

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 9th March, 2016

The House met at 9.30 a.m.

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

PRAYERS

QUORUM

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Members, as you can see for yourselves, we are still not able to conduct business this morning because of quorum hitch. So, I order that the Quorum Bell be rung for 10 minutes.

(The Quorum Bell was rung)

Order! Order! Can you resume your seats? We now have sufficient quorum. So, I order that the Quorum Bell be stopped. We shall begin the business of the morning.
Next Order.

PERSONAL STATEMENT

EULOGY TO THE LATE HON. GEORGE MWICIGI NDUNG'U

Hon. H.K. Njuguna: Thank you, Hon. Temporary Deputy Speaker.

Hon. Temporary Deputy Speaker, I would like to bring to the attention of the Members the passing on of Hon. George Mwicigi Ndung'u, who is a former Member of Parliament for Kandara Constituency, part of which was the current Gatanga Constituency. The late George Mwicigi was a Member of this House from 1969 to 1979 and from 1983 to 1989, namely, three terms. For us in Kandara, which is part of Gatanga now, we remember Mwicigi because he was able to transform the lives of the constituents at that time. He provided water to every homestead then and you can imagine in 1974/75, every homestead in Kandara had access to clean drinking water. Indeed, the infrastructure was one of the best projects in the then East Africa.

Mwicigi introduced horticulture when it was relatively new in this country in form of avocados, macadamia and the other larger family of horticulture, to the people of Gatanga, Kandara. He was the first Member of Parliament to introduce table banking and transformed the lives of our people by asking them to mobilise table banking and do away with thatched houses. He also introduced grade cows. In fact, for me, it is my humble submission that he is the best Member of Parliament ever in the history of that constituency.

Even as I eulogise him, it is important to say that we owe it to some of these great people. He left a high hospital bill of Kshs.3 million in the Aga Khan University Hospital. We will be circulating a paper asking for some donations to assist in resting of a great son of this country. Even as I eulogise him, sometimes I feel it is important to think outside this House in future in terms of what we should do for some of these people. Everybody will go at one time or another. It is important that we see how we can assist them. I believe the pension we are talking about should cater for medical bills.

To the family of a great son of this country, relatives and friends, I take this opportunity to eulogise him on behalf of the Gatanga people. May God rest his soul in eternal peace.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much, Member for Bobasi. I understand you also have words of eulogy to the departed former Member.

Hon. Manoti: Thank you, Hon. Temporary Deputy Speaker. I also take this opportunity to pass my condolences to the people of Kandara and Kenyans for the passing on of the former Member for Kandara, Hon. George Mwicigi.

This great Kenyan was an Assistant Minister for Agriculture and during his time, he did a lot of work for this nation. Up to now, most people remember him for the good work he did for Kenyans. On behalf of the people of Bobasi, Kisii County, Kenyans and on my own behalf, we are together with the people of Kandara on the passing on of their great leader. Finally, I take this opportunity to congratulate the people of Malindi and Kericho for holding peaceful elections which Kenyans should emulate.

Thank you, Hon. Temporary Deputy Speaker for the opportunity.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much, Member for Juja on the same note.

Hon. Francis Waititu: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to eulogise the passing on of Hon. George Mwicigi. This is a man I knew for a long time. Being from Juja Constituency, I can be a witness and say that he was one of the directors of the East African Bag and Cottage industry, where Kenya produced a lot of bags. This is the man who created the EA Bag and Cottage firm.

In those days, Juja Constituency was known because of those bags. This is a constituency where there is no tribalism and all members of the various tribes live there. It is the constituency with a high number of tribes. Today, that factory has been closed. We have lost 6,000 to 8,000 jobs because the person who took it over from Mwicigi, an Indian, and I am not against Indians, closed the factory. The Government should think of buying that factory and reviving it, so that we can produce bags instead of importing and build on what the late George Mwicigi had tried to put up for this country. If we do this, we will have done something.

Being in the Departmental Committee of Agriculture, Livestock and Cooperatives, I have gone round and seen what he started and what the Member for Gatanga has said is quite true. On behalf of the people of Juja Constituency and on my own behalf, I say *pole sana* to the people of Gatanga.

The Temporary Deputy Speaker (Hon. Kajwang'): Finally, Member for Sigowet/Soin.

Hon. Kemei: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. On behalf of the people of Sigowet/Soin Constituency I pass our sincere condolences to the family of the late George Mwicigi. From what we know, Hon. George Mwicigi focused on things that made a difference in the lives of the people of Kandara. His development role particularly in improving agriculture in Kandara is worth noting and also in

terms of supplying clean water to the people of Kandara. We, in Parliament, should emulate the late George Mwicigi and do the same things.

Finally, let me, on behalf of the people of Sigowet/Soin Constituency congratulate Senator Aaron Cheruiyot, for being elected Senator for Kericho Country. On that note, I want to thank the people of Sigowet/Soin Constituency for voting 78 per cent Jubilee. It demonstrates the confidence the people of my constituency have in the leadership of President Uhuru Kenyatta and the Deputy President Hon. William Ruto.

The Temporary Deputy Speaker (Hon. Kajwang'): Alright Members, I thank you. Member for Gem, I had not seen, but now I can see your intervention. Take three minutes to cough it.

Hon. Midiwo: Thank you, Hon. Temporary Deputy Speaker. You know I cannot have control of the cheap gadgets which we are using. Let me just add my condolences to the family of the late Hon. George Mwicigi. It would be nice if all of us would have such good things said about us when we pass on.

Secondly, I have heard Hon. Justice congratulating the people of Kericho. That cannot go unchallenged. It will go into the book of records that Kericho is the county where voting ended at 6.00 p.m. The votes were tallied, paper work done and transported to the tallying centre. I am congratulating and talking about humility of Members of Parliament. Good things have been said about the former Member of Parliament.

Hon. Members: Hon. Temporary Deputy Speaker---

The Temporary Deputy Speaker (Hon. Kajwang'): You do not have to answer them, kindly proceed.

Hon. Midiwo: Hon. Temporary Deputy Speaker, it would be nice for us to have good things said about us like we are saying about the late George this morning. I thank you for having allowed us to do that. You know from Total to Bomet and Narok to Muhoroni, in 180 minutes voting closed, counting was done and transportation to Kericho was done and by 9.00 p.m., we had a winner. They went and rigged the Independent Electoral and Boundaries Commission (IEBC). The kind of rigging that happened is the biggest injustice. In Malindi, for only one constituency, it took us until 3.00 a.m. to finish.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Gem, are you done?

Hon. Midiwo: This rigging that happened in Kericho---

(Several Members stood in their places)

The Temporary Deputy Speaker (Hon. Kajwang'): Order Members! Resume your seats. The Member who is talking across the aisle, Order! Member for Gem, resume your seat. Alright, I know this is a beautiful morning and many of you must have had breakfast. So, it is good if you exercise your energies after a good breakfast.

By the authority of the Speaker, I order that those words of condolences and eulogy be reduced in the HANSARD and made available to the family at the time that they will repose the remains of the former Member of Parliament. That is done, we shall now move to the business of the House.

(Loud consultations)

Order Members! Nominated Member and the Chair of a party, order! Allow me to recognise young people who are with us here to watch and follow the proceedings as part of the curriculum they are pursuing in schools. There is Nyandarua High School from Ol Kalou Constituency in Nyandarua County. Can I see you by rising and then taking back your seats? Children from Nyandarua where are you?

(Students from Nyandarua High School rose)

Thank you very much, you may seat. Londiani Girls Secondary School from Kipkelion East Constituency, Kericho County and Gataragwa Girls Secondary School in Kieni Constituency, Nyeri County. They are well represented in good uniform.

(Applause)

Now we shall proceed with the business of this House. Nominated Member, Hon. Johnson Sakaja, you are on an intervention. What is the problem?

Hon. Sakaja: Hon. Speaker, I have been on intervention for a while. First of all, thank you for recognising these young people who are present today. As a Member representing the youth, I want to welcome them to *Bunge* and tell them that the young people of this country are, indeed, the trustees of Kenya's posterity.

As I walked into the Chamber, I heard an old relic that reminded me of the colonial days. One of the orderlies shouted "hats off strangers". Of course, that comes from Westminster traditions where people used to wear hats throughout the day. It is so misplaced to shout "hats off strangers." First of all, no one is wearing a hat anymore and probably the person shouting that does not even know what it means. I really wanted your opinion on this. Do you not think we need to move with the times? We are in 2016. If we do not, these young people will still be shouting "hats of strangers" when they are in Parliament.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much. Let me hear words of counsel from some ranking Members here. Member for Kanduyi, what do you have to say? Are you in the Chamber? He seems not to be there. Member for Tongaren, on the specific issue that has been raised.

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Speaker, I know traditions die hard. Sometimes when people have been trained to do things in a particular way, it is difficult to change them. But really, some of these superfluous utterances are totally uncalled for. If anything, I hardly see any strangers who dare walk in here wearing a hat. They are already stopped from that. So, that kind of utterance is just a throwback to the past like it happened in Malindi by-elections where the Armoured Personnel Carriers (APCs) were patrolling the whole place and scaring mothers and women from going to vote. That is also a relic from the past.

The Temporary Deputy Speaker (Hon. Kajwang'): Do not go outside the realm. Thank you very much.

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

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Gem, one minute without getting out of the realm. You know the game.

(Loud consultations)

Order! Can you proceed?

Hon. Midiwo: Yes I am proceeding. You must restrain this Cheboi. He is a young boy.

The Temporary Deputy Speaker (Hon. Kajwang'): Proceed, please.

Hon. Midiwo: Let me thank Hon. Sakaja. We have been talking about revising our rules. In many jurisdictions now, if you go to their parliaments, none of those things are followed any more. It looks very colonial shouting in the corridors for even young people to hear. It is very wrong. How nice would it be for us sitting here sometimes just dressed like Hon. Mwaura or the way Koigi wa Wamwere used to dress? I am on a point of order, you 'Nyangores'.

I had occasion to visit some assemblies where people can even eat and snack in the Chamber. This tie thing that one has to come here in--- if you go to North Eastern region, what should stop Members from coming in their religious *Kanzus* during some seasons and even Maasai *shukas*? We cannot keep behaving like *mzungus* and we are trying to liberate ourselves from colonialism. I want to support change of the Standing Orders.

The Temporary Deputy Speaker (Hon. Kajwang'): Alright thank you. The first Chairperson of Committees, I do not see you on my screen.

Hon. Cheboi: Thank you, Hon. Temporary Deputy Speaker. I just wanted you to restrain the Member for Gem who is an extremely good friend of mine. We came to Parliament at the same time. I really want to dissuade him from mourning more than the bereaved.

I am a Member of KANU as you know and I am not mourning. I am surprised and wondering whether there was any connection between his party and mine or a memorandum of understanding. So, he is here telling me that my party lost and we should be crying and I am not crying myself.

The Temporary Deputy Speaker (Hon. Kajwang'): That is the spirit of the National Assembly. Members you know it is your duty to revise the Standing Orders as you should and as many times as you may want.

Procession is a practice which takes from tradition, jurisdictions and usages. If you decide that there is a Kenyan, East African or African usage, you may want to look at your Standing Orders. But as for now, until that is done, we will do what other jurisdictions do and what is part and parcel of regalia. We also have to give the National Assembly the dignity that it deserves. It stands at the pinnacle of the heart of the nation. Those are some of the things you will be looking at. Let us move on with the business of the House.

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Deputy Chairman

(Hon. Kajwang') took the Chair]

THE POLITICAL PARTIES (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, this is the Committee of the whole House convened to consider the Political Parties (Amendment) Bill (National Assembly Bill No.5 of 2015). For the convenience of the House, we have reordered the business appearing as Order No.8. We will begin with business appearing as Order No.8 (ii). After that, we will finish with Order No.8 (i).

Order Members! Sometimes when Members leave the Chamber, I do not know whether it is because of lack of business in the House or whether they are going to Committees. Business of the Committee of the whole House is perhaps the most important part of legislation-making. That is when you get the opportunity to discuss the law in detail. I know that you have conveniences to attend to, but I would urge as many of you as possible to remain in the Chamber.

Clause 1

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Kiminini, are you the sponsor of this Bill? Can we hear you?

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): Just hold on if you do not mind.

(The Temporary Deputy Chairman (Hon. Kajwang') consulted with the Clerks-at-the-Table)

I was consulting on this. You notice from the Order Paper that two Members have proposed amendments to the same clause. This is a one-clause Bill. The Members for Malava and Kiminini have proposed amendments. In the view of the Chair and the Clerks-at-the-Table, if the amendments by the Member for Kiminini were to be upheld, then the amendments proposed by the Member for Malava would fall by the wayside. This is because the threshold proposed by the Member for Malava is lower than the one proposed by the Member for Kiminini. Stay guided.

Let us begin. Let us have the Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman. This is with regard to the Political Parties Fund. Its objective is to help political parties in terms of adhering to the democratic principles. The threshold has been high in the past. This amendment is to reduce the threshold. I have consulted with Hon. Injendi, who is the party leader of the Maendeleo Democratic Party. He has expressed his concern and we are working together.

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

THAT, Clause 1 of the Bill be amended in paragraph (b) by deleting the proposed new paragraph (c) and substituting therefor the following new paragraph

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- “(c) the party does not have at least –
- (i) five elected members of the National Assembly; or
 - (ii) three elected members of the Senate; or

- (iii) three elected members who are Governors; or
- (iv) twenty members of County Assemblies.”

Reducing this threshold will give more room for more political parties to get funding. In this case, the threshold has been done in a manner that will not allow briefcase political parties to get funding. I have been working very closely with the Registrar of Political Parties as pertains to this threshold. When we have a higher number up to seven, we will have a choice. For now, there are only three political parties that managed to reach this threshold. We have different post-election memoranda of understanding and the Registrar of Political Parties cannot directly give funds to those political parties based on the MOU. We thought that a law has to be in place to help the Registrar of Political Parties to give funds directly to those respective political parties. This threshold is high. It will not allow many briefcase political parties to benefit. The parties that will achieve this threshold are those that are national in nature.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Malava, I will give you the first opportunity. We may or may not reach your amendment. So, let me give you the first opportunity.

Hon. Injendi: Thank you, Hon. Temporary Deputy Chairman. My argument is that for political parties to exist, they must have offices in at least 25 counties. Usually, they present candidates for Parliament, county assemblies and governorship. Instead of the threshold being five Members of Parliament as proposed by my brother, we should stipulate that it should be one Member of Parliament. What normally happens during an election is that after these parties have presented candidates, there are those who will go through and those who may not go through. In my party, we presented candidates throughout the country, but I am the only one who managed to go through. I am serving Kenyans as an elected leader. Many other parties are entitled to Kenyan taxpayers' money just like other parties that qualified to have Members in the National Assembly.

I propose an amendment to Hon. Chris Wamalwa's amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Do you oppose his amendment?

Hon. Injendi: I oppose his amendment by proposing a further amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Gem, let me recognise you on an intervention before I ask you to contribute. Let us have the Member for Gem on an intervention.

Hon. Midiwo: Hon. Temporary Deputy Chairman, I thought these are two different amendments whereby we will dispose of one and then go to the next. He is saying that you have given him time to amend a proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): There is a misunderstanding by the Member for Malava.

Hon. Members, there are two amendments. We will begin with the amendment by the Member for Kiminini because the amendment proposed by the Member for Malava has a lower threshold. It is the view taken by the Chairman that if the amendments by the Member for Kiminini were upheld, then the amendments by the Member for Malava would be dropped. I allowed him to have the first bite of the cherry because we may or not reach his amendment although he went ahead to argue his amendment instead of relating himself to the amendment by

the Member for Kiminini. Hon. Midiwo, now that you are on your feet, can you finish your contribution on this?

Hon. Midiwo: Hon. Temporary Deputy Chairman, I rise to support the amendment by the Member for Kiminini. We are now running coalitions and if you look at CORD, we share our money with the Wiper Democratic Movement (WDM) and FORD (K), but the account only holds ODM responsible. If you give them money in law, they have to be audited. That will be bringing greater accountability to the usage of public funds. I support his amendment based on the fact that Hon. Injendi is on record that he has an amendment. He is opposing Hon. Wamalwa's amendment and supporting his. I want to take this opportunity to urge him to withdraw his amendment. If you will indulge me, he is trying to say that there are many Members of Parliament in this House who are in political parties for different reasons, for instance, through interference in nominations. Some are Members of political parties that do not exist. We have reports tabled every year by the Auditor-General and I would urge us to debate them. Where does the Auditor-General find these briefcase political parties? Why does he need to audit them?

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Midiwo, make sure you do not refer to the political party of the Member for Malava as a briefcase party. You can refer to any other party, but not his. I want to protect him. He is here on his own right and he is a Member of a political party. I know you have not referred to him, but that was a warning of wisdom.

Hon. Midiwo: Hon. Temporary Deputy Chairman, I am not aware Hon. Injendi is a Member of a briefcase party because as far as I know, he is one of us and a Member in his own right. The logic I am giving is that Kenya is a multiparty State, but there are so many crooks on the streets that are holding briefcase parties that they can only have one Member of a county assembly and enjoy public funds. In an electioneering period, if somebody feels aggrieved by The National Alliance Party (TNA) or ODM, they grab the next party possible which is not organised. That is a dangerous usage of public funds. The threshold must be high and political parties must work to gain greater public support.

Lastly, now that we are talking about parties, I want to urge all of us that as we make these laws, we should make further amendments for political parties to gain greater independence and accommodate all of us, so that there is no need to run away and join parties that are imaginary.

I want to further say that when you go for elections, which is what we largely use political parties for, we want to urge the Government to lessen and do away with the usage of State power. I was in Malindi until yesterday and I saw the use of the military. I want to take this opportunity to warn Mr. Mwathethe, the Chief of Defence Forces (CDF), from getting into politics only one year into an election period. It is wrong for the military to participate in electioneering. I am a Member of the Departmental Committee on Defence and Foreign Relations and I will make sure that as we debate their budget, we will teach them a lesson. They cannot use the military for that reason. After all, they are in Somalia trading in charcoal. We will tell them the truth.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, I now want to recognise Chairmen of parties. Nominated Member, Hon. Johnson Sakaja.

(Loud consultations)

He will be heard uninterrupted. As you speak, please, help us to understand how these parties find their way around without showing presence in 24 counties bearing in mind that we have Article 77 of the Constitution and Section 22 of the Elections Act.

Hon. Sakaja: Hon. Temporary Deputy Chairman, you are too lenient on Hon. Jakoyo, who is going off tangent and talking about the military. You must substantively talk about that issue. Parliament gave allowance for the military to be in Malindi and Lamu because of terror.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang'): I will not allow any point of order. Hon. Sakaja will be heard uninterrupted.

Hon. Sakaja: Hon. Temporary Deputy Chairman, we approved the deployment of the Kenya Defence Forces (KDF) to Malindi and Lamu. So, does it mean that simply because it is a by-election they should move out of their stations? They were not campaigning. You must deal with that issue substantively. You cannot expect that just because it is a by-election, terrorists and criminals are off duty and that the military should walk away. They did not participate in electioneering. If they did, you should bring that issue to the House substantively. Just because you saw somebody in a *kofia* does not mean they were voting. Did you see any of them in a polling station?

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

The Temporary Deputy Chairman (Hon. Kajwang'): I will not entertain that point of order.

Hon. Sakaja: Hon. Temporary Deputy Chairman, I am happy that the Chairman of ODM is in the House and as much as he only recently became Chairman, I will remind him some of these things.

Hon. Member: He is your senior.

Hon. Sakaja: He is my senior in Parliament, but he is my junior in political parties' leadership. I have been chairman of a party for five years.

(Laughter)

I fully support the amendment by Hon. Chris Wamalwa and I want to persuade my colleagues in Jubilee to fully support it. The political future of this country will only thrive when we build strong political parties and institutionalise them. When you have political parties that are only funded by individuals, then democracy goes out of the window and that for you to stay in that party, you must be a sycophant or too loyal to the person who is funding the party.

If you will allow me, I would like to emphasise on two issues. The first issue is that Hon. Wamalwa is lowering the threshold and saying that a party must, at least, have five per cent of the vote. If we assume that in the last general elections there were 12 million registered voters and maybe 86 per cent voted, that comes to over nine million voters. Then, over nine million voters multiplied by six different ballots gives you the total number of votes to calculate the percentage from. Any party that can achieve two per cent of that has national character. You cannot get more than one million votes in one region or county. So, on that issue of changing it from 5 per cent to 2 per cent, I fully agree. That is okay, but I hope he is not amending calculations

of what FORD (K) got so that it is not an amendment to serve his party only. There are many political parties that need to be supported.

Secondly, one provision that many people forget is Section 25(2)(b) of the Political Parties Act which provides that the party shall not be entitled to receive funding from the Fund if more than two-thirds of its registered office bearers are of the same gender. I am glad to speak about this during the week of International Women's Day. Many political parties existing, and I am sure many of the parties on this side, do not have two-thirds of the registered office bearers being women or men.

If we do not give our women an opportunity or even in future if men do not get these positions, we are just not being smart. If a party like ODM had principles of fairness, we would have very many women elected on ODM in single Member constituencies. I can say this authoritatively because out of the 16 women elected to single Member constituencies, eight of them are from TNA. It is because of the process. When you inculcate such processes from the office bearers, the way you do your nominations and even funding women, more women and young people get elected.

Finally, on the issue of having three elected Members, I was not for this initially because all it takes is for one person to get 20 MCAs elected in one county or one governor in one county and the party would be regional. The issue of the threshold still holds. In any case, big political parties which are worried that the money will become too little, even in as much as we love more parties getting into the threshold, the amount of money any party will get will still be based on the proportion and the ratio of votes garnered even if your members have not won the election. So, if your member was No.3 and got 3,000 votes, that 3,000 adds up to the total tally of the political party.

So, I want to support this amendment. I Thank Hon. Wamalwa. This moves to strengthening democracy in our country. I would like to persuade all my colleagues in Jubilee to support this. It is for our interest. Even as we come together with many parties to form Jubilee Party, all the other small parties within Jubilee are also going to get money and we will have it all in one basket.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. I want to come to the Member for Suba, whom I understand is a Chairman of a political party.

(Hon. Kaluma walked into the Chamber carrying a bag)

Even before we go there, I want to deal with an issue here of procedure. Member for Homa Bay Town, the Chair has seen you walk down the aisle carrying what seems to me to be a bag. I raise to you Standing Order No.101, which says that a lady Member may be allowed into the Chamber with a handbag of reasonable size. The last I checked, Member for Homa Bay Town, you are not a lady unless things have changed. I am also looking at the Speaker's Rules, Rule 22, which provides that no person, even if otherwise qualified, shall be admitted to the lounge, the dining room or the Speaker's Gallery and so on, unless he or she is, in the opinion of the Serjeant-at-Arms, properly dressed. This means that if he is a man, he has a coat, collar, tie, long trousers, socks and shoes or service uniform or decent national dress for men and an equivalent standard for women, with hats optional. I do not see how a Member, whom I think is a male, can walk into Chamber carrying a bag of unreasonable size. Can you address yourself to those issues?

Hon. Kaluma: Hon. Temporary Deputy Chairman, the issue of gender is nowadays very difficult to decipher physically. It is very wrong to assume that because I am Hon. George Peter Opondo Kaluma, I am necessarily male.

(Laughter)

That is an interrogation that I think can take a whole day.

Today, I am celebrating a woman. I do not want to disclose my gender, but what I have here is a gift for my support to the women across the world. I have been recognised as the only Member who does that from this side.

It is just my support.

The Temporary Deputy Chairman (Hon. Kajwang’): You are even getting into more trouble.

Hon. Kaluma: Hon. Temporary Deputy Chairman, for all intents and purposes---

The Temporary Deputy Chairman (Hon. Kajwang’): Order, Member for Homa Bay Town! You are getting into bigger problems now. I do not know what to do with this Member. Can I hear from one or two ranking Members on this issue only before I make a decision on this? I will make a decision on this one way or the other. Member for Suba, I am not inviting you to contribute, but to make a remark on the issue of whether this Member for Homa Bay Town is properly dressed or not.

Hon. Ng’ongo: Thank you, Hon. Temporary Deputy Chairman. Unless we change our Standing Orders, they are very clear that we would only admit lady Members to the Chamber with bags. Those bags must be of reasonable size and must be checked. I suppose that the bag that is held by Hon. Kaluma was checked, but it does not meet the threshold of him being a female as far as we know and as far as his records in Parliament show. There is no contradiction. There may be contradiction elsewhere, but in terms of records, the people of Homa Bay elected a male Member. If we were to work on the formula of realising the two-third gender rule, we would compute his tally as male and, therefore, work for more females to be nominated to this House if that law was allowed.

In my view, there is no ambiguity in this. Hon. Kaluma should just return the bag where he got it from. He has not said the truth. These bags are issued to every Member out here. It is not that he has been recognised. In fact, I was worried how Hon. Kaluma could be recognised for fighting for gender issues and I am not. But now I have just learnt that these bags are given to every male Member who wants to pick them. I am going to pick mine as I walk out.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I will come back to you. Member for Mbita, I am worried about this gender issue because Member for Homa Bay Town is threatening that I should get the Serjeant-at-Arms to do physical inspection of whether he is male or female. Can you discuss this?

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. At some point, I would encourage that we do a physical inspection of the Member for Homa Bay Town. I would want to speak to the issue of the bag that the Member is carrying. The Standing Orders say that women Members may carry bags of reasonable sizes. What that presupposes is a bag of the nature that I have and classy handbags that we have like the Michael Kors and other bags.

The Temporary Deputy Chairman (Hon. Kajwang’): Not these plastic bags and all those things picked from somewhere.

Hon. (Ms.) Odhiambo-Mabona: Not the kind that Hon. Kaluma is carrying. The kind Hon. Kaluma is carrying is the one that women Members of Parliament, otherwise known as Kenya Women Parliamentary Association (KEWOPA), are issuing in recognition of the International Women’s Day to our male Members for the pre-emptive support that they will give us on the two-third gender rule as we bring that Bill. We know that they are very supportive including Hon. Jakoyo Midiwo and the Chairman of the ODM party. Therefore, we are encouraging them to go and get their bags outside. The kind of bag that Hon. Kaluma is carrying is a sort of bag that even male Members can carry so long as they are inspected. It is a bag that you can carry your printer or laptop in.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Having heard the submissions of the Members, I rule Member for Homa Bay Town out of order. He is not properly dressed. I, therefore, order that he deposits that bag plus the contents thereof with the Serjeant-at-Arms. Should he want to carry any bag any other day, he should carry a briefcase and not that type of bag picked from the supermarket.

(Laughter)

It is so ordered.

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

The Temporary Deputy Chairman (Hon. Kajwang’): No, you cannot engage with me after I have made an order.

(Hon. Kaluma withdrew from the Chamber)

Member for Suba, you may proceed.

Hon. Ng’ongo: Thank you, Hon. Temporary Chairman. Let me allow Hon. Kaluma one second to walk out.

The Temporary Deputy Chairman (Hon. Kajwang’): I have not ordered him to walk out. I have just ordered him to deposit those funny things with the Serjeant-at-Arms.

Hon. Ng’ongo: Thank you, Hon. Temporary Deputy Chairman. I want to contribute to this amendment by Hon. Chris Wamalwa. I agree with my colleagues that we need to support this amendment. I know that we need some threshold for parties to qualify for funding from State coffers. At the same time, if you raise it too high, you disadvantage parties. Therefore, you do not support multiparty democracy. Article 4 of the Constitution talks about Kenya being a multiparty republic recognising political parties.

Having said that, it is also not right to give funding to what we have variously termed as briefcase parties. Last weekend, I was sharing with the acting speaker of Migori County, who is a Member of the County Assembly (MCA) on Agano Party ticket and he confessed to us that if he is asked today to visit the offices of Agano Party, he has no idea. He does not even know the leadership of the Agano Party. He only got that certificate during that time of frustration when he could not get the ticket of the party he preferred then.

We need to rein in on the Registrar of Political Parties. You asked a very fundamental question. Our law in the statutes is very clear. It says that there must be a presence in, at least, 24

counties. The Registrar of Political Parties has continued to allow parties to operate illegally in this country including even gender representation in the management of political parties and not having their accounts audited.

Finally, it is unfortunate that my colleague, who is the Chairman of a party that is almost extinct or defunct, The National alliance Party (TNA), has left. He said that I am just a chairman who assumed my position recently. That may be true, but in terms of political maturity and experience, I have a longer period than him. I wanted to talk to this point as the Chairman of ODM. What we saw in Malindi cannot be downplayed. We have to complain and we must tell the Jubilee administration that Kenya is not Uganda. They must know that. They may have their friends in Uganda, but Kenya cannot go back to where Uganda is. I say this with a lot of pain. Kenyans struggled to free themselves. The militarising in Malindi in the name of *Al Shabaab* will not work. If the Jubilee administration and the President knew that there was the presence of the *Al Shabaab* in Malindi, why did he cause a by-election in a place that is not stable? It shows political immaturity on the part of the President and his team. No wonder, the President even created a vacuum in a place that is supposed to be their stronghold. An intelligent politician cannot cause a competition one year to elections in a place where he enjoys support.

Hon. (Ms.) Shebesh: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Just hold on, Member for Suba. Member for Nairobi on a point of order.

Hon. (Ms.) Shebesh: Hon. Temporary Deputy Chairman, since morning, we have witnessed diversion of what is on the Floor to issues of Malindi and Kericho by-elections. We are in the Committee of the whole House to consider issues of political parties. We have again digressed to the issue of Malindi and Kericho by-elections. I am asking if, according to the Standing Orders and the rules of the House, we can disengage from the issue and go the opposite direction and be allowed to continue without bringing a substantive Motion. We are ready to discuss this issue. If ODM feels that they need to discuss the elections in Malindi and Kericho, we are up to the task, but let them bring a substantive Motion and we will discuss it. They won Malindi and we won Kericho, what is the big deal?

(Loud consultations)

Please, rule on this matter because from morning, this has been the trend and we cannot allow it to continue.

The Temporary Deputy Chairman (Hon. Kajwang’): All right, just a minute. Order! Do not speak across the aisle. I am going to have control of the Chamber. So, any Member speaking, do not digress because I will hold you to Standing Order No.107 which talks of gross disorder. Do not digress. Do not get out of the rails. Speak to what is before the House. Member for Suba, you have half a second. Do not respond to it.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, we need to define “relevance”. We are discussing political parties. Political parties are formed for elections. We are talking about how to improve political parties and how to make elections free and fair. There is no digression. The problem is that many of us get jittery when we discuss some of these things. It is high time we also spoke our minds because if the Kenyans who fought in the late 1980s and in the early 1990s did not stand up to speak what was right, we would be having a country that is oppressed more than it is today, but we will not allow us to go back there.

The Temporary Deputy Chairman (Hon. Kajwang'): Do you support or do you oppose the amendment?

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, the way I always start my contributions is by supporting.

The Temporary Deputy Chairman (Hon. Kajwang'): Okay, thank you. Member for Kitui Central.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. I must register my disappointment because it looks like people must shout to talk in this House. Some of us, by nature, are not of the character of shouting although we are politicians.

I support this amendment. It is important for us to have democracy in this country, more so, party democracy. We all know that democracy is expensive. It is important that political parties are funded by the State. It is a way of promoting democracy and maturing it.

I thank Hon. Wamalwa for coming up with this amendment. When you look at this country, it is obvious that as we move to the future, coalitions will be the way forward. All parties will have to be in coalitions. We have realised that for the three years that the two big coalitions have been in existence only ODM, TNA and the URP have been getting funding. As it was said, Wiper Democratic Movement gets the money and we have to account for it through ODM. At the end of the day, the accountability aspect of this money is with ODM. If anything went wrong, ODM will be accused or punished for mistakes which might not have been committed by the party members. So, this amendment is going to sort that problem.

The second issue is the way the money is shared within coalitions. It is to some extent through MoUs which are gentlemen's agreement. By passing this amendment, we will make sure that there is a law which clearly stipulates how this money should be shared.

The issue of five elected Members of the National Assembly, three Senators and three Governors and 10 MCAs is important. As it was said, in a situation where you only allow one elected Member, we will be promoting briefcase parties in this country. Time has come for us to have serious parties which can be represented in this country and, more so, parties which can have at least 24 county offices. I support this amendment and urge my colleagues to support it for purposes of ensuring that we have mature political party democracy.

The Temporary Deputy Chairman (Hon. Kajwang'): There is this Member who does not have a card. He informs the Chair that he is also a chair of a political party. This is the member for Nyaribari Masaba. I do not know about those parties. They are not here in the Chamber. You must always carry your card with you. However, I will give you the microphone.

Hon. Moindi: Thank you, Hon. Temporary Deputy Chairman, for giving me this chance to contribute to this amendment. I am a member of the National Rainbow Coalition - Kenya (NARC-Kenya). I am democratically elected. The party has 27 Members of County Assemblies (MCAs); 17 are elected and 10 are nominated. We should consider our parties.

A parent has 11 sons and two wives. One wife has one son and another has 10 sons. Those two families should qualify for the share of what the father brings. I support the amendment in Clause 2 to accommodate each and every party because they all belong to this county.

The Temporary Deputy Chairman (Hon. Kajwang'): Which amendment are you referring to? I heard you referring to the amendment by the Member for Malava.

Hon. Moindi: I am referring to that of Hon. Injendi.

The Temporary Deputy Chairman (Hon. Kajwang'): Then I am afraid you may not have followed the proceedings because we were on the amendment by the Member for Kiminini. That is what we need you to support or oppose.

Hon. Moindi: I oppose the amendment by Hon. Chris Wamalwa Wakhungu.

The Temporary Deputy Chairman (Hon. Kajwang'): Before I come to you, Member for Nakuru Town East, allow me to go to this other side. Let us have the Member for Ugunja.

Hon. Wandayi: Thank you, Hon. Temporary Deputy Chairman. I just want to make very few comments.

Kenya is a recognised multi-party democracy. In most established democracies, political parties evolve and become institutions that are integral in the management of democracy. We are looking at a situation where eventually, Kenya will have at most two or three political movements that would compete against one another for political power. The only way you can achieve that is by reining in those briefcase political parties. Unless we come down hard on those briefcase parties, we will not eliminate what we call political corruption in this country. There are people who have perfected the art of running around with those briefcase parties at election time. They are the ones who cause mayhem in the established political parties. You find members becoming disobedient and indisciplined because there are parties at the doorstep that they will go and run into.

I entirely support the amendment by Hon. Chris Wamalwa. It is a very important amendment because it will ensure that parties that have reached the threshold are supported effectively through financing so that they are able to execute their mandate properly under the Constitution and under the relevant law.

It is also important that, as we debate this amendment, we should compel the necessary Government officers to release the requisite funding for those parties in full and on time as the law dictates.

Finally, it is also important---

The Temporary Deputy Chairman (Hon. Kajwang'): That was all the time we had for you. I give the Floor to Member for Nakuru Town East.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Chairman. As much as I was a little bit disappointed as Hon. Makali was saying, let me thank you for the ruling you have just given regarding what was raised by Hon. Shebesh about digressing and irrelevancy in terms of the Motion that is on the Order Paper. I was in Malindi and it is unfortunate that the Orange Democratic Movement (ODM) just wanted to see the military. I could see ODM supporters streaming into polling stations to do their business.

The Temporary Deputy Chairman (Hon. Kajwang'): Stop digressing, Member for Nakuru Town East.

Hon. Gikaria: I am sorry. I support the amendment that has been brought by Hon. Chris Wamalwa. I agree with what has been said. If, indeed, political parties in the Coalition for Reforms and Democracy (CORD) get their money through ODM, as Hon. Makali has said, and that it is only ODM that is accountable, then what Hon. Chris has just brought will go into place. As it is now, so many parties have more than what Hon. Chris has just indicated. This will go a long way in improving democracy.

At the same time, the aspect of some members here insinuating that we have so many briefcase political parties is un-substantiated. Those political parties were registered based on criteria that was in the Political Parties Act through the Registrar of Political Parties. The

Registrar cannot do that unless they are in conformity with the law. In future, I request you to rule somebody out of order because there is no way a political party---

The Temporary Deputy Chairman (Hon. Kajwang'): Give him the microphone to support or oppose.

Hon. Gikaria: I support the amendment brought by Hon. Chris Wamalwa.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Westlands.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I add my support to this amendment. There are many political parties in this House that have Members of Parliament, MCAs and even some elected governors and senators and yet the threshold, as provided in the law, excludes them from benefiting from this public funding. This amendment will allow political parties that have sponsored members who have won elections and are members of the National Assembly, Senate or as mentioned in the amendment, to broaden the support for political parties and also move away from those rogue party leaders who hold political parties to ransom. When we give them public funding, they will be accountable to the public and they can account for the funds.

I support this amendment because we need to support political parties that are still fragile to enable them sponsor members and benefit from the public coffers instead of depending on the whims of the owners of those political parties. I support.

The Temporary Deputy Chairman (Hon. Kajwang'): The last one is Hon. Oburu Odinga.

Hon. (Dr.) Oginga: Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity.

At the outset, I want to support this amendment because there are people in the country who confuse democracy with chaos. Democracy is a very deliberate system of organised expression of the will of the people, and people have the right to express their will. However, there must be rules to it. Those rules are such that people cannot just move from political parties at any time they like, or jump from this vehicle to the other one.

In this country, there are people who keep briefcase political parties in their houses and just wait for elections. When it is time for elections, they walk around fishing for people who want to jump from their parties, so that they can seek favours from them. They do not give them certificates for nothing. Those people collect a lot of money. They become rich and stay for the whole year without doing anything else. They wait for elections or by-elections so that they can collect money.

Hon. Temporary Deputy Chairman, we must bring discipline to our system of democracy so that people can choose their parties on time according to the rules. Political parties are just like clubs which have rules and people must be controlled. This is one of the ways that Kenya could move towards an organised system where you do not have so many briefcase political parties. We can have a system of two, three or four strong parties which compete with proper ideologies and organised systems of management so that *wananchi* can have a choice of the best leaders who are endowed to rule them.

With those few remarks, I support the amendment and urge other Members to support it. Thank you.

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

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

(Clause 1 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Malava, your amendment should, therefore, be withdrawn. Have you heard me, Hon. Injendi?

Hon. Injendi: Hon. Temporary Deputy Chairman, I give in because I have heard the voice of the majority. Therefore, withdraw my amendment.

(Proposed amendment by Hon. Injendi withdrawn)

(Title agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Kiminini, are you on an intervention?

Hon. Wakhungu: Hon. Temporary Deputy Chairman, I am not on an intervention.

The Temporary Deputy Chairman (Hon. Kajwang'): I have been informed that you want to intervene. That is what I am telling you.

Hon. Wakhungu: No, I am just waiting to report.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Kiminini, you need to learn your ropes. Rise in your place and make your intervention. Is this the first time you are proposing a Bill? Please move reporting.

Hon. Wakhungu: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Political Parties (Amendment) Bill (National Assembly Bill No. 5 of 2015) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, we will withhold the reporting on this Bill and consider the In-Vitro Fertilisation Bill.

THE IN-VITRO FERTILISATION BILL

(Resumption of consideration interrupted on 24.2.2016)

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Mbita, I am sure that all the issues are now at your fingertips. We want to co-operate as much as possible so that we can move as fast as we can.

Hon. Members, the Member for Mbita has a raft of amendments which are not in the Order Paper. She has circulated them to the Members. I urge you to hold a copy so that you are

able to follow the proceedings. This is a continuation of the consideration of the In-Vitro Fertilisation Bill (National Assembly Bill No. 36 of 2014). We shall resume from Clause 28.

Clause 28

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by deleting Clause 28.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, if Hon. Nyikal's amendment is upheld, the amendment by the Member for Mbita will be laid by the wayside.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, we have substantively agreed with Hon. (Prof.) Nyikal. Because he is basically moving this clause to the interpretation section, his amendment has taken into account my concerns. We have agreed in principle.

So, I support.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Mbita, I can see that you had proposals on Clause 27, but we had passed it. If you are very passionate about it, it can be subject to a re-committal.

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

(Clause 28 deleted)

Clause 29

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 29 of the Bill be amended-

- (a) in paragraph (a) by deleting the words "one year" and substituting therefor the words "five years";
- (b) by deleting sub-clause (b) and substituting therefor the following new sub-clause-

“(b) the man had consented to parentage in writing and the artificial insemination takes place within five years of the death of the man.”

The importance of the amendment in (a) is that with technology, it is possible to keep the embryos and sperms for 10 years. Therefore, one year will be limiting. The import of part (b) of the amendment is that it is possible, with the use of technology, to have sperms extracted soon after a man's death for later use in fertilisation. Therefore, there is need for parentage issues to be sorted out by the law.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Order! I am reconciling the two amendments by Hon. (Prof.) Nyikal and Hon. Millie, particularly on Sub-Clause 29 (b). I was having a practical problem with (b). So that we do not lose track, let us do them piece by piece. Let us finish (a) first and then we go to (b) because I am not reconciling it properly.

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

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

That was on (a) but let us come to (b). Hon. Member for Mbita Constituency, the reason I am having a problem is that the Hon. Member for Seme is deleting some words and inserting others, but even the words that he is inserting seem to be the ones the Hon. Member for Mbita seeks to delete. That is what I want to reconcile. Hon. Member for Mbita, just a minute. Before we go to (b), let us handle the further amendment on (a).

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman. I beg to move:-
THAT, the Bill be amended in Clause 29-
(a) in paragraph (a) by deleting the words "the insemination" and substituting therefor the words "assisted reproductive process"

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): All right. It is proposed. Let us have the Hon. Member for Homa Bay Town.

Hon. Kaluma: Hon. Temporary Deputy Chairman, I oppose this proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): The further amendment or the other one?

Hon. Kaluma: The further amendment, the increase of the period from one to five years.

The Temporary Deputy Chairman (Hon. Kajwang'): No. The increase of the period has been settled. The issue that we are dealing with is that the Hon. Member for Mbita is changing the words from "the insemination" to "assisted productive process."

Hon. Kaluma: Hon. Temporary Deputy Chairman, I support that. I had a problem with the increase in years. Unfortunately, it was not addressed but it has passed me. Five years is such a long time to be searching for the cells of a man when we have living men around here.

(Laughter)

It is too long and we needed to be fair.

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Let us get to Sub-clause (b). Hon. Member for Seme and Member for Mbita, you need to work very closely so that we do not have a legislation that has not been thought through. However, because the Hon. Member for Seme is proposing a deletion according to the Standing Orders, I will begin with the deletion. He is proposing an insertion which has words which are contrasting. Hon. Member for Mbita, you may want to choose whether you want to do a further amendment by what you have proposed or whether you think the Hon. Member for Seme has sufficiently captured the totality of the phrase you want to bring.

Hon. (Prof.) Nyikal: With guidance, I have seen the proposal by the Hon. Member for Mbita. The difference is the words "reproductive technology". Then, the Member for Mbita has left "one year". My amendment is in agreement with replacing "artificial insemination" with "assisted reproductive process" but then the one year---

The Temporary Deputy Chairman (Hon. Kajwang'): No, please! You are on sub-clause (b). Proceed.

Hon. (Prof.) Nyikal: Look at sub-clause (b). My proposal reads "the man had consented to parentage in writing and the artificial insemination takes place within five years of the death of the man". Hon. (Ms.) Mabona's proposal reads "parentage and the artificial insemination takes place within one year of the death" and substituting therefor the words "assisted reproductive process and it takes place within one year of the death of the man"

The only difference there is that "assisted reproductive technology" is taking the place of "artificial insemination", and I am okay with that. The only thing will be the one year which should be changed to five years.

The Temporary Deputy Chairman (Hon. Kajwang'): No. You are confusing me further. Just stick to your amendment the way it is and then we will go to Hon. Millie and see if that further amends what you are saying. Stick to what is on your Order Paper. You will discuss Hon. Millie's when it is there.

Hon. (Prof.) Nyikal: Well, I will stick to my amendment, but I can further amend it to take care of Hon. Millie's concern.

The Temporary Deputy Chairman (Hon. Kajwang'): First of all, let me hear you on your amendment. A further amendment is another procedure.

Hon. (Prof.) Nyikal: Okay. I will go over that again. I proposed the deletion of Sub-clause (b) and substituting therefore the following new sub-clause:-

"(b) the man had consented to parentage in writing and artificial insemination takes place within five years of the death of the man."

The Temporary Deputy Chairman (Hon. Kajwang'): Is that the substance of your amendment?

Hon. (Prof.) Nyikal: Yes.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): I will give the Member for Mbita the first opportunity. The reason I do so is so that you can help. If the Member for Seme has captured what you thought would have been in the further amendment, then you support him and we leave it at that. Let us hear you.

Hon. (Ms.) Odhiambo-Mabona: Thank you. My amendment differs in substance from that of the Member for Seme because his was moving it to five years when I was leaving it at one year because of the issue of proximity of parentage. However, he convinced me because of the issue of technology to agree to five. I was also moving away from the issue of consent to parentage, but we sat and agreed that we adopt his. That is what I was trying to say. So, I am okay with his.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Thank you.

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

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

Can I hear the Member for Mbita on the HANSARD withdrawing the proposed amendment?

Hon. (Ms.) Odhiambo-Mabona: Which one was it?

The Temporary Deputy Chairman (Hon. Kajwang'): Paragraph (b).

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I withdraw my proposed amendment to Clause 29(b).

*(Proposed amendment to Clause 29(b) by
Hon. (Ms.) Odhiambo-Mabona withdrawn)*

(Clause 29 as amended agreed to)

Clause 30

The Temporary Deputy Chairman (Hon. Kajwang'): Who is the Mover of this amendment?

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 30 of the Bill be amended in the opening statement by deleting the words "section 28" and substituting therefor the words "section 2"

The import of this amendment is that we have deleted Clause 28 and the contents of Clause 28 are in section 2 that we will probably come to later. So, reference to section 28 will, therefore, be inappropriate.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Nominated Member, Bishop Mutua.

Hon. (Bishop) R. Mutua: Hon. Temporary Deputy Chairman, I was waiting to contribute to something else.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you very much. The Member for Homa Bay Town.

Hon. Kaluma: Hon. Temporary Deputy Chairman, this is a straightforward matter. We had deleted Clause 28. So, I support the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Muhoroni.

Hon. Oyoo: Sorry, Hon. Temporary Deputy Chairman, my intention has been overtaken by events.

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Mbita, it is all right. Do not be jittery. We are only on the opening statement to Clause 30.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Mbita, move your paragraph (a) of your amendment.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 30-

(a) by deleting paragraph (c); and

The essence of my amendment is to delete sub-clause (c) which talks of marriage by cohabitation. Sub-clause (a) already introduces marriage under any system recognized by law in Kenya, and cohabitation would then be such a marriage. Secondly---

The Temporary Deputy Chairman (Hon. Kajwang’): No, just leave it at that. I will come to part (b) of the amendment later.

Hon. (Ms.) Odhiambo-Mabona: Okay.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Kajwang’): Now, go to the next amendment, Member for Mbita.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 30-

(b) in paragraph (d) by deleting the words “at the time of the placing in the woman an embryo or sperm and eggs or her artificial insemination” and substituting therefor the words “at the time of the assisted reproductive process”.

What is currently provided for is limiting, but when you use the words “assisted reproductive process” it covers all sorts of reproductive processes, including in-vitro fertilization, insemination, amongst others. So, the amendment is just about using inclusive language.

(Question of the amendment proposed)

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

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

(Clause 30 as amended agreed to)

Clause 31

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I notice that Hon. Nyikal has a similar proposal and he has advised me, as a medical doctor, that the language used--- I thought what obtains in the Bill sounded a little crude, but he told me however crude it is, it is the biological term. I was trying to be a bit more elegant. So, I think we will adopt his amendment, which captures the biological aspects.

The Temporary Deputy Chairman (Hon. Kajwang’): In that case, you have to withdraw your amendment.

Hon. (Ms.) Odhiambo-Mabona: I withdraw my proposed amendment. I will support the amendment by Dr. Nyikal.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you. The amendment by the Member for Mbita is withdrawn.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Seme.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 31 of the Bill be amended by deleting the words “in-vitro fertilization” and substituting therefor the words “assisted reproductive technology”.

(Question of the amendment proposed)

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

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

(Clause 30 as amended agreed to)

Clause 32

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Seme.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 32 of the Bill be amended by-

(a) deleting sub-clause (1) and substituting therefor the following sub-clause—

“(1) A woman of eighteen years or more may, at the request of a couple, consent to have an embryo or eggs and sperm of the couple placed in her or artificially inseminated for purposes of surrogate motherhood.”

The Temporary Deputy Chairman (Hon. Kajwang’): These things are confusing! So, let us go paragraph by paragraph. We begin with the first paragraph on Clause 32(1).

(Question of the amendment proposed)

You understand, the Member for Mbita, that if we uphold the amendment by the Member for Seme, then your amendment to sub-clause (1) fails. If we reject the amendment by the Member for Seme, then we will come to your amendment. That is how it flows.

Shall I put the Question? Member for Mbita, what is it?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, if you look at the first part of the proposed amendment by the Member for Seme, he is using the word “couple”, where I am using the word “parties to a marriage”. We are proposing interpretation which adopts both “couple” and “parties to a marriage”. So, I do not have a problem with that. But I do not know how we are going to go about it because we have agreed on it. I do not know whether I will move a further amendment.

The second bit of my amendment was to delete all the wordings, especially from “female placed or artificially inseminated in her for purposes of surrogate motherhood” and to replace with simpler terminology which is “a process of assisted reproduction as a surrogate mother”. So, I do not know whether we can adopt Hon. Nyikal’s amendment and I move a further amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): We will handle Hon. Nyikal’s amendment first. If we uphold Hon. Nyikal’s amendment, you are free to propose a further amendment if his amendment does not satisfy what you are talking about. If we negative Hon. Nyikal’s amendment, we will consider your amendment. That is how I see it.

Just a minute! I am trying to give direction and then we move on. Let us have contributions. We will start with the Member for Homa Bay Town.

Hon. Kaluma: Thank you, Hon. Temporary Deputy Chairman. In substance, the amendment proposed by Prof. Nyikal is in order. Can the House imagine an 18 year old girl giving informed consent for this process? Because I know that the Mover can further amend this clause, in as much as it is late, I recommend that we increase this age limit to 25 years and above. Eighteen years is too early to give informed consent for such a process. I request Hon. Nyikal to amend this to read “a lady of a minimum of 25 years” giving consent for this process. The age of 18 years is too young.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Turkana.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Chairman. I am seeking clarification. When we delete the specification of male and female and substitute it with “parties to a marriage”, are we giving room to same-sex marriages?

The Temporary Deputy Chairman (Hon. Kajwang’): The amendment by Hon. Nyikal is not talking about parties to a marriage. It is talking about a woman of 18 years. I want us to move systematically so that we do not confuse terms here. All of you have the right to contribute. We are considering the text which talks about a woman of 18 years. The contribution by the Member for Homa Bay Town is about the age of the woman. That is where we are.

Let us have the Member for Marakwet East.

Hon. Bowen: Thank you, Hon. Temporary Deputy Chairman. I support the Hon. Member for Homa Bay Town, my friend, Peter Kaluma. There are students who are 18 years old. I propose that we increase this age to either 22 or 25 years. I support that we amend it to 25 years.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me hear from other experts. Let us have the Member for Likuyani.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Chairman. I also agree with my colleagues who have said that 18 years is rather early. As you know in this country, it gets to a point where girls, sometimes, become desperate. We know that there is a monetary element when it comes to surrogate motherhood. We cannot run away from that. Let us increase the age.

The next thing I would like to talk about is the way Dr. Nyikal has phrased this amendment. It appears too constrictive. Assisted reproduction is a little wider. When we talk about consent to have an embryo, egg or a sperm of the couple placed in the woman, we should open it up so that it instead reads “assisted reproduction”. That gives room for any new technologies that will arise. When we get to this level, there are times when you will find sperms being donated by somebody else and not necessarily the father.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Seme, when we discussed this in the other clause, we agreed to replace the term “artificially inseminated” with “assisted reproductive technology”. That is what the Member for Likuyani is saying. When I come back to you, you should have further amendments that clean up that terminology. According to Hon. Kibunguchy, it is too constrictive and may not take care of future technology that will arise in that field.

Lastly on this, let us have the Member for Mbita on the specific issue we are looking at. The only issue that has risen out of this is that of age.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, the argument on the issue of age is very persuasive. Because of desperation, sometimes, people may agree to be surrogate mothers because of the monetary aspect. Even though we are proposing to outlaw it in the Bill, we know that, sometimes, people tend to disobey the law when they are desperate. I urge my good friend Dr. Nyikal to propose a further amendment to increase it to 25 years.

At the same time, my further amendment is on what the Member for Likuyani is suggesting; that we use the term “assisted reproductive process” as opposed to all those medical terminologies.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mbita, you are the owner of the Bill. Those amendments must come from you. Let us first deal with the proposed amendment by the Member for Seme, which is on the Floor of the House. Do not vote before

you know where we are headed to. The further amendments that you have talked about will be proposed by the Member for Mbita, being the owner of the Bill. I want it to be clean. That is because you will give me a Floor amendment, which I do not want. I want us to go by the Order Paper.

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have the Member for Mbita on a further amendment.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 32 (1) be further amended by deleting the word "eighteen" and substituting therefor with the word "twenty-five".

(Question of the further amendment proposed)

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

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

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 32 –

- (a) in sub-clause (1) by deleting the words "any two persons, male and female, have an embryo or sperm and eggs of the two persons, male and female placed or artificially inseminated in her for purposes of surrogate motherhood" and substituting therefor the words "parties to a marriage, undergo a process of assisted reproduction as a surrogate mother", and, Clause 32 (1) will then read "A woman of eighteen years or more may, at the request of a couple, consent to a process of assisted reproduction for purposes of surrogate motherhood".

The Temporary Deputy Chairman (Hon. Kajwang'): Please repeat it so that I can capture it.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I am proposing a further amendment to Clause 32(1). It reads:-

THAT, a woman of 25 years or more may, at the request of a couple, consents to a process of assisted reproduction for purposes of surrogate motherhood.

(Question of the further amendment proposed)

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

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

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 32 of the Bill be amended by-

(b) in sub-clause (2), by inserting the words “at birth” appearing immediately after the words “over the child”.

Hon. Temporary Deputy Chairman, surrogate motherhood even when there is an agreement might have disputes as to when the surrogate mother relinquishes parenthood. We are making it clear that it should be at birth.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Mbita.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 32-

(b) in sub-section (2) by deleting the words “on behalf of the two persons” and substituting therefor the words “on behalf of the parties to a marriage”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Turkana, this is where your intervention was. Can you, please, repeat it for the benefit of Members?

Hon. (Ms.) Emanikor: Hon. Temporary Deputy Chairman, I would like to seek clarification that when we delete the words “male and female” and substitute therefor the words “parties to a marriage” does it give room to same sex marriage? In my view, it does. Is that what we want to be perceived?

The Temporary Deputy Chairman (Hon. Kajwang'): I am sure you are discussing it in light of an Article in the Constitution. Nominated Member, Isaack Mwaura.

Hon. Mwaura: Hon. Temporary Deputy Chairman, even if you have two persons, they could be of the same gender and so, it does not cure the problem that Hon. Emanikor has raised. The Marriage Act defines the parties to a marriage.

The Temporary Deputy Chairman (Hon. Kajwang'): Are you, therefore, opposing that amendment?

Hon. Mwaura: No. I support it.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Muhoroni, do you want to speak on this?

Hon. Oyoo: Hon. Temporary Deputy Chairman, I am lost because there is a lot of usage of medical terminologies and feminist definitions between my good friend, the Member for

Mbita and medical specialist Hon. (Prof.) Nyikal. That drifts the balance of what I had intended to talk on.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Homa Bay.

Hon. Kaluma: Hon. Temporary Deputy Chairman, permit me to allay the fears of the Member for Turkana. The amendment by Hon. Millie is making clarity to the fact that the provision applies to parties to a marriage. Our Constitution and the Marriage Act clarify who can be party to marriage and same sex or gender marriages are expressly prohibited. The amendment by Hon. Millie should satisfy my sister.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Muhoroni, do you now understand where we are going?

Hon. Oyoo: Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Turkana, are you well advised?

Hon. (Ms.) Emanikor: Yes.

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

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

(Clause 32 as amended agreed to)

Clause 33

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Seme, shall we re-order the appearance and begin with the amendment by the Member for Mbita? This is because she is proposing to delete the entire clause and you are only proposing to make corrections in the same. If we uphold her amendment, then your amendment will fall by the wayside. Member for Mbita.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by deleting Clause 33 and substituting thereof the following new clause-

33. (1) Parties to a marriage wishing to enter into a surrogacy agreement with any woman must sign a surrogacy agreement in a prescribed form before the process is undertaken.

(2) The form shall indicate the names of the parties to the marriage as the parents of the child to be born through assisted reproductive process.

(3) The entry in the form shall be conclusive proof of parentage of the child and shall be used for purposes of registration of birth and any other legal processes.

(4) Where there is a dispute as to the parentage of a child born out of assisted reproductive process, the aggrieved party may apply to court within sixty days of the birth of the child for determination of parentage of the child.

(5) The parties to a marriage shall not give any monetary or other benefits to the surrogate mother other than for the expenses reasonably incurred in the process of surrogacy.

Hon. Temporary Deputy Chairman, we agreed with Hon. (Prof.) Nyikal that he drops his proposed amendments. The proposed amendment provides that after a child is born of assisted reproductive process, you have to go to the High Court which is an onerous task on the parents.

Hon. (Ms.) Lay explained to the House - as we were going through the Second Reading - how it took her years to adopt her own child that somebody else carried for her. One of the Members was asking me if we are trying to help in situations like the one that happened at MP Shah Hospital, where couples that cannot have children have had somebody else carry the child for them and upon birth, the person suddenly sees that the child is very beautiful and does not want to let go. We are making it clear that they must get into an agreement and upon birth, that child goes to the parent and not the surrogate mother. We had a court decision that was urging Parliament to make such a law to deal with ambiguities as the courts are dealing with many of such issues where people fight over parentage. When a woman has carried a child for nine months, they start bonding. But they should know that when you are carrying for a couple that cannot have children; it is not your child but theirs.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Mbita, please go back to your phraseology and clean up this English that instead of using the word "wishing", I suggest that you use the word "intending" and on "any woman must sign" you use the words "any woman shall sign". Can I hear you on the HANSARD on that as a further amendment?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move a further amendment to Clause 33 (1) by deleting the word "wishing" and replacing with the word "intended".

Which is the other one?

The Temporary Deputy Chairman (Hon. Kajwang'): After the word "woman shall"

Hon. (Ms.) Odhiambo-Mabona: Is that in (1)?

The Temporary Deputy Chairman (Hon. Kajwang'): Instead of "must" it should be "shall"

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, further that the word "must" be replaced with the word "shall" in the same sub-clause (1).

(Question of the further amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Seme, you understand, therefore, that your amendment is dropped.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, we had actually discussed that. In the context of what she had said, there are disputes that arise, but we had agreed that I drop my amendments.

(Proposed amendment by Hon. (Prof.) Nyikal dropped)

(Clause 33 as amended agreed to)

Clause 34

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 34-

- (a) in paragraph (a) by deleting the words “in vitro fertilization” and substituting therefor the words “assisted reproductive”
- (b) in paragraph (c) by deleting the words “in vitro fertilization” and substituting thereof the words “assisted production process”; and,
- (c) in paragraph (e) be amended by deleting the words “in vitro fertilization” and substituting therefor the words “assisted reproduction”.

What we are doing as advised by the medical fraternity is: Instead of using “in vitro-fertilization” which is limiting, we use “assisted reproduction” which is wider. That is all it seeks to do.

(Question of the amendment proposed)

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

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

(Clause 34 as amended agreed to)

Clause 35

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 35 of the Bill be amended-

- (a) in sub-clause (1) by deleting paragraph (a);
- (b) in sub-clause (1) by deleting the words “in vitro fertilization” appearing in paragraph (b) and substituting therefor the words “assisted reproduction”.

(c) in sub-clause (6) by renumbering sub-clause (6) as sub-clause (3);

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Seme, limit yourself to (a) first.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 35 of the Bill be amended-

(a) in sub-clause (1) by deleting paragraph (a).

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mbita, I know you have an amendment. This is why I am beginning from this. When we carry the deletion, we may not carry yours. Is that your point of discussion?

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

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 35 of the Bill be amended-

(b) in sub-clause (1) by deleting the words “in vitro fertilization” appearing in paragraph (b) and substituting therefor the words “assisted reproduction”.

Again, that is in line with our earlier definition.

The Temporary Deputy Chairman (Hon. Kajwang’): Both of you are speaking about the same thing. Have you seen that Member for Mbita and Member for Seme? Let us take any in that order. I have already chosen to take Member for Seme.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Just a minute Member for Seme. Let me go to Member for Mbita for the purpose that we are in 2(a). Yours is sub-clause (6).

Let us deal with sub-clause 2(a) first.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. I beg to move:-

THAT, the Bill be amended-

(b) in sub-section (2)(a) by deleting the words “in vitro fertilization” and substituting thereof the words “assisted reproductive”

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mbita, are you talking about “assisted reproductive” or “assisted reproduction”? Before, you were following reproductive technology. So, where are we?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, in some instances, it becomes assisted reproduction and in some instances, it is assisted reproductive. In some instances, it is assisted reproductive technologies depending on the context. I know that there are some we may have to do some clean up later, just to make them grammatically correct. It depends on the context of the sentence.

The Temporary Deputy Chairman (Hon. Kajwang’): So here, we are dealing with assisted reproductive?

Hon. (Ms.) Odhiambo-Mabona: I think so, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you.

Hon. Kaluma: Hon. Temporary Deputy Chairman, that matter is critical. The reproduction process is assisted - assisted reproduction process - but the technology is reproductive. It is assisted reproduction process and not reproductive process. I was taught English by an Englishman.

Hon. (Ms.) Odhiambo-Mabona: I got an “A” in English, but do I say.

The Temporary Deputy Chairman (Hon. Kajwang’): Without having to do a further amendment---

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, in this instance, it is actually “reproduction.” I wish to propose a further amendment that we have “assisted reproduction.”

The Temporary Deputy Chairman (Hon. Kajwang’): You see, “reproductive” is the verb of it, if “reproduction” is the noun of it. Is it not? Are we dealing with the noun or the verb?

Hon. (Ms.) Odhiambo-Mabona: In this one, we are dealing with the noun.

The Temporary Deputy Chairman (Hon. Kajwang’): Then it should be “reproduction.”

Hon. (Ms.) Odhiambo-Mabona: I have agreed.

The Temporary Deputy Chairman (Hon. Kajwang’): How do you express yourself?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move a further amendment that it be “assisted reproduction.”

(Question of the further amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): No! We are still in sub-clause 6 of the same clause.

Hon. (Prof) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 35 of the Bill be amended-

(c) in sub-clause (6) by renumbering sub-clause (6) as sub-clause (3).

That is basically renumbering. If you look at Clause 35(1) and (2), you will find that it goes to (6). That should, therefore, be replaced by (3). It is just a problem of numbering.

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

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

(Clause 35 as amended agreed to)

Clause 36

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, the Member for Mbita.

Hon. (Ms) Odhiambo-Mabona: I have something. Hon. Temporary Deputy Chairman, I thought I had already moved that, the one where I changed “reproduction”.

The Temporary Deputy Chairman (Hon. Kajwang’): No, that was Clause 35. The same word appears here and in the noun form. It is an active noun, if I remember my English.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 36(2)(a) by deleting the words “in vitro fertilisation” and substituting therefore the words “assisted reproductive”.

The Temporary Deputy Chairman (Hon. Kajwang’): We could have used a corrigendum but now that we are here, I will propose the Question.

(Question of the amendment proposed)

Is that your proposal; “assisted reproduction”? The Member for Likuyani, are the English people helping you here or they are messing the profession?

Hon. (Dr.) Kibunguchy: As we go ahead, we are getting more and more confused. If you look at most of these amendments as we move forward, you will find that we are replacing “in-vitro fertilisation” on one hand with “assisted reproduction” and on the other hand with “assisted reproductive services” and “reproductive technology”. That is where I am getting confused. We have to be clear because some of these issues, in future, will be grounds for litigation especially when we are dealing with a very sensitive matter. I wish we could all be consistent. What are we substituting “in-vitro fertilisation” with?

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, the Member for Homa Bay.

Hon. Kaluma: Thank you, Hon. Temporary Deputy Chairman. The proposed amendment is good. I wish Hon. Millie would be attentive. The proposed amendment is in order save that if we only delete “in-vitro fertilisation”, the amendment will not make sense. It would only make sense if we deleted “in-vitro fertilisation treatment services” and replaced the whole

of that with “assisted reproduction process”. So, I request that she amends it in that way so that we are consistent with the manner we have been amending. She agrees.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, but you see I am just a presiding Chair. I am not a teacher of English. The Chair is getting very tired now. The Member for Mbita, I am persuaded to report progress. I am really considering reporting progress.

Hon. (Ms.) Mabona-Odhiambo: Hon. Temporary Deputy Chairman, we are actually moving well. Let me clarify. We are moving well legally. There is the grammatical, the legal and the medical aspects. I would like to say that if we are looking at the legal aspect, the essence of the medical is retained. The essence of the medical is “assisted reproduction”. Within the context of every clause we may use--- It would have been better if we were able to use consistent language but there are times that we may use different terminology. If I use this one as an example, if we say born in consequence of assisted--- That is why I was using “reproductive” until I was persuaded to use “reproduction”. If it is a treatment, it becomes “reproductive” not “reproduction” but, I was being persuaded to be consistent. Sometimes, consistency may not work. As long as the essence of the medical terminology is retained, there are some that will be cleaned by miscellaneous amendments. These are the things that a miscellaneous amendment Bill is supposed to do. Some do not come here as long as they do not touch on the substance of the Bill.

My proposal is that we are progressing well. The problematic part is “assisted reproduction” and “in-vitro fertilisation”. “In-vitro fertilisation” is one aspect of “assisted reproduction” as I have since been taught by the able doctors. I am only a lawyer. For me if we can retain the substance it would be fine. I would like to suggest---

The Temporary Deputy Chairman (Hon. Kajwang’): I agree with you on one part that we have corrigenda in which we are able to clean up the semantics and the grammar. The only thing is that if that grammar has the effect of changing the meaning of what you are discussing, that is when I will be worried. But if it retains the context of what you are discussing, we will clean up in the legal office by way of a corrigendum.

Hon. (Ms) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, the substance is retained. That is why I am saying that we are progressing well. The substance which is “assisted reproduction” is retained. So, at what instance it becomes “reproductive” or “assisted reproduction” or “assisted reproduction technologies” depends on the context of the clause. Therefore, in this one, we do not want to talk about technologies. We are talking about a process. We are talking about a treatment service.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Here we are talking about reproduction.

Hon. (Ms.) Odhiambo-Mabona: In this context, we are talking about “reproductive” because it is treatment. If we go for “reproduction”, then Hon. Kaluma’s amendment makes sense but, if we use “reproductive” then we can retain treatment services.

The Temporary Deputy Chairman (Hon. Kajwang’): Very quickly the Member for Seme.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, basically, you got it right at one point. “Reproductive” or “reproduction” depends whether you are using a verb, a noun or an adjective. The process will be different if you are using a noun or an adjective to describe. As far as I am concerned, I have not seen any major change in context as we move along. In this

particular case, if you take Hon. Kaluma's amendment on "assisted reproduction process", then the sense will remain the same throughout. I do not see any change at all in the context.

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Mbita, you are the owner of the amendment. What do you want to stick to so that we move?

Hon. (Ms.) Odhiambo-Mabona: So that we move, I propose that we delete "in-vitro fertilisation treatment services" and replace with "assisted reproduction process."

The Temporary Deputy Chairman (Hon. Kajwang'): Is that on Clause 36? The Member for Mbita, let me see if I can engage you so that we move without discussions on this. Look at page 3044 of the Bill. Are you on sub-clause (a)? The word "processes" is not in that text. So that we are together, either move that you have "assisted reproductive treatment services" deleted and replaced thereof with the words "assisted reproductive processes" or just put "assisted reproductive" instead of "in-vitro fertilisation" so that you have "assisted reproductive treatment services." The word "processes" is new in this Bill. So, remove what you have in the Bill and replace it with the entire phrase. This is because I will have a patchwork of new phrases coming in.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, what I had proposed is what you are indicating. I picked one of those two options. So, the one I had picked was to delete "in-vitro fertilisation treatment services" and replace it with "assisted reproduction process." That is what I propose.

The Temporary Deputy Chairman (Hon. Kajwang'): That is okay.

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

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

(Clause 36 as amended agreed to)

(Clause 37 agreed to)

Clause 38

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 38(3) by deleting paragraph (f).

This was giving room for certain information to be available to the public. However, because of the nature of the issues that we are dealing with, I do not think there is any circumstance under which we should give any information of this nature to the public. So, I propose a deletion of sub-clause (f).

(Question of the amendment proposed)

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

(Clause 38 as amended agreed to)

(Clause 39 agreed to)

Clause 40

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 40 be amended, by deleting the words “in vitro fertilization” and substituting therefor the words “assisted reproductive”.

We have similar amendments with the Member for Seme. The difference is in “reproductive” and “reproduction”.

The Temporary Deputy Chairman (Hon. Kajwang'): No! Let me have the Member for Seme. The Member for Seme, let me have your amendment first.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 40 of the Bill be amended, by deleting the words “in vitro fertilization” and substituting therefor the words “assisted reproduction”.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Mbita, do you, therefore, want to drop your amendment? Express yourself.

Hon. (Ms.) Odhiambo-Mabona: Yes, I wish to drop my amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 40 as amended agreed to)

Clause 41

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 41 of the Bill be amended in sub-clause (3) by deleting the words “in vitro fertilization” and substituting therefor the words “assisted reproduction”.

(Question of the amendment proposed)

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

(Question, that the words to be inserted in place thereof be inserted,

put and agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Mbita, do you want to drop your amendment?

Hon. (Ms.) Odhiambo-Mabona: Yes, I drop my proposed amendment, Hon. Temporary Deputy Chairman.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 41 as amended agreed to)

Clause 42

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I notice that the Member for Seme also has the same amendment. I do not know if you will go with mine or his.

The Temporary Deputy Chairman (Hon. Kajwang'): Just a minute. Have you agreed on who takes care of English? I do not want us to take too long. Under Clause 42, the Member for Seme is talking about "reproductive technology" while the Member for Mbita is talking about "reproductive services." Which is which so that I know who comes first? That is on sub-clause (1) alone.

Hon. (Ms.) Odhiambo-Mabona: In sub-clause (1), technology works because it is on premises.

The Temporary Deputy Chairman (Hon. Kajwang'): Do you want me to hear the Member for Seme?

Hon. (Ms.) Odhiambo-Mabona: Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Seme, shall I hear you on sub-clause (1) of Clause 42?

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 42 of the Bill be amended in sub clause (1) by deleting the words "carry out in vitro fertilisation" and substituting therefor the words "undertake assisted reproductive technology".

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Do you wish to withdraw paragraph (a) of your amendments?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I wish to withdraw paragraph (a) of my amendment.

*(Proposed amendment to Clause 42(a) by
Hon. (Ms.) Odhiambo-Mabona withdrawn)*

The Temporary Deputy Chairman (Hon. Kajwang'): We proceed to Clause 42 (b).

Hon. (Ms.) Odhiambo- Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT the Bill be amended in Clause 42-

(b) in subsection (2) by deleting the words "in vitro fertilisation" and substituting therefor the words "assisted reproductive services".

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Homa Bay Town, do you want to contribute to this amendment?

Hon. Kaluma: Hon. Temporary Deputy Chairman, we need to choose one phrase to use in place of "in vitro fertilisation". I thought that the understanding was that "in vitro fertilisation" is an assisted reproduction process. If we agreed to that then it would be a matter of changing the terminology so that we do not use the words "technology services" throughout.

The Temporary Deputy Chairman (Hon. Kajwang'): What would you prefer?

Hon. Kaluma: Hon. Temporary Deputy Chairman, if we are merely replacing the words "in vitro fertilisation" with the words "assisted reproduction"; I would prefer that we do this consistently. We should not at times be talking about "services" and "technology" at other times. We are just substituting words "in-vitro" with a simpler phrase that can be understood by the ordinary citizen.

The Temporary Deputy Chairman (Hon. Kajwang'): This is the Member for Mbita's amendment. Can you agree with her on the use of this terminology so that I do not come back to her? Please, approach the Member for Mbita so that we do not take too much time on the English language.

Homa Bay Town and Mbita constituencies are relatives. So, I like the discourse which is happening between the Member for Homa Bay Town and the Member for Mbita. If you want to go to Mbita Constituency, you must pass through Homa Bay Town.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, my mother comes from Homa Bay Town Constituency. Because of that, we have agreed that we will be using "assisted reproduction processes". However, the Member for Homa Bay Town will keep an eye and alert us where it does not apply. Otherwise, we will consistently use "assisted reproduction processes".

(Question of the amendment proposed)

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

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

(Clause 42 as amended agreed to)

Clause 43

The Temporary Deputy Chairman (Hon. Kajwang'): Which is the better descriptive phrase between "assisted reproductive technology" and "assisted reproductive processes" so that I know whom to ask, the Member for Seme?

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, it is not that simple because sometimes we are describing the services that are being provided and sometimes we are talking about the processes that are going on.

The Temporary Deputy Chairman (Hon. Kajwang'): Sometimes you are defining the technology with which those services are provided and other times you are describing the procedure by which those services are provided. Where are we now? What are we dealing with?

Hon. (Prof.) Nyikal: In Clause 43, we are talking about services.

The Temporary Deputy Chairman (Hon. Kajwang'): This refers to the conditions that the regulating authority will give the practitioners. Are we, therefore, dealing with a technology or a procedure?

Hon. (Prof.) Nyikal: Here, we are describing the services. I am more comfortable with the words "assisted reproductive technology services".

The Temporary Deputy Chairman (Hon. Kajwang'): Move your amendment, Hon. (Prof.) Nyikal.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 43 of the Bill be amended in sub clause (3) by -

- (a) deleting the words "in vitro fertilisation" appearing in paragraph (a) and substituting therefor the words "assisted reproductive technology";
- (b) deleting the words "in vitro fertilisation" appearing in paragraph (b) and substituting therefor the words "assisted reproductive technology";
- (c) deleting the words "in vitro fertilisation" appearing in paragraph (c) and substituting therefor the words "assisted reproductive technology";

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Go to Clause 43 (d).

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 43 of the Bill be amended in sub clause (3) by -

- (d) by deleting the words "creation of the embryos" appearing in paragraph (d) and substituting therefor the words "bringing about human procreation".

The essence here is the sensitivity of the word "creation". It is not in science technology. So, it is better to use the words "human procreation" and not the word "creation". We are not creating anything.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Okay. Let me ask some religious Members to make contributions. Nominated Member, Hon. Isaack Mwaura would you release nominated Member Hon. Zuleikha because I want her to comment on this? It is in the opinion of the Member for Seme that the word "creation" is not scientific as far as he is concerned. The use of that word "creation" presents a scientific problem. What do you say from a religious point of view? I want to ask the same question to the Hon. Member for Makueni.

Hon. (Ms.) Juma: Hon. Temporary Deputy Chairman, please repeat your question about creation and science.

The Temporary Deputy Chairman (Hon. Kajwang'): We are just about to pass an amendment but the Member for Seme says that in the Bill, persons whose gametes have been used in bringing about the creation of embryos--- In his view, you cannot create embryos. So, I am asking for your response from a religious point of view.

Hon. (Ms.) Juma: That is straightforward. According to Islamic religion, creation is by God.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. The Member for Makueni, I am trying to get you the microphone.

Hon. (Ms.) Mumo: Thank you. We have only one creator who is God and creation cannot be scientific. It is God who is the creator.

Hon. Kaluma: *(Inaudible)*

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Homa Bay, you are now bringing another word "procreation" instead of "creation". Nominated Member, Hon. Isaack Mwaura can you finish this?

Hon. Mwaura: Thank you, Hon. Temporary Deputy Chairman. I wanted to raise that same issue. It is "procreation" and not "creation."

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, but we are procreating embryos. Do you procreate embryos? I asked that so that it is in the HANSARD, so that future students looking at the proceedings of the Assembly will know that you knew about creation, procreation and science.

Hon. Mwaura: The issue about procreation is that you are partners with God in bringing the embryo to existence. That is why it is "pro" the way you say "pro chancellor". You co-participate because there is the involvement of human in that development.

The Temporary Deputy Chairman (Hon. Kajwang'): Okay. Thank you very much. I have proposed the Question. Shall I put the Question?

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

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

The Member for Mbita, express yourself on what we do with your amendments on Clause 43.

Hon. (Ms.) Odhiambo-Mabona: I wish to withdraw my amendments on Clause 43 as

they have been taken care of.

(Proposed amendments by Hon. (Ms.) Odhiambo-Mabona withdrawn)

(Clause 43 as amended agreed to)

Clause 44

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 44 of the Bill be amended in sub clause (1)-

(a) by deleting the word “an” appearing in paragraph (a) and substituting therefor the words “the resultant”;

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Just a minute. Is that Clause 44(1)(a). Yes, explain yourself.

Hon. (Prof.) Nyikal: If you just use the word “an embryo” that embryo could come from anywhere. However, if you say “the resultant” you are implying that the production of that embryo has involved the woman from whom it is being taken. This is so that it is very specific to that person and not another.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Let us move on.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 44 of the Bill be amended in sub clause (1)-

(b) by deleting the words “in vitro” appearing in paragraph (b) and substituting therefor the words “assisted reproductive technology”;

We are removing the words “in vitro” which is not complete in the Bill. If we say “assisted reproductive technology”, it is more complete.

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Mbita, are you on the same Sub-clause 44(1)(b)?

Hon. (Ms.) Odhiambo-Mabona: I wish to withdraw my amendment.

(Proposed amendment by Hon.(Ms.) Odhiambo-Mabona withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Seme, are you on Sub-clause 44(1) (c).

Hon. (Prof.) Nyikal: I wish to withdrawn that amendment because we have discussed it.

(Proposed amendment by Hon (Prof.) Nyikal withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Thank you very much. Hon. Member for Seme again on Sub-clause 44(1)(d)--- If you drop it you do not have to explain. Go to (d). It is the one which you have withdrawn.

Hon. (Prof.) Nyikal: I have withdrawn Sub-clause 44(1)(c) which was referring to Sub-Clause 44(1)(d)

The Temporary Deputy Chairman (Hon. Kajwang'): I do not have Sub-clause(c). Where is it?

Hon. (Prof.) Nyikal: In the Order Paper you have sub-clauses (a) (b) and (c).

The Temporary Deputy Chairman (Hon. Kajwang'): So, which one have you withdrawn?

Hon. (Prof.) Nyikal: I have dropped Sub-clause (c) which is dealing with "statutory"

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. That one has been withdrawn. So, there is no discussion. Go to paragraph (d) of your amendment which is Sub-clause (3).

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 44 of the Bill be amended in sub clause (1)-

(d) by deleting sub clause (3) and substituting therefor the following new sub clause-

“(2) The storage period in respect of embryos shall be a period not exceeding ten years or as the license may specify.”

The main issue here is that we are replacing five years with 10.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have the Hon. Member for Homa Bay.

Hon. Kaluma: To extend the period of storing an embryo from five to 10 years is too long. Whatever interest you must be having in that embryo must---

The Temporary Deputy Chairman (Hon. Kajwang'): Probably it is because you are only a lawyer and a father. Can we hear the doctors express themselves?

Hon. Kaluma: Maybe.

Hon. (Prof.) Nyikal: Why we are proposing five to 10 years is because technologically it is now possible to keep the embryo for 10 years. If the law drags behind technology and says five years, what happens is that people will start to do it anyway and they will still be within the safe limits biologically. So, technologically if it is possible to go to 10 years, then it is better to keep the law in pace with technology.

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have the Member for Likuyani.

Hon. (Dr.) Kibunguchy: I agree with Dr. Nyikal. I would like to look at it in a slightly different way. Sometimes you might get a situation where you have a young girl, maybe 20 years old, and she has a problem that requires radiotherapy which will destroy her ovaries. In that process she is not ready to be a mother. So, it is good that we can harvest the eggs and get the embryo and store it until the time she will be ready to be a mother, maybe when she is in her 30s. I am looking at it in that context. So, we should extend the period. Let us not restrict it too much. A period of 10 years is good.

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Homa Bay Town, has the lawyer in you been convinced?

Hon. Kaluma: Yes, the moral argument is very strong, Hon. Temporary Deputy Chairman. I support.

The Temporary Deputy Chairman (Hon. Kajwang'): I think the Member for Taita Taveta has a better moral argument to this.

Hon. (Ms.) Lay: Thank you, Hon. Temporary Deputy Chairman. I agree with the limit of time for storage. It also depends on the couple because storage has some expenses; it is not for free. The longer you store, the more money you pay. So, if it is put at 10 years, I do not think there is a problem with that.

The Temporary Deputy Chairman (Hon. Kajwang'): Remember that the text reads "not exceeding ten years". So, you can store for one, two, five or 10 years.

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

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

(Clause 44 as amended agreed to)

Clause 45

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Seme, just move the amendment as per the Order Paper unless you want to go into details.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 45 of the Bill be amended—

- (a) by inserting the expression (1) immediately after (45);
- (b) by renumbering the subsequent sub-clauses as is appropriate;
- (c) in sub-clause (6) by deleting the expression "subsection(1)" and substituting therefor the expression " section 41(2)";
- (d) in sub-clause (8) by inserting the word "be" immediately after the words "shall not".

(Question of the amendment proposed)

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

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

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

(Clause 45 as amended agreed to)

Clause 46

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 46 of the Bill be amended in sub-clause (1) by deleting the word “compiled” appearing in paragraph (d) and substituting therefor the word “complied”.

This is just to correct the typographical error.

(Question of the amendment proposed)

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

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

(Clause 46 as amended agreed to)

Clause 47

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 47 of the Bill be amended in sub-clause (1) by inserting the word “not” immediately after the words “licensee is” appearing in paragraph (e).

The explanation is that as it is, the provision does not make sense at all. It is talking of whether the person being licensed is suitable for the activities. It should read that “the authority may revoke a license if satisfied that the licensee is not a suitable person to hold the licence”.

(Question of the amendment proposed)

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

(Clause 47 as amended agreed to)

(Clauses 48, 49 and 50 agreed to)

Clause 51

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 51 of the Bill be amended, by inserting the following new paragraph immediately before paragraph (a) -

“(aa) monies allocated by Parliament for purposes of the Authority;”.

The import of the amendment is that the Authority created by this Bill is so important that we cannot leave it to the proceeds that accrue from its activities. It should actually be funded from the Exchequer.

(Question of the amendment proposed)

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

(Clause 51 as amended agreed to)

(Clauses 52 and 53 agreed to)

Clause 54

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 54 of the Bill be amended in sub clause (3) by deleting the word “fo” appearing immediately after the words “the end” and substituting therefor the word “of”.

This is a typo correction that is being made.

(Question of the amendment proposed)

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

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

(Clause 54 agreed to)

(Clauses 55, 56 and 57 agreed to)

Clause 58

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I dropped this amendment after discussions with the Hon. Member for Mbita.

(Proposed amendment by Hon. (Prof.) Nyikal dropped)

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. Proceed the Member for Mbita.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, now that he has dropped his amendment, I beg to move:-

THAT, the Bill be amended in Clause 58(2) by deleting the word "subsection Shall" and substituting therefore the words "subsection (1) shall."

(Question of the amendment proposed)

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

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

(Clause 58 agreed to)

Clause 59

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I drop that amendment.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 59 agreed to)

Clause 60

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-
THAT the Bill be amended in Clause 60

- (a) In paragraph (d) by deleting the words "in vitro fertilization a procedure" and substituting therefor the words "assisted reproductive services";
- (b) In paragraph (e) by deleting the words "in vitro fertilization" and substituting therefor the words "assisted reproduction";
- (c) In paragraph (h) by deleting the words "an in vitro embryo" and substituting therefor the words "an embryo from assisted reproductive process";
- (d) In paragraph (n) by deleting the words "in vitro embryos" and substituting therefor the words "embryos from assisted reproductive process";
- (e) In paragraph (o) by deleting the words "in vitro fertilization" and substituting therefor the words "assisted reproduction processes."

The Temporary Deputy Chairman (Hon. Kajwang'): Can you start with what is in (a).

Hon. (Ms.) Odhiambo-Mabona: In subparagraph (d) by deleting the words "in vitro fertilization a procedure" and substituting therefor the words "assisted reproductive services"

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Mbita, have you got the syntax properly in each of them now?

Hon. (Ms.) Odhiambo-Mabona: Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Homa Bay agrees, do you? I hope you are not reflecting. There cannot be any reproduction between the Member for Mbita and the Member of Homa Bay Town, otherwise, it would be of consanguine relation.

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have the Member for Seme on the same clause.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 60 of the Bill be amended-

(a) in the opening statement by inserting the words “,in consultation with the Authority” immediately after the words “Cabinet Secretary”;

(b) by inserting the following subparagraph immediately after sub-paragraph (p)-
“(q) in respect of research relating to assisted reproductive technology treatment, services and products”.

The last amendment is basically the area under which the Cabinet Secretary, in consultation with the Authority, may make regulations.

(Question of the amendment proposed)

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

(Hon. (Ms.) Odhiambo-Mabona spoke off the microphone)

The Temporary Deputy Chairman (Hon. Kajwang'): We are considering Clause 60. I took it that you handled all of your amendments in one sweep.

Hon. (Ms.) Odhiambo-Mabona: I originally moved all the amendments but you asked me to just prosecute one.

The Temporary Deputy Chairman (Hon. Kajwang'): Just for avoidance of doubt, can you move all of them at once.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 60-

(a) in paragraph (d) by deleting the words “in vitro fertilization a procedure” and substituting therefor the words “assisted reproductive services”;

- (b) in paragraph (e) by deleting the words “in vitro fertilization” and substituting therefor the words “assisted reproduction”;
- (c) in paragraph (h) by deleting the words “an in vitro embryo” and substituting therefor the words “an embryo from assisted reproductive process”;
- (d) in paragraph (n) by deleting the words “in vitro embryos” and substituting therefor the words “embryos from assisted reproductive process”;
- (e) in paragraph (o) by deleting the words “in vitro fertilization” and substituting therefor the words “assisted reproduction processes”;

(Question of the amendment proposed)

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

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

(Clause 60 as amended agreed to)

Schedule

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the SCHEDULE-

- (a) in subsection (1)(b) by deleting the words “written permission of the chairperson notified to the Board” and inserting the words “without justifiable reason” at the end of the sentence.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): You have dealt with 1 (b).

Hon. (Ms.) Odhiambo-Mabona: Can I please deal with all of them? I have three proposed amendments to the Schedule.

The Temporary Deputy Chairman (Hon. Kajwang'): Can you handle them differently? Can we first work on Schedule 1 (b)?

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have the Member for Seme on paragraph 4(b).

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Schedule to the Bill be amended-

- (a) in paragraph (4) by deleting the word “off” and substituting therefor the word “of” appearing in sub-paragraph (3);
- (b) in paragraph (5) by deleting the word “or” appearing immediately after the words “the members” and substituting therefor the word “of”;
- (c) in paragraph (8) by inserting the words “The minutes shall” immediately before the words “be kept” appearing at the beginning of the paragraph.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Mbita, please move your proposed amendment on Paragraph (8).

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the SCHEDULE-

- (a) in subsection (8) by inserting the words “The minutes of the Board shall” immediately before the words “be kept in such a manner”.

(Question of the amendment proposed)

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

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I concur with the amendment by the Member for Mbita and so I drop mine.

(Proposed amendment by Hon. (Prof.) Nyikal dropped)

The Temporary Deputy Chairman (Hon. Kajwang’): Most obliged. The Member for Mbita, please move your amendment on sub-section 11.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the SCHEDULE-

- (b) in subsection (11) by deleting the words “in vitro fertilisation” and substituting thereof the words “assisted reproduction”.

(Question of the amendment proposed)

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

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

(Schedule as amended agreed to)

Clause 2

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill be amended, by- (a) deleting the definition of the expression “in vitro fertilisation”;

(a) deleting the definition of “In Vitro fertilisation”.

(b) inserting the following new definitions in proper alphabetical sequence—

"assisted reproductive technology" means fertilisation in a laboratory dish or test tube of sperm with eggs which have been obtained from an ovary, whether or not the process of fertilisation is completed in the laboratory dish or test tube;"

"child" means any human being under the age of eighteen years;

"couple" means a male and a female who are in an association that may be recognised as a marriage under any law in Kenya;"

"court" means the High Court of Kenya;"

"father" means a man who in the case of a child who is being carried by a woman as a result of the of placing in the woman an embryo or sperm and eggs or the artificial insemination of the woman-

(a) the man donated his sperms for the process of assisted reproduction, and at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman-

(i) the woman was party to a marriage with the man;
or

(ii) the woman was not party to a marriage with the man but has subsequently contracted a marriage to the man; or

(iii) the man and the woman have never contracted a marriage, but the man has in agreement with the mother, written a parental agreement acquiring parental rights of a father, or

(b) the man did not donate his sperms for the process of assisted reproduction, and at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman-

(i) the man was party to a marriage with the woman;
and

(ii) the man has in agreement with the woman, written a parental agreement acquiring parental rights of a father;"

"mother" means a woman who is carrying or has carried a child as a result of placing in her an embryo or sperms and eggs or artificial insemination of the woman under a process of assisted reproduction and

shall not include a woman carrying a child under a surrogate motherhood agreement;”

“parties to a marriage” means a husband and a wife and include a couple;”

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Mbita, do you have something on this?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in Clause 2 by inserting the following new definitions –

“Court” means the High Court of Kenya; and

“Parties to a marriage” means a man and woman married to subsisting laws of marriage in Kenya.

I would like to drop my definition of “court” in Clause 2.

Hon. Temporary Deputy Chairman, I am sorry for creating confusion. I have noticed that Hon. (Prof.) Nyikal has also defined “parties to a marriage” and my amendment was doing the same. I, therefore, drop my proposed amendments.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona dropped)

(Clause 2 as amended agreed to)

Long Title

Hon. (Prof) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the long title to the Bill be amended by deleting the long title and substituting therefor the following long title –

“AN ACT of Parliament to provide for the regulation of assisted reproductive technology; to prohibit certain practices in connection with assisted reproductive technology; to establish an Assisted Reproductive Technology Authority; to make provision in relation to children born of assisted reproductive technology processes and for connected purposes.”

(Question of the amendment proposed)

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

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

(Long Title as amended agreed to)

Title

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the title of the Bill be amended by deleting the words “In-Vitro Fertilization” and substituting therefor the words “Assisted Reproductive Technology.”

(Question of the amendment proposed)

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

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

(Title as amended agreed to)

Clause 1

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 1 of the Bill, be amended by deleting the words “In-Vitro Fertilization” appearing immediately after the words “as the” and substituting therefor the words “Assisted Reproductive Technology.”

(Question of the amendment proposed)

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

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

(Clause 1 as amended agreed to)

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

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Mbita, do I hear you on an intervention?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Assisted Reproductive

Technology Bill (National Assembly Bill No.36 of 2014) and its approval thereof with amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Shebesh in the Chair)]*

REPORTS

THE POLITICAL PARTIES (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will start with the Political Parties (Amendment) Bill.

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Political Parties (Amendment) Bill (National Assembly Bill No.5 of 2015) and approved the same with amendments.

Hon. Wakhungu: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Ferdinand Wanyonyi to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, I want to thank Hon. Chris Wamalwa for bringing this amendment to the House.

With the passage of this amendment, parties can now access funds directly from the Registrar of Parties as opposed to what happened in the past where, for example, the big parties like ODM or TNA would access the funds. In this Bill, each party will access the funds.

I second the Motion and thank Hon. Chris for bringing this amendment.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Ms. Shebesh): Let us now have the Mover.

Hon. Wakhungu: Hon. Temporary Deputy Speaker, I beg to move that the Political Parties (Amendment) Bill (National Assembly Bill No.5 of 2015) be now read the Third Time.

I request Hon. Ferdinand Wanyonyi to second.

Hon. Wanyonyi seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Ms. Shebesh): Is there anybody who wants to contribute? I cannot put the Question now for obvious reasons, Hon. Wamalwa. So, we will go to the next Bill.

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Assisted Reproductive Technology Bill (National Assembly Bill No.36 of 2014) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have the Mover, Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Joyce Lay to second the Motion for agreement with the report of the Committee of the whole House.

Hon. (Ms.) Lay: Thank you, Hon. Temporary Deputy Speaker. I want to second and say congratulations to Hon. Millie Odhiambo together with Hon. Nyikal for their combined efforts. It is a milestone for this country to have this Bill in place.

I second.

(Question proposed)

(Question put and agreed to)

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Speaker, I beg to move that the Assisted Reproductive Technology Bill (National Assembly Bill No.36 of 2014) be now read the Third Time.

I request Hon. Opondo Kaluma to second.

Hon. Kaluma seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Ms. Shebesh): I see Hon. Mwaura.

Hon. Mwaura: Thank you, Hon. Temporary Deputy Speaker. I want to congratulate the Mover and the sponsor of the Bill, Hon. Millie Odhiambo, and all of us who participated in this. This Bill will go a long way in assisting persons who have challenges getting children by having legal means with which the processes can be guided. Indeed, and in particular, there is concern with persons with disabilities because some of them can only get children through this means. Mainly women and men would require it because people deserve to have children. There is an assumption that the only way to conceive is natural and yet with technology that God has given us, we can now cross that barrier.

I support.

Hon. (Dr.) Kibunguchy: Hon. Temporary Deputy Speaker, may I also join my colleagues in thanking Hon. Millie for coming up with this Bill. Initially, when the Bill came to the Departmental Committee on Health, we thought that it was rather restrictive. However, I am

glad and happy that we expanded the scope so that it was not just in-vitro fertilisation but it encompassed all the other technologies that go towards assisted reproduction.

It is extremely important because as we know, between 10 and 20 per cent of our people cannot reproduce naturally. So, they need some assistance in one way or another. This Bill gives the legal framework for these people to conceive and be parents without having to go through backdoors or dark alleys.

I would also like to congratulate Hon. Nyikal for having come up with extremely useful amendments that have made what was initially a good Bill to be even better.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Ms. Shebesh): One minute only to Hon. Joyce Lay.

Hon. (Ms.) Lay: Asante sana, Mhe. Naibu Spika wa Muda. Ninachukua nafasi hii kumpongeza Mhe. Millie Odhiambo kwa Mswada huu ambao umeweka alama katika nchi yetu ya Kenya katika kuwasaidia wale ambao hawawezi kupata watoto kwa njia ya kawaida. Mswada huu pia utaleta suluhu kwa wale ambao wanapata watoto kupitia kwa kina mama ambao wanawasaidia ili mtoto akizaliwa uwe unaweza kumpokea mtoto huyo kama mtoto wako siku ya kwanza bila kwenda kortini kupata stakabadhi ambazo ziko kamili. Sheria hii itawasaidia wananchi wengi wa Kenya.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): As I rise on my feet, let me also add my voice to congratulating Hon. Millie. You have fought this for a long time and I am happy to see that change. You have brought a paradigm shift for many women in this country.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we have come to the end of this sitting. Therefore, the House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.