are not trained because they just listen and use their wisdom. In this case and with the establishment of those courts, we are going to have justice being delivered by people who have been trained, have been in the legal systems, understand the law and have done law. We will definitely expect to have better services to our people.

I have heard about the case of the use of technology – Clause 29. I have heard my brother, the Member for Igembe Central opposing it. Hon. Temporary Deputy Speaker, technology is an idea that is unstoppable at the moment. We used to have voice on mobile phones. Later, we got into texts. Today, I can speak to you when you are in New York and I can see you. One of the reasons why corruption is rampant in our courts is because of the time wasted by the people who should be productive in the other areas in the society. They queue, attend and listen to the proceedings of the courts as they wait for their cases to be determined. That is what makes them feel they should just bribe and avoid going to courts. If I can spend, say, two days in a court that would be conducting the court session from where I work, why would I not think of getting out through an easy exit? With the technology that is there today, there is no way I can mistake Hon. Olago if I speak to him from Kisumu on a video call and yet, I can see him. The parties that are present will be able to see and say: “Yes, I am not just speaking to a voice and the photo or image, but I can see there is the image of the person who wronged me.”

The idea is not one’s presence in court; the idea is being able to listen, argue out a case and arrive at a conclusion after adducing the relevant evidence. Therefore, it is a very good thing. It is only that we must be careful because, sometimes, technology can be corrupted. That is why the system that is going to be put in place has to have appropriate technical support to ensure that technology is not misused in a particular case. Of course, those being Government established courts; we expect the technology that is currently available – like the Fibre Optic Cable and 4G for video conferencing – to be availed for use in courts across the country. As the courts get that technology, even the common man will benefit from that delivery in the neighbourhood.

With those few remarks, I support the Bill, hoping that we will pass it in the next stage so that we can have the proposed courts as soon as possible.

**The Temporary Deputy Speaker** (Hon. (Ms.) Maul): Next on my request list is the Member for Embakasi West, Hon. George Theuri.

**Hon. Theuri:** Thank you, Hon. Temporary Deputy Speaker. I stand to support this Bill.

It is high time we decongested our courts. Some of the cases can be resolved in the small claims courts. One of the biggest challenges the courts have is the numerous number of cases that need to be expedited. For the small claims courts, justice will be faster. I believe that the small claim courts will be keen to save Kenyans the hustle of tedious legal processes for minor cases that can be dispensed of easily and cheaply. They will also resolve disputes informally, cost effectively and expeditiously in accordance with the principles of law and justice.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. James Nyikal!

**Hon. (Prof.) Nyikal:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity.

I am quite happy that, at long last, we are getting our court systems to work, assuming, of course, that when we pass this Bill into law, it will be implemented. The summary of the small claims court law is basically access. Physical access has been a problem to many of our people;



the courts being far away from them. Lack of finance has also made many of our people miss justice. Justice has eluded them because they cannot afford it.

The other aspect is flexibility. Throughout the Bill, you find a lot of areas of flexibility that makes it much easier for justice to be administered. Simplicity and doing away with technicalities will make justice accessible. Those of us who are well informed abhor going to court basically because of the technical issues, the time limits and the processes involved. This Bill seems to have taken care of all those aspects.

Finally, it is also extremely friendly. Therefore, this Bill brings out what the Constitution intended in Article 48 when it says that the State will ensure access and even look at the issue of the expenses that are involved.

This Bill addresses the majority of our people who cannot access justice. In many instances, people in the rural areas let issues pass because the courts are located too far from where they live and, therefore, too expensive to pursue justice. In this case, the principles that are involved are extremely important: Timely disposal of cases, equal opportunity of access, fairness and, more particularly, simplicity of procedure. Those are extremely important principles.

Many of my colleagues have argued that the requirements for one to be appointed as an adjudicator are too strict. In my view, when you forego a lot of technicalities and make matters simpler, you require people who are extremely experienced in any profession. We need people with a lot of experience and good judgement – people who will understand the intricacies that are involved. Therefore, I do not find any problem with the requirements that have been indicated. In any case, it is indicated that the adjudicator can be a part time or full time employee, which means that we will be able to access adjudicators from one court or the other. I like this Bill because it provides for records and registries and proper administration of the whole process, so that the envisaged simplicity, easy access and low cost of justice does not, in any way, compromise the quality of justice.

Part III of the Bill is on jurisdiction, which will be cascaded to the county level. I look forward to my sub-county of Seme having a court in Kombewa to deal with the issues affecting people on their everyday lives. In the areas of jurisdiction, supplies of goods are what people fight about in the rural areas. They fight over small contracts, exchange of monies and personal injuries – which would, otherwise, require that people fill P3 Forms and embark on a long process with financial implications in making claims. So, this provision is very important.

The limit of Ksh100,000 is acceptable, particularly the provision that the Chief Justice can actually advise. Importantly, under Clause13, the small claims courts have been protected. Therefore, once processes are before it, nobody can go to a higher court until those processes are completed. This is to ensure that the work of the small claims courts is not frustrated. There is the likelihood of such tendencies to emerge, particularly in favour of those who can afford expensive cases.

On the definition of who should benefit from those courts, it has to be a resident of the local area. The incidents need to have taken place in the local place. Therefore, again, I find this acceptable. Who really makes the claim? We do not want complex cases where people turn themselves into corporate entities and you have to unveil them to know who is behind the corporate activity. In this case, the complainants are simply a natural person who will have their claims. In case of them having problems explaining themselves, we have provided for representatives - although it has been claimed that the representative needs to be defined. I agree that it is extremely important that those who cannot express themselves properly should have justice through representatives.

The processes have also been made quite flexible. The court shall have control over its procedures, but within the law. Even where procedures take place, I find it extremely flexible. The provision for alternative dispute is probably the most important part of this Bill because the procedures that have been provided allow for utilization of alternative processes in a structured manner and with good records so that you can use council elders, but put the proceedings on record. Orders will be made according to the court, and they will be respected.

Clause 20 talks about bad lawyers. What people fear most is the adversarial nature of the court processes, where lawyers go for each other's necks, pin down innocent-looking people and make them look foolish in front of the whole crowd. We must protect our people from such experiences. Therefore, I support this particular provision. In terms of the language of use, people need not be afraid that when they go to court, they will need somebody to help them. One can speak in any language, including sign language.

The time to be taken in the whole law process has been shortened. You can use technology. I am not afraid that technology can be abused. There are enough protection measures. We have enough cyber space laws that can protect us. It allows for cases with similar claims to be consolidated. So, in the rural areas, you may find that an incident has occurred and so many people are involved. Now, you will not have a whole village standing with you in the process. So, what is required is that you consolidate them and get a representative claim.

I was concerned about the execution of the decrees that come. If you have this flexible process, then what about the decrees? Shall we get into a situation where people take those courts for granted? However, the Bill gives powers for execution of decrees and review of those decrees. This is so that those who think they can go to that simple court and get free are liable to fines or imprisonment if they abuse the process of court.

If we make amendments, pass and implement this law, the fear that currently exists in people for courts will go away. People will stop feeling that the courts are not for them.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Let us have the Hon. Member for Westlands, Hon. Timothy Wanyonyi.

**Hon. Wetangula:** Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute to this Bill. At the outset, I would like to say that this Bill is very progressive. First, I wish to address myself to Clause 34. This is a very beautiful draft. Clause 34 talks about having proceedings done and ended on the same day or, at most, three days. This will give justice to the people who need speedy adjudication of local issues. We are now realizing that justice has been denied to the bulk of our population because it was not accessible.

The other thing is about having court proceedings conducted in the local language within the local jurisdiction. This is very progressive because it will allow litigants to go to court and present their cases without fear. They can present their cases in the language they understand very well. In court, there is a stage where a magistrate asks the accused to give his mitigation remarks. You will find the clerks simply asking, "Malilio?" The interpretation of that is not very accurate and so the accused is not able to understand what is going on.

The other is about the electronic proceedings. I believe this is the way to go not just at this level, but also at the High Court. That is because we are looking at going digital even in the dispensation of justice. We can do these things through tele-conference, skype, video conference, by telephone as given in the Bill and so on. This is not absolute - it can still be reviewed. The whole world is moving towards this kind of digital platform. We are moving towards making our courts much more accessible because technology moves faster than the written law.

Clause 21 talks about language. What captures my imagination is the use of indigenous language, braille and Kenyan sign language. This makes it accessible to people with disability. Sometimes, people with disability go to court and they do not find interpreters or people who understand the Kenyan sign language. Since this provision is made available to them, it means that this will be accessible to the people who come to consume the court services.

I wish to look at Clause 18 about dispute resolution mechanisms. It is also provided that those small claims courts can explore this mechanism instead of going through the whole court process. They can even adopt this and once this is agreed, then the parties can record consent in court and that will lead to a speedy disposal of the matter. This is going to lift some of the backlog in the senior courts.

Clause 15 talks about geographical jurisdiction whereby the matters are heard within the geographical areas. It limits the cases to the geographical area where the dispute arose and where the parties reside. This is a beautiful draft and it captures the imagination of Kenyans. It will make justice accessible to all.

Finally, the jurisdiction of the courts has been set at Kshs100,000, and the Chief Justice has a leeway to enhance this. So, it is not an absolute ceiling. He could still give the adjudicator of the court a higher limit of jurisdiction.

The memorandum talks about the Bill giving effect to Articles 48 and 169 of the Constitution. This is important because we are trying to ensure that all matters given in the Constitution are being legislated. I must also congratulate the Chief Justice for coming up with these kinds of ideas. Previously, we used to have small District Magistrates Courts and some of those courts used to deal with customary, land and other local issues that can be quickly dealt with at the local level with minimal cost. The Small Claims Courts will go a long way to give our people access to justice and also make them feel that the courts are not made for the rich. They are accessible to all Kenyans, including the poorest person down in the village.

I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Member for Machakos County, Hon. Susan Musyoka.

**Hon. (Ms.) Musyoka:** Thank you, Hon. Temporary Deputy Speaker, for this opportunity to air my views on this very important Bill. The Small Claims Court Bill is very important, and I stand here to support it. This is one court that will bring justice closer to the people. The way it has been crafted, it will bring instant justice to people who have suffered for a long time and were not able to access justice. These people will include women, youth, the elderly, persons with disabilities, children and disadvantaged persons who have small claims to make, and who are not able to access justice the way it is today. Many have had claims and have been aggrieved. Many of them have tried but due to the high cost of accessing justice, the bureaucracy that is involved and the lengthy court processes, it has been very difficult for them to go through the process; many of them give up even before trying. Women, or *mama mbogas*, as we call them, will now make claims when they have issues, especially in their places of business.

Many women down there are very much intimidated by court rooms; this informal way of doing business in courts will be acceptable and welcome. Many people who have been denied justice for so long will now be able to access the justice that they deserve. I like clause 15, which captures the functions of the Small Claims Court quite well; it will promote access to justice to large populations that have been rendered helpless due to difficulties in accessing justice.

Clause 22 allows for consultations before the courts by electronic means, by allowing the proceedings to take off in the physical absence of one of the parties. This is very good and

because we are turning digital, it will be good for us to use our technological development even in those small courts.

Clause 26 allows for the proceedings to be conducted in an informal manner and for the use of our native languages. That is very acceptable. It will be a relaxed environment and it will be very easy for women - whom I want to support - the youth, elderly persons and persons with disabilities to access the court and get justice.

Hon. Temporary Deputy Speaker, clause 28 allows for the proceedings to be held in public or in chambers and this is another relaxed way for people to be able to talk, express themselves and be heard. They will be listened to and will get what they deserve.

Clause 39 allows claims to be settled in various forms, not just monetary. That is another clause that I really like. One can be paid in kind the equivalent work or in monetary terms. Every aggrieved person will be satisfied with the outcome. So, the establishment of this court is very welcome; I support the fact that it will be devolved to the sub-county level. I will happily wait for this to be executed.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You support the Bill.

Next is Member for Matayos, Hon. Odanga.

**Hon. Odanga:** Hon. Temporary Deputy Speaker, I also stand to support the Small Claims Court Bill as it will give chances to the less fortunate in society to have their claims settled in a less costly manner and very speedily.

I am attracted, particularly, to the appointment of arbitrators in these courts. It has been said here by our colleagues that the qualifications for the adjudicators are too high. I want to state that we do not need to water it down because these are important courts and we need people with experience. Five years is not too much and being an advocate of the High Court is not too much. I will support that it remains as it is. The procedures are well laid out and this will make me support the Bill; also the expeditious disposal of cases is important because it will help us to have justice. Many times justice has been delayed and, therefore, it has been denied, more so when it has to do with people with small financial resources. The fact is that this will now be a thing of the past, and matters will be settled even on the same day, or day after day until they are finally determined. It will be an act of great assistance to people who will have matters in court.

Hon. Temporary Deputy Speaker, the fact that English, Kiswahili, indigenous languages and sign languages are going to be used in this court is something that gives us an opportunity to support this Bill. Many times we have had many people in courts who do not understand the proceedings, jargon, the language that is used in courts but this is an opportunity for our languages to be used in courts. This should just be the beginning. This should be applied to the higher courts that exist in this country.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You support. We will have the Member for Taveta.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I also want to add my voice in supporting the Small Claims Court Bill of 2015. In our Kenyan way of doing things, in the past it was the elders who used to deal with issues. Then came the chiefs but in the process, some issues used to be solved and others not. The people who came from bigger clans, who had more powerful elders and chiefs, would end being favoured. We have a situation here where we are going to have people with issues concerning small claims being dealt with in a more legal manner. Their issues will be adjudicated so that the issues can be dealt with speedily and be

concluded as quickly as they are presented. This is a way of making sure that instant justice will be dispensed.

In the normal judiciary system, we have had high legal fees being a factor affecting *mwananchi*. These Small Claims Courts will go a long way in assisting that *mwananchi* who mostly cannot afford legal representation.

This is going to be the court for the *mwananchi*; the court at the grassroots; the court which is going to solve all these problems. You will find that most times, Kenyans would go to a magistrates' court or the High Court and would not understand the language used there. This allows vernacular to be used so that Kenyans can understand everything that is going to be dispensed legally.

You cannot underscore the importance of having speedy decisions being made. People have been rendered poor considering that sometimes they have to walk very long distances. These are courts which are going to be in all the sub-counties so the distances which are going to be covered will be less and the number of visits to those courts will be fewer because these are issues which will be solved within 72 hours.

This is not the only place where this style of doing things is a reality. We have seen on television issues being dealt with in a court system. One programme which is very famous is *Judge Judy*, where issues concerning small claims are dealt with immediately. After that, there is no system for appealing. You either go home happy or unhappy, but at least the truth has been heard and the decision has been made. That is a way of dealing with our issues without clogging our Judiciary with too many issues which have gone on for years.

Back home you will find somebody selling the only cow that they have to deal with a case where a neighbour stole another's cockerel or slaughtered his goat. He will have to sell the only cow that he has been relying on to deal with those cases because he needs to pay his legal fees or travel very long distances. People have lost hope because a case concerning Kshs10,000, Kshs20,000 or Kshs2,000 can go on for five to 10 years without being dealt with. Every time you go to court, it is still being mentioned because the magistrates have too much on their desk and they have to deal with what they view as more important than your small issues. This will go a long way in dispensing justice. As the saying goes, justice delayed is justice denied.

I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Member for Gilgil, Hon. Samuel Ndiritu.

**Hon. Ndiritu:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support this Bill.

There is a saying that the things that can impoverish a person are diseases and court cases. This Bill is supposed to create an opportunity that will lighten the quest for justice for the very low in society. I remember a quote by the President of the Supreme Court, Hon. Justice Mutunga, when he said that one should look for other means of settling disputes. The narrative of "we will meet in court" is dangerous in the sense that it is very costly in addition to causing enmity. This showed the desperation for such a Bill where we solve these matters in a way that is less expensive to the common person.

I also view it as an elevation of the chief's courts in the villages, where the chief and *wazees* sit and arbitrate on those small matters in the villages. I, therefore, feel that professionalising those chief's courts and actualising the provision of the Constitution which requires that every citizen accesses justice in the cheapest or most affordable way possible, is the right way.

Clause 16 mentions an area where we can avoid brokers where people usually claimed to be professionals. We are all aware of the issue of brokers in the Ministry of Lands who have been chased away. Such people would pretend that they are going to be representatives. This type of representation is something that we need to look at and if possible, amend it so that it can be defined. The representative can be somebody who is close to the litigant, namely, a relative such as a son or daughter. We must be very careful not to introduce those brokers.

There is also Part III on the jurisdiction of the court. There may be cases which are being adjudicated in another court. There is the danger of those who may be mightier than others running to the higher courts where they may frustrate the operations of these Small Claim Courts. That is an area we need to look at.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order Members! Hon. Members, please, let us allow the Member to contribute and be heard. Hon. Member, you are also vertically blessed. It is important that you get closer to the microphone.

**Hon. Ndiritu:** I was talking about the jurisdiction of the Small Claims Court and dealing with cases that might be in another court. The danger is that there are some people who can frustrate the operations of these Small Claims Court, where they might rush to a higher court because nobody is barred from going to the next court. We need to ensure that they can be protected if they are not strong enough. The reason why this court is being created is so that---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Member for Kipipiri, you are loud. Please lower the volume of your consultations.

**Hon. Ndiritu:** Thank you. He is my neighbour. The reason why this court is being created is so that we can cushion those people who might want to frustrate this court.

I have also looked at the execution of the decrees of this court. We are quite aware that some have fallen victim to this. When a decree is made in these higher courts, a lot of things go under the table. Without your knowledge, judgment is made and you are auctioned. We have heard of cases of people saying they do not know how it happened until people came to auction their property. If a case is determined *ex parte*, if I may use the language of the learned friends, it can be reviewed. That is a very important provision. Corruption may permeate in those courts.

I also want to support the view that this court be heard in local languages. It is very important. Sometimes you might use an interpreter or somebody who may not understand the national languages and a person might lose a case for not being able to present themselves in the best way. I see this Bill as an avenue where justice will be affordable and easily accessible to the common person.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Neto, you know the process and procedure. We value your sentiments. Hon. Member for Ndaragwa, Francis Nderitu.

**Hon. Nderitu:** Thank you, Hon. Temporary Deputy Speaker. I would also like to add my voice to this Bill.

Before I go to the main Bill, I would just like to say that we have a number of constitutional bills that are coming to the Floor of the House. Being a Member of the Departmental Committee on Lands, I would like to urge this House to look at the Community Land Bill carefully and give the information that is required. For most of these constitutional Bills, despite the procedure they go through in Parliament, the main thing would be to study them and understand their content, so that whenever we are making proposals, one has enough knowledge on them.

To add on that, I would like to say that this Bill is timely based on the fact that most people in the rural areas especially some of us who come from some constituencies, do not have a single courts. So, the issue of handling cases has been to a large extent confined to the people who have money and means. Every time you touch on the issue of courts, people panic. You realize that whenever people are taken to court, they are find it difficult to express themselves on an issue.

This Bill is timely. Going through the clauses, I find that the common man in the village, who does not understand the technicality of law, will be adequately looked at. I know very well that we have challenges in language. It will be very good to articulate issues in the local language where people have different ways of delivering their messages. I am very sure with this kind of Bill it will be very easy as we have said that cases of third jurisdiction or below Kshs100,000 will be determined.

I would also like to support the idea of the continuous hearing of cases. Sometimes when there is numerous adjournment of cases, you will find that even the defendants lose directions of a case and when the case comes for hearing, you will realize there is loss of memory, but when a case is held consecutively and determined, it will be very easy for a defendant to argue his case and also for the claimant to follow the case.

As far as the issue of filing the claim is concerned, this is a very easy way of doing so because most of the times, we are lost because of procedures. You will find that there are a number of times that we go to court and the material facts that someone has are very critical, ideal and factual, but the procedure of filing the case is disputed merely because of some technicalities in the courts. I am very sure that with this kind of facilitation and lack of a lengthy claim format, it will be easy for the litigants and defendants to put their cases properly.

On the issue administrators, my colleagues have contributed to the issue of experience, but I would like to side with those that are of the view that we should reduce the time frame for the person required to be an administrator. The time frame of five years and the kind of experience that we are looking forward to--- If you look at the people that the cases are being filed against, there are many cases where these people are knowledgeable on some issues. If the criteria of five years, go unchallenged, we need to readjust and look at the people we are dealing with. I am very sure, if somebody is learned and qualified in law with two or three years' experience and deals with a village issue that may be dealt with by a chief or even local *wazees*, I do not think that an offender can be challenged based on that.

I am also looking at the issue of penalties. I am very sure that what the court is looking at, is a position where there is consensus, so that when a case is determined, the plaintiff and the defendant are able to agree in the court and the amount of settlement. I am very sure that with this kind of arrangement, it will be very easy for people who have small claims of business nature worth Kshs 20,000 to Kshs 80,000 to come to a conclusion and settle the matter.

Hon. Temporary Deputy Speaker, with those few remarks, I would like to call this a timely Bill. It will help the lower cadre of our society. I am very sure that this is a Bill that would have come earlier, because I know there are many cases that are pending in our judiciary. If we had these alternative courts earlier, the burden of the higher courts would be lessened.

With those few remarks, I would like to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You would like to support. Hon. Soipan Tuya, Member for Narok.

**Hon. (Ms.) Tuya:** Thank you, Hon. Temporary Deputy Speaker. I wish to add my voice in support of this Bill. The title of the Bill should have been: Access to Justice (Small Claims

Court Bill). I say this because the Bill is all about making justice accessible, bringing it closer to the people and making it available.

Our justice system has been marred with a lot of challenges for the common Kenyan since the establishment of this Republic. For one, our customary justice systems which are the indigenous processes of dealing with disputes have been eroded over the years and replaced with a justice system which in many instances is very abstracted in nature. Abstracted in the sense that it does not address the realities of our varied cultures in this country and does not address the realities of the common Kenyan. The court processes are very complex, intimidating and very foreign to most Kenyans. What this Bill seeks to do is to bring a hybrid system where we can bring a linkages between our indigenous justice systems and the legal or formal justice system as it were.

The Bill is also founded on very strong principles of the constitution of ensuring fairness in access to justice for Kenyans and the Constitution also addresses the need to embrace alternative dispute resolutions in dealing with matters which may fall under different regimes of law including customary law.

Hon. Temporary Deputy Speaker, the Bill is timely in the sense that even in the application of that alternative dispute resolution mechanisms, we know that in as much as we may want to embrace our indigenous forms of justice, most of these practices especially the customary law practices may not always be fair, particularly to certain groups of marginalized people within our society. An example is women. With this law forming that linkage between the formal and the informal justice system, we are going to make sure that even those processes of customary access to justice, are going to be accountable, fair, and founded on the core principles of the Constitution of non-discrimination and fairness for all people.

Hon. Temporary Deputy Speaker, this Bill, which I am happy to note that we are yet to hear anybody who is opposed to it, will come a long way in restoring confidence in our justice system for Kenyans. It will ensure that access to justice is not just a preserve of a few people who can afford to hire a lawyer to stand in for them as our society is getting very litigious, adversarial and very intimidating.

Clause 11(2) provides for the sub-county as a minimum decentralised level for the Small Claims Court which means that as we advance, in my own interpretation, we will have the opportunity to decentralise these courts further to make sure they go down to the people.

Clause 18 makes a provision to the effect that an order that is made under an Alternative Dispute Resolution (ADR) shall be binding to the court and coupled with the requirement for record keeping under the Small Claims Court. This will go a long way in streamlining and making sure that fairness is achieved even as we go to opening up justice to be realistic, available, and accessible to Kenyans.

An appeal to the High Court on points of law is another provision of this Bill, which creates that linkage in the event that a litigant is not satisfied with a decision of a Small Claims Court; they still have an opportunity on a point of law. I think this is the opportunity to make sure any injustices which may be occasioned under the ADR mechanisms will be sufficiently addressed.

As I support the Bill, I would like to take issue with Clause 20 which uses some strong language in barring legal practitioners from appearing before the Small Claims Courts. I think this is highly misguided. I am an advocate of the High Court of Kenya, of 11 years standing, and I must say I have never been inspired to open an office in Nairobi because I feel like the people I ought to represent cannot reach me in Nairobi, as they cannot afford to come to Nairobi. I have



done a lot of public interest litigation and community lawyering on *pro bono* basis. I know there are so many other lawyers who are readily available to provide legal services on *pro bono* basis to indigent Kenyans. However, this Bill will lock them out, and I do not think it is fair.

Two, I think opening representation such that any Tom, Dick and Harry can be classified as a legal representative of a litigant without any provisions for policing these people, I think is going in the wrong direction. This is because anybody can come up and exploit an indigent Kenyan who cannot afford a lawyer, and in the event of indiscipline by these representatives, who are they going to be accountable to? I will be looking at it deeply for purposes of bringing an amendment. We should have some basic threshold of how a legal representative should be. It should be open to legal practitioners. Even if we are saying we are afraid that allowing lawyers to represent somebody aggrieved under a Small Claims Court jurisdiction would take us back to that expensive process, I think this Bill provides some checks and balances. If the thinking behind this is that we are going to make the Small Claims Court more complicated and out of reach for the common Kenya, then we are not going in the right direction. In my view, it is myopic, and will lock out good intentioned lawyers who would want to go to this low level to represent poor Kenyans.

Hon. Temporary Deputy Speaker, availing a process where filling of claims can be done orally makes it easier for poor Kenyans to access these courts. Exclusion of strict rules of evidence which many times are rigorous, complex and very complicated will go a long way in affording Kenyans access.

Finally, the process of this Small Claims Court affords Kenyans instant justice or “*justice chap chap*”

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Member for Subukia.

**Hon. Gaichuhie:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute. At the outset, I want to say I support. Having the Small Claims Court is going to expedite justice because I believe right now, we have so many pending cases which mostly are for the Small Claims Court. Having that court will expeditiously, and be inexpensive for justice to be given to people. It is said very well that justice delayed is justice denied. I believe having the Small Claims Court in place will help expedite justice, and people will get justice in good time.

When we have courts that can accept languages that can be understood to the elderly who are not eloquent in English or Kiswahili will be good as they will be able to articulate their issues in these small courts in the best language that they know.

Allowing that we have electronic cases going on via electronic media is a good step in the right direction. The Jubilee Government is digital and when we embrace technology; it will be in the right direction.

Having adjudicators who have an experience of five years as High Court advocates is a good thing because I believe that experience must be somebody who has been in court for quite some time. The registrar is a High Court Advocate with an experience of three years. That is somebody who can articulate issues of the court.

Hon. Temporary Deputy Speaker, having appeals that are allowed in matters of law is good because I do not think people should have appeals on petty issues. So when they appeal only on matters of law to the High Court, it will make the courts better.

The restriction of the Small Claims Court cases to Kshs100, 000 is also a good idea. Though we may find it is little money, I believe not many Kenyans have cases of more than

Kshs100, 000. It is again allowed that because of inflation rates, the Chief Justice (CJ) can adjust the rates. I think that is a step in the right direction. The issue that you should not split these cases to smaller amounts, that if it is one case that is more than Kshs100, 000, then it should not be in this court is good. That in Section 14 of the Bill, which says they do not allow dividing of these claims. I think it is the best way to go. Because many hon. Members spoke about it, I do not want to be repetitive. This is the best way to go because it will hasten justice, and make it readily available even in the sub-county, or as it is proposed have them in the lower divisions, as low as a ward level. Having them in the ward level will make justice cheap. This is because at times if we want to access a court in my constituency, we have to go to Nakuru, which is very far. In some cases, sub-counties are very far from the headquarters yet we get so many cases coming to court the same day and time thus making it hectic for people who are not able to go to court every time. When people go to the current courts, they are told that their case will be mentioned on a certain date. They are given a date and after that another one. It is very expensive and nobody compensates them. Even if they are to claim their bus fare, it takes quite a long time before they are compensated.

So, when we will have these small claims courts in our backyards, it will be very good. The conditions of having these cases dealt with on the same day or even for a maximum period of three days will be very good for our people.

With those very few remarks, I want to thank you and support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You appreciate. Hon. Members, I must appreciate that we have 27 requests. We will not all be able to speak, of course, within the time. Hon. Member for Likuyani.

**Hon. (Dr.) Kibung'ochy:** Thank you, Hon. Temporary Deputy Speaker for giving me this chance. Let me also add my voice. Before I do that, let me say that this is a very happy day for me because, at least, we have a mechanism and a system that is going to bring the administration of justice very close to the people.

I would like to look at two areas. One of them is the adjudicator. I know many people have talked about it. I will go as per the Bill. It gives this individual five years of experience. Because we are looking at a judicial or court system which wants to make things very easy and informal, we have to have somebody with a lot of experience to do that. If you get a young man who has just left law school and you make him an adjudicator before he gets experience in some of these nitty-gritty, he might end up making too many mistakes.

I will go by that. But what is even more important like most Members of Parliament have said is that this is a system that is fairly localised. It is a system we are borrowing from what has been happening; where we have elders and assistant chiefs dealing with these small issues within the community; issues of trespassing on people's land, issues of boundaries of people's farms and small debts in the villages and in the communities and many others like burials and dowry.

What we need to do with this adjudicator, in my view, is to give him a panel of elders from the area, people who know the area very well. As the Bill stands, this adjudicator can come from anywhere. They have not specified in the Bill that he must be somebody who comes from that area. So, we need to give him people who understand the small problems that occur in that community on a day to day basis. So, I am going to bring an amendment so that this adjudicator has a small office around him; a panel of elders or a council of elders who can advise the adjudicator, people who come from far to understand what exactly goes on in this community on a day to day basis. That is something that this Bill did not quite address and so we need to address it.

The next thing that I see is that as soon as these small claims courts are established, they are going to be crowded with so many cases. Because we have said that the cases must be handled expeditiously, possibly in one day, maximum three days, I can see many cases pending within these courts yet that is not really what we wanted. I imagine that once you start a case, you must finish it before you start another one. Although we have said and this is excellent that all these courts should be set up in every sub-county, soon after that we should roll them down. Let them go to every ward so that they can handle---- I can see many cases coming to these courts and we might just end up creating another backlog to this individual.

Finally, I am excited and very happy that we are now going to talk to people in their languages. People will come before the courts and present their issues in a language they understand best. This has been permitted by this Bill. The great icon Nelson Mandela said that when you talk to somebody in his or her mother tongue, you are talking to his or her heart. So, this is the direction we need to take. I get excited because of that.

Apart from that aspect where we need to give the adjudicator some people around him who can advise him and he can consult on a day to day basis, I am very happy with most of the provisions in this Bill.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, well spoken. Hon. Member for Wajir, Fatuma Ibrahim.

**Hon. (Ms.) F. I. Ali:** Thank you, Hon. Temporary Deputy Speaker for providing me this opportunity to contribute to this Bill. I must also support the Bill. I agree with the Members who have said that the Bill is very progressive. I start by congratulating the Chief Justice, the Chief Registrar of the Judiciary and the Judicial Service Commission (JSC) for spearheading this kind of a Bill. If I were in my former position, I would have called this Bill a human rights based Bill.

There are three things that will enable a person to access justice particularly the poor and rural people. One is the accessibility in terms of location, language and material for communication, for example, the braille language. This Bill incorporates all that. It provides opportunity to allow the small claims courts to use the local languages so that people can understand and bring a person they have confidence in. People who are not likely to understand the court process will understand it. The Judiciary we have today thinks about rural people and those who are likely to be excluded from accessing justice.

I like the issue of the adjudicator who will help in adjudication of the claims but I have a personal concern. The adjudicator should not be a lawyer or an advocate. It should include other professions, men and women in those localities who understand the small claims. I see councils of elders consisting mostly of men but do not include women in their leadership. So, when we are looking for an adjudicator, we should expand that opportunity to include other professionals such as teachers, local clerks and others. It should also include women who understand small problems in those localities. He should not be an advocate of the High Court because they are already magistrates and court clerks who are already familiar with the legal language and the law. The adjudicator should be a non-lawyer but a qualified social scientist who understands local issues like the small claims. He should be a qualified social scientist who understands local issues, small claims and case dynamics, and who can easily fit into the system. I am really worried when you talk about an advocate because my area has very few lawyers who can go and work in Wajir, Mandera, Moyale and Marsabit, and in other far-flung areas. What I really admire about this Bill is the provision that the proposed courts should be devolved to the sub-county level as well as to lower levels of the decentralised units like the wards. I assume that the wards

will be the lower level decentralised units within the sub counties. I also assume that the small courts will be mobile courts that will be moving to local areas where they can sit even under trees. That is another way of improving accessibility to justice for poor people who cannot travel or do not understand that the courts exist.

What I also like about this Bill is that it seeks to formalise the use of alternative dispute resolution mechanism by allowing the process to filter through the courts and making formal agreements binding in court and to be witnessed. Sometimes the challenge that we have in the informal structures is enforcement of judgements. Especially, when a judgement affects children, women and persons with disabilities elders sometimes cannot enforce it. If this is done within the small claims courts, it is likely to attract more enforcement and bring some sense of obligation on the perpetrators of those crimes.

The court should give a timeframe of conclusion of such small claim cases or petitions so that they are not prolonged like it happens in the ordinary courts, where a case may take a year, three years or four years. This will ensure that the spirit of the small claims court is not lost and protracted in some ways. What I like about the Small Claims Court Bill is that individuals who fear appearing before those courts, or even before the ordinary courts can be represented by their preferred individuals who sometimes might have better knowledge. Such representatives can guide such individuals and give them confidence. People are intimidated in this process. That is a creative way of allowing individuals who are not able to present themselves adequately.

In Clause 21, the Bill allows the use of English, Kiswahili and any other language. I presume that in Wajir the local languages will be Somali, Borana and other small dialects that are spoken there. This makes these courts people-centred. This is moving forward to make it a progressive court and to localise the claims of individuals so that locals can identify with the courts, have confidence and be able to articulate their issues more easily.

What is more progressive also is the use of Braille and sign languages, which are not mostly expressively stated in our courts. In this Bill, there is a requirement for the courts to use sign and Braille languages as well as technology. This is for people with disabilities and other individuals who feel comfortable speaking in certain languages. They can access justice, understand, monitor and follow the proceedings.

The Bill should allow other professions to be included in adjudicating certain things because sometimes it might be hard and challenging for certain regions to have lawyers and advocates of the High Court to apply for jobs in certain areas. Sometimes you have the court but you do not have the adjudicator or other personnel because you have made conditions very difficult for other professions not to provide their skills and be adjudicators. So, I will also bring an amendment to this Bill on that matter.

With those remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Next on my request list is the Member for Kathiani, Hon. Robert Mbui.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute. Much has been said. So, I will be as brief as possible to allow more Members a chance to contribute.

I want to begin with the purpose of this Bill. It says that the intent and purpose of this Bill is to constitute a court wherein claims of up to but not exceeding some certain jurisdiction of the court can be adjudicated informally and inexpensively but in accordance with established principles of law and natural justice. That sounds great. If we can go that way, then we begin to

do what brought us to this House – which is to represent the people who seek to ensure that their lives are improved by the leaders that they elect every time.

The Chief Justice was on record saying that there is a heavy case load in Kenyan courts. Due to that, there is obviously need for some of these cases to be handled in different ways. In fact, he said that we need to look for alternative dispute resolution mechanisms. He even implied that we go traditional. That means if you have wronged me, I can go and talk to some character at home there and make sure that whatever they do, will make you pay me back. What was making him get to that position was because of the pressure that they have as the courts in Kenya. This is going to be helpful in ensuring that we ease the burden that is in court systems.

Kenyans are highly discouraged from going to court. Much as we keep threatening each other with suing each other, a lot of times people do not go to court. There are several things that discourage Kenyans. The first one is the speedy implementation of justice. We go to court and a case can be heard for years on end. This has been happening from time immemorial. I guess that this Bill is talking about instant justice. When you go to court and you get the ruling within a day or a maximum of three days, that is just great. That is what we require.

The other thing that discourages Kenyans from going to court is the very high cost. This Bill has dealt with that issue because the cost of advocates and the very high cost that get incurred by Kenyans going to court will be reduced. This encourages Kenyans to go to court on minor issues that require justice.

The other discouragement that has been sorted out here is the language barrier. We know that Kenyans understand English and Kiswahili and their traditional or local languages. The language that is spoken in most courts of law is legal. Some of us with degrees sometimes get lost. The language barrier is being sorted out by this Bill where there will be proper effective communication in whatever language the ones who are handling the case want to communicate in. So, that will help in sorting out that problem.

The other issue or problem that Kenyans have is in proximity to courts. You can imagine somebody coming from North Eastern to seek justice in far places. So, with the idea of bringing these courts to the sub county that means that justice will be within easy reach. That will encourage more Kenyans to seek help. Because these problems always exist, Kenyans have come up with their own ways of resolving them. One of the solutions they have had for their cases is to go to vigilante groups like the *Mungiki* to seek justice. Because it is expensive and it takes too long to get justice in the court of law, sometimes they find it easier to talk to an amorphous group of people and ask them to seek justice for them. They either attack someone or something like that. So, this will now become a thing of the past because it is possible to go to a court that is within reach and one that is cheap and that you can communicate effectively and get justice. So, this is one of the things that will be sorted out.

Many times when you have a debt and you need to get it paid, if you do not go to the *Mungiki*, you might end up going to the police. This is what happens. The police also create what we call kangaroo courts to give justice. Recently, I had a constituent who had a problem. Somebody grazed his goats in his farm and damaged his flowers. As is normal in natural justice, he confiscated the goats so that he could seek some compensation. The compensation was as little as Kshs500 but a policeman was involved in this case. He came in and arrested my constituent because he had kept those goats overnight because they had damaged flowers. That is totally against the law but that is what keeps on happening when we do not have easy ways of getting justice for our people.

Hon. Temporary Deputy Speaker, I support this Bill very strongly. I believe that this is the way to go. As I sit, I was shocked by Hon. Soipan but we talked and she cleared the air. She mentioned the words “justice *chap chap*” on the Floor of the House. I felt that the words were not Swahili. Where I come from in Machakos, *chap chap* is synonymous with propaganda and I did not want that to stain this very good law. I rest my case.

Thank you. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Member for Kathiani and also the Organising Secretary, Wiper Democratic Movement, I think she had a right to express herself when she said *maendeleo chap chap*. She still could have said *maendeleo cheap cheap* because it was not *maendeleo*. It was justice. She had a right to do it.

Let us have the Member for Nakuru Town East, Hon. Gikaria. Hon. Members, we have 22 requests. We have no limitation; all of us are going to speak.

**Hon. Gikaria:** Hon. Temporary Deputy Speaker, I am cognisant of the Standing Order where we are told not to repeat ourselves so much. I will try as much as I can to be done within three minutes.

I stand to support this Bill. It has been said that it is going to avail justice in the fastest way. I remember when Hon. Keynan brought a Motion here in Parliament. He said that after our term in office we, as Members of Parliament, will not get employed. With this, we might get an opportunity to be adjudicators having had five years’ experience as lawmakers within Parliament.

I will raise something in Clause 46. This Bill has given us an opportunity that as much as the adjudicators are in office, they should work within the confines of the law, rules and regulations that have put them in office. It has strictly indicated the process of removal if they do not match up to expectation. That is an added advantage in this Bill that as much as the adjudicators will be there, they can also be removed from office.

The second thing is a little bit questionable and in Third Reading we will look at it. This court, under Clause 43, can set aside its orders that it has given earlier. I do not know whether in law it is possible that a court can make a decision and after some time, either through an appeal or something else, set aside a decision it had already made. These are issues we need to look at and bring some amendments in the Third Reading to try and resolve them. The limit which has been prescribed at Kshs100,000 is in line as indicated by Hon. Speaker.

Clause 31 is on consolidation of claims. Throughout this Bill, we have indicated that this cannot exceed Kshs100,000 but, if you have to consolidate cases that go beyond the Kshs100,000, then again it must be very specific that consolidation of cases must be within the limits that have been set in this Bill. So, again, we need to be very careful.

Hon. Temporary Deputy Speaker, I am being harassed that I need not say so much. I agree that this Bill is in line with the Constitution as it has been indicated. We want to fasten the process of establishing the court so that we can have timely and conclusive determination of cases. I do not know how possible it is within the three days. We hope that within three days these things will have been sorted out and a judgement reached.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): For avoidance of repetition, we can always allow other Members to speak. Let me have the representation from Thika Town.

**Hon. (Ms.) A.W. Ng’ang’a:** Thank you very much, Hon. Temporary Deputy Speaker. I rise to support.

This dispute resolution mechanism is the best. We are not inventing the wheel. It is only that previously a decision made by elders who sat down and resolved matters was not legally binding. The courts are for those people who have a dispute of less than Kshs100,000 and they have been shying away feeling that if they went to the court, they were going to use more money than the one they were trying to get. So, with these courts, many people are going to make their requests so that their matters can be discussed and concluded. I will not repeat myself but the only thing that I would say is that we have seen in this Bill that once an agreement has been reached, it is binding; it is there to stay. Even if you take it to the High Court, that resolution has been made, it is binding and people have to abide by it. That is a good one.

The only problem I have is when we say that the adjudicator has to have an experience of five years. Most of the times, I usually have a problem with that because all the jobs advertised on the newspapers say that you must have an experience of five years. We have so many students, young men and women who leave universities and when a job is advertised and you are told that you must have experience of five years, you wonder where you will get that experience yet you are qualified. That is why you graduated and you have a degree or a diploma. When it comes to Third Reading, we have to amend it and say that if you are qualified and you have an experience of one year, it is good enough to become an adjudicator because you have already gone to the university and went through all those courses so you can sit down, listen to all parties and come up with a solution. That also applies to the registrar. It should be amended to say anybody who has qualified, not only an advocate but you can also be from other fields, you can be a registrar at that court and you can do that job that you are supposed to do. When we move to Third Reading, those are a few things we need to discuss because I feel that you do not need to have three years' experience for you to be a registrar.

I will not forget to say that this is going to solve a lot of problems. Just the other day in my constituency, a lady's phone was taken from her house. She went to report the matter to the police because she actually knew who took her phone but when she went there, the policemen decided that they are the ones to settle the dispute. In the process, instead of recovering your goods, you find yourself getting into more problems than what you went to report. So, this Bill will help in solving the cases that come up at the village level or at the grassroots. When most of them hear that there is court that is coming, even if they cannot speak Swahili or English, they can still represent themselves because most of the time they wonder what language to use when they get there. With this Bill, there is no language barrier. With this Bill, they can present their views well.

Another thing that I have liked is that you can send a representative even though we need to put a ceiling to it. There is need for a representative because you might not be feeling well and someone else who understands your case better can represent you so that the case is heard and determined.

Hon. Temporary Deputy Speaker, we are doing well with this legislation. If we continue legislating these kinds of Bills they will really help at the grassroots level where everybody will feel accommodated. People do not need to travel far and wide to look for justice - justice will be closer there at home. We have heard of cases where a person lends another, say, Kshs100, 000 or Kshs50, 000 and the person defaults in payment. In fact they end up saying, "I will not give you that money. What will you do to me?" Now, we have a place where one can take that dispute, be heard and the defaulter compelled to return the money.

I rise to support and thank you very much.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Mbui should have listened to you, but since I know the translator will be there, justice will be cheaper in these small courts.

The next on my request list is Member for Kipipiri, Hon. Samuel Gichigi. Hon. Members, I have 20 requests. I must appreciate that both sides have shown interest to contribute.

**Mhe. Gichigi:** Ahsante sana Mhe. Naibu Spika wa Muda. Nimesimama---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order! I know you learnt about time, processes and procedures when you went to school. Carry on, Hon. Member.

**Mhe. Gichigi:** Nimesimama kuunga mkono Mswada huu kuhusu Mahakama ya Madai Madogo ambao umeletwa Bungeni. Kwa haraka, nataka kuwajulisha wenzangu na wananchi kuwa haya mahakama ambayo yatatengenezwa baada ya hii sheria si ya jinai au uhalifu bali ni ya mashtaka kati ya watu binafsi. Kwa hivyo, wasifikirie kuwa ni polisi watakuwa wakipeleka mashitaka katika hayo mahakama.

Pili, ni sheria nzuri ambayo inatungwa. Hii ni kwa sababu kwa mara ya kwanza tangu Katiba ipitishwe tuzipa Mahakama za Juu nafasi ya wiki mbili na nyingine miezi sita ili kupeana hukumu wakipelekewa madai ya kuhusu uchaguzi ambao umekumbwa na shida. Kwa mara ya kwanza, Mahakama ya Madai Madogo itakuwa na nafasi ya kuamua kesi kwa siku tatu. Hii ni sheria nzuri kabisa.

Lingine wananchi wanastahili kujua kuhusu hii sheria ni kuwa mahakama hizi zitakuwa katika kila kaunti na zinahusu kesi ndogo ndogo au madai madogo madogo ambayo hayazidi Ksh100, 000. Kwa hivyo, kama kesi inazidi Ksh100, 000 inabidi mlalamishi aende katika mahakama za kawaida.

Lingine muhimu ni hilo la kuwa hakuna wanasheria wanahusishwa hapa. Mimi ni mwanasheria lakini ukweli ni kuwa watu wengi huko nje hutisha wenzao. Ukienda kupeleka madai yako ambayo ni halali kabisa, mtu hukutisha kuwa ataajiri wakili na wewe utaona. Hii sheria inasema hakuna mawakili. Watu watakuwa wanatoshana nguvu wakienda mbele ya muamuzi atakayekuwa katika hii sheria.

Sheria hii imesema Msajili awe wakili. Nakataa hilo. Ni muhimu tubadilishe sheria hii katika sehemu ya tatu ya upitishaji sheria na tuondoe hili pendekezo kuwa Msajili sharti awe wakili. Mtu yeyote aliye na uwezo wa kusimamia ofisi awe Msajili katika mahakama hii. Hamna haja ya kusema tunapunguza uanasheria mwingi halafu tunaajiri mawakili katika kila sehemu.

Mhe. Naibu Spika wa Muda, hili jambo la lugha pia ni zuri sana. Kwa mara ya kwanza, wananchi wataruhusiwa kuongea lugha ya mama ambayo mtu anajisikia anaweza kuelezea madai yake. Hii ni badala ya lazima ya kuwepo na mtu wa kutafsiri kila wakati na kila wakati kuulizwa uongee Kiingereza au Kiswahili. Hii sheria itakuruhusu uongee ile lugha ambayo unajisikia uko nyumbani nayo.

Kipengele cha 32 kinasema zile sheria ambazo kwa kawaida zinatumiwa wakati wa kutoa ushahidi zilegezwe. Unaweza kutoa ushahidi hata kwa simu na mahakama inawezatumia karatasi tu. Ile sheria inayokataza watu na kuwaambia “usiseme hivi, sema vile” imeondolewa hapa. Haya ni mahakama ambayo inawaruhusu watu ambao hawana mawakili, hawana masomo waweze kutoa ushahidi wao haraka haraka.

Kipengele ambacho labda nina shaka nacho ni cha 47 ambacho kinasema eti “mtu akipatikana kuwa anastahili kulipa mwingine,” usipolipa unawekwa ndani miezi sita. Hiyo ni sheria mbaya kwa sababu haisemi “kama una uwezo wa kulipa na ukatae ndipo unaweza wekwa ndani.” Kwa kweli imesema ukishindwa kulipa uwekwa ndani. Hiyo ni sheria mbovu kabisa na lazima tuibadilishe na kusema hatua itachukuliwa mtu ambaye ana uwezo wa kulipa lakini anakataa kulipa.



Kipengele cha 48 kinasema kuwa mtu anawezapeleka madai yake madogo kwa mahakama nyingine wakati wowote. Nasema hivi: Haina haja tutengeneze haya mahakama halafu turuhusu watu wapeleke madai haya madogo madogo kwa mahakama zingine. Wacha madai ambayo hayajazidi Kshs100, 000 tuyapeleke katika haya mahakama.

Sheria hii pia ina shida kidogo. Inasema madai yanayohusiana na kampuni hayawezi kupelekwa katika haya mahakama. Kama madai ni madogo madogo na ni ya chini ya Kshs100, 000, kwa nini tuiseme kampuni ambazo zimeenda mashinani kwa sababu ya kandarasi, pesa zinazokuja kwa kaunti na kadhalika zisipeleke madai na mashtaka yao katika haya mahakama? Hicho ni kipengele ambacho tunastahili kubadilisha.

Naunga mkono.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): *Unaunga mkono.* Hon. Mwiti, what is out of order or are you on intervention?

**Hon. Irea:** Thank you, Hon. Temporary Deputy Speaker. Before I contribute to this Bill, I would like to pass some information to this House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You want to pass some information to the House?

**Hon. Irea:** Yes, some information to this House and a message of condolence to the family of the late Julius Muthamia who passed on last week. He was a Member of this House and he was the first Senator from the Meru County when there was devolution at that time. Senator Muthamia comes from my constituency and I have put a condolence book out there for Members to sign. Those who will wish to talk to the family of that Member, the number is in the book of condolences.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Okay, Hon. Member. Your point is taken. You were on intervention and not contribution. We give the next chance to the Hon. Member for Ndhiwa Constituency, Hon. Aghostinho. Then, I will give a chance to the Member for Nyeri County and the nominated Member, Hon. Wangamati.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Speaker. You notice you have just had a Small Claims Court right therein.

This is a progressive Bill. Clause 34 speaks volumes on this Bill because it says the matters should be dealt with expeditiously and, hopefully, they should be finished within a day. If we are dealing with small issues and small claims, there cannot be a better progressive clause as Clause 34.

I would be speaking to the Bill chronologically but I am running out of time, and I do not intend to contribute to this debate after the close of business.

There is an inclusion of Clause 18 in this Bill. I have listened to some of my colleagues speak to the fact that the inclusion of an alternative dispute resolution mechanism in this particular Bill is a positive move. I think that cannot be true. If at all we want to work on a regime of alternative dispute resolution, that ought to be in a Bill of its own that is distinct and clear because alternative dispute resolution mechanism has been used to deal with serious claims, and not just small claims. Therefore, the inclusion of Clause 18 in this Bill takes away the whole meat of what alternative dispute resolution is all about. It narrows the path and purview of what alternative dispute resolution is about.

Regarding the issue of making justice accessible through establishment of small claims courts, there has been a lot of attempt to have a lot of procedure in this particular Bill. If Clause 34 makes my reference point, then you would not want to deal with issues of procedure where it talks about how to file a claim, especially as described in Clause 23. It makes---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Neto, there is a point of order but I can assure you that there is nothing out of order.

Member for Isiolo, what is out of order?

**Hon. (Ms.) T.G. Ali:** Hon. Temporary Deputy Speaker, many of us have sat here for a long time. I wish you could give each one of us at least a minute to speak to this very important Bill. I am just seeking your indulgence and that of hon. Members, so that each of us can at least have minute to speak.

**The Temporary Deputy Speaker** (Hon. Ms.) Mbalu): You know when to raise the issue of reduction of time for each Member speaking. However, your voice has been heard.

Proceed, Hon. Neto.

**Hon. Oyugi:** Hon. Temporary Deputy Speaker, I can bring a small claim case to your court so that we can articulate the matter between me and Hon. Tiya Galgalo. This is because I was not actually out of order.

Clause 23 talks about procedure and how to bring in authenticated documents on claims being made. This takes away the ease with which the small claims courts ought to work. We have said very good things about the exclusion of the rule of evidence. There is a clause which talks about not having rules of evidence in the small claim courts. It makes no sense to then include a rigorous procedure of filing claims and doing such heavy paper work like it happens in ordinary court process.

Clause 21 needs to be re-phrased so that apart from just writing in English, Kiswahili or any other appropriate language, we take justice closer to the people by saying in black and white that proceedings in these particular courts shall be conducted in mother tongue. If at all you are having small claims about little things like a goat and small monies, since the litigants will not have any particular legal representatives, they ought not be subjected to formal languages. If they wish to speak in the Kamba language, they should be allowed to do so. Likewise, if they wish to speak in the Luo language, they should be allowed to do so. That ought to be expressed in terms of what the language of the court ought to be so that we do not talk about English and Kiswahili. When people wish to express themselves in their mother tongue, such language should be admissible as a language of the court.

There is a little contradiction in Clause 9, which speaks to the registrar having power to enforce court decrees. This provision does not read very well with Clause 39, which describes the manner in which decrees can be expedited and makes reference to Clause 9(c) – which says that the register shall be enforcing the decisions of the court. There is a slight contradiction there. The best way forward is to expressly leave the execution of decrees to Clause 39. However, that can be dealt with through amendment.

Clause 10 also speaks to a little bit of a strain as it presupposes that an adjudicator can rule over the registrar of the court. This creates conflict between an adjudicator and a registrar. The registrar is the one who enforces court decisions. Therefore, there is discordance in that particular provision.

The other thing is about the provision for appointment of an adjudicator. An adjudicator appointed under Clause 6(3) shall serve on such terms as maybe indicated in the list of appointment. There ought to be provision for express terms of service for an adjudicator, so that terms of service for an adjudicator are left to the whims of the person appointing adjudicators from time to time. Express terms of service will enable an adjudicator to know what time to serve because if at all---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Neto, you will have your five minutes in the next sitting. You can prepare for more.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, pursuant to the provisions of Standing Order No.30, on hours of meeting; and the time now being 6.30 p.m., this House stands adjourned until tomorrow, Wednesday 14<sup>th</sup> October 2015 at 9.30 a.m.

The House rose at 6.30 p.m.