

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 19th August 2015

The House met at 9.30 a.m.

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

PRAYERS

QUORUM

Hon. Deputy Speaker: Can the Quorum Bell be rung?

(The Quorum Bell was rung)

Hon. Deputy Speaker: Okay, can the Quorum Bell now stop. We are properly constituted.

Hon. Kato: Hon. Deputy Speaker, I beg to lay the following Papers on the Table:-
Sessional Paper No.1 of 2015 on the National Policy on Elimination of Child Labour -
Ministry of Labour, Social Security and Services.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Tinderet Constituency for the year ended 30th June 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Mosop Constituency for the year ended 30th June 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Ainabkoi Constituency for the year ended 30th June 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Kiminini Constituency for the year ended 30th June 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Nzoia Sugar Company Limited for the year ended 30th June 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Forestry Research Institute (KFRI) for the year ended 30th June 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the National Water Conservation and Pipeline Corporation (NWPC) for the year ended 30th June 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Kabarnet Hotel for the year ended 30th June 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of United Republican Party (URP) for the year ended 30th June 2014, and the Certificate therein.

Hon. Deputy Speaker: Chairperson of Mediation Committee.

Hon. Washiali: Hon. Deputy Speaker, I beg to lay the following Paper on the Table:-

The Report of the Mediation Committee on the Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No.36 of 2013).

Hon. Deputy Speaker: Next Order. Hon. Washiali, I believe you have a notice of Motion.

NOTICE OF MOTION

ADOPTION OF REPORT ON FERTILIZERS AND ANIMAL FOODSTUFFS (AMENDMENT) BILL

Hon. Washiali: Hon. Deputy Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Mediation Committee on the Fertilizers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No.36 of 2013).

Hon. Deputy Speaker: Next Order.

STATEMENT

Hon. Deputy Speaker: Hon. Pukose, do you have a statement?

Hon. (Dr.) Pukose: No.

Hon. Deputy Speaker: Hon. Chris Wamalwa, do you have a statement?

Hon. Wakhungu: No.

Hon. Deputy Speaker: Hon. Opiyo Wandayi.

CRISIS IN THE SUGAR INDUSTRY

Hon. Wandayi: Hon. Deputy Speaker, I want to seek your indulgence. I thought this is the appropriate Order under which to raise this matter. I am at a loss. I have been intending to file a question on a matter which is currently engaging the minds of Kenyans and generating a lot of heat. This is a matter concerning the supposed agreement signed between Kenya and Uganda with regard to the importation of sugar. This is a matter that traverses various Ministries. It concerns the Ministries of Agriculture, Livestock and Fisheries, Foreign Affairs, Commerce, Tourism and East Africa Region as well as the National Treasury. There are several Ministries which are concerned with this matter.

The question I want to address to you for your ruling with a view to summoning the relevant Cabinet Secretaries jointly or otherwise is that there is total confusion as to whether, in the first place, there is an agreement signed between Kenya and Uganda with regard to sugar importation from Uganda. You will recall that His Excellency the President alluded to the fact that there was an arrangement between Kenya and Uganda on this matter.

Hon. Deputy Speaker: There is a point of order by Hon. Pukose.

Hon. Wandayi: I am on a point of order.

Hon. Deputy Speaker: Hon. Pukose is on a point of order. Just hold your horses.

Hon. Wandayi: I am on a point of order. I am summarizing.

Hon. Deputy Speaker: You are not on a point of order. You are making a statement. Hon. Wandayi, please, let us follow our rules. What is your point of order?

Hon. (Dr.) Pukose: On a point of order, Hon. Deputy Speaker. Hon. Wandayi is claiming that he has no evidence as to what agreement was written. Being a Member of the Departmental Committee on Agriculture, Livestock and Co-operatives, is he in order to engage us about a hearsay agreement? Can he produce evidence of any agreement, so that he can substantiate his claim? As far as we are concerned, we are not aware of any agreement.

Hon. Deputy Speaker: Hon. Wandayi, are you in order being a Member of the Departmental Committee on Agriculture, Livestock and Cooperatives?

Hon. Wandayi: I have not made my point and I am being interrupted.

Hon. (Dr.) Pukose: That is hearsay!

Hon. Wandayi: This is a House of order. This is the people's House.

Hon. Deputy Speaker: It is a House of order. We are trying to be orderly.

Hon. Wandayi: We cannot turn it into a public rally.

Hon. Deputy Speaker: Can you finish what you were saying?

Hon. Wandayi: Thank you, Hon. Deputy Speaker.

In the midst of all this confusion caused by conflicting statements from the same Government, is it in order that you make a ruling that the relevant Cabinet Secretaries (CSs) appear before this House and give us evidence and the proper agreement, if at all there is any, between Kenya and Uganda?

Hon. Deputy Speaker: Order, Members!

Hon. Wandayi: This is a matter that is generating heat and it concerns the livelihoods of more than 6 million Kenyans. It is not a laughing matter. Make a ruling that the relevant Cabinet Secretaries appear before us and lay before this House the appropriate agreement concerning sugar importation.

Hon. Deputy Speaker: Your point has been made Hon. Wandayi. Members, without getting too excited, I am rightfully informed that there will be a substantive Motion that will be coming to the Floor on the crisis in the sugar industry tomorrow morning. That is the right point at which you can bring in all the concerns that you are now trying to raise in this sitting. Let us not go into that. Let us hold our horses until that Motion comes to the Floor.

Let us move on, if we have no other statement.

Next Order.

BILLS

First Reading

THE ACCESS TO INFORMATION BILL

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

COMMITTEE OF THE WHOLE HOUSE

[Order for Committee read]

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

IN THE COMMITTEE

[The Temporary Deputy Chairman (Hon. Cheboi) took the Chair]

THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We are now on Order No.9, Committee of the whole House on the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No.09 of 2015). I can see Hon. Kang'ata is present. This Bill has only eight clauses. We will be moving pretty fast and so Members should concentrate.

Clause 2

The Temporary Deputy Chairman (Hon. Cheboi): On this one, we have two amendments. We will have Hon. Kang'ata's amendment first then Hon. Mutura's.

Hon. Kang'ata: Hon. Temporary Deputy Chairman, I beg to drop my amendment in favour of Hon. Mutura's. We had a discussion and I chose to compromise.

(Proposed amendment by Hon. Kang'ata withdrawn)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mutura.

Hon. Kangara: Hon. Temporary Deputy Chairman, I thank Hon. Kang'ata for coming up with this Bill. I want to give justification as to why I want my amendment. On the issue of two representatives---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mutura, I want you to proceed to move your amendment. It does not matter whether you support or not. Obviously, if you were fully supporting, you would not be having an amendment. Kindly move your amendment and we dispense with it.

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

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Hon. (Eng.) Gumbo?

Hon. (Eng.) Gumbo: On a point of order, Hon. Chairman. I *per se* do not have any objection to Hon. Mutura's amendment, but it is important that, as a House, we do not forget the reason why Parliament exists. It is a House that makes laws.

The Temporary Deputy Chairman (Hon. Cheboi): So, what is out of order?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I am coming to my argument. Many times, we have referred to Kenya Private Sector Alliance (KEPSA) nominating somebody to sit on---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Eng.) Gumbo, you are a senior hon. Member and I do not want you---If you have an issue, you allow him to move first, and then you can bring in your point of order. You are completely pre-empting what he wants to say.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, but you have called the order.

The Temporary Deputy Chairman (Hon. Cheboi): I have called the order but I want Hon. Mutura to move, then you can proceed and make your point. Let us first have Hon. Mutura.

Hon. Kangara: Temporary Deputy Chairman. I beg to move:-

THAT, Clause 2 of the Bill be deleted and replaced with the following

new clause-

Amendment of
section 4 of Cap
213A.

3. The Higher Education Loans Board Act (in this Act referred to as the principal Act) is amended in section 4 –

(c) in subsection (1) by inserting the following new paragraph immediately after paragraph (i) –

“(ia) two persons–

(i) one of whom shall be nominated by the Kenya Private Sector Alliance; and

(ii) one of whom shall be government sponsored student in a public university nominated by an alliance of all students unions.”

(d) by inserting the following new sub-sections immediately after sub-section (2)–

“(2A) The member of the Board appointed Under subsection(i)(ia) shall serve for a period of two years;

(2B) The member of the Board appointed under subsection(i)(ia)(ii) shall be elected by the student leaders on a rotational basis from the respective public and private universities;”

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mutura, justify your amendment so that the Members can be with you. I will then come back to Hon. (Eng.) Gumbo because he might have gone a little ahead of you.

Hon. Kangara: Thank you, Hon. Temporary Chairman. The justification is on the two nominees. I am proposing that one of the nominees be a student from public universities. It is good that when we are dealing with students, we include them in decision making for the sake of their welfare.

Hon. Temporary Deputy Chairman, I am also proposing that the second nominee should be a person from KEPSA, being a body that employs students. I am proposing that if seconded, we have those two nominees on the Board.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first shot to Hon. (Eng.) Gumbo. I do not know whether you want to proceed in terms of your point of order, or proceed to support or oppose this particular clause.

Hon. (Eng.) Gumbo: On a point of order, hon. Temporary Deputy Chairman. First, I have no objection to the framing of the amendment. In this House, we have many times referred to this entity called KEPSA. Is it recognised in any law in Kenya? The danger is, when we allow pressure groups to nominate representatives, they can exist today and fail to exist tomorrow. There are too many pressure groups. I think the idea of pressure groups nominating representatives when they are not recognised in law to take legal positions is dangerous to this country. Tomorrow, another entity will come doing exactly the same thing KEPSA is doing. I have discussed this matter with KEPSA people; they are asking to be recognised in law, but do they exist in law? What happens tomorrow if we have another pressure group calling itself “Kenya Sector Alliance”? There are so many of these things. If we go in this direction, we are going to lose the intention of this Parliament to make laws that serve the people of Kenya. What happens if the people who formed KEPSA decide that they do not want it and want to call it by another name? If it is this House, it will be okay because we will come back to it. If KEPSA was recognised in law, it would not change its name without coming back to this House. The name would have to be changed by this House and we would change reference to it accordingly. When we allow pressure groups to nominate pressure groups that are not recognised in law, it is a dangerous way to go. There is no end to it. It is something this House must cease doing.

The Temporary Deputy Chairman (Hon. Cheboi): I take it that you are opposing an amendment. That is as far as I can hear you. Much as you have raised a point of order saying that it is not recognised in law, I find it more of an argumentative statement than a point of order. There is a lot of interest in this particular clause. I will open it to a few more hon. Members, who will, therefore, convince you one way or the other. I have taken one person from this side; so I will definitely give the next shot to anybody top on the list to my right, and that is Hon. Member for Chuka/Igambang’ombe.

Hon. Njuki: Thank you, Hon. Temporary Deputy Chairman, for the opportunity to contribute to this amendment. I would have preferred Hon. Kang’ata’s amendment because it was giving the opportunity to the private university students to sit on this Board. We do not have private and public students. There has been a serious problem where students in public universities get preference in getting HELB Fund loans while the ones in private universities are treated as private students; this does not make sense.

Now Hon. Mutura has brought the issue of the employer and, maybe many hon. Members did not get what he meant. When most students clear university they get employed in the private sector. Therefore, KEPSA is a stakeholder in this particular case. When it comes to collecting dues after students have cleared the university, there is a big problem. The Government is very effective where students are employed in public sector. Collecting repayment from students employed in the private sector is usually a problem.

In this particular case, I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman. I rise to oppose because of the following reasons. HELB Fund is very important as far as the education system financing is concerned. My friend has talked about private and public universities entry, but you need to know that HELB Fund gives priority to public students, who have met the threshold and

their fees is normally subsidised. Today, if you want to study medicine, may be because you got an “A,” but did not qualify in terms of the cluster subjects, if they go through a private arrangement they will get because they show capacity in terms of fee payment. However, the HELB Fund, of late is also giving money to students under the parallel degree programme.

So, students in public universities should be given priority as they have demonstrated competence as far as the minimum threshold is concerned. The issue of bringing in KEPSA to represent employers is wrong. In this country, employers are recognised by the Federation for Kenya Employers (FKE) and KEPSA is an amorphous body. In fact, they have been pushing for the public-public sector partnership and they have gone through. It is not through an Act of Parliament. If it is an issue to do with employers, we rather incorporate FKE and not KEPSA.

I vigorously oppose.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we are getting ourselves into a major problem. All the three hon. Members who have spoken have made very lengthy arguments. Please be to the point as you know we should not be debating at this point in time. Members must go straight to the point.

Top on the list on this other side is Hon. Melly, Member for Tinderet.

Hon. Melly: Thank you, Hon. Temporary Deputy Chairman. I want to say that in this Bill, if you look at the students who have been introduced by this clause, I would prefer---

(Hon. (Ms.) Kajuju crossed the Floor without bowing)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kajuju, you are totally out of order. You will have to go back to the Bar and do what is supposed to be done.

Hon. Melly: If you look at Hon. Kang’ata’s clause, and we are to introduce---

Hon. Kang’ata: I have dropped it.

Hon. Melly: You have dropped it? Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us specifically deal with this amendment. On this other side, let us have Hon. Stephen Kariuki of Mathare.

Hon. Stephen Kariuki: Thank you, Hon. Temporary Deputy Chairman. From the outset, I would like to say that I support this amendment in order to incorporate the student fraternity in the management of the Higher Education Loans Board (HELB). I also support the involvement of the Kenya Private Sector Alliance (KEPSA), because as my friend, Ing’ombe has said, we should be able to consider employers of students after graduation.

On that note, I support.

The Temporary Deputy Chairman (Hon. Cheboi): We have no Ing’ombe here. That should have been the Member for Chuka/Igambang’ombe.

Let us have Hon. Member for Navakholo then I will give an opportunity to two more Members and we will be taking our decision on this.

Hon. Wangwe: Thank you, Hon. Temporary Deputy Chairman. I would like to say that I support one amendment and object to the other.

The Temporary Deputy Chairman (Hon. Cheboi): There is only one amendment.

Hon. Wangwe: Hon. Temporary Deputy Chairman, he has moved an amendment as per the Order Paper. When you look at the Order Paper, they are two. One is the proposal to include KEPSA and the second one is for the Government-sponsored students in public universities. I

want to concur with the second one but object to the first one. We cannot allow KEPSA into this body. This diverts the objects of the Bill in totality.

The Temporary Deputy Chairman (Hon. Cheboi): Just to guide you Hon. Wangwe, you will have to make up your mind on whether to support the amendment or not. This is a package as far as we are concerned.

Hon. Wangwe: Hon. Temporary Deputy Chairman, if it is a package, I object to both.

The Temporary Deputy Chairman (Hon. Cheboi): You have said that you support or oppose?

Hon. Wangwe: I oppose, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let me have the Mover of the Bill and then---

(Several Hon. Members raised their hands)

I can see people are putting up their hands. I have more than 20 requests. We will not give an opportunity to everybody; we will definitely take on board as many people as possible.

Hon. Kang'ata: Thank you. The reason I dropped my proposal and adopted this one was because it was a compromise. I was told it was not fair to just bring on board students only. I had to drop one student and allow the private sector to come in. Why do we bring in the private sector? The reason is the HELB capacity to recover money. Majority of students join the private sector then recovery of the money becomes an issue. Two, the private sector may help the Board towards coming up with more ideas of getting money that is going to supplement the Government grant. This notion of depending on the Government only does not make sense. We need to come up with more and fresh ideas and the private sector can help us. That is why his idea makes sense and I had to agree to compromise on it.

Hon. Bowen: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. What is your point of order, Hon. Kangogo? We will have to go by the list here. You are on a point of order and I see you have also made a request which is among the top ones in the list.

Hon. Bowen: On a point of order, Hon. Temporary Deputy Chairman. I am raising a point of order especially on the Member for Navakholo. When he said he was rejecting one part of the amendment, it was improper because it is one clause. It is either you reject or accept it wholly, because it is one clause.

I want to oppose this amendment. One, putting students to be part of the Board members of this HELB is actually wrong because you are taking them away from studying. These are students who are supposed to be in class and not in boards. Two, I want to support Hon. Wamalwa that when you graduate from a university, the people who are out there to receive you are the Federation of Kenya Employers (FKE) and not the private sector.

The Temporary Deputy Chairman (Hon. Cheboi): You are back to the same argument. I think we are taking too long.

(Hon. Anyango consulted loudly)

I can see there is a lot of consultation here. Why would you not save your decibels for when you will be making the decision?

I am giving a chance to the Hon. Member for Makueni, who is on this side and at the top of the list.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Chairman. Recently, the private sector asked Members of Parliament to help them have a law to legalize their existence. They do not have a law to that effect right now. So, the question is: What method will you use to engage the private sector?

Thank you, Hon. Temporary Deputy Chairman and I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I will now give a chance to the Hon. Chairlady of the Departmental Committee on Education, Research and Technology Committee and Hon. Ng'eno.

(Hon. Kipyegon clicked)

Hon. Ng'eno, you will not be allowed to click. You will have to follow the procedure; you will not click. You will not do that. If you insist, we will not be in good books for the time being. You have an opportunity to speak but you cannot click. It is actually bad manners.

Let us have Hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Chairman. We are talking about putting the private sector in the Board. I would just like to inform the House that we have FKE. The said KEPSA also sits on the FKE. So, they are already well represented in the Board. We would not like to add any other person from the private sector while they are already represented by FKE on the Board.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Ng'eno.

Hon. Kipyegon: Hon. Temporary Deputy Chairman, I just wanted to say that I support, but there is one more issue: I do not know whether this matter is legal or illegal because HELB also sponsors college students currently. When we only talk of university and we are not mentioning college students, I do not know how that one can come in.

In this one of having one of the students from private universities, you know the kind of admissions that we have right now. Most students are locked out. Students who have grade "A" are admitted to do Bachelor of Arts degree or general courses, and some people would like to take their children to private institutions. We need to have them on this Board.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have the Hon. Member for Suba. He will probably be the last one.

Hon. Ng'ongo: Thank you, Hon. Temporary Deputy Chairman. First of all, we are becoming "too activist" in this country. This idea of bringing in KEPSA is not good. What is this amorphous body called KEPSA that you want to bring to education, and why do you want to make them part of this Board? We need to really interrogate issues before we think about them. Just because you have some friends in the private sector does not make them competent to run matters of education.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Save that. I can really see Hon. (Prof.) Nyikal as the last one.

Proceed, Hon. Nyikal.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I stand to oppose this amendment. There is a slow movement in this country to get social services moved to the private sector, or for the private sector to take them over. Basically, this is a public issue.

I oppose the issue of KEPSA getting in. I prefer the Bill as it was with the students represented. That made more sense.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Now, I see a lot of excitement on this issue. Let me give the last two. We will start with the Member for Yatta and then I will come to this direction and give a chance to the Member for Othaya.

Hon. Kilonzo: Thank you, Hon. Temporary Deputy Chairman. I stand to oppose this amendment. If we want to incorporate KEPSA for effective collection of loans, then we have competent organizations which can do that job. In particular, we have the Credit Reference Bureau (CRB), and to get clearance from them, you must have paid your loans.

I stand to oppose this amendment completely.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member for Othaya in one word then we take a decision.

Hon. (Ms.) Munene: Thank you, Hon. Temporary Deputy Chairman. I rise to oppose this amendment because if students are going to be given allowances, they are going to fight among themselves. So, there is no need to give them this chance because they will not study, having in mind that there will be allowances. They will simply fight; we, as parents, are going to get into problems since our children are going to kill each other because of money.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Now Members will have an opportunity to make their decision, because not every one of us can speak.

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

Order, Hon. Members! Having made the decision that this one falls, we go back to Clause 2 as it is in the Bill.

(Clause 2 agreed to)

(Clause 3 agreed to)

Clause 4

Hon. Kangata: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 be amended by inserting a new paragraph immediately after paragraph (a) –

“(b) inserting the following new subsection immediately after subsection (5) –

(6) All regular government sponsored undergraduate students in the universities shall upon application for the loan be entitled to an award of the loan unless the Board is able to provide documentary evidence of a student’s ability to pay fees without the loan.”

The whole idea is to give priority to regular undergraduate students. This was borne out of my own noting of the Garissa attack. It was very clear that almost 90 per cent of regular

undergraduate students came from very poor families. Were it not for this HELB money, majority of them would not have been there. So, we need to secure them, one, because of where they come from; two, by virtue of them having performed very well in the Kenya Certificate of Secondary Education (KCSE). Most of them joined in as regular students, having got grade “B+” and “A-” as opposed to students who are there may be out of their parents having some strong financial background. So, to support these young children who perform very well in the KCSE, let us have this provision, and HELB in the first instance will give them preference. That is the whole rationale.

(Question of amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will not give chances to many Members this time. I will start with Hon. Timothy Wanyonyi, Member for Westlands. Do you want to speak to this one? I see you have your card in.

Hon. Wetangula: Yes, Hon. Temporary Deputy Chairman. I support this amendment. I think it is important because many times students apply and they are never informed whether their applications have been rejected or not. Sometimes, there are undue delays which cause undue hardship to the students. I support this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have Member for Luanda. What is that? You will have your opportunity, hon. Member.

Hon. Omulele: Thank you, Hon. Temporary Deputy Chairman. I stand to support this proposed amendment. This is because we, as Members of this House who have been dealing with students in our constituencies, know that every child who is admitted to a university under the regular programme actually applies for the HELB loan through the Constituencies Development Fund (CDF). Our children are poor and from what I have observed, most of the students are denied loans without any explanation. So, I think it is fair that we give our children opportunities; we have been saying that the only inheritance we can give our children is education. I support.

The Temporary Deputy Chairman (Hon. Cheboi): Very well; let us have Hon. Seneta, Member for Kajiado.

Hon. (Ms.) Seneta: Thank you, Hon. Temporary Deputy Chairman. I stand to support this proposed amendment. I support and insist that the Board should be writing to the institutions to inform them early which students have benefited. This is so that they are not denied opportunity to register or sit examinations.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Tong’i.

Hon. Tong’i: Thank you, Hon. Temporary Deputy Chairman. I stand to support this proposed amendment. However, I have a proposal that we should also make it mandatory for all students who have applied for loans to qualify. This is because for you to apply for a loan you clearly must be needy. This idea of a student qualifying because he or she is from a poor family should not be the concern of the Board. My proposal is that everybody who has applied should be given a loan. The fact that you have applied is a clear indication that you are in need, and you need that help. After all, it is a loan and you are going to repay it. So, why should you be denied when it is an entitlement to every needy person?

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I will exercise my prerogative and give a chance to one Member who was fairly late for reasons that I will not explain. That is Hon. Mwaura, who was a bit late; I have chosen to give him an opportunity because I can easily understand the situation which he is in. He can be allowed to be late once in a while.

(Laughter)

Hon. Mwaura: Thank you, Hon. Temporary Deputy Chairman. We have to build the society. I rise to oppose this amendment by my good friend, Hon. Irungu Kangata. If you look at the current situation of HELB, it is not able to give all the applicants money as they request. It, therefore, means that if you go by this amendment, the only people who are going to benefit from that limited resource are regular Government-sponsored undergraduate students. In my opinion, I do not think that just because you got a grade “B+” and above qualifies you to be poor and, therefore, entitled to a loan. There are many bright people who come in as self-sponsored students and who do not want to advance their education. I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. I must commend Hon. Mwaura. He is very smart of late.

Let us have Hon. Dawood.

Hon. Dawood: Thank you, Hon. Temporary Deputy Chairman. I want to support this amendment; my reason for supporting is because I believe all undergraduates under Government sponsorship should get loans. But, there should be a rider that all the people who apply should be informed if their applications have been received. Many cases happen where people make application for loans and they do not go through. This is good but there should be a rider that they should be informed whether they will be given loans, so that they can wait for them.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Chairman. This for me is a very good amendment. One, it recognizes effort; I think the idea of saying that we give equal priority even to those who are pursuing parallel degrees as opposed to those who are going through regular programmes is not good. I want to congratulate Hon. Irungu Kangata on this. I was very impressed when a student from a secondary school I started four years ago, an orphan, got grade “A” minus. Why would such a student not be given priority over somebody like my child, who is able to get other alternatives? *Mzee* Kangata, I want to thank you very much and I support.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly, let us have the Member for Rongo.

Hon. Anyango: Hon. Temporary Deputy Chairman, with my credit management experience I have a lot of difficulties with this clause. Where is the Board going to get documentary evidence to decline giving loan? Secondly, why the discrimination between students under the parallel degree programme and Government-sponsored students? Why are we guaranteeing in law that there will always be Government-sponsored students? In future the policy of Government sponsorship will disappear, and students will be admitted by boards of respective universities. Honestly, we are giving responsibility to the board that is very difficult to discharge.

First, is the discrimination that you must be Government-sponsored and second it is automatic to get it. Then, why is it a loan application? It will cease to be an application with particulars which can be used for recovery in future, because you are asking that this process be automatic the moment you apply. So, the whole clause, I think, is misadvised and I oppose it.

The Temporary Deputy Chairman (Hon. Cheboi): Okay; now Hon. Members, let us make our decision on this one, one way or another. I see there are more Members who want to speak, but I think this is something we can finalize.

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

(Clause 4 as amended agreed to)

Hon. Members, if you notice, we have indicated from Clause 4 the Bill goes to Clause 7, which means, therefore, we do not have Clauses 5 and 6. We will, therefore, place Clause 7 as Clause 5 in the Bill.

Clause 5

Hon. Kangata: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 5 of the Bill is amended by:-

- (a) inserting the words “supported by an affidavit” immediately after the words “in writing” in the proposed new subsection (1A)”.
- (b) inserting the following new subsection immediately after subsection (1A) –
“(1B) The affidavit referred to in subsection (1A) shall be valid for one year and can be renewed annually.”

This was a compromise after HELB approached me. The way I had originally crafted this proposal was that--- The idea was that if you get a loan from HELB and you do not get employment, you will do a letter and there will be no interest until the day you get employed. I wanted to save young people who are getting into the job market.

These days failing to pay HELB is very punitive; they are taking your name to the Credit Reference Bureau (CRB), so you cannot even go to the private sector and start a business because you are already blacklisted. I thought they needed to be told not to charge interest until a person gets employed. But, I was told by the Members of the Committee on Education, Research and Technology that the clause can be misused; people will always say they do not have jobs. To mitigate against that I brought in the aspect of an affidavit.

You all know the law of affidavit; if you lie in an affidavit, you can be charged with perjury. Two, I made it annual; so it is not just a letter or affidavit forever; every year you renew it; if you fail to renew it, then interest will start accruing again. Remember, we have several elements in loans; the interest and the normal charges. That those who have not been affected, HELB still have that mechanism which I think is fair.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): This amendment will move quickly, and those who did not speak to the other one, we will be given priority. We will start with the Hon. Member for Kathiani.

Hon. Mbui: Thank you, Hon. Temporary Deputy Chairman. I support this and I think it is a good idea because even if you look at Article 10 of the Constitution on good Governance, it talks about transparency and accountability. So, this is a record that can be kept for future reference and it is a good amendment. Unfortunately, I am talking late; I think that Clause 4 was a big mistake we have just made because we do not have that money, as a country.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, let us have Member for Sigor.

Hon. Rotino: Thank you, very much, Hon. Temporary Deputy Chairman. I support the amendment that the Mover has moved. This is because it is important to realize that not everybody gets a job immediately; it is so punitive that when you do not pay the loan as prescribed your name is taken to CRB. It is important that the affidavit is produced and every year you renew it, and as soon as you get a job then you can start repaying the loan. I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Member for North Imenti.

Hon. Dawood: Hon. Temporary Deputy Chairman, I support the proposal for the affidavit because as the proposer has said, a lot of people do not get jobs immediately and they can be out of a job for more than five years and then the interest builds up. It is a good idea and I support it.

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

(Clause 5 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman: Hon. Kangata, as the Mover can you please move reporting.

Hon. Kangata: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 09 of 2015) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

**REPORT, CONSIDERATION OF REPORT
AND THIRD READING**

THE HIGHER LOANS EDUCATION BOARD
(AMENDMENT) BILL

Hon. Cheboi: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No.09 of 2015 and approved the same with amendments.

Hon. Kang'ata: Hon. Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report.

Hon. (Eng.) Gumbo: Hon. Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

Hon. Kang'ata: Hon. Deputy Speaker, I beg to move that the Higher Loans Board (Amendment) Bill, National Assembly Bill No.9 of 2015 be now read the Third Time.

I request Hon. Gumbo to second.

Hon. (Eng.) Gumbo: Hon. Deputy Speaker, I beg to second that the Higher Loans Board (Amendment) Bill be read the Third Time.

As I second this Bill, it is our duty, as representatives of the people to support any measure that removes barriers to access of education to many children in Kenya. Some of us who sit in this House would not be here today if these barriers were there. Therefore, as beneficiaries of a system that enabled even people from disadvantaged backgrounds to access higher education, this is a good move. As we move forward, let us remove as many of these barriers as possible so that many Kenya children especially those who deserve can access higher education.

I support.

(Question proposed)

Hon. Deputy Speaker: Hon. Daniel Maanzo, do you want to make a comment on this?

Hon. Maanzo: Yes.

Hon. Deputy Speaker: Go on. Make a very brief comment. Remember it is the Third Reading.

Hon. Maanzo: Hon. Deputy Speaker, I would like to say that the amendments have been proper. This makes the lives of students in Kenya much better.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, Hon. Johana Kipyegon.

Hon. Kipyegon: Hon. Deputy Speaker, this is a very important amendment to this Bill given the fact that many students have been suffering especially those who are---

(Several Hon. Members withdrew from the Chamber)

Hon. Deputy Speaker: I request the Hon. Members who are exiting to give us a few minutes because we want to put a Question on this. Allow us a few minutes. Do not leave the Chamber. I know you may be going to Committees.

Hon. Kipyegon: The most important amendment was on the under 18 who have had a serious problem in getting these loans. We have students who join universities when they are not yet 18 years old and normally, they do not get these loans.

Hon. Deputy Speaker, I thank the Mover for this particular amendment.

Hon. Deputy Speaker: Yes, Hon. Stephen Manoti.

Hon. Manoti: Thank you, Hon. Deputy Speaker. I would also like to commend this amendment as it will go a long way in assisting many of our students especially those from poor background.

Thank you.

Hon. Deputy Speaker: Yes, Hon. James Nyikal.

Hon. (Prof.) Nyikal: Thank you, Hon. Deputy Speaker. This is an important amendment. The income parity in this country is actually disturbing. The gap between the rich and the poor is growing too wide to the extent that majority of Kenyans who are in the poverty group will not access social services like health and education. Therefore, these amendments that bring and streamline support for those who are disadvantaged are welcome.

I, therefore, support this.

Hon. Deputy Speaker: Yes, Hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Thank you, Hon. Deputy Speaker. I would like to congratulate the Mover, Hon. Kang'ata, for moving the amendments that are going to be useful in ensuring that poor applicants benefit. I would like to note that if there is an award for pro-poor amendments, it needs to go to Hon. Kang'ata because he seems to have the most number of pro-poor amendments sometimes with unintended consequences like what will happen with Clause 4.

The issues in Clause 4 are really good but some of the unintended consequences raised by Hon. Dalmas need to be looked into. We have many poor students who do not get a written reason why they do not get the loans. We are not able to help them because the reasons are unknown. There is need for a letter indicating that they did not succeed in getting the loan because they did not give us enough evidence of "X" or "Y" but documentary is a bit on the extreme side. Probably, that is something we need to eventually look into.

With those remarks, I thank the Mover and look forward to a better HELB.

Hon. Deputy Speaker: Hon. Members, feel sufficiently represented by those views that have been given so that we can put the Question. I have confirmed that we have quorum for the purpose of making a decision.

(Question put and agreed to)

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

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

Hon. Deputy Speaker: Was the Bill ongoing or you are moving it. Yes, Hon. Kaluma.

Hon. Kaluma: Thank you, Hon. Deputy Speaker, for the great opportunity to move this amendment to our Constitution.

Hon. Deputy Speaker, I beg to move that the Constitution of Kenya (Amendment) Bill, National Assembly Bill No.2 of 2015 be now read a Second Time.

The Bill we have before us would not be necessary if the organs of Government clearly kept to their places of work, functions and roles and time without interfering with others. This Bill would also not be necessary if we operated under the previous Judiciary where we had judges who were firmly anchored on some of these constitutional principles which are very basic and well settled.

On previous occasions before this House, I have mourned the fact that the great judges who have served this country like Justices Ringera, Nyamu and Emukule; and those great judges of public law like Justices Ibrahim, Ojwang' and Warsame no longer sit in the Public Law Division of the High Court. So, that is the background we are coming from. How we wish that the solidity of mind, the understanding of the Constitution and the relationships between Government organs on matters constitutional and intervention against one another in terms of checks and balances were well understood. The judges served in the then Public Law Division understood them.

Kenya is a constitutional democracy. That means all organs established by the Constitution are equal. The difference is that they perform their constitutional functions and mandates within their respective areas. Parliament will make laws in addition to execution of those other functions we have under Articles 95 and 96 of the Constitution. The Executive will set Government policies and enforce those policies, including the laws, in a manner that serves the interest of our people.

Although Article 10 contemplates that other individuals can and must also be interpreting the Constitution, the Judiciary is given power to interpret the Constitution and laws and check whether any action by any individual, State organs or agencies is in accordance with the Constitution.

In terms of status and standing, the Judiciary, Parliament and the Executive are co-ordinate institutions. None is superior to the other. They perform their independent functions as given by law on behalf of the people of Kenya. I do not want to take long in moving this Bill. The Constitution has in-built the doctrine of separation of powers as our value and in its architecture. That is why those functions I am talking about have been granted to those respective organs and agencies of the Government. The Constitution has also in-built what we call checks and balances among those organs and agencies of the State.

What am I saying? Parliament will budget and that money will go to the Executive for it to execute those functions, but Parliament will retain the obligation to play an oversight role. For instance, we have the Public Accounts Committee (PAC) of this House doing a bit of audit. In terms of relevance, there is no time Parliament, either as individual Members or through its Committees, including PAC, will go to the desk of the Executive when it is still spending money executing those functions which are important for the people of Kenya. In fact, PAC will wait for those expenditures to be concluded. At the end of the year, the Auditor-General will speak and those queries raised by the Auditor-General will be interrogated by this House through PAC on behalf of the people of Kenya.

In this Bill, I am seeking to cure a situation which worried the nation quite a while back and it is something that continues to bother people. The idea that courts have been intervening on matters Parliament is dealing with while those parliamentary proceedings are still going on. I am not saying that the courts ought not to check Parliament.

Legitimately, the courts must check Parliament in the exercise of the authority given by the people of Kenya. However, now that the courts seem not to be alive to the need to keep detached from parliamentary actions and proceedings until they conclude, there is need for a provision that would make it clear. While Parliament exercises the sovereign will of the people of Kenya in dealing with a matter as important as the Budget and others, let the courts wait. Once Parliament makes its decision either way, the courts have the constitutional mandate in terms of checks and balances to intervene when petitioned by any Kenyan, whether ultimately what Parliament passed or an action of Parliament is in accordance with the Constitution. The courts should come at the end to question whether what Members of Parliament, seated in either House, did is in accordance with the Constitution or not.

Indeed, if the courts were to find that Parliament passed a law, for instance, which violates the provisions of the Constitution, then in invoking the supremacy of the Constitution, ours being a constitutional democracy, those laws will fall. Some provisions of the Security Laws (Amendment) Act which we passed the other day were annulled by the courts. The history of these matters is very long. We have situations where a whole law has been struck out. I can remember the famous In Duplum Rule law, which was brought by Hon. Joe Donde, then an indefatigable Member of this Parliament. It was wholly nullified by the courts.

The Kenya Roads Board Act was wholly nullified by the court on finding that, indeed, what Parliament did contravened the Constitution in terms of those provisions the Kenyan people put in the Constitution as a principal document. However, let the courts wait until Parliament exercises the sovereign will as the representative of the people and make a decision before they can intervene.

There is a limb to this matter which is very critical. People will remember when we had issues of governors in various courts, for example, the case of the Governor of Embu against Members of the County Assembly (MCAs) and others. In fact, this is what informed my thinking around this provision. We had a situation where Parliament was proceeding and the courts were also proceeding with the same matter. While Parliament adhered to the doctrine of *sub judice*, the courts appeared not to have regard that this matter was going on in Parliament.

Two things happen. One, public resources and public time are spent on resolving a single issue that may be of concern to the people of Kenya by two organs of Government, which would rather wait for either to proceed. This was a clear case that was still proceeding before Parliament. Another thing happened which never caught the attention of a number of us. We may be forgetting. I remember there were even attempts to cite the Speakers of the National Assembly, the Senate and those of the relevant county assemblies for contempt. So, you imagine the role of a Speaker of Parliament and imagine how constrained Members of Parliament would be in terms of liberty to debate as if they do not know. This is because the Speaker is a Member of Parliament *sui generis*. You are seated there and because Hon. Kaluma and others were debating, the Speaker is cited for contempt on a matter that would rather be presided by Parliament before it goes to another forum to test its constitutionality.

We are not fighting the courts. I would be the last person to fight the courts given the fact that I am a lawyer as I continue to practice before the courts. We are telling the courts to let the

organs of the State check one another within the times that would allow proper checks and balances. It never happens anywhere in the world. In fact, for us who are deep in constitutional law, it is something that hurts us very much. This jurisprudence is so settled. If you look at those cases I have spoken about---

There is a case of Hon. Musalia Mudavadi and cases of former Members of Parliament. Parliament always said: "No, we will not intervene until it is done." That has been going on because we have judges who are testing the limits of the various constitutional powers.

I am seeking to bring in another provision that a Member of Parliament shall not be liable and should not be made liable either criminally or in civil matters for exercising the functions of that office. Members of Parliament should have the liberty to do whatever they want to do, not fearing that there could be civil or criminal action against them.

As we speak, there is a former Member of Parliament in a similar case. I do not know whether you know the case of Hon. Gor Sungu. He came into this House and said:

"There was the murder of the former Foreign Affairs minister, a very popular Cabinet Minister of the Kenyan Government, which is something the people of Kenya are still agonizing about. Let us go to the depth of it."

He moved a Motion and this House created a Committee which was to investigate the murder of the late Dr. John Robert Ouko. Since Gor Sungu moved the Motion, it was him who chaired that Committee. So, Gor Sungu leaves the Committee and, within the precincts of Parliament, says:-

"It appears, according to the evidence we have, there is a lead that another Kenyan outside there could know something about this murder."

Hon. Members, a defamation action was taken to court. I thought the High Court would have wanted to know the boundaries of Parliament and the capacity in which Gor Sungu was speaking. He was speaking as the Chair of a Committee investigating this matter of grave concern to the people of Kenya; that a Minister of Government can disappear and tomorrow his body is found burnt to ashes like some burnt grasshopper on the hills of his rural village. It is a matter of serious concern.

The High Court never referred to the immunity this Member of Parliament needed to enjoy to be able to do his work. The High Court said Gor Sungu must pay Kshs3 million. An appeal was taken to the Court of Appeal and Gor Sungu said:

"I was exercising my functions as a leader of the people and a person mandated to resolve issues of concern to the people together with my colleagues. It is a matter I deserve to comment on to inform the public in terms of the direction the investigations into this important matter was taking."

However, the Court of Appeal did not hear that. The fine was moved from Kshs3 million to Kshs10 million. Gor Sungu, whose only mistake was to serve the people of Kenya in terms of the leadership position he held as an MP, is out there. He has no other source of livelihood. He is living with undue difficulties. He has to pay Kshs10 million. That Kshs10 million has to be the basis upon which we calculate costs and interest going forward. Of course he appealed to the Court of Appeal to permit him to send the case to the Supreme Court, which is the last court, to deal with this issue about the immunity of an MP when executing his functions as an MP.

What did the Court of Appeal say? It said he has no leave to go to the Supreme Court. It insisted that the matter has been pending for too long and, therefore, he should pay. We have a situation where that Hon. Member, who had the bravery and courage to take up the matter that

continues to exercise our minds as the citizens of this country who believe in the security of all and more so the security of the leaders of this nation serving in top positions like Cabinet Secretaries (CSs), has to pay for something he did in due discharge of his functions as an MP. That is why I am saying that let us really grant this immunity to MPs so that this becomes a free place of debate.

Currently, the MPs exercise the sovereign will of the people of Kenya. When I speak I want to have the freedom. When I am on the base of the national values and principles, I want to have the freedom that the people of Homa Bay Town Constituency sent me to have here. I should not fear that when I say something, I will be charged with defamation and when I do this, I will be arrested and subjected to a difficult situation.

Article 95 of the Constitution, today, gives us very wide powers, contrary to the thinking of Kenyans that we are only limited to legislation. Our primary obligation is representation.

Recently, I accompanied Hon. Mutura to a police station simply because his constituents were sitting together protesting. As a leader, you have to join them. He went there and was arrested together with them and he was accused of incitement. I remember asking the police officers where they draw the line between an MP being there to commiserate, understand and listen to the problems of his people and find a solution around them, as the Constitution mandates him to do, and an MP who is seeking to incite. We have a situation where if we will not make this clear in law, we will not be able to discharge that obligation. That is why I am not limiting the proposed amendments just to Parliament. I am saying that be it the Senate, the National Assembly or the County Assemblies, whenever they are treating an issue of concern to the people they represent, let the courts wait. They must have the freedom to freely talk around these issues. If indeed they are harboured, it would not be right. They must have the freedom to talk about leadership of the country. Once they are done, let the courts, whether it is the High Court or any other court duly mandated in law, intervene to check what could be happening.

I do not want to belabour this point. I beg the Members to consider this Bill. I am begging Kenyans outside there to understand. I have no problem with courts intervening over parliamentary work. There have been concerns, particularly from some constitutional commissions, that there are times when this could be a breach or violation of human rights. I am limiting this to the functions of Parliament. I am limiting this to be an immunity to be given to Parliament when it is proceeding with the exercise of the functions of Parliament.

Violation of human rights is not a function of Parliament. The court can intervene on that. In the exercise of the sovereign will of the people as their representatives, I doubt if we can, for instance, sit here to take away the life of anybody. Even if it were to be life, I do not believe that in this Plenary we can bring a Kenyan and say we are killing him/her so that the court can be justified to intervene as we are proceeding. We want freedom to proceed. If we are to kill any Kenyan, I want to assure the people of Kenya outside there that that is not a function of Parliament and it is not the immunity that this Bill I have placed before Parliament seeks to do.

I thank you, Hon. Deputy Speaker. I beg Hon. Kang'ata, the MP for Kiharu to second the Bill.

I beg to move.

Hon. Deputy Speaker: Yes, Hon. Kang'ata.

Hon. Kang'ata: Hon. Deputy Speaker, I second this Bill and support it 100 per cent. The reasons are as follows.

First, the power of the court to question a decision of Parliament including a law is usually restricted in many other jurisdictions. Hon. Members, I refer this to the practice in the United Kingdom (UK). In the UK, you cannot take Parliament to court to challenge a law that has been made by Parliament. If you go to Israel and France, you will find it is only parliamentarians who can exercise that power. For instance, if I am an MP and there is a certain law that has been passed here, it is only me or any other MP who can go to court to question the legality of a statute. Here in Kenya it is the very opposite. Anyone has the right to go to court to question the constitutionality. We are not intending to challenge or to limit that. I just wanted Members to understand that, indeed, Kenya is somehow special in the international jurisprudence on this issue.

The reason why other states circumvent that issue is for obvious reasons. Parliamentarians happen to be people who are doing their work after directly being elected by the people of Kenya. We are here out of the fact that we were all elected by people. Actually, were it not for the space and the issue of resources, every Kenyan is supposed to be here.

Therefore, in other countries, that right is usually very whittled down. In Kenya we have opened it, which is good and we support that idea because it is in the Constitution. However, courts have now gone overboard. You have a situation where even when a matter is still under discussion by Parliament, injunctions have been issued. Even in circumstances where clearly the courts are not supposed to entertain those matters, they have gone overboard. What is the effect of that? The effect of that is that we shall now become second class vis-à-vis the Judiciary. We shall not be able to function as a Parliament. That will be the effect of that going forward. It is a very major assault on the constitutional arrangements of the organs of this country. This is because if, for instance, injunctions are being issued against the Executive and Parliament, then that will mean that power is now repossessed by the Judiciary as opposed to duly elected representatives of the people. That is very dangerous. That will be the effect of that. It is fine that the Judiciary has the legitimacy as per the Constitution but the bottom line is they are not elected.

This amendment does not propose that we limit the jurisdiction of the High Court *per se*. The High Court will still have powers to question our actions but, it will be at the tail end. After we debate and crystallize our decisions in terms having our report to a law, we will have no problem at that point. Any Kenyan is entitled to go and question that issue at the High Court.

However, Hon. Deputy Speaker, the issue is about when the matter is still under discussions or under pendency of the Parliament, it is not fair for the court to intervene. I cite the case of Mr. Wambora. We have seen a situation where the matter was being intervened when the county assembly and the Senate was still considering that issue. Someone may say Parliament wants to become selfish. I draw the attention of Members to our Standing Orders.

We have explicitly restrained ourselves that we shall not discuss any matter that is before a court of law. It is in our Standing Orders. So, if we, as Legislature, have a rule expressly saying we shall not discuss a matter that is before a court of law that also ought to apply to the Judiciary. That is the whole idea of this Bill.

Actually, we are simply telling the court to adopt our practice which is that we do not interfere with our matters when it is before you. In the same rationale when the matter is before us, please, do not interfere. Once we are done with the matter, fine, you have the right to check on the constitutionality of our decision, whether it is a law or whatever it is, but allow us to have what is called “freedom of discussion”. Allow any kind of Bill or discussion to come here but whether we shall agree to it, we will have the liberty to discuss. Otherwise, I foresee a situation

where, one day, God forbid, the Speaker will be cited for contempt. It will be a very embarrassing situation. It will reach a situation where, God forbid, the President can be cited for contempt.

So, to prevent such kind of a situation, Hon. Kaluma has come up with a very good amendment which is clearly proposing to amend Articles 117, 165 and 196 of the Constitution. The import of the amendment to Article 117 is to provide that Parliament may, for the purposes of orderly and effective discharge of the business of Parliament, provide for powers, privileges and immunity of Parliament and its Committees and its leadership.

Article 165 proceeds to provide issues relating to matters that fall within the functions of Parliament which are pending and undergoing considerations before Parliament; that is either in the Houses or in the county assembly. The operative clause which I want Members to note is the pending and undergoing consideration. That is the key operative term in that amendment. That means it is not a concluded matter. We are referring to pending and undergoing consideration before Parliament or matters under that kind of circumstances.

We need to protect Members who are doing their work here because they may be accused of defamation. We have been told about the case of Gor Sungu and several other things which can occur here. Under the Standing Orders, if you feel there is a way for instance that a Member of Parliament has abused the privilege granted to him by the Constitution or by Standing Orders, you have the liberty to write to the Speaker and he can commence internal disciplinary mechanism against a Member of Parliament.

To my best opinion, let us say for instance, I defame a person who is not with me here, and then you feel I want a remedy against that Member of Parliament, it is very simple. Write to the Speaker and he will take the necessary action against that person but, the issue of dragging a Member of Parliament to the court, is not good and creates the following problems.

One, it limits the freedom of speech. Two, means we have become subservient to the courts. This is what we call ouster clauses. It is a clause that ousts the jurisdictions of courts. It is not only in parliamentary practice but even in commercial cases. Take for instance a contract. If you were to provide that in case of a dispute you are going to refer your disputes to an arbitrator, the court usually upholds such kind of clauses. This is not something new. It happens even in international diplomacy. If you have a dispute with a UN official, you will write to the UN and they will be taken before a UN tribunal. You will not go to the courts. So, it happens in other jurisdictions and other entities too.

I support the Bill because it is a very good thing to ensure that the independence of Parliament is maintained by this amendment.

I second.

(Question proposed)

Hon. Kajwang’: Hon. Deputy Speaker, the cry of the Member for Homa Bay Town is a cry of this Nation.

Hon. Wakhungu: *(off record)*

Hon. Deputy Speaker: Hon. Wamalwa, can you just let the Speaker do her job as she knows best.

Hon. Kajwang: The Member for Kiminini should know that there is Article 107 in which Members of the Speaker’s Panel ranks some order of precedence in the Constitution.

(Applause)

Allow me to say that the cry for freedom of expression and the cry that this State is a sovereign State is all embedded in the amendment that is sought today by the Member for Homa Bay Town Constituency. Our Constitution begins by declaring that the sovereignty of the people of Kenya belongs to the people of Kenya. That power is delegated to State organs in Article 1(a), Parliament and the legislative assemblies in the county governments.

It has been interpreted right for several years since the promulgation of the Constitution and everybody understands that to mean that the people of Kenya have given Members that are sitting in this Assembly, in the Senate and in the assemblies power to discuss issues that concern them and to come up with national solutions. It means, therefore, that it is very important for the people of this country to have a situation in which their issues are discussed fairly, robustly and accurately without fear or favour.

Before the Constitution was promulgated, it did not have this clause that you see under Article 117. The framers of the new Constitution decided to put it in the Constitution: that there shall be freedom of speech and debate in Parliament. It could only have been that this insertion was to buttress and fortify the section of the Constitution which opens the Constitution. Sovereignty of the people means that there will be freedom of speech and debate in Parliament. Taken together is the freedom of expression that every Kenyan enjoys; that there will be freedom of expression and people will discuss everything that they are able to do except in freedom of expression it is limited to issues that are not injurious to third parties.

Hon. Deputy Speaker, the ruling my learned friend, Hon. Kaluma has raised was heard before the promulgation of the Constitution. It could have been argued at that time that Article 117 did not exist and somebody would have said that the statute on privileges of this house, that is, Chapter 7 of the laws of Kenya, was not very clear on the issue. Counsels raised an issue on what are the precincts of the House.

Hon. Sungu, was somewhere along the parking next to the entrance of this House. According to the Powers and Privileges Act, that is the precincts of the National Assembly. When the judge, who is now the Deputy Chief Justice tried the issue in the high court, she decided not test, question or rule on what the precincts of the House are. She decided that anything which is said at the parking, therefore, is something which is said on the streets.

The way the courts have ruled and the jurisprudence that has been built on it will, therefore, mean that if precincts of the House cannot be the physical or geographical enclosure of the National Assembly, even what we say on the Floor of this House, looking at that ruling, becomes culpable. You can see that the case was taken to the Court of Appeal, which put gags on the Motions and Hon. Sungu is unable to go to the Supreme Court.

If the Court of Appeal and the Supreme Court cannot handle this matter, the only way to handle this matter is to create a constitutional clarity on the issue. So, all we are saying is not to create a situation in which Members of Parliament go on abusing people saying all manner of things and injuring third parties and companies. No! What we are saying is that because we have the sovereign will of the people of this country, we come to this House and speak our mind without fear or favour. Otherwise, we will be ruled by the Executive, Legislature and the same people who are injuring the people of this country.

For that reason, I want to root that the amendment proposals by Hon. Kaluma are at the core of enhancing parliamentary debate in this jurisdiction. One more thing is the question of whether the court can intervene on issues that are discussed before this House. Tomorrow, we are going, as a Committee, on a retreat with the judges to discuss issues concerning judicial independence and the freedom of the Legislature to operate. They all agree that there is judicial independence and we all agree that there is judicial independence. That a judge cannot be influenced even by his fellow judge or the Chief Justice upon what is before him for a decision. He only has to look at the evidence and the law and make a decision. That is in the Constitution and that is the fundamental principle in which our freedom lies.

Associated to it is also the freedom of the legislature to do its bit. We are not saying that legislators are perfect or that we will do perfect things. But the role that the Constitution has given is that let us do our bit, then when we pass a legislation or a Motion or whatever it is which we pass which you think is wrong, take it to the relevant institution, have it interpreted or even have it annulled, or say that it was unconstitutional.

As I have said on the Floor of this House, next time we are faced with this issue, since I was elected to this House to protect the Constitution, my interpretation of the Constitution is that as long as I am discussing something which is within the province of this House, then the Judiciary is unable to come and stop me from saying what I have. Otherwise, the Judiciary becomes the debating chamber.

I want to urge all my colleagues that we need to turn up in numbers. We need to look at this thing freely and enhance what the drafters of this Constitution said. We need to come here in full numbers so that we are able to support this amendment. Nobody should say that we cannot amend the Constitution. Make no mistake that this thing is about any other political persuasion. This is simply to enhance that 20 per cent that we were unable to do at that time but which is very crucial in the way we do things.

Without taking more time on this because I have said what I must say about it, I plead with my colleagues that let us approach this thing as an issue concerning this nation under Article 95. God willing come next Wednesday - I hope it will be next Wednesday – we will pass this Bill without a doubt.

Thank you.

Hon. Deputy Speaker: Thank you. Hon. Chris Wamalwa.

Hon. Wakhungu: Thank you very much, Hon. Deputy Speaker. From the outset, I rise to support this very important Bill. Article 1 of the Constitution is very clear. The sovereign power belongs to the people. This can be exercised directly by themselves or indirectly through their democratically elected leaders who are the legislators in this House.

We understand the separation of powers of the three arms of the Government namely the Legislature, the Executive and the Judiciary. Article 94(1) of the Constitution clearly stipulates that the legislative authority is vested in this House. As we are doing our work, we do not expect any busybodies out there to come and interfere with us.

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

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

We recognize Article 195(3)(a) of the Constitution that deal with unlimited jurisdiction of the High Court on matters of civil or criminal in nature. We appreciate that, but we are saying that in this Bill let them come in at the tail end and not in the process. We are still doing the cooking and somebody is coming from outside saying: “Hey, do not do the cooking. Stop!” This is what we are talking about. The same way when a matter comes to this Parliament, we know the issue of *sub judice*. If a matter is active in court and you table evidence here to show that it is active, we do not handle it. It is the same when it comes to the High Court. If a matter on legislation is active on the Floor of the House, let that *sub judice* rule also apply to the High Court because this will be interfering with the work of the Members of Parliament.

We are aware of somebody called “His Excellency Governor Wambora”. I recently watched him on TV in the presence of the Deputy President. He said this: “You will not take me anywhere. You tried to impeach me but you failed. The court has protected me.” This is the level of impunity that we do not want to hear. It has even made the Senate not to operate. We know very well that Article 125 of the Constitution says that Members of a parliamentary Committee can summon anybody anywhere for purposes of getting evidence. If the High Court is going to interfere with the process, then we will not legislate.

I want to read something interesting. Article 94(5) says:

“No person or body, other than parliament, has the power to make provision having the force of law in Kenya except under the authority conferred by this Constitution or by legislation.”

We are trying to recognize the role of Parliament. The core business of Parliament is to legislate. If you have an issue with the law, please wait for the output and go to court for purposes of interpretation. I want to request Hon. Members to wake up and support this Bill because it is very critical. Without this Bill coming into place, I can assure you that our work will be impeded. We will not be able to complete this work.

We all know about the issue of security laws. You understand the anarchy that was here. The laws were passed and then CORD went to court. In this case, they looked at the output. So, we want it to continue that way. However, the Wambora way of doing things and the impunity that we are trying to bring across, is what we are against. I want to thank Hon. Kaluma because this is a very wonderful Bill that is well thought out. I expect Hon. Members to support this for the process of defending and protecting the role of Parliament.

I support.

Thank you.

The Temporary Deputy Speaker (Hon.Kajwang'): Yes, the Member for Kathiani.

Hon. Mbui: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute. The previous speaker took a lot of words from me because I was also identifying the fact that our first Article recognizes that we, as a House, are extremely powerful in that all sovereign power is vested in the people and by extension, they can exercise it through us. As a result of that, we also notice that in the same Article, there is delegation of the same power to other organs. One of them is the courts. Therefore, from the beginning, it is very clear that the courts do not have more power than the National Assembly or the Legislature.

We all know that there are three organs of governance. We have the Judiciary, the Legislature and the Executive. Each of them is completely independent of the other. Each of them is allowed by law to operate and carry out its own affairs. So, I stand to support because we

have seen that we have very clear roles for Members of Parliament and Judges that are enshrined in our Constitution. However, there are many times when there is interference with operations of this House. We have seen the courts attempting to define what it is that we can do and cannot do which is not acceptable. I want to say that one of the roles that Members of Parliament have is to represent the people and the other one is to make laws. In representing the people, there are a lot of things that we have to do. Many a times, there are things that may rub people the wrong way because that is what our people want. So, in representing people, we need the privileges and the power to do that without fear.

Hon. Kaluma was very right in making laws. We need to have a situation where we can make laws from the beginning up to the end without any interference from anybody else. So, this situation where the courts come in and stop us in the middle of making laws is totally uncalled for. I believe that courts should not and cannot injunct Parliament in carrying out its responsibilities of making laws. We do not need permission or to be “perfected” by anyone as we do our job.

Now, there is this issue of constitutionality that keeps on coming up. What is really constitutional? Making laws is constitutional when it is being done by Parliament. In fact, for anyone to stop Parliament from making laws is unconstitutional. So, we also know that we have a role to play. I want to believe that by passing this amendment, we shall be ensuring that the powers of this House are respected and we are allowed to do our job without fear or favour. We noticed that the courts keep overstepping their mandate. In fact, recently, sometime last year, the courts reached this point where they were stopping Parliament from doing its job of summoning governors.

The Senate was trying to summon governors to question them about the management of the funds. The courts would stop them from doing that. That was unfortunate because one of the other jobs that Parliament has is to oversee the Executive. One of the executives that we have is the county governments. So, if the governor who is the executive or the accounting officer cannot be summoned to account for money that he has been given by this country, then that is totally unacceptable. That is one of the areas that I felt that the court was overstepping its mandate and making major mistakes.

There is too much to say but on this particular issue, I strongly support it. I urge all my colleagues to support it because we need to protect ourselves. We need to give ourselves power to represent our people, make laws and oversee without fear or favour of any other department or organ of Government.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Yes, the Member for Emurua Dikirr.

Hon. Kipyegon: Thank you, Hon. Temporary Deputy Speaker for this opportunity to contribute. From the outset, I wish to state that I support the amendment by Hon. Kaluma. I would like to say that this amendment is not removing what is in the Constitution but adding teeth to it. Article 94(5) of the Constitution states:

“No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.”

This part alone clearly states that it is only this House, the Senate and the county assemblies who are vested with the powers to make laws or even to amend this Constitution.

The Hon. Member made a proposal to amend this part so that this House, in its duty of making the law, oversight and representation is given serious protection either from within or without. Many a times, many people have been rushing to courts to stop this House from doing some serious legislation. It is on that particular point that Hon. Kaluma has made his registration known. He has registered his concerns that this House must be respected because it has separate powers from the Judiciary. We must understand the separation of powers. It allows this House to make laws, the Judiciary to interpret them and the Executive to implement or put breathe to them. Each one of those particular bodies must be allowed to do its duties. If this House is prevented from doing what is stated in the Constitution, then who else will have those powers? The courts cannot make laws. They can only interpret them. It is only on some very minor situations like on cases of precedent that courts can be said to have made some laws.

Parliament has some powers and jurisdictions like those of the High Court. They allow Parliament to summon people to give evidence. It is only after giving evidence and hearing witnesses that we can make conclusive legislation, oversee and allow other bodies of the Government to deal with the issues that were being overseen or looked at by this House.

Another very important factor in this Bill is the amendment to Article 117 of the Constitution. It talks majorly about powers and privileges. We remember Mr. Gor Sungu's case where a Member of this House was looking into a very serious case. Later on, it was taken before court. The Member had to suffer but it was not a personal matter. It was a matter which was before this House and was discussed in the Committee.

The Hon. Member seeks to shield this House and the committees on the matters which are before the committee or this House. It is not only the Members of Parliament. In Article 196, the amendment seeks to also give protection to the MCAs whom we all know are also grappling with the same situation.

Hon. Temporary Deputy Speaker, sometimes they discuss matters that affect the counties or legislate on matters that affect counties. Sometimes they deal with the constitutional provisions of impeaching the governors. This is the case and yet some governors would rush to court and stop the process which is provided by the Constitution. So, Article 196 as amended will provide for the protection of the county Assemblies so that they cannot also face the same situations that some Members of this House have faced in the past.

There are amendments in Article 165 by the Hon. Member. Article 165 talks about the High Court and especially on Article 165(a) which says:

- “The High Court shall not have jurisdiction in respect of matters-
- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution;”

In this matter, the Member is trying to show the High Court that they may not have jurisdiction also on matters which are before this House. In this amendment it states that the jurisdiction should not only end with the Supreme Court or Superior Courts but Parliament should also be included in that particular part of the jurisdiction. It will only be after the matter has been canvassed, passed in this House that the courts can either look at the legality or the illegality of the Acts which are passed in this House.

Hon. Temporary Deputy Speaker, I think the major reason why we have courts is so that they hear matters which are either within the Constitution or in the Acts of Parliament. The judgements which are given in courts are either based on the Constitution or on Acts of Parliament. It is, therefore, very prudent that the courts wait until this House, the Senate and the

county assemblies clear the matters which are before them. We would also wish to ask the courts that as a matter of fact, whenever there is a matter which is active in courts, it is never subject to either political discussions or even discussions in this House. Even the President himself cannot discuss matters which are active in courts.

I remember when the Independent Policing Oversight Authority (IPOA) went to court and reversed the recruitment of police, the President gave a declaration that the recruits should go to Kiganjo Training College. However, the courts stood their ground and carried the day. I think because the President respected the court's ruling later, this House also respected the court's ruling later. They should also be in a position to respect anything that is being undertaken in this House until when that matter has been signed into law. That is when somebody can go to court and seek interpretation, to see whether the Act which has been passed in this House contravenes the Constitution. This is because the Constitution also provides that any law, either customary or any other Act even international treaties that contravene the Constitution is null and void.

It is upon the courts now to determine the matter, but not before we clear with it. It is only after this House has passed the laws that the courts can now give full interpretation. I wish to support this amendment by stating clearly that it seeks to protect the powers vested in this House by the people of the Republic. As it is known by the law, it is in the Constitution that empowers it to legislate and the supremacy of the people is represented in this House. If you were to tie the hands of this House from representing, legislating and overseeing for the Kenyan people, who else would do that job? So, we are only seeking protection from interference, litigation and protection from any other body that may want to gag this Parliament.

Secondly, we are only seeking for the separation of powers to be clearly stipulated so that when we deal with whatever we deal with, we do not get interference. When courts deal with their issues, we do not interfere with it. When the Executive deals with what they deal with, we do not interfere with it. So, the courts should also not interfere with our processes until when somebody wants to seek interpretation.

Thank you and I support.

The Temporary Deputy Speaker (Hon. Kajwang'): Let us have the Hon. Member for Kisumu West. I can see you are anxious to put in your word on it.

Hon. Aluoch: Thank you, Hon. Temporary Deputy Speaker. I rise to support this amendment Bill. I congratulate Hon. Kaluma for bringing it up. It is long overdue because this is not only making the doctrine of separation of powers clearer but as we said, it is strengthening it. Those Members of this House who served with me in the last Parliament will remember the classic example of how courts can interfere with the process of this House. Arising with the Kriegler Commission and the Coalition Agreement, the last Parliament had the responsibility of disbanding the Electoral Commission of Kenya (ECK) that was in existence at that time.

The ECK Chairman, Mr. Kivuitu, and his commissioners went to court to stop Parliament from discussing any Bill that was meant at removing them from office. The Speaker, Hon. Marende was served with an order to stop Parliament from discussing. I took it upon myself to find out if it was really legal for the court to stop us from debating. The then Speaker delivered along ruling on the issue of separation of powers. Ultimately he said that Parliament could not be gagged. We proceeded to disband the ECK as was required under the Coalition Agreement.

If this amendment Bill had been passed by that time then the courts could not have even attempted to do what they did. The issue of Hon. Sungu is a very tragic example of how the absence of this amendment can lead to this House being indirectly gagged.

Hon. Sungu was then acting as the Chairman of the Select Committee of this House that was probing the murder of the late Hon. (Dr.) Robert Ouko who comes from my constituency. In the course of his duties as the Chairman of that Committee, he met pressmen within the precincts of Parliament but not within the House or the Committee. He told them about what had been said about one of the people who was supposed to appear before that Committee. Arising from that, he was sued and now he stands to pay up to about Kshs10 million. Poor Hon. Sungu does not have the means to do that. I was with him over the weekend. He is not able to pay this money. So, there are two things that will happen to him; either he will have to file for bankruptcy or he will go to civil jail. Look at those consequences arising from performance of your duties as a Member Parliament. This should not be allowed to happen in this country and that is why this amendment Bill is coming at the right time, and to cure the right type of mischief. This is how I look at it: If it was possible to pass this amendment Bill and have it have retrospective effect, it would cure the agony that Hon. Sungu is going to face.

Freedom of expression is an issue that we have enshrined in our Constitution. However, the law as it stands now appears to restrict the freedom of expression by MPs in the performance of their duties. I was discussing this a few moments ago with Hon. Junet of Suna East. He was of the view that what we are canvassing now could be canvassed in an amendment to the Powers and Privileges Act and I said “No”. Why did I say so? It is because that Act is supported by the Constitution. So the only place we can cure this mischief is by passing this amendment. I know that the threshold is high. However, I urge my colleagues, when the time comes, let us all be here and pass this amendment Bill. It is for the sake of this House and the posterity of this country.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang’): Let us have the Hon. Member for Kitutu Chache North.

Hon. Angwenyi: Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to this important Bill. This Bill addresses the issue of this Parliament being an institution respected and expected to deliver services to Kenyans, or being made a laughing stock. Like my colleague has just said, at one time we had a committee dealing the murder of the late Hon. (Dr.) Ouko. That committee made certain decisions. Those decisions were made known to the public within Parliament precincts, and yet that Chairman of that Committee has been committed to pay Kshs10 million.

The Chairman of that Committee has been committed to pay Kshs10 million for having made a statement arising from a decision of the Committee he chaired. How long are we going to be under the ambit of the Judiciary, that they must gag us and block us from delivering our services to represent, oversee and legislate? In the hierarchy of positions in Kenya, the Legislature is second to the Executive. If we did not have a President and Deputy President, the Speaker of the National Assembly would be the President of this country. That is how Kenyans regard this Legislature.

Hon. Kaluma has brought this Bill at the right time and it is one which we must all support 100 per cent so that we can send a message to the Judiciary that Parliament is alive, awake and must protect its mandate. The Constitution gives us a mandate which we must

implement and fulfill. We cannot have another agency of Government blocking us from implementing or exercising that mandate.

I urge both sides of this House to rise up and support this Bill so that we can set a precedent in this country and say that 349 Members of Parliament fought for this Bill to pass.

With those few remarks, I beg to support.

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

Hon. Maanzo: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this important Bill.

Article 160 (5) of the Constitution allows a judge or any member of the Judiciary, while deliberating on any matter and following the law, to have no liability whatsoever - whether criminal or civil. This is lacking when it comes to Parliament because the three institutions of a government - the Judiciary, Parliament and the Executive - all enjoy separation of powers. For equity to be among the three of them, then the same sub-article should be imported when it applies to Parliament. A Member of Parliament (MP), while following the law and active within the law, cannot face any liability or be charged after they leave Parliament or while still in Parliament. This is why I am supporting this Bill. It is very important so that there is equity and fairness. If you rely on the Powers and Privileges Act to balance the same, then the argument by a judge or the Judiciary would be that, that Act of Parliament is subordinate to the Constitution and, therefore, that argument would not be sustained in court. It is only fair that they be brought at par and we have a similar constitutional enactment or amendment to make sure that we bring the two bodies at par. Whatever happens here cannot be checked by the Judiciary while it is going on. That is why we do not have a judge seated in the Chambers of Parliament. It can also be argued that if you do not do the same, then this precedent which has been created will be used in the future. The Judiciary makes law by way of precedent. It will be quoted again and again and other people will follow the fate of Hon. Gor Sungu.

I support this constitutional amendment and I urge Members that it is very important. It is for the future of this nation; not just for this sitting Parliament. We will have a proper equilibrium of separation of powers and whatever matters that are going on in Parliament are not subjected to judicial proceedings. As a practicing lawyer for many years, I have seen that some judges are very firm on the issues of *sub judice* and matters that are live in Parliament. The moment an application is filed, the judge would state "that motto" and ask the lawyer what the status of the matter was and if it was still live in Parliament. The moment it was known that it was still live in Parliament, then the judge would immediately dismiss it and wait to see what Parliament would do. We would also like other judges to take that into account. But there has to be a law to guide them so that they can interpret it correctly. The moment that law is missing, then there is nothing to stop the judge from going on to make a judgement against an utterance made by an MP because of the proceedings.

The precincts of Parliament include parliamentary Committees, whether they are sitting in Kenya or abroad, in Nairobi or Mombasa or whatever part of the country. That constitution is constituted under the Standing Orders and it is viewed as a parliamentary sitting. Though it is very well explained, the interpretation chosen then had to take the day because the Constitution did not state it clearly as a superior role.

I support the Bill.

The Temporary Deputy Speaker (Hon. Kajwang'): I know that very soon, I will be factoring in gender. But before I factor in gender, let me hear what people on my right are

saying. Member for Mukurweini. Before the Member for Mukurweini stands to contribute to the Bill, allow me to welcome young children from Chemelil Sugar Factory Primary School in Muhoroni Constituency, Kisumu County.

(Applause)

You may proceed, Member for Mukurweini.

Hon. Kabando wa Kabando: Thank you very much, Hon. Temporary Deputy Speaker.

When we were drafting the Constitution and thereafter the very elaborate process of negotiation in order to give Kenya a new dispensation, little was it anticipated that we will have some of the bottlenecks or complications in terms of the independence of the institutions and some of the basic governance matters that are afflicting communities in Kenya to the extent that people are asking questions. Sometimes, because of these small confusions, you hear isolated complaints like: "This Constitution that we made is too permissive and too liberal", to the extent that individuals who want to create propaganda and scandalize a very good and progressive document will have their say in small audiences. These are some of the small things that we need to incrementally change in order to fortify the very strong gains that we made a few years ago after great sacrifices were made.

One great loss, that was never anticipated, is that Parliament would lose its ground and space. Kenya still celebrates Parliaments that existed nearly 30 years ago - the 4th and 5th Parliaments - because they had six or seven individuals who were able to stand and say important things, expose scandals, initiate legislation and stand out against the Executive those days. Totalitarianism and one-party-ism were the benchmark of the continent. Having now passed those stages, it is now important to strongly entrench in the Constitution, the independence of institutions to the extent that those institutions execute their mandate without undue interference.

It has come to the extent that small matters, even beyond Parliament, where MPs are acting in the public interest, are being circumvented by the Judiciary. I can give an example within my community when we initiated this war on illicit brew.

Everywhere, MPs are now being sued by individuals who are being facilitated, financed and sponsored by merchants of the business of death. You find it very difficult for MPs and Members of the County Assembly (MCAs) to execute a very important directive and mandate that is resonating very powerfully within the villages and hamlets of this country. In this Parliament, we have seen proceedings being initiated to deal with matters before us and yet, the Constitution is very clear about the mandate of Parliament, both the Senate and the National Assembly.

The Constitution is very clear about the mandate of the National Parliament, the Senate and the National Assembly. I want to congratulate Hon. Kaluma, for this brilliant and bold initiative in this progressive legislation. If we pass this amendment, we shall empower parliamentary committees, the Chambers of the National Parliament and the county assemblies - and I am very happy that they have been brought on board. It was anticipated that devolution will take a lower level but powerful enough to ring-fence public resources and check the Executive of the county governments. Today, members of the county assemblies are not only facing threats of suits from residents of their counties, but also suffocation by all-powerful county governors. Many counties in this county do not have county assemblies but local authorities of the past. They have councillors instead of honourable members of the county assemblies, who are a

parliament at that level of governance. Therefore, giving immunity to members of the county assemblies (MCAs) and the National Parliament, to collectively execute the mandate on public hearings, the legislations, oversight and representation, is a hallmark of progressive review of the national law - to enable peoples' representative to play their legitimate role without deviations and trivialisations that are happening.

Hon. Temporary Deputy Speaker, as I conclude, it is important to say that, as Members of the National Parliament and the county parliaments, we should be held to account. I am very happy that our great Chief Justice, who may be facing some criticisms here and there, is acknowledging that there is corruption and defeating of justice in the Judiciary. Something needs to be done in that area. As we change the national law, it will be incumbent for the members of the Judiciary who live in this county - they do not live externally; they are not in helicopters 24-hours - they are up there, looking down and they will come to live with us in the estates and neighbourhoods with exact lifestyles and living conditions of the common person. It is important for them to assimilate within themselves the belief and the faith that the public interest of the Republic of Kenya is paramount for making popular judgments that appear to only please other audiences that are fictitious and not seen.

The Constituencies Development Fund (CDF) case is in court. If you look at some of the conclusions made, you will ask whether those people live around here or are in other heaven that is without the living conditions of the Kenyan people on a daily basis. I support this amendment in the firm appreciation that it will help cushion Parliament against abuse by processes that are not anchored on any legal or moral justification.

Hon. Temporary Deputy Speaker, it is important that when this piece of legislation is brought here, we should appreciate that despite the politics and noises out there of disagreement and grand-standing within this House, we do not belong to any coalition. We belong to the national Parliament and it is not Jubilee or CORD. Therefore, if a good initiative is brought before the House, nobody should make noise. You can go and talk to your political partners, but many of us will embrace whatever legislation is initiated by anybody on the Floor of the House. It is not about Jubilee or CORD. We shall remain captivated on matters of national interest because we are built with the need to serve the Kenyan public in the best way we should. That is because it is a historical opportunity to serve.

Thank you, Hon. Temporary Deputy Speaker. I support very strongly.

The Temporary Deputy Speaker (Hon. Kajwang³): Member for Siaya.

Hon. (Ms.) Ombaka: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity. I would like to support this amendment that has been brought by Hon. Kaluma. In his presentation, he made a very passionate appeal and I believe he is very right. When I came to this House, I constantly heard many older hon. Members saying that this is a House of debate, customs and traditions. That gave us so much power that this is a very important House. The role we play is very critical. This House of debate exposes you to debates on sensitive matters which should be protected when mentioning certain things or when expressing yourself in a certain way. Without protection or immunity, we cannot perform. I believe this is a role we need to protect all the time. When he mentioned the plight of Hon. Gor Sungu, it came to my mind that if we do not watch out, we many end up in the kind of regime we had in the past. Even when you said that the KANU party is dead, you get arrested and imprisoned and yet, you said it in the House. We do not want to get to that situation anymore. We passed it and the law we are putting

in this amendment is going to protect us from going back to the old ages when saying such statements would put you to prison.

Secondly, the role of the Judiciary is critical. We are playing complimentary roles such that whatever debate is going on here may end up in court. There is need for coordination in a manner that one organ handles it much better or first before the other takes it up. There should be no confusion that when an issue is being debated in the House, it is already in court and somebody is pursuing that matter up there. Collision is going to take place. With these amendments, there will be respect between the two institutions- Parliament and the Judiciary. The Judiciary should wait until all the matters they are interested in are handled successfully in this House before they take it up. Otherwise, there is always going to be conflicts and problems. We will not move one inch. We are going to demonstrate ourselves as people who are constantly fighting with the Judiciary. We do not want to go towards that direction. We want to ensure that whatever reaches the court is something that has successfully been handled by this House.

I support this amendment because it gives us immunity and protection as representatives of the people. Matters that come to this House are matters that can end up in court and can be so sensitive to put somebody in trouble. We should be given that immunity because of the kind of different issues that emerge and that need us to handle.

Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity. I would like to support this amendment.

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Mvita.

Hon. Nassir: Thank you, Hon. Temporary Deputy Speaker. I would like to go contrary to my colleagues. I do not support these particular amendments. When we come up with laws, we need to understand that they are not for this current Parliament, but will continue for other Parliaments as well. As much as we need to ensure we are protected, when I look at the amendments proposed in this Bill that: “A Member of Parliament is not liable in an action suit in respect of anything done, or omitted to be done in good faith in the lawful performance of a function of Parliament”. The problem is that, as Parliamentarians, we may end up taking this a notch higher.

The question ends up being: What is going to be defined as the performance of Parliament and whether I can come out, give a press release and my views. Does that mean it is my obligation, as a Member of Parliament - or it is me as an individual - for my own political interest, I can decide to go out to a public rally? Does it mean I am performing my duty as a Member of Parliament and I need to be protected?

So, as much as we and our interests need to be protected so that we do not have cases in future, I think the wording in this can be totally changed. I ask my colleagues to forgive me. But the way we are and, as my colleague has indicated, when they were fighting liquor, that became an issue. If they are being sued by individuals who feel they had been trespassed, was he doing his job as a Member of Parliament at that particular time when he was going to destroy illicit liquor? I am worried that we are going to create trends. This House is going to give birth to tyrants. What is going to happen is that one person will go to a certain place and decide to destroy and use his privileges as a Member of Parliament to say anything and no one can stop them.

Through the history of this House, it has given birth to excellent leaders but, at the same time, this House has also given birth to characters that have not really represented the true face of what this House deserves.

To save the nation from tyrants who are going to be born, I would strongly request that Members oppose this Bill. If we were to accept this Bill, let us accept it with an amendment to define the word “Parliament”. When that definition comes, does it mean that it is anywhere where HANSARD records are being put in place like the Chambers? Does it mean the precincts of any Committee of Parliament? Does it mean anywhere the Parliamentary Committees meet and it not just a bunch of us who wish to sit down and come up with these kinds of statements that can turn this country upside down?

Needless to say, the ultimate law of this country is the Constitution of Kenya (CoK). When any court is going to be challenged that someone is doing something within their rights as per the CoK, then no court can be able to touch any Member who commits any form of illegality and uses or covers himself with that umbrella that he is doing it as a Member of Parliament.

Again, when we go into Article 196 of the CoK and the amendment that is being proposed in Clause 2(a), it talks about a Member of County Assembly (MCA) not liable in action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a function of a county assembly. Now, not only are we trying to legitimize 350 potential tyrants, we are now trying to legitimize an excess of 1,280 tyrants. We do not need this kind of show of force and might.

Hon. Aden: On a point of order, Hon. Temporary Deputy Speaker.

Hon. Nassir: I respect Hon. Abdikadir from Balambala.

The Temporary Deputy Speaker (Hon. Kajwang’): Okay, Member for Mvita. Just hold on your horses. Member for Balambala is on a point of order.

Hon. Aden: Thank you, Hon. Temporary Deputy Speaker. Is it my ears or is the Hon. Member for Mvita calling hon. Members of this House and MCAs “tyrants?” He must withdraw that statement. We are not tyrants. We are hon. Members who represent the people of Kenya. That word must be withdrawn. He must withdraw and apologize to hon. Members for calling us tyrants.

(Applause)

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Member for Mvita, you know I was holding on because you are canvassing an opinion that is divergent. It is a restraint from the Temporary Deputy Speaker, but you can now see that you have got yourself into problems with your fellow Members. Can you do what you think you should do?

Hon. Nassir: Hon. Temporary Deputy Speaker, my words are on the HANSARD. I am at liberty. I have said that this House will end up giving birth to tyrants. I do not know whether other Members here wish to pass this law so that they can be reborn and be reborn as tyrants. But, I stand with my words that if we are going to pass legislation that is going to change the Constitution and that constitutional amendment ends up making Members of this House able to do things on the precincts and they cover themselves under a blanket that no one can touch them as long as they are Members of Parliament--- I wish to give the definition of the word “tyrant” as per the *Oxford Dictionary*. It is a cruel and oppressive ruler, a dictator, despot, autocrat, authoritarian and an oppressor. That is what this House is going to give birth to if we blindly decide to pass this Bill.

Hon. (Dr.) Musimba: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Just a minute again because the Hon. Member for Kibwezi West, is on a point of order.

Hon. (Dr.) Musimba: Thank you, Hon. Temporary Deputy Speaker. Just to take up from where the Member for Balambala has left, I think the utilization of the word “tyrant” is, indeed, misplaced because the people of the Republic of Kenya take it upon themselves, as their constitutional obligation, to elect leaders of good standing. Leaders stand for the Constitution as per our oath which is very clear that we are going to uphold the rule of law and act in the best interest of the Republic of Kenya. Indeed, the preamble prayer, prior to all our proceedings is: To offer good service to men and, indeed, to the better citizenry.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. I rule as follows--- Just help me because I think I got the gist of your argument.

Hon. (Dr.) Musimba: Thank you.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. I rule as follows:-

Although the use of the word “tyrant” may border on a description that may be un-parliamentary, the very essence of the Constitution whose Article 117 you are trying to amend says that there will be free speech on the Floor of this House. Then, there is the freedom of expression. I take those two Articles to be within which I would still find the description of Member of Mvita as a free and fair expression in debate. Of course, to the extent that he has referred to: “You will be making a mistake if you then pass that legislation”. Not that you are tyrants. So, I rule that there is nothing that is out of order.

Member for Balambala.

Hon. Aden: Thank you, Hon. Temporary Deputy Speaker. I wish to take the opportunity to support---

Hon. Nassir: Hon. Temporary Deputy Speaker---

The Temporary Deputy Speaker (Hon. Kajwang’): No. The Hour-Glass just ran down on you.

Hon. Aden: Thank you, Hon. Temporary Deputy Speaker. I take the opportunity to support this very important amendment. I want to pick it on from where the discussion was between my friend, a very good brother and former schoolmate.

Hon. Members: Which school?

Hon. Aden: The School? Lenana School! He was my senior in school by one year, but I can tell him that now he has no opportunity to knock my head as a mono. I am no longer his “rubble”. I want to support this amendment. This is basically because of the amendments that we are speaking to here - the first one being under Article 117 which gives a Member of Parliament the immunity. I just want to read this before my good friend leaves this Chamber.

(Hon. Nassir consulted loudly)

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Member for Mvita, there is also a code of conduct in general practice that when you have done a good debate as you have, you also listen to others in silence.

Keep in the Chamber so that you can hear your junior speak to. Thank you. Proceed.

Hon. Aden: Hon. Temporary Deputy Speaker, I just want to say that, that particular amendment actually says that: “A Member of Parliament is not liable in an action or suit in respect of anything done or omitted to be done in good faith”. I want to underline the words

“good faith” because we do not do what tyrants do in good faith. Tyrants do not do things in good faith. This is what I want to say. These are the tyrants that *Mheshimiwa* here said will be created if this is passed into law. So, in other words, our options are very clear under the Constitution. We, legislate, oversee and also represent. In so doing then, we should not end up being victimized or condemned as we have seen our colleague last week being sentenced to pay huge penalties for doing what the people of his constituency had sent him to do.

Hon. Temporary Deputy Speaker, the amendment to Article 165(5) that is limiting the High Court on matters before Parliament is very important. Otherwise, we will not be able to do the work that we have been sent to do here. Parliament will not embark on a certain issue and certain legislation of national interest. Remember, the sovereign power in the Constitution belongs to the people of Kenya and they express or utilize their power. One of them is through the elected leaders who sit in this House. So, anything that this House is seized of is their interest and is under the powers of the sovereign people of Kenya. For that reason, indeed, if matters which are before this House are subjected to court proceedings and each time we discuss an issue is stopped by a court directive, then it would not be justice to the people of Kenya.

Hon. Temporary Deputy Speaker, amending Article 165(6) puts Parliament at the same level of a superior court. In other words, matters which are at the Supreme Court, for example, cannot again be discussed by the lower courts. In the same manner, matters before this particular House - just the same way that a matter before the Supreme Court is respected by other courts - should not be touched.

As I end, the amendment to Article 196 is also intended to ensure that Members of the County Assemblies (MCAs) are also granted similar cover in doing their jobs. I want to insist and say that it should not be misunderstood that parliamentarians want to try and protect themselves around this particular law. We are saying that we act in good faith. If I stand here before this House and present documents that show that somebody has stolen public money belonging to the people of Kenya and I table them and mention that particular person, I should not be taken to court tomorrow and be asked to pay a fine of Ksh10 million. This is exactly what this particular law is trying to say. Similarly, the MCAs also legislate as we do here. It is only that they do in their respective counties and they too should be given that opportunity. Once that cover is there, then we will be able to fearlessly express and represent the people of Kenya and ensure that even in our oversight roles, we are able to do them without looking at our backs for fear that the same actions that we have taken can be taken against us in a court of law and be condemned like we have seen our former colleague unfortunately suffer.

Hon. Temporary Deputy Speaker, I want to end there so that my colleagues can add onto this. It is a very fair and good piece of legislation. This amendment will clarify many issues. It will end this unending tussle between both Houses, the bicameral system that is the National Assembly and the Senate against our Judiciary. The Judiciary is not an enemy to this House. It is another arm of Government and what we are saying is that under the principle of separation of powers, this House should be given the respect it deserves. That respect was given by the people of Kenya. The Members who are in this House are carrying out their duties in good faith. They should not be condemned. They should be protected under the Constitution.

The Temporary Deputy Speaker (Hon. Kajwang’): Allow me to recognize pupils from Karindi Primary School, Mukurweini Constituency in Nyeri County. Thank you very much. Member for Mbita.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I have listened to the Members and especially the Hon. Colleague from Mvita. I think he has some sense though I do not support him. I can see what he was belabouring to say. If we had institutions that were true to their positions and their calling, then this amendment would not be necessary.

Hon. Temporary Deputy Speaker, if you look at the Constitution, it is very clear under Article 117(1). It says:-

“There shall be freedom of speech and debate in Parliament”.

Article 117(2) states:-

“Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and Members. Parliament has by law provided those privileges and immunities.”

So, I would actually want to tell the Hon. Member that, indeed, it is nothing new really that we are initiating because it is there in law. The only difference is that the courts have not stayed true to the mandate that we are given to do by subsidiary legislation and they have overstepped their mandate or ignored their mandate especially in the famous case of Hon. Gor Sungu. This is because, if you do or say something on the Floor of this House in good faith, then you should not be held personally liable. Indeed, what this House should have done is to take the liability that was charged to Gor Sungu because it was work that he was doing as a Member of this House.

However, I was listening very keenly to the Hon. Member from Mvita. If you look at what the Constitution provides currently and what Hon. Kaluma is providing, he is actually extending the coverage. This is because, currently, if you look at the Article that I have spoken to, it seems to focus on the issue of speech and debate in Parliament. It does not talk to the performance of functions of Parliament. When you are talking to the performance of functions of Parliament, then it basically means that we are not only looking at our legislative roles, but we are also looking at our legislative oversight and other roles including the ones that Kenyans have given us nowadays, which includes development work.

Hon. Temporary Deputy Speaker, should we only be covered with the privilege? Should we only be insulated when we speak? Should it only be our freedom of speech which should be covered? I think there is a level of discretion that is still left to the courts when you say it is work that is done in good faith. That is because good faith is still a subjective provision that the courts will have to interpret. The courts would still have to interpret what good faith is unless by legislation we indicate or expand what we mean by good faith. I am happy that I can see Hon. Aden is actually bringing at the same time a law that is covering that. So, I think it gives us opportunity when it is fresh and when we are discussing this to actually relook at these issues.

Hon. Temporary Deputy Speaker, one of the things that I had to grapple with is the infamous fight that we had in Parliament on 18th December 2014, when some male colleagues actually attempted to undress me before the Floor of this House.

That is actually covered under privilege that if you want to go and prosecute somebody outside, it becomes a legal hurdle. So, for me, I want us to be very clear that it is not an issue of good faith, but things that are criminal in nature. They must be left to the realm of criminal law. Members of Parliament cannot be allowed to perform criminal activities, whether within or

outside Parliament, and be covered by privilege. So, to that extent, I would agree with Hon. Nassir, except that I think it is not necessarily a reason that I would oppose this. But it is something that we can cure by the legislation that is being brought by Hon. Adan Keynan. For me, I will not oppose but I would want to say that we provide very clearly, under which part we should exclude so that, as Hon. Nassir says, we do not create potential tyrants.

Hon. Temporary Deputy Speaker, as Members of Parliament, some of the things that we do as part of our representation role is because of the privilege we are covered with, so that we can say things that other people cannot say outside Parliament, for instance. As a lawyer, I will be put to strict proof when I say some things and I would be charged with defamation and a whole manner of things and yet, sometimes, we have *prima facie* evidence over certain issues. If we are not insulated, then the county would stand to suffer and that is why, for me, I want to support Hon. Kaluma to the extent that, so long as there is evidence of good faith, we should insulate members of Parliament.

This is also not only a challenge to our Judiciary. There is something despicable that is going on in the country; that leaders must now live above board. The small bickering that we are seeing is extremely embarrassing for this country. Sometimes, I feel that the Judiciary and Parliament have a sense of competition and that is why even, instead of following rules that are very clear by law, we want to show who is stronger or mightier – the sort of unnecessary wars that I see going on between this House and the Senate. Others calling themselves “upper or lower” House - and I heard my good friend Hon. Nassir yesterday saying that some may want to call themselves “houses close to heaven”.

We need to get over that kind of approach and focus on serving Kenyans and on being true to the letter and spirit of the law. But, this coverage should not only extend to Parliament, but to Members of County Assemblies (MCAs). That is one of the reasons why I am supporting these amendments. But, with the same vein, when we are giving this sought of insulation to Members, then they must also live by higher standards. If you look at the debates and actions that go on in some of our country assemblies, it is embarrassing and, sometimes, you almost feel that we need to lift that veil and reach people who do not honour the dignity of the Houses that they are serving. We need to exclude by subsidiary legislation, again, not only for Parliament, but for county assemblies also.

Another thing that I support – and I know that in court we cover the proceedings of the court through the *sub judice* rule--- Again, this one is even by common law practice in the Commonwealth, you cannot indict Parliament when it is doing its work. If you are dealing with the issue of separation of powers, it sets in when the work of Parliament is already done. I think we have made several rulings in this House.

Unfortunately, sometimes the courts, as I have indicated before, have gone over-board and purported to “injunction” Parliament when they are doing their work.

Hon. Temporary Deputy Speaker, that is unlawful. If the courts did their work, we would not need to do these amendments. But because the Bible tells us: “Remind them even if they know”, by Constitution, we will remind them even if they know.

Hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Mbita and Mvita, both the names of the constituencies you represent rhyme. I was going to ask, therefore, do you not think there is wisdom in keeping the amendment in the text it is so that the courts will still have residual power to investigate by way of evidence and facts what is, therefore, “good faith in

lawful performance of function”, so that the several members of the assemblies you are talking about still would not go abusing people or defaming each other and there would still be a court of law which will say: “Well, you have the privilege but according to the facts and evidence that are before us on this matter, that was not in good faith or in lawful performance of the functions of the assembly.” Would that be wisdom, Member for Mbita? Give her the microphone, please.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker. Actually, a sober judgement would go the way you are saying but, I think I understand Hon. Kaluma. The frustration of Hon. Kaluma would be the sort of judgements that are coming out the courts that do not seem to adhere to the law. In all honesty, we do not need this amendment if the courts stayed true to what the Constitution says in Article 117. It is sufficient but, what he is doing is to make sure that there is no doubt whatsoever as to what Parliament intends.

What we have seen in the case of Hon. Gor Sungu is worrying! There is no way that the court should have gone the way it did so long as you are dealing with a matter in good faith. I actually also believe that so long as you have the phrase “in good faith”, you are still not sufficiently insulating. We are basically doing the same thing. By using the phrase “in good faith”, we are still giving the discretion to the courts to determine what is good faith. They can decide that what I am saying now about them is not in good faith. We are still giving them that power and authority. In a sense it cures, but it does not exactly cure.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. Member for Mvita, I would have given you a chance but there are many colleagues who have not had a bite of the pie. They would be very indignant at me. Member for Matayos, you are on the queue.

Hon. Odanga: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I want to support the amendment and also thank Hon. Kaluma for bringing it to the House. From the days we were at school - just like the school children who are seated in the Public Gallery, we knew and were taught that Parliament was sacrosanct. Parliament was immune and whatever business was prosecuted in the House would not be handled by any other organ, be it Government or otherwise.

(Hon. Nassir stood up in his place)

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Mvita, I need to see the Member speaking.

(Hon. Nassir resumed his seat)

Hon. Odanga: Thank you, Hon. Temporary Deputy Speaker. The children in the Public Gallery may be wondering. Today, we are having pupils from Mukurweini where coffee is flourishing. We also have pupils from Muhoroni where sugar-cane is rotting in the farms. They may be wondering what these Members of the National Assembly are discussing when they know very well in their syllabus that the Government is made up of three organs: Parliament or the Legislature which makes laws, the Executive which implements those laws and the last is the Judiciary which deals with the laws that are already made in Parliament or punishes the law-breakers.

I want to thank Hon. Kaluma for bringing this amendment because a lot of businesses that we have been handling in this House has also been handled by the courts at the same time.

This is against the Constitution which envisages that National Assembly and its Committees have equivalent powers as those of the High Court. As such, the High Court should only be handling matters after the National Assembly has dealt with them completely. Therefore, the fact that the courts have been handling issues that we are still handling in this House has been curtailing parliamentary work. It is high time that this is changed so that the sovereign power of this House is established and continues to flourish.

Thank you, Hon. Temporary Deputy Speaker. I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Kisumu East.

Hon. S.S. Ahmed: Thank you, Hon. Temporary Deputy Speaker. I thank Hon. Kaluma for bringing this amendment---

Hon. F.K. Wanyonyi: He has just come in and he is given a chance to contribute.

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for Kisumu Town East has just come in, but he has approached the Speaker on the basis that some of the people you have mentioned on the Floor are his constituents. As a matter of fact, he came to the Office after the fellow you have discussed. Exercising the discretion that is reposed on the Speaker, I have allowed him to speak.

Please proceed.

Hon. S.S. Ahmed: I plead for my colleagues' indulgence. Hon. Gor Sungu---

The Temporary Deputy Speaker (Hon. Kajwang'): These are small favours we do every day and so, let him speak.

Hon. S.S. Ahmed: I plead with my colleagues to allow me to contribute. Hon. Gor Sungu was a Member of Parliament for Kisumu Town East and I had the privilege of succeeding him in office. Because this touches on Article 117 of the Constitution, Hon. Gor Sungu has been harassed continually by that case. As a matter of fact, there is a fine of Kshs10 million that has been imposed on him. At this moment, he does not have a house. They took his houses and sold them. He has been coming to Parliament and to the Speaker for the last four years or so, with a plea that he was the Chairman of the Select Committee on the Ouko Inquiry.

What he told the Press or whoever sought his comments was in good faith. He gave that information in good faith. They probably tricked him at the car park. The issue is the understanding of the phrase 'good faith'. There was a whole Committee which sat for nearly six months investigating that matter. People claim that Hon. Sungu was not in the precincts of Parliament, but I know that the car park is in the precincts of Parliament. Immunity to Members of Parliament who have made certain accusations in good faith is very important. I hope that this amendment goes through because many of us have information which we want to share in the House in good faith.

The other amendment is to Article 165 of the Constitution. I was the Chairman of the Departmental Committee on Local Authorities which presented a Report on the cemetery scandal in the last Parliament. We named the then Minister for Local Government, Hon. Musalia Mudavadi, and others as culpable. Hon. Mudavadi went to court and then came to the House and claimed that the matter was still in court and, therefore, the Report could not be tabled.

As a result, nothing has happened. However, his Principal Secretary (PS) and everybody else have already been charged in court. That was nearly six years ago. We wonder why the courts would still not allow us to table that Report. Actually, I have now obtained guidance and I intend to re-table that Report and see whether the objection is still going to come in the same

manner that there is a case in court. This is where the courts must be reasonable and allow us to continue doing our work.

With those few remarks, I thank you, hon. Temporary Deputy Speaker. I thank my colleagues for indulging me. Thank you so much. I am very grateful.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Wajir North, if you could just take a few minutes, I would allow just one or two Members also to say something. Please take just a few minutes.

Hon. Saney: Thank you, hon. Temporary Deputy Speaker. Articles 1 and 2 of our Constitution clearly stipulate that the sovereign power is vested in the citizenship of this country and can only be exercised through the Constitution. Article 2 of the Constitution specifically stipulates that that sovereign power can be exercised, by extension, through its elected representatives. The elected representatives are in the Houses of Parliament, which are the Senate and the National Assembly.

The National Assembly has a very important role in overseeing the other organs of Government. It is only the Legislature that has the power to protect the public even at times when the Government goes wrong. It also protects the public from the excesses of their own Government. That oversight role comes with roles and responsibilities. This amendment clearly brings out immunities that can clearly go well with those responsibilities. The amendment suggested in Clause 2 (1) is clear. Besides what my colleague, Hon. Nassir, has suggested in terms of diction in what those words might mean, it is clear that the amendment suggested in Clause 2 (1) clearly indicates that a Member of Parliament (MP) is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance. So, in as much as MPs and Members of County Assemblies (MCAs) do their work in lawful performance, they deserve immunity. I acknowledge that the Constitution indicates the freedom of speech and debate. However, it has gone short of bringing out immunities that go with such freedoms. MPs debate and do so many activities in their advocacy role on a day to day basis. That ordinarily comes with some protection.

Article 165 (c) further brings in the aspect of extending those immunities to county assemblies. I believe that, that is in the spirit of devolution. That makes devolution alive - one of the main things that we have benefited from in the 2010 Constitution. It is up to Kenyans to come up with quality MPs. For me, extending that immunity to the county assemblies is a welcome amendment. Further, Clause 3 (b) brings in a new amendment where the Legislature is brought at par with the superior courts. The Government is always made of three institutions - the Executive, the Legislature and the Judiciary. The highest organ in the Judiciary is the Supreme Court. The highest organ in the Executive is the Presidency.

The highest organ in the Legislature is Parliament. So, it logically makes much sense to bring those immunities and responsibilities that bring Parliament at par with the superior courts as espoused in (d).

With those few remarks, I support the amendment.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. Member for Muhoroni, I have ten minutes which I intend to divide, five apiece between Member for Muhoroni and Member for South Mugirango. Take the first five.

Hon. Oyoo: Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity. I wish to oppose this amendment. I want to oppose it because I do not think it is

timely. Our title in this House is honourable and unless and until that day when we will learn to conduct our affairs honourably, we will not need to carry that title.

The Temporary Deputy Speaker (Hon. Kajwang): You are getting in trouble with me before you even get to trouble with Members. My take is that all these Members are conducting themselves honourably. Do you have any other evidence to the contrary? That insinuation is a sentence of its own. So, you either substantiate it or withdraw.

Hon. Oyoo: As I go on, I will substantiate it.

The Temporary Deputy Speaker (Hon. Kajwang): Alright, I will wait for you to substantiate.

Hon. Oyoo: Hon. Temporary Deputy Speaker, I want to say that the bone of contention here is that many speakers before me have mentioned Gor Sungu as a case in point. If you assess the whole debate, you will see that there is one thing that has embittered the MPs and they want to insulate themselves against prosecution for making reckless statements. I am a victim of the Gor Sungu-led Select Committee. Gor Sungu led Select Committee that was supposed to investigate the death of my good friend and political mentor, the late Dr. Ouko. He was coming at a time when elaborative investigation had been done by local police.

Hon. (Ms.) Odhiambo–Mabona: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang): Just hold on Member for Muhoroni. Hold your horses there. Member for Mbita, what is out of order?

Hon. (Ms.) Odhiambo–Mabona: Hon. Temporary Deputy Speaker, is the hon. Member in order to mislead the House? None of the Members who have spoken or the proposed Bill purports to allow Members to make reckless statements. Nowhere in any Members statement does it talk about reckless statements and nowhere in the Bill does it talk about allowing Members to make reckless statements. So, is he in order to mislead the House?

The Temporary Deputy Speaker (Hon. Kajwang): All right! Just a minute! Member for Gatanga.

Hon. H.K. Njuguna: Thank you, Hon. Temporary Deputy Speaker. This law is very clear. As long as Members of Parliament are conducting their business lawfully, they remain honourable. Is the Member in order to say that Members of Parliament are not honourable?

Hon. Anami: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang): All right! Member for Shinyalu

Hon. Anami: Hon. Temporary Deputy Speaker, this amendment is not about the case of Sungu. The case of Sungu was given just as an example. Is the Member in order to reduce this amendment Bill to a special issue which was just given as an example?

The Temporary Deputy Speaker (Hon. Kajwang): Thank you. For the reason that we are working around Article 117(a) and freedom of expression, I am going to exercise a lot of restraint even for those people who are offering divergent opinions, except that we will wait for you to substantiate what you set out that you will substantiate that Members are acting dishonorably. We are still waiting for you as per the Standing Order. You will also need to know whether there is conflict of interest which needs to be declared. So, if you are going to go on something which touches on you personally, there is the Article on conflict of interest. Just know that those are the paths that you have to tread. Proceed, Member for Muhoroni and Member for Mugirango, we will extend the House for about five minutes to get your contribution. This is because of these distractions.

Hon. Oyoo: Thank you very much, Hon. Temporary Deputy Speaker. The courts should be allowed and the judges should not be gagged. If we are clear, since I started listening to the debate, there is something called good faith. Good faith should be reciprocal. If you act against me in good faith, I will also reciprocate with good faith. If it is not in good faith, then it should not be in good faith.

Hon. Temporary Deputy Speaker, Members in this House should not fear being taken to court so long as what they do is lawful and in good faith. Giving leeway to Members is very reminiscent in Committees where Members drag in even the names of innocent people who have no opportunity to defend themselves. If we are going to give blanket cover that anybody who mentions anybody's name so long as it is in the Floor of the House or in a Committee meeting cannot be taken to court, all of us are going to suffer direct or collateral damages. I do not think anybody should fear. In view of the separation of powers, we will be going too far to gag the courts. By way of substantiation, I was saying that Gor Sungu's case has been referred to and many people have expressed a lot of sympathy on him.

In substantiation, at the time he took over the matter, the Ouko case had been adjudicated at a very high level. The Judicial Service Commission (JSC) had gone very far; they had made their reports. Unfortunately, when they were supposed to close in on the real culprits who are big people, it was cut down by the powers-that-be of those days. I expected Gor Sungu at that time to have gone for the fat cats who had killed Ouko. They were not small people. But when he took over, people who were supposed to be his key witnesses like us---

Hon. Temporary Deputy Speaker (Hon. Kajwang'): Yes, there is freedom of speech, but I must protect also other peoples' freedom and rights who may not be on the Floor of the House to defend themselves. So, walk around those issues.

Hon. Oyoo: What I am saying is that violence begets violence. If you do not carry yourself with honour when you are chairing a Committee, you are supposed--- I am now talking here, but if I go outside there and start saying: "My good friend, Millie Odhiambo said this about me but I know this about her", she has a right to go to court and get redress. So, we are not coming here to curtail the powers of the Judiciary. We should not use parliamentary--- At this time I am talking to you, children from my constituency are here and they are desperate. They cannot afford school fees because sugar, which is sweet, has grown sour. The in-thing we know about sugar is the sugar deal between Kenya and Uganda. Some people are quietly trying to sneak in amendments to deviate attention of Parliament from discussing the Kenya-Uganda sugar deal to narrow it down to their fights between individuals which they have had outside there. Those are the kind of things that we are going to have.

Hon. Temporary Deputy Speaker (Hon. Kajwang'): Again, you are running into several problems because you have not even substantiated the one which I am expecting you to. To impute improper motive on a Member that by canvassing a Private Member's Bill he is sneaking in a Bill to distract the attention of the nation is even gross misconduct. So, what do you want me to do with you?

Hon. Oyoo: I just wanted to say---

Hon. Temporary Deputy Speaker (Hon. Kajwang'): I will still allow you for sake of Article 117 (a) for the last time. Your minutes are coming down. One minute for you.

Hon. Oyoo: I want to say that we should not interfere with the separation of powers. We should allow courts to operate independently and Members should take responsibility for their actions and addresses - whether in Parliament or in the Committees. We should act with a lot of

tolerance towards each other and act justly everywhere. Otherwise, I oppose this thing because in my own interpretation, it is likely to curtail the powers of the courts. Therefore, it will infringe on the justice of some innocent people.

Thank you very much.

Hon. Temporary Deputy Speaker (Hon. Kajwang'): Have you substantiated what you set out to substantiate?

Hon. Oyoo: Yes. I said that I would substantiate by saying that if a Member wants to use the immunity that we enjoy in Parliament to malign others or say things that he cannot substantiate, then I believe that he should not be insulated by the parliamentary privileges.

Hon. Temporary Deputy Speaker (Hon. Kajwang'): Member for Muhoroni, resume your seat. I think I will censure you. I do not think you have substantiated what appears to me to be gross misconduct; that is, to say that Hon. Members are themselves dishonourable just because they appear to be making discussions from the Floor of the House. I have decided that I will not censure you by ordering you out of the Chamber, but by the words that I have stated which are in the HANSARD, you are so censured that you are out of order and you did not substantiate yourself. So, you stand censured.

Member for Mugirango, you have five minutes.

Hon. Nyamweya: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to support this Bill. The Bill is very important in the sense that it will bring clarity between the Judiciary and the National Assembly. What we are experiencing is that the Judiciary has almost started supervising our discussions here in the National Assembly. It will reach a point whereby if there is a debate going on here, someone will go to court and get a ruling that we cannot discuss that issue. We will be stopped from debating.

Another issue is between us and the Senate. We need to address each other as hon. Members and understand that we are here to serve this country, to work for Kenyans and to ensure that we pass laws which can improve the democratic space in this country. We also contribute meaningfully. Sometimes, we talk at each other and waste valuable time. One thing we cannot recover is time. If today goes, we cannot get it tomorrow. There is the issue of us discussing what our role is and what the role of the Senate is. We are all towards one goal; to make this country better. None of us is more superior to the other.

What is more disturbing at the levels of the National Assembly and the Senate is using the powers we have been given by the Constitution to summon various Ministries and organizations. We must also look at our mandate and take note that when we summon those people to appear before us to discuss and interact with them, we take their valuable time. We have an example of Kenya Airways. We are taking the valuable time of the stakeholders involved. The Senate is involved. When you are making a ruling, will you implement what you are saying? If you know that you cannot, then you should check yourself and understand that you are not doing the right thing.

Equally, the National Assembly has a role to play. I support this Bill as amended so that we get clarity. This House is known for what it is. More importantly, I support county governments. We are in a crisis at the moment in the county governments. The county governments, county assemblies and members do not know their mandate. Probably, there could have been a mistake when this new Constitution was put in place.

When elections were done, Members of the National Assembly and the country governments were not taken for training to understand their roles. They did not go through a

motion about their responsibilities - that this is what you are supposed to do. Partly, this is what is causing all the problems in the country whereby members did not get explanations with regard to their exact roles at the start of the session after elections. What happened is that the governors and members of the county assemblies were sworn in and started debating without knowing the process of how to do legislation. But this would also help them especially at the county levels, where they should not to be intimidated by the governors. If this goes down, they will know that when they are contributing in their debates, they are independent and free to say what they want and cannot be held responsible for their discussions.

More importantly, Parliament will execute whatever it has in this National Assembly or in the county assemblies until we finish.

With those few remarks, I support the Bill.

Hon. Temporary Deputy Speaker (Hon. Kajwang’): Thank you. This Bill is still alive on the Floor of the Assembly. I order that it shall be printed next Wednesday on the Private Members Bill in the morning for further debate. As at this time we are adjourning, there is still a balance of one hour and 13 minutes. I have seen the Member for Gatanga and Member for Vihiga who want to debate. Please come next Wednesday and you will get enough time.

Member for Vihiga, what could be out of order just before I adjourn the House?

Hon. Chanzu: I did not want to disrupt my best friend. Is the Member in order to say that Members of Parliament, governors and members of county assemblies were not taken through--- It is very clear in the Constitution!

Hon. Temporary Deputy Speaker (Hon. Kajwang’): Taken through what, Member for Vihiga?

Hon. Chanzu: He made an allegation which I want to correct. He is out of order by saying that the members were not taken through the roles they were supposed to play.

Hon. Temporary Deputy Speaker (Hon. Kajwang’): Through an induction course or something like that?

Hon. Chanzu: Hon. Temporary Deputy Speaker, the Constitution is very clear about our roles. I was asking whether the Member for Mugirango is in order to put it in that way when all these roles are spelt out in the Constitution very clearly - even for MCAs.

Hon. Temporary Deputy Speaker (Hon. Kajwang’): Well, I will resolve this way. Come on Wednesday next week and prosecute the debate. You may as well take that time to say things which might answer the Member for Mugirango.

ADJOURNMENT

Hon. Temporary Deputy Speaker (Hon. Kajwang’): Order! Hon. Members, the time being 1.05 p.m., this House stands adjourned until Wednesday, 19th August 2015 at 2.30 p.m.

The House rose at 1.05 p.m.