

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 13th October, 2016

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Speaker: There is a Communication which is being finalised. It will come much later.

Let us move on to the next Order.

PETITION

WAIVER OF TAXES ON SANITARY TOWELS RAW MATERIALS

Hon. Speaker: The Vice-Chair or the Chair, Departmental Committee on Finance, Planning and Trade is expected to give a brief on the Public Petition on the waiver of taxes levied on raw materials used in the manufacture of sanitary towels and tampons. Have they not received sufficient representation?

The Order is, therefore, dropped and can come at a later date.

Let us move on to the next Order.

Hon. Speaker: Hon. Members, before the Leader of the Majority lays Papers, allow me to recognize the presence of students from Kambala Girls High School, Molo Constituency, Nakuru County in the Speaker's Gallery. In the Public Gallery, we have Kuku Secondary School, Loitokitok Constituency, Kajiado County; FYM School from Kimilili Constituency, Bungoma County; Kongoni Primary School, Langata Constituency, Nairobi County; Twin Birds Academy, Embakasi East Constituency, Nairobi County and AIC Missionary Cornerstone, Ainabkoi Constituency that is ably represented by Hon. Chepkong'a. This is in Uasin Gishu County. They are all welcome to observe proceedings in the National Assembly.

Yes, the Leader of the Majority Party.

PAPERS LAID

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

The Reports of the National Cohesion and Integration Commission on the Ethnic and Diversity Audit in respect of:-

- (i) County Public Service;

- (ii) Parastatals in Kenya;
- (iii) Constitutional Commissions; and,
- (iv) Public Universities.

Hon. Speaker: Let us have the Chairperson, Departmental Committee on Finance Planning and Trade and the Chairperson, Budget and Appropriations Committee, Hon. Mutava Musyimi.

Hon. Musyimi: I thank you, Hon. Temporary Deputy Speaker. I beg to lay the following Paper on the Table of the House:-

The Report of the Working Group on Socio-Economic Audit of the Constitution of Kenya, 2010.

Thank you, Hon. Speaker.

Hon. Speaker: The Vice-Chairman had forgotten that the House convenes at 2.30 p.m. Let us hear the Vice-Chairman, Departmental Committee on Finance, Planning and Trade.

Hon. Gaichuhie: Thank you, Hon. Speaker for indulging us.

I beg to lay the following Report of the Departmental Committee on Finance, Planning and Trade on the Table of the House:-

The consideration of public petition on waiver of taxes levied on raw materials used in the manufacture of sanitary towels, pads and tampons.

Hon. Speaker, indulge me to inform the House that in this Report, we consulted the National Treasury and agreed. We passed their prayers and it has been taken care of in the Finance Bill of 2016.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. We expected it to be given earlier. The Report on the Working Group of the Socio-Economic Audit of the Constitution of Kenya, 2010 that has been laid on the Table of the House today, is referred to the Budget and Appropriations Committee for consideration and report to the House.

Let us move on to the next Order.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING
TUESDAY 18TH TO 20TH OCTOBER, 2016

Hon. A.B. Duale: Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), on behalf of the House Business Committee, I rise to give a Statement regarding the business appearing before the House for the week beginning Tuesday, 18th October, 2016.

Hon. Speaker, The House Business Committee met on Tuesday, this week at the rise of the House, to prioritise the business for consideration. The House will consider the following Bills for Second Reading:-

- 1) The Competition (Amendment) Bill, 2016, should we not conclude today.
- 2) The Insurance (Amendment) Bill, 2016
- 3) The County Assembly Services Bill (Senate Bill No.27 of 2014)
- 4) The National Youth Service Bill (Senate Bill No.26 of 2014)
- 5) The Persons with Disabilities (Amendment) Bill (Senate Bill No.24 of 2014)
- 6) The Public Private Partnerships (Amendment) Bill, 2016

- 7) The Constitution of Kenya (Amendment) Bill No.3 of 2015
- 8) The National Honours (Amendment) Bill (Senate Bill No.16 of 2014).
- 9) The National Flag, Emblems and Names (Amendment) Bill (Senate Bill No.2 of 2013)
- 10) The Contempt of Court Bill, 2016

Hon. Speaker, it is expected that the Departmental Committee on Justice and Legal Affairs will table its Report on the vetting of the nominee for the position of Chief Justice on Tuesday, next week. It is anticipated that the House may choose to consider the Motion on approval the same day.

In this regard, should the Committee table its Report on Tuesday, next week, I will give Notice of Motion asking the House to enter into another sitting after 6.35 pm. so as to consider the Report on the appointment of the Chief Justice.

In addition, the Finance, Planning and Trade Committee is also expected to table its Report on the vetting of nominees to the Central Bank of Kenya Board on the same day. The debate on the same may follow thereafter.

Hon. Speaker, in the same week, the House Business Committee has scheduled several Committee Reports for debate as follows:-

- (a) A Motion on the Report of the Departmental Committee on Environment and Natural Resources on the Investigation into Wildlife Poaching in Kenya;
- (b) The Report of the Departmental Committee on Administration and National Security on the Investigation into the Garissa University College terrorist attack;
- (c) The Report of the Departmental Committee on Transport, Public Works and Housing on the Inquiry into the Procurement of Apron buses by the Kenya Airports Authority; and,
- (d) The Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the Inquiry into the Importation of a Consignment of Fertilizer by the Ministry of Agriculture, Livestock and Fisheries through the National Cereals and Produce Board.

Hon. Speaker, on questions before committees, the following Cabinet Secretaries (CSs) have confirmed that they are scheduled to appear before the following committees on Tuesday, 18th October, 2016:-

The Cabinet Secretary for Interior and Coordination of National Government will appear before the Departmental Committee on Administration and National Security at 10.00 a.m to answer questions from Hon. Roba S. Duba, Hon. Abdullahi M. Diriye, Hon. Francis Mwangangi, Hon. Raphael Otaalo, Hon. Abdinoor Mohamed, Hon. Abdul Rahim Dawood, and Hon. Ben Momanyi.

The Cabinet Secretary for Education, Science and Technology will also appear before the Departmental Committee on Education, Research and Technology to answer questions from Hon. Abdullahi Diriye, Hon. Hon. Geoffrey Odanga, Hon. Peter Kaluma, Hon. Kabando wa Kabando, Hon. Robert Mbui, and Hon. Ronald K. Tonui.

Finally, Hon. Speaker, the House Business Committee will reconvene on Tuesday, 18th October, 2016 at the rise of the House to consider Business for the coming week.

Hon. Speaker, I now wish to lay the Statement on the Table of the House.

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

Hon. Speaker: Order, Members! For the benefit of the House, there is in existence a Supplementary Order Paper. I hope all the Members who made their way through the main door got copies. The purpose of the Supplementary Order Paper is to allow the Chairman of Departmental Committee on Justice and Legal Affairs to move a Procedural Motion. I, therefore, hope that every Member has a copy of that Supplementary Order Paper for purposes of following what we are about to transact in the next Order.

PROCEDURAL MOTION

EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEE FOR APPOINTMENT AS CHIEF JUSTICE OF THE REPUBLIC OF KENYA

Hon. Chepkong'a: Thank you, Hon. Speaker. I have two prayers that I would like to request this afternoon.

First, this morning Justice Maraga, the nominee for the position of Chief Justice appeared before the Departmental Committee on Justice and Legal Affairs. We have concluded the hearings and the decision thereof. We will be meeting, as a Committee, today at 4.00 p.m. to adopt the Report. I am, therefore, requesting that I be allowed---

As you know, I cannot move the Motion and discuss our Report the same day. The reason I am making this plea is because, Section 10 of the Public Appointments (Parliamentary Approval) Act requires that Parliament must consider any nominee that is forwarded to Parliament within 14 days.

Unfortunately, this legislation is in conflict with the Standing Orders. Unfortunately, again, the Standing Orders are subsidiary legislations and so the overriding legislation is the Public Appointments (Parliamentary Approval) Act of 2011, the so-called "Mungatana Legislation".

Therefore, it behoves this Committee to table the Report to allow it move the Notice of Motion on Tuesday, otherwise we will be out of time. The reason I am saying this is because we do not know the eventualities. Sometimes we may lack quorum and as a result be unable to transact business. It is important that we table the Report.

Hon. Speaker, I am, therefore, requesting you to grant me time to table the Report any time between 4.00 p.m. and 6.30 p.m. before the House rises. If I have your concurrence I can move the Motion.

I would like to ask the Leader of the Majority Party to second that request.

Hon. Speaker: Hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, the Chairman of the Departmental Committee on Justice and Legal Affairs has done very well. What he is saying is that by Tuesday, the 14 days will lapse. We want the Committee to do good work. They cannot vet the nominee for the position of Chief Justice Nominee today and at the same time debate. It would appear like we are turning the House into a conveyor belt. So, I want them to go and analyse the HANSARD on what Justice David Maraga said so that over the weekend they do a good report. With the extension of seven days, on Tuesday we can have another sitting outside that of the anticipated 14 days.

So, I want to ask my colleagues that we grant him his prayer. It is our business to ensure that we raise the required quorum on Tuesday. I am sure by Tuesday evening, without anticipating debate--- Personally, I am already decided on Justice David Maraga and I will not

change my position. However, I will wait for the Report. I am going to support Justice David Maraga.

(Laughter)

I have decided I will support him. If they approve his name, so be it but if they do not, I will oppose it. I am sure he is a very decent man. He is also a very good man. So, I seek the extension and ask everybody that if this is granted, the Committee should work over the weekend, table the Report on Tuesday and give Notice of Motion. We will then have another sitting at 6.35 p.m. to deal with the matter of the nominee.

I beg to second the Motion.

Hon. Speaker: Well, I think Hon. Chepkong'a did not move the Procedural Motion. Did he move the Procedural Motion? He did not move it. I think Hon. Chepkong'a was merely requesting that should his Committee finish the Report, it be allowed to table it.

Hon. Chepkong'a: Yes. That is correct, that I be allowed to table the Report any time before 6.30 p.m. if we conclude our Report.

Hon. Speaker: If you conclude, you will be allowed to table the Report.

Hon. Chepkong'a: Yes, and then you will allow me to move the Motion.

Hon. Speaker: Well, that permission can be given by the Hon. Speaker by way of rearranging the Order Paper. The permission is granted. You can table the Report at whatever other time. However, before you go to that business, let me also rearrange our Business at the request of the Chairperson of the Public Accounts Committee (PAC), due to his absence next week. I will allow him to move a very important Petition. I think Hon. Members, if you recall in the words of the late Prof. Ali Mazrui, in one of the treatises he wrote: "As independence drew closer, the term "East Africa" shrunk in meaning."

So, as the date, 2nd August 2017 draws closer, the Petition that Hon. Gumbo is about to read may be of great interest to the Members.

Yes, Hon. Gumbo.

PETITION

IMPLEMENTATION OF THE 2009 AKIWUMI TRIBUNAL REPORT ON MINIMUM LIVING PENSION

Hon. (Eng.) Gumbo: Thank you, Hon. Speaker for your indulgence. Just to repeat what you have said, I would request Members to pay keen attention to this Petition because in about 10 months most of us sitting in this House will be affected by what it is praying for.

This Petition is by the Former Parliamentarians Association of Kenya (FOPAK) and former Members of Parliament on the implementation of the 2009 Akiwumi Tribunal Report on minimum living pension for former Members of Parliament who served between 1984 and 2002.

I, the undersigned, on behalf of the FOPAK and former Members of Parliament, draw the attention of the House to the following:-

- (i) THAT, both sitting and former Members of Parliament (MPs) are the face of national leadership outside Parliament, and that circumstances impose inescapably heavy burden and unpremeditated social responsibility on them;

- (ii) THAT, the scheme of service for MPs did not secure their livelihoods upon leaving Parliament, thus subjecting majority of them to economic hardships and sorry state of living conditions;
- (iii) THAT, the Parliamentary Service Commission (PSC) appointed a tribunal led by Justice Akilano Akiwumi to review the terms and conditions of MPs and staff of Parliament vide Gazette Notice No.699 of 2009;
- (iv) THAT, the Tribunal recommended payment of a monthly living pension equivalent to US\$ 1,000 each to former MPs who served from 1984 to 2002, who were then estimated to be 500 but have since reduced to about 370 due to natural attrition and of course the fact that they are not alive;
- (v) THAT, the said Report adopted by the House on 30th June, 2009 obligated the relevant Committee of the House to institute necessary amendments to the Parliamentary Pensions Act, Cap. 196, of the Laws of Kenya to give effect to the recommendations of the Akiwumi Tribunal on living pension;
- (vi) THAT, to date, the said recommendations have not been given the force of law, thereby subjecting former MPs to continue earning and this is important, between Kshs2,700 and Kshs40,000, which is a huge mismatch with the current economic circumstances in general and the cost of living in particular;
- (vii) THAT, failing to pay former MPs the recommended living pension of US\$ 1,000 is in violation of their inherent right to a dignified life as guaranteed by Article 28 of the Constitution of Kenya;
- (viii) THAT, efforts, including judicial mechanisms, to have the Parliamentary Pensions Act, Cap 196 reviewed so as to accord with the recommendations of the Akiwumi Tribunal and address the plight of the affected former MPs have not yielded satisfactory action and;
- (ix) THAT, the issues in respect of which this Petition is made are not pending before any court of law, tribunal, constitutional or legal body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Justice and Legal Affairs:-

- (i) Amends Section 8 of the Parliamentary Pensions Act, Cap. 196 to give legal effect to the proposed payment of the minimum living pension of US\$1000 to former MPs by inserting the following new subsection immediately after subsection (2) –

“(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between the years 1984 and 2002 and is entitled to pension under this section, and whose monthly pension amounts to not less than Kshs1,000, shall be entitled to, with effect from 1st July 2010, to a monthly pension of Kshs100,000 only.”

- (ii) Makes any other orders deemed fit in mitigating the plight of the petitioners.

And your humble petitioners will ever pray.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Hon. Members, you may now appreciate why I made reference to 2nd August, 2017. Looking at the Petition, even though it is directed to the Departmental Committee on Justice and Legal Affairs, the prayers therein would obviously have

a huge financial implication. I thought that perhaps the Departmental Committee on Finance, Planning and Trade may be better suited because the amendment is to the Pensions Act. Obviously, they will need to also invite the views of the Salaries and Remuneration Commission (SRC).

The Pensions Committee of the House has faced difficulty dealing with former MPs. This is because they cannot qualify to be called “State officers.” This is because that is a terminology that was introduced by the new Constitution and recognises such. Therefore former Members cannot be State officers. That is a matter which whoever is going to deal with, either the Departmental Committee on Justice and Legal Affairs or the Departmental Committee on Finance, Planning and Trade or whichever other Committee will have to address. That is the issue of where to place former members especially, the category that is referred there who served between 1984 and 2002. That is the gist of it.

Hon. Members, I am fully aware of the issues because they have been canvassed before me. We do not have a way of dealing with the matter. I can see Members have put in their cards. They want to comment on this. Is it because 2nd August, 2017 is drawing near and perhaps it could be sending shockwaves and some discomforts?

Let us hear Hon. Nyikal who is the Member for Seme.

Hon. (Dr.) Nyikal: Thank you, Hon. Speaker. Obviously, as August, 2017 draws near, we are more conscious of the fate of the former Members. This is because the reality of being former is dawning on everybody.

I would also like to support this Petition and look at it in terms of the situation of the current MPs. I have looked at their terms of service and there are discrepancies. This is when I compare them with other State officers. For example, the basic salary of the MPs is quite low and what boost us are the allowances that are paid. Those who do not qualify for a second term, the only thing they will get at the end, is gratuity which is not calculated against the allowances. Basically, MPs may appear like they are earning a lot of money through allowances but they do not count towards gratuity.

If you look at other State officers, for example, you will find that they are entitled to vehicles while MPs get some lump sum money to buy vehicles. In my view, this is a low deal compared to what other State officers get. State officers get vehicles which are serviced and maintained by the State. I do not understand why, as a State officer, one should be given money to buy a vehicle, maintain it on his or her own, while the other State officers have vehicles that are maintained by the State.

Hon. Speaker, even the security officers we have, have different terms from the security officers of other State officers. The amount they are paid is different from what security officers attached to other State officers are paid. Take the case of going to a meeting in Mombasa with a Principal Secretary (PS). Their security officers will be entitled to a per diem while your security officer, as a Member of Parliament, will not be entitled to anything except that lump sum. If you do the calculation, you will find that they are actually underpaid. I know many of us here use our money to pay our security officers.

Hon. Speaker, this should provide an opportunity to look at the situation of the current MPs. They have social responsibilities which I do not need to talk about. There are *Harambee* and funeral contributions to be made, school fees and hospital bills to settle. I think the Departmental Committee on Justice and Legal Affairs should take this opportunity to look at what appertains to the current Members.

Thank you, Hon. Speaker for giving me that opportunity.

Hon. Speaker: Let us hear the Member for Magarini, Hon. Harrison Kombe.

Hon. Kombe: Thank you, Hon. Speaker. I also wish to support the Petition. Former MPs are currently in a bad situation. They are leading miserable lives.

We have been receiving some here in Parliament Buildings. At the end, they borrow fare to go to Makongeni, Kiambu, Mathare and elsewhere. For sure, if this Petition is considered, former Members - some of us are going to be former Members - will have an opportunity to enjoy being MPs.

Thank you, Hon. Speaker.

Hon. Speaker: Let us now hear Hon. Onyonka.

Hon. Onyonka: Asante Mhe. Spika. Ninakumbuka tulilizungumzia jambo hili la mishahara ya Wabunge ambao walikuwa katika Bunge hili hapo awali mwaka wa 2012. Wakati ule, tuligundua Wakenya wanadhani Wabunge wanapewa hela nyingi zaidi na haziambatani na hela ambazo wananchi wengine wanapata.

Ningependa kusihi Bunge hili kuwa vile wenzangu wamezungumza, na ukiangalia mwaka ujao, utaona kwamba asilimia 80 ya Wabunge ambao wako hapa hawatarudi. Huo ndio muongozo ambao tunaona kila mwaka. Asilimia 80 au 75 ya wale Wabunge wanachaguliwa hawarudi hapa.

Jambo muhimu ni kuwa ukiwaangalia wazee na akina mama ambao walikuwa Wabunge katika hili Bunge, utaona kwamba wana shida sana. Hawapati matibabu hospitalini na hawana hela ya kununua mafuta ya magari yao. Hata hawana magari kwa sababu wengi wao walikuwa wakifanya siasa wakati Hazina ya Ustawi wa Maeneo Bunge (*CDF*) haikuwepo.

Ningependa kusihi Bunge hili lihakikishe limerekebisha hii shida ambayo imekuwa ikiwakera Wabunge wa zamani. Vile ndugu yangu, Mhe. (Dkt.) Nyikal amesema, ni vyema tuhakikishe kuna usawa wa mishahara ya Wabunge wa wakati huu na wafanyakazi wote wa Serikali. Hili likitendeka, kila mtu atakubali kuwa anapata riziki ile ambayo sheria inamkubalia kupata.

Kumalizia, ningependa kuwaambia wale Wabunge ambao wako hapa sasa kwamba ingawa hili jambo linawakera wale wazee na akina mama ambao wamekuwa hapa awali kuliko sisi, wembe ni ule ule utatunyoa.

Asante sana ndugu Spika.

Hon. Speaker: Let us now hear the Member for Tiaty.

Hon. Abongotum: Thank you very much, Hon. Speaker. First of all, I want to support the Petition by Hon. Gumbo. I wish to inform Members that when MPs retire, they need three things namely food, money for medicine and money to buy a newspaper. If you do not get the three, you are living on borrowed days. I have seen this since I came to Parliament. We have lost a number - I would say over 100 Members - from the time I came here because of lack of food and medicine. I support this in every meaning of that word.

The Parliament of Uganda has introduced a small package for MPs to the extent that even burials of MPs in Uganda are being funded by the Parliamentary Commission of Uganda. I want us to look at the plight of these Members and support that they should be paid, at least, US\$1,000 like it was recommended by Justice Akiwumi. Let us all support the Petition. If you look at the other side of the aisle, you will find that most of you were not in this Parliament.

On 2nd August, 2017---

Hon. Members: It is 8th August!

Hon. Abongotum: Hon. Speaker, I am referring to a statement made by my boss. By 8th August, 2017, 75 per cent of us will be former MPs. So, let us support this Petition so that the welfare of Members who will be outside can be catered for.

Thank you, Hon. Speaker.

Hon. Speaker: The Member for Gem, you have the Floor

Hon. Midiwo: Thank you, Hon. Speaker. I rise to comment on this Petition. I know that former Members have and are really suffering. I know very many who are suffering.

Recently, I was called by a former Member and his voice was sad. They think we are the only lot that can help them. Sometimes while sitting here, we behave as if we will stay here forever. If you talk to the majority of these Members, they will tell you that they will come back. Nobody puts himself in the 76 per cent bracket that is going home. It is natural and human.

Even the people who want our seats, even the ones who have nobody - he is the only voter for himself or herself - say they are going to win. The truth is that only 24 per cent comes back. I was reading somewhere that this time round because of the loose money in the counties stolen by governors and the way they are using it, the attrition will be like 78 per cent. So 18 per cent will come back.

Hon. Speaker, what is important is, are we taking care of Kenyans? This society is very cruel to politicians. It is very very cruel. There are some things or games where there must be no shame. Four or five years after the SRC was put in place, other than just sit in the office, I thought the least they could have done was to work out a pension for senior citizens.

Hon. Speaker, today, the Government has a cash transfer programme for ordinary citizens. Somebody who has served here for 20 years has no food in his house, yet he has served this country. You cannot benefit from the cash transfer programme because you are a former Member of Parliament. The other day, the Deputy President said that they want it increased. It will be more than pension. I know of a former Member of Parliament who earns less than Kshs2,000 per month, but people still visit his home for tea and other necessities. I do not think that is how we want our country to run. I am happy the Chairman of the Budget and Appropriations Committee has tabled a report this afternoon that allows us to amend the wrong things in our Constitution, for example, the provision that took away Ministers from the House. We have gone for nearly four years without even knowing who our Cabinet Secretaries are. It may be too late for us to even figure out who they are.

We have changed so much even where we did not have to change anything. We were fixing some things which were not broken. This House must rise to the occasion and help Kenyans. Some Kenyans have served this nation diligently and we should save them. We should even give them a chance in their old age to buy medicines or *sukuma wiki*. Their situation is dire. Those of us who have been here for long have seen it all. Many of the new Members do not know the faces of many former Members of Parliament, but we cannot go to the tea lounge without seeing a former Member whose life looks like it has stopped. This morning, I hosted a few former Members in my office. It beholds upon us to do it right. I want to thank Hon. Eng. Nicholas Odero Gumbo for trying to do it. He also wants to be my Governor. I hope he will give pension to all the retirees in my village when he gets there.

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. This Petition is timely. The first thing we should do is to harmonize pension for all Members of Parliament including all those who served in previous Parliaments.

The situation in our country is sad. In other developed democracies, when Members of Parliament leave office, they have value. They teach in universities. They become experts. They become consultants. They can even be appointed ambassadors. It is only in Kenya where when you are removed from office, you go back to the village. I agree with what Hon. Jakoyo said that 76 per cent of the current Members will go home. I am also praying that 95 per cent of the governors also go home.

I used to hear Hon. Jakoyo and other Members from Siaya County talk about their governor. Last night, I realised that he is the worst governor ever in the history of the world. How do you put your portrait on examination papers? Instead of the students answering the questions, they were busy looking at his portrait.

(Laughter)

I am lucky none of my children schools in Siaya County. If my son was in Siaya County, I would have removed him the following day. I hope Hon. Gumbo will not follow the Governor's footsteps in the likely event that he becomes the next Governor of Siaya County. I hope Hon. Gumbo has learnt a lesson: That he will not finance mock exams and put his portrait on the examination papers. Next time the Governor might include the portrait of his wife, the First Lady of Siaya County, on the examination papers.

(Laughter)

That is unacceptable. I totally support what the Cabinet Secretary for Education, Science and Technology, Dr. Matiang'i, said. It is not about interdiction. Those characters must be sacked. Education is a national function. He can only administer examination on Early Childhood Development Education (ECDE). That is where he can put his photos. So, the matter of this Petition is very important. I can hardly count those of us who were in the 10th Parliament. We are about 30 out of 222 Members. Around 37 Members came back, with a few going to the Senate. What Hon. Gumbo is doing is to prepare us for transition.

(Laughter)

You think he is talking about the former old Members. In the next nine months, many of us will be carrying the tag "former Member of Parliament". That is where we will fit in this Petition. As Members of the Departmental Committee on Finance, Planning and Trade do their investigation, they should remember that they are also doing it for themselves. The kind of recommendations they will bring will not go to waste. In fact, the implementation will be very easy.

I would also like to indulge you that when former Members of Parliament come here, let them be accorded some respect by our staff. Most of our staff do not even know them. They treat them like any other member of the public. Let us share a cup of tea with them when they come. If we do so, they will be satisfied psychology. They will leave in the evening while they are very happy. This is a process that all of us will go through.

I, therefore, thank Hon. Gumbo. I am sure that the Petition will be given due process and fast-tracked before 8th August 2017.

Hon. Speaker: Very briefly, can we have a Member from the Pensions Committee? We have to transact some business that requires a certain threshold. Member for Mwatate.

Hon. Mwadime: Shukrani, Mhe. Spika, kwa kunipa nafasi hii kama mwakilishi wa Kamati ya Malipo ya Uzeeni.

Kwa kweli, malalamishi ya wale waliokuwa Bungeni miaka iliyopita yanafaa kushughulikiwa. Kwa kweli, Wabunge wastaafu wako na matatizo makubwa. Wengi huja hapa lakini hata hela kidogo za kununulia chakula cha mchana huwa hawana. Hata wakiwa wagonjwa, wengi wao hawana uwezo wa kujisaidia. Hilo ni tatizo kuu. Kiongozi ni kiongozi hata kama amesita kuwa Mbunge. Wengi wa Wabunge wastaafu wanalalamika kwamba wakiwa nyumbani kwao, wananchi bado huwatembelea lakini hawawezi kuwasaidia. Hata wenyewe wakiwa wagonjwa ni tatizo. Kwa hivyo, ningependa Wabunge wenzangu walitazame ombi hili kwa undani kabisa ndio tuone jinsi tutakavyolishughulikia janga hili.

Wengi wao huja ofisini kwangu kwa sababu wanajua niko katika Kamati ya Malipo ya Uzeeni. Mimi hushindwa niwambie nini.

Asante kwa fursa uliyonipa. Singependa kuzungumza mengi.

Hon. Speaker: Hon. Members, as I indicated earlier, this Petition should go to the Departmental Committee on Finance, Planning and Trade. Even though it is talking about amending the law, it would be best seated in the Departmental Committee on Finance, Planning and Trade. I will subsequently refer it back to the Departmental Committee on Justice and Legal Affairs. The full implications of the Petition can be discussed better in the Departmental Committee on Finance, Planning and Trade. This is not really a matter of law, but finance. It is so ordered.

If there are Members making their way in, they should take their seats because I want to make some Communication.

COMMUNICATION FROM THE CHAIR

Hon. Members, I had indicated earlier that there will be some Communication by way of Message No.7 of 2016.

MESSAGE ON APPOINTMENT OF LADY JUSTICE PHILOMENA NDETE MWILU AS DEPUTY CHIEF JUSTICE

Hon. Members, pursuant to the provisions of the Standing Order No.42(1) relating to Messages from the President, I wish to inform the House that I have received a Message from His Excellency the President dated 12th October, 2016 regarding the appointment of the Hon. Lady Justice Philomena Mbete Mwilu as the Deputy Chief Justice (DCJ) of the Republic of Kenya. The Message also includes an original version of the Judicial Service Commission's (JSC) Report on recruitment and selection process for the DCJ and her curriculum vitae.

This was submitted in line with the provisions of Article 166(1)(a) of the Constitution which provides:

“(1) The President shall appoint –

(a) the Chief Justice and the Deputy Chief Justice, in accordance with the recommendation of the Judicial Service Commission, and subject to the approval of the National Assembly.”

In this regard, the President now seeks the approval of the National Assembly on the said nomination.

Hon. Members, Section 8 of the Public Appointments (Parliamentary Approval) Act of 2011 provides that an appointing authority shall upon nominating a person for an appointment to which this Act applies notify the relevant House of Parliament accordingly.

Consequently, I hereby confirm that a proper notification in line with the said provision has been received. Section 8 of the Public Appointments (Parliamentary Approval) Act of 2011 further provides that the relevant Committee should table its report for debate and decision made within 14 days from when the notification of the nomination is given. Regarding the applicable statutory timelines, the Public Appointments (Parliamentary Approval) Act of 2011 also requires that the public be given a seven days' notification for submission of views regarding the suitability of a nominee for appointment into an office requiring approval of Parliament.

In this regard and in accordance with the provisions of Article 259(5)(a) of the Constitution as read together with Section 5 of the said law, the counting of the seven days shall start running on the day following the day when the notice appears in the dailies. I hope that is clear.

Hon. Members, pursuant to the provisions of Standing Order No.43(3)(c), I now refer the Message including the curriculum vitae of the nominee to the Departmental Committee on Justice and Legal Affairs to undertake the necessary approval hearings. I wish to guide the Committee and the House that the Committee should notify the nominee and the general public of the time and place for holding the approval hearings, expeditiously. It should, thereafter, commence the necessary approval hearings and table its report, so that the House may consider it on or before Thursday, 27th October, 2016.

I thank you, Hon. Members.

Next Order.

PROCEDURAL MOTION

EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEE FOR APPOINTMENT AS CJ

Hon. Chepkong'a: Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, this House resolves to extend the period for consideration of approval for appointment of Justice David Kenani Maraga, as the Chief Justice of the Republic of Kenya, notified to the House on 4th October, 2016, by a further period of not more than seven (7) days from 18th October, 2016.

As you communicated to the Committee we are expected to conclude the approval hearings and table the Report of the Committee on 18th October, 2016, which is Tuesday next week. As required by the legislation that gives us power to do so, the Public Appointments (Parliamentary Approval) Act, the advertisement was placed last week. The time for members of the public to present their views expired on Wednesday this week. We met this morning to conduct the approval hearings in accordance with the law and we concluded them this afternoon.

We will be meeting as the Departmental Committee on Justice and Legal Affairs at 4.00 p.m. to consider this matter. We hope to conclude, as you have already granted me permission to

table the Report before 6.30 p.m. I will strive to do so. Again, we are cognisant of the fact that we cannot table the Report, move the Notice of Motion and discuss it on the same day. So, we are seeking for an extension of time so that in the unlikely event that we do not conclude this matter on Tuesday, we have an opportunity to do so the next day. If the House does not grant an extension approval, it means that we will be out of time if we do not conclude the matter on Tuesday. This House will not have an opportunity to express itself in the consideration of the approval or rejection of Justice Maraga as the Chief Justice of Kenya.

A number of issues arise from this Motion. From the face of it, the Public Appointments (Parliamentary Approval) Act of 2011 appears to be in conflict with the Standing Orders. The Standing Orders in other instances require that the Committee be given time, about 14 days, to consider such approval while the House has 10 days within which to consider the Report of the Committee. Unfortunately, the principal Act famously known as the “Mungatana Act,” does not give Parliament more than 14 days. It just gives us 14 days and so, we must conclude the process within the 14 days. If we were to do so, at times we do an injustice because we are also required to give members of the public seven days within which to present their views. So, we have been operating on a very tight schedule. We hope that when this House considers amendments to the Standing Orders, this is one of the issues which we will need to amend in the Public Appointments (Parliamentary Approval) Act, so that it is in line with the Standing Orders.

With those remarks, because it is fairly straightforward, I had requested the Leader of the Majority Party, who has indicated that he will support the appointment of Justice Maraga as the Chief Justice, to lobby. There is nothing wrong with this suggestion. The only thing is that it is high level lobbying because it comes from the Leader of the Majority Party. We will take that into account. As you know, as Members of the Departmental Committee on Justice and Legal Affairs, we are very independent, but we can be lobbied if we think that he has good reasons to do so. We can tell him that we will consider this thing and give it the due consideration that it requires.

(Hon. Kipyegon consulted loudly)

Hon. Speaker: Member for Emurua Dikirr, you cannot sit there and start asking questions without leave of the House.

Hon. Chepkong’a: Hon. Speaker, the only problem is he became disorderly and I chased him out of the Committee and a report will come to you.

Hon. Kipyegon: On a point of order, Hon. Speaker.

Hon. Speaker: There is nothing out of order.

Hon. Chepkong’a: Hon. Speaker, I am not lobbying. I am only saying that the Leader of the Majority Party---

Hon. Speaker: Just move it because it is a Procedural Motion.

Hon. Chepkong’a: Hon. Speaker, the Leader of the Majority Party has his say, but we will have our way when the Report comes here. I would like to request the Leader of the Majority Party to second, but not to lobby.

Hon. A.B. Duale: Hon. Speaker, I would like to second and I am not going to lobby. Forgive me because he had earlier forced me to second a request. I thought I was seconding the Procedural Motion.

What the Chairman is saying is that today they have vetted Justice David Kenani Maraga, the nominee for the position of the Chief Justice. The Committee will take time to go and do the

Report over the weekend until Monday. Then we anticipate they will table the Report on Tuesday and give Notice of Motion. If that goes well, because it is the last day of the 14 days that are required by the Public Appointments (Parliamentary Approval) Act, with the leadership and the House Business Committee (HBC), we will be forced to have another sitting beginning from 6.35 p.m., not only to discuss the Report of the Departmental Committee on Justice and Legal Affairs, but also the one by the Departmental Committee on Finance, Trade and Planning on the way forward regarding nominees to the board of the directors of the Central Bank of Kenya (CBK).

Hon. Speaker, the plenary will have the last say on this Report. Hon. Chepkong'a can vet and cook his report - "cook" in a right way. He can prepare his report and bring it to the House. Hon. Nyenze and I do not sell *mitumba* in this House. Our business is to lobby and make sure that the coalitions' respective positions are adopted. On this Procedural Motion, I support him.

It is good that we have seven days and anything can happen. It is a safeguard. Through the Speaker, we decided to have an extension of seven days beginning Tuesday next week, so that Parliament can also have a timeframe to deal with the nominees.

I beg to second.

(Question proposed)

Hon. Speaker: Member for Seme has an intervention.

Hon. (Dr.) Nyikal: Thank you, Hon. Speaker. I actually rose to support the extension. Given the timelines, my suggestion to the HBC is that from the time the report is tabled, it should be made available to the Members, at least, one day before it is debated. In the past, we have seen situations where reports are tabled in the morning and then they are debated in the afternoon. This is such an important report that we need to go through diligently and make an appropriate decision. My prayer is that there will be enough time for Members to read the Report.

Thank you.

(Question put and agreed to)

MOTION

DEPLOYMENT OF CHAPLAINS TO LEARNING INSTITUTIONS

THAT, aware that cases of unbecoming conduct among young people has been on the rise as exemplified by runaway drug abuse and addiction, drunkenness, sexual orgies and general irresponsibility; and deeply concerned that these incidents of loose morals have been worsened in the recent past by emerging radicalization of the youth leading to inclination towards terrorism and lawlessness, this House urges the National Government to consider deploying chaplains to all secondary schools and tertiary institutions in order to instil desired morals, social virtues, national values and a sense of responsibility, to address and root out moral decadence at an early age, and to supplement the work of guidance and counselling departments operating in these institutions.

(Hon. Odanga on 3.8.2016)

(Debate concluded on 12.10.2016 – Morning Sitting)

Hon. Speaker: Hon. Members, I have confirmed that we quorate. The debate on this Motion by Hon. Geoffrey Odanga was concluded. What remains is for me to put the Question, which I hereby do.

(Question put and agreed to)

BILLS

Third Reading

THE KENYA DEFENCE FORCES (AMENDMENT) BILL

Hon. Speaker: Again, Hon. Members, what remains is for me to put the Question.

(Question put and agreed to)

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

Second Readings

THE COUNTY EARLY CHILDHOOD EDUCATION BILL

(Hon. (Ms.) S.W. Chege on 6.10.2016)

*(Resumption of Debate interrupted on
12.10.2016 - Afternoon Sitting)*

Hon. Speaker: I am told that the person replying on behalf of the Mover is Hon. Kisoi, a Member of the Departmental Committee on Education, Research and Technology.

Hon. Kisoi: Thank you, Hon. Speaker. On behalf of the Chairperson of the Departmental Committee on Education, Research and Technology, I beg to reply.

This is one of the Bills that have attracted a lot of attention from the Members. Within four hours of its debate, it had been canvassed by about 26 Members. The concerns that were raised by Members in this Bill will be considered and tabled during the Committee Stage.

I beg to reply.

(Question put and agreed to)

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

THE COMPETITION (AMENDMENT) BILL

Hon. Kato: Hon. Speaker, I beg to move that the Competition (Amendment) Bill (National Assembly Bill No. 24 of 2016) be now read a Second Time.

By way of introduction, competition law in Kenya originated with the Price Control Ordinance of 1956 renamed the Price Control Act of 1956 and revised in 1972. The underlying philosophy of the Kenyan competition law initially had been to protect consumers against price increases. Subsequently, the Restrictive Trade Practices, Monopolies and Price Control Act, which came into effect in 1989 was enacted to comprehensively deal with matters relating to competition law. It provided for the regulation of mergers, control of unwarranted concentration of economic power and prohibition of restrictive trade practices.

The Restrictive Trade Practices, Monopolies and Price Control Act was intended to be a transitional piece of legislation to enable Kenya move from a price control regime to a market regime. It also created the monopolies and price department, which was mandated to encourage competition in the economy. However, the same Restrictive Trade Practices, Monopolies and Price Control Act was not effective. Some of the notable weaknesses included the fact that it maintained price control provisions, its enforcement procedures were complex and its remedial measures were ineffective. The Government, having recognised the important link that competition had to economic development, made the decision to introduce further legal reforms that were contained in the Competition Act, 2010. The objectives of the Competition Act 2010 were to promote and safeguard competition in the national economy, protect consumers from unfair and misleading market conduct, and provide for the establishment of the Competition Authority and the Competition Tribunal. The emphasis of the current competition law is on reduction of entry barriers and restrictive business practices irrespective of which group of undertaking it affects.

The Competition (Amendment) Bill was read for the First Time in this House on 19th July, 2016. It proposes to align the principal Act with Article 176 of the Constitution, which recognises county governments and the principle of decentralisation of services. The current Competition Act talks about local authorities. That Act was established in 2010. This amendment tries to align that law with the Constitution in accordance with Article 176 of the Constitution because the local authorities have since been changed to county governments.

The second objective of the Bill is to impose obligation on stakeholders to provide information where the Competition Authority conducts an inquiry either on their motion or under the direction of a Cabinet Secretary. The new amendment, especially on Clause 6 of the Bill, will make it mandatory for stakeholders to provide information to the Competition Authority whenever they conduct an inquiry.

The third objective of the Amendment Bill is to allow for exclusion of mergers which will have minimal impact on competition from the provisions of the principal Act. The principal Act is a bit rigorous in terms of mergers because some mergers might have very minimal economic impact. The fourth objective is to empower the Competition Authority to initiate investigation on its own motion for expeditious resolution of consumer complaints.

Hon. Speaker, I now seek to highlight the proposed amendments contained in the Bill. Clause 2 of the Bill seeks to delete the definition of the term “local authority” and replace it with the term “county government”. The definition of the term “undertaking” is also proposed to be deleted and substituted with a new definition, which is wider as it includes a more comprehensive list of groups of businesses and trade associations as undertakings. Under Clause

2 of the Bill, there is a further proposal to insert a new definition of “county government” in line with Article 176(1) of the Constitution.

Clause 4 of the Bill proposes to introduce a new clause and make it mandatory for every person undertaking trade association to provide information requested by the Authority in fulfilment of its statutory mandate for conducting an inquiry or sectoral study.

Clause 5 of the Bill talks about buyer power. This is important because it was previously noted that the current Act did not address it. It prohibits abuse of buyer power. It outlines the factors for consideration when determining buyer power by the Authority. It further provides for the development of rules by the Authority in consultation with the Cabinet Secretary and other stakeholders. This is in line with Article 10 of the Constitution, which provides for public participation.

Clause 6 of the Bill seeks to include abuse of dominant positions and buyer power as some of the instances where the Authority must give notice to the concerned undertaking of a proposed decision that a prohibition has been infringed pending conclusion of an investigation. Previously, the issue of abuse of power by a dominant position had not been included in the Act. This widens the scope of prohibited conduct under the Act.

The amendment in Clause 7 is a consequential amendment as it amends Section 36 of the principal Act to be in line with amendments proposed in Clause 6 to include abuse of a dominant position and buyer power as infringement of prohibited conduct under the Act.

Hon. Speaker, these amendments further quantify the maximum penalty that an undertaking can be required to pay following an investigation by the Authority up to 10 per cent of the immediately preceding year’s gross annual turnover of the undertaking in question in Kenya. Previously, this penalty was not quantified and had been left to the courts’ discretion. The amendment on Clause 8 is consequential. It is related to the amendment on Clauses 6 and 7, which seeks to amend Section 37 of the Act to align it with Sections 34 and 36 of the Act. It includes abuse of the dominant position and buyer power as one of the instances where it can obtain interim relief in case it needs to act as a matter of urgency. This widens the powers of the Authority in case of an infringement under the Act.

Clause 9 of the Bill seeks to enhance the definition of a person who controls an undertaking. Previously, a person was seen to control an undertaking if they owned more than half of the issued share capital of the undertaking. The amendment seeks to include a person who owns more than half of the business or assets of the undertaking too. This is in line with the reality on the ground as such person may own less than half of the share capital, but still controls an undertaking.

Clause 10 of the Bill enables the Authority to set a threshold for any proposed merger to be excluded from Section 4 of the Act, which deals with the merger. This is a deviation from the previous position where the Authority would unilaterally declare that a proposed merger was excluded from the provision of this Act without determining the threshold. It is thus desirable as it gives the Authority a say in determination of mergers.

Clause 10 of the Bill further allows the Authority to impose a financial penalty in an amount not exceeding 10 per cent of the preceding year’s gross annual turnover of the undertaking in Kenya in case of contravention of the provisions of Section 42 of the Act as opposed to the previous position whereby this penalty was to be in addition to the penalties prescribed under Sub-Section 5 of an imprisonment for a term not exceeding five years or a fine not exceeding Kshs10 million. This gives the Authority the discretion to decide which penalty to impose, depending on the circumstances.

Clause 11 of the Bill introduces two new sub-sections to Section 47 of the Act, which deals with the revocation of approval of a proposed merger. The proposed amendment introduces a financial penalty of up to 10 per cent of the preceding year's gross annual turnover of the undertaking in Kenya. The proposed amendment further provides for penalties for a party to a merger who gives incorrect or misleading information, and who fails to comply with any condition attached to a merger approval.

The amendment contained in Clause 12 introduces a new Section 70A, which allows the Authority, on its own initiative or upon receipt of information or a complaint from any source, to initiate investigations into a consumer complaint.

As I conclude, I wish to assure Hon. Members that the proposals contained in this Bill are in conformity with international standards and best global practices on consumer protection and regulation of anti-competitive practices. They have been developed as a result of continuous monitoring of failures identified in the Act and are as a culmination of widespread stakeholder consultations.

I beg to move and, with your permission, request the Leader of the Majority Party to second. Thank you.

Hon. Speaker: Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. As I second, Hon. Katoo has done a great job of moving this Bill. He has highlighted a few amendments that are proposed in the Bill. I will just highlight four key areas.

Number one, the Competition Authority, as currently constituted and within the provisions of this Act, is facing certain challenges when it is conducting market research inquiries. When they ask for information from stakeholders in order to address those challenges, they do not get it. So, what does the Bill do? This amendment proposes to impose an obligation on every stakeholder. It will become mandatory in the market to provide the necessary information that is required by the Authority. After this Bill is assented to, they can write to you and tell you they want "A," "B," "C" and "D" and, as a marketer or a company, you must provide that information. What is the objective of this? It is to protect consumers from unfair and misleading market conduct where a company misbehaves or provides fake goods in the market. The Authority has now been given powers.

Number two - and the most important one - is to create remedial measures and penalties under the Competition Act, especially penalties for abuse of dominance. When Airtel or Safaricom abuse their dominance, the Authority will now have the powers, under this law to impose certain penalties and administrative measures in as far as abuse of dominance is concerned.

I will now go to number three, which is the second last. The Act is not very clear. There are Small and Medium Term (SME) companies that want to merge. That is not a function of the Competition Authority. World over, authorities deal with big multinational companies that want to merge. So, this particular amendment is trying to reduce the administrative burden on the Authority and facilitate investment through such mergers. SMEs can merge, but the Authority will focus on when Barclays Bank wants to merge with Standard Chartered Bank. When small local firms want to merge, that is not a function of the Authority. So, this Bill proposes to set up a specific threshold for mergers which should be excluded from the provisions of the Competition Act. At what threshold can the Authority deal with it in as far as mergers are concerned?

Lastly, the Competition Authority does not have powers of its own to initiate investigations where the Authority discovers that there are defective goods being sold to consumers. So, if they want to protect consumers, the power to investigate does not lie within the Authority. This Bill proposes to amend the current Competition Act to give the Authority powers to initiate its own investigation in line with exercising its powers of protecting consumers.

Thank you, Hon. Speaker. I beg to second.

(Question proposed)

Hon. Speaker: Member for Ndhiwa.

Hon. Oyugi: Thank you, Hon. Speaker. I would like to support this particular Bill. Hon. Katoole Metito spoke very well. He spoke to the essence of the competition law. We agree that the competition law ought to be one that promotes and safeguards the market as it is in consumer protection, and also helps with restrictive trade practises as well as monopoly.

It is possible, particularly in this Bill, to see that there is an attempt to put proper enforcement mechanisms. This is because, ordinarily in the competition law, you really need a proper enforcement mechanism as most of the times the people engaging in business would want to engage in unfair business practices. That particular enforcement mechanism ought to be speaking to market dominance as well as the control of mergers - amongst many other things that would make business practices unfair to consumers.

I will speak to specific provisions of this particular Bill. Clause 4 is a fairly good provision. It states:-

“Every person, undertaking trade association or body shall be under an obligation to provide information requested by the Authority in fulfilment of its statutory mandate for conducting an inquiry or sectoral study regulated by this section.”

I think that particular provision, which is also in line with Article 35 of the Constitution, will help the Authority in terms of the enforcement mechanisms that I have spoken to. It is possible to have an authority but, if it is not given an enforcement mechanism or provisions as to how it conducts its mandate, then that particular authority will not help in regulating the various unfair business practices.

Clause 5 proposes to introduce a New Clause 5 (2A), which says:-

“Any conduct that amounts to abuse of buyer power in a market in Kenya, or a substantial part of Kenya, is prohibited.”

I think that needs to be defined. There is an attempt in Clause 5 (2D) to say what “buyer power” would ordinarily mean. However, if we do not refine the prohibition in Clause 5 (2A), then I really think that the definition of “buyer power” which is contained in Clause 5 (2D) might not really be very useful.

The buyer power here is said to mean:-

“The influence exerted by an undertaking or a group of undertakings in the position of a purchaser of a product or service.”

If that particular abuse is not defined properly, then we might not understand what we are going to be prohibiting. It is a good thing to prohibit, but the mechanisms and the spectrum that is being prohibited ought to be defined.

New Section 70 (A) reads:-

“Pursuant to the provisions of this Part, the Authority may, on its own initiative or upon receipt of information or a complaint from any person, government agency, Ministry or consumer body, initiate investigation into a consumer complaint.”

I think that is good. It puts the enforcement process in a two-pronged approach. One, the Authority, out of its own motion, would conduct investigations in terms of the unfair business and market practices or if at all there is a complaint, the consumers are free to approach the Authority to register their complaints. I really think that, that provision is good and it needs to be included because it will help in ensuring that the objectives of the consumer protection provisions of this law are attained.

With those few remarks, I support this Bill. I think that one of the things we need to do is to look holistically at the competition law that we passed in 2010 to see other provisions which we can improve so that we can help in improving consumer protection as well as make business practices fair to the consumers.

I support

Hon. Speaker: Hon. Wanjiku Muhia, Member for Nyandarua.

Hon. (Ms.) Muhia: Thank you, Hon. Speaker for giving me the opportunity to speak on this Bill, which is timely. We are now looking at the global market and, indeed, competition has been regulated in order for business to continue. Authorities need to be given powers as it is stipulated here, especially in Section 4, on how to minimize the number of quotas that want to interfere with market forces. Market forces should be left to flow naturally, but clever business persons try to manipulate the forces to suit their own interest.

Monopoly has been an issue in our country, but this could be cured by this Bill. We have seen, time and again, some companies doing bait-advertising. That is unfair to the consumers. Some companies go on air or print media to advertise products and promise that the products, say, mobile phones, will be in the market and shall be sold at a particular price. Unfortunately, when consumers go to search for the products, they do not find them. This is indiscipline and it is unfair to the consumers. So, this Bill will cure those strategies which are not necessarily clever because, at the end of the day, they lack integrity.

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

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

Abuse of dominancy has been realized. I would like to point out here the case of Safaricom. We have seen some businesses successfully coming in place. Safaricom has really excelled. That is because anytime you want to leave their services; you realize that one service is connected to another. As a result, some other companies have wished to copy-paste what Safaricom does in order for them to excel. They have gone as far as trying to cite provisions in the Competition Act and the Consumer Protection Act to defend their claim that Safaricom is dominating. However, the company may be dominating in nature because of its muscles of good strategy in marketing and also a good capital base which might have grown from one level to another. It is important to caution other service providers not to use this law for their own benefit. People should be left to compete. Even if a business appears like it is dominating, the

other people who are coming in business should try and compete to get to its level. We should not use the law to bring down companies that are doing well.

Monopoly can be prevented when authorities are empowered through such a Bill. Sometime back, Kenya Power Company (KPC) enjoyed monopoly in Kenya and only the rich could access electricity. However, this lasted only until when the supply of solar systems from China was all over the country. KPC was threatened because people could still access light. So, monopoly can take the country backwards. With this proposed law in place, monopoly will not exist.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Omulele): Very well. We shall have Hon. Onyango Oyoo, the Member for Muhoroni.

Hon. Oyoo: Thank you, Hon. Temporary Deputy Speaker. I also wish to add my voice to this Bill. I believe that it is a good Bill despite some few limitations in it. I know it will add value to our country in terms of boosting our economy. What I would like to have entrenched here is enough public participation so that there is full disclosure. There should be enough time for interested members of the public to contribute adequately. Since this is going to involve a lot of money and interest, the authorities should ensure that they apply very competent considerations.

I know that we are led by people who are also businessmen. Many times, it happens that when there is an opportunity to appoint people into authorities like this one, they put their business interests first and so, they appoint people who are likely to fast-track their business interests. That is unethical and should not be allowed to happen. I say this because if we had competent people and full disclosures were done, then that would mitigate illicit factors like what the country is confronted with in view of the problems that Kenya Airways is facing. If proper disclosure was done before, we could know in the signed Memorandum of Understanding (MoU) that KLM is owned by Air France which, in turn, is owned by Lafarge. Lafarge brought its own employees to take charge of our coveted airline. Many people would have known what was happening and would have argued out against such a merger.

That is why I insist that for the sake of future transactions, this Bill should have a provision that will ensure that full disclosures are made and that there is good enough time for public participation. If that is done, Kenyans who are interested and care for their little treasures will have enough time to read about the full involvements of the parties interested in mergers. That way, they will be in a position to make proper decisions before conclusions are made.

There should be mechanisms for checking cheating. That is because many under-estimate or under-state their interests because of lack of proper legislation. You will find very flickering advertisements about institutions which do not work. We have seen adverts that are meant to cheat customers, for example, an advert claiming that one Asprol tablet can treat 20 diseases. I do not think that is ethical. Those are things that we will have the Competition Authority checking. We also need full-proof mechanisms for checking whatever is happening. Authorities must create opportunities or facilities for occasionally checking what is happening in the market in-between the times of the intended merger and when the ultimate acquisitions are made.

This is a good Bill and the intention is good. However, as usual, in Kenya, we have two problems. The first one is that people get into ventures in a hurry without checking and verifying facts. The second one is that once a project has been started, Kenyans do not create mechanisms for cross-checking, oversight and maintenance.

I support.

The Temporary Deputy Speaker (Hon. Omulele): Very well. Hon. Johana Kipyegon.

Hon. Kipyegon: Hon. The Temporary Deputy Speaker, you will excuse me so that somebody else can contribute.

The Temporary Deputy Speaker (Hon. Omulele): You are excused, Hon. Member for Emurua Dikirr. Could we then have Hon. Kipruto Moi, the Member for Rongai?

Hon. Moi: Thank you very much, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this important Bill. The Competition (Amendment) Bill aims to promote and safeguard competition in the national economy and also aims to protect consumers from unfair practices. It also provides for the powers and functions of the Competition Authority.

Hon. Speaker, research indicates that the Authority has been experiencing challenges when conducting market research and seeking information from stakeholders. With the advent of this Bill, it can now be possible for the Competition Authority of Kenya (CAK) to get information from major stakeholders. Generally, this Bill contains provisions that propose to impose an obligation on stakeholders to provide information and also for CAK to impose penalties for non-compliance.

I now proceed to speak on specific clauses of the Bill. Clause 2 proposes to amend Section 2 of the Act on interpretation, meaning the “local government” now changes to become “county government” and the definition of “undertaking” now includes corporate bodies. Clause 6 empowers the Authority to intervene in the case of a dominant position by an undertaking, similar to the position that Kenya Power Company finds itself in. When you have a company like Kenya Power and no other competitor, it means the people who will ultimately suffer are Kenyan consumers. There is nobody to challenge Kenya Power Company. That is why they have no regard for their consumers and clients. Clause 6 will check that and that is why I support this Bill.

Clause 7 amends Section 36 by providing for action following investigations - a penalty of 10 per cent of the preceding year’s turnover on companies that actually violate the law or where there has been an infringement on those laws. Finally, Clause 10 amends Section 42 by changing the current situation where the mandate of the Authority was to provide exclusion of some mergers from the provision of the Act to specify that the Authority can now set thresholds for the exclusion of mergers from this Act. In other words, those whose impact is minimal may be excluded from the provisions of this Act. Finally, Clause 11 proposes a penalty of 10 per cent of the preceding year’s annual turnover on entities falsifying information leading to violation of merger requirements.

With those few remarks, I wish to support and urge my colleagues to support. Thank you, Hon. Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Very well. A very enlightened contribution. We shall now have Hon. Tonui, Member for Bomet.

Hon. Tonui: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support these amendments on CAK. I believe the key object of these amendments is to make the appointment of Commissioners to CAK move faster and in a more efficient way unlike the way it is being done currently, where it has to pass through Parliament. CAK is just a parastatal like any other where the Cabinet Secretary (CS) in charge of the Ministry appoints commissioners.

Therefore, we need to ensure that there is efficiency in the appointment of commissioners by ensuring that the CS for the National Treasury can be empowered to replace the commissioners in CAK in a faster way than bringing them to Parliament, which takes longer. I

understand that vacancies in CAK have not been filled for nearly a year simply because of the process of coming to this House, where there is a queue. The business of this House can sometimes be a lot. I believe this is going to be a better way of appointing.

On the issue of competition, we need to make the Authority more efficient in dealing with issues of competition, so that we can ensure that our consumers are better served in terms of the prices of goods which are purchased. I can see a situation, especially in the communication industry, where we only have one dominant player while the others are minor ones. They are not able to compete with the bigger player in the communication industry. I am very sure such a situation does not bring out the best in terms of pricing for the services which are there. We need to encourage CAK to ensure that we deal with those issues so that some of those playing grounds which are not leveled can be leveled and competition can be encouraged in this country.

With those few remarks, I do support it. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, I see no further interest in this. I now request the Mover to reply.

Hon. Katoo: Thank you, Hon. Temporary Deputy Speaker. This is a very important Bill. Yesterday, the one on the County Early Childhood Education attracted 26 contributors but this one, which is talking about business competition and is so crucial to the economy of this country, has only attracted seven contributors, including the Mover and the Seconder.

Nevertheless, those seven have made very informed contributions. Business is evolving and becoming global in nature and, therefore, it keeps on changing. It is so dynamic and is not a static activity. Having said that, I mean such a Bill will be subject to very continuous reviews with respect to the dynamic nature of the business environment that keeps on changing, especially now that we are in a global economic sector. Strategies have to keep on changing and, therefore, for one to remain competitive in the business environment, things do not have to be done the same way all the time. This calls for continuous review of such legal frameworks in order to have a conducive business environment. Therefore, we take the contributions by those seven Members very seriously. They are going to inform the Third Reading of the Bill. If need be, their comments will be taken to enrich this very important Bill.

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

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, for obvious reasons, we cannot proceed to the next action, which is to put the Question. I will, therefore, defer that particular aspect of this Bill to the next Sitting. I direct that we move to the next Order.

(Putting of the Question deferred)

Second Reading

THE INSURANCE (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. Omulele): The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker. I beg to move that the Insurance (Amendment) Bill, (National Assembly Bill No. 28 of 2016) be now read a Second Time.

I want to go on record that I am speaking on this Bill when we are only six people, and more so, with only one person from the Opposition side - the Member for Migori County. It is my hope that Hon. Members have time to read this Bill.

Before I give some brief highlights of the proposed amendments, it is very sad that I am moving this Bill to a virtually empty House; an empty Chamber. I am sure the HANSARD will help me. Members can go through the HANSARD and read what I, my deputy and the other Members who are here will contribute.

What is the object of this Bill? It has been submitted by the Cabinet Secretary (CS) for the National Treasury in line with proposals announced in the Budget for the 2016/2017 Financial Year.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Leader of the Majority Party, probably, just before you proceed, I have heard you comment that there is virtually a problem with the numbers in the House. I would like you to be more direct in that respect so that, if that is the situation, then we can ring the Quorum Bell so that we can draw the attention of the Members who are in the precincts.

Hon. A.B. Duale: Yes, Hon. Temporary Deputy Speaker. This is a very important Bill. We cannot transact business when we have serious issues of quorum. Maybe, you can order that the Quorum Bell be rung.

Hon. Kombe: On a point of order.

Hon. A.B. Duale: I am on a point of order. I will finish and then you can talk.

The Temporary Deputy Speaker (Hon. Omulele): I had actually pointed out to the Leader of the Majority Party on a point of order. Let him finish. I will give you an opportunity, Hon. Kombe. Let the Leader of the Majority Party finish.

Hon. A.B. Duale: If you look at Standing Order No.34, it says a quorum of the House or of a Committee of the whole House shall be 50 Members. We are hardly even 10. So, I will ask your indulgence that the Quorum Bell be rung so that we can start with serious business of the House.

The Temporary Deputy Speaker (Hon. Omulele): Very well. I, therefore, direct that the Quorum Bell be rung for 10 minutes under Order No.35 of our Standing Orders.

(The Quorum Bell was rung)

(Several Hon. Members tried to withdraw from the Chamber)

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, you need to take note of the fact that if the Quorum Bell is ringing, you cannot leave until that particular event is over.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, having failed to raise the requisite quorum, pursuant to the provisions of Standing Order No. 35(2) (a), the House stands adjourned until Tuesday, 18th October, 2016, at 2.30 p.m.

The House rose at 4.45 p.m.