

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 27th October, 2016

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

MEDIATION COMMITTEE ON ASSISTED REPRODUCTIVE TECHNOLOGY BILL

Hon. Speaker: Hon. Members, you may recall that yesterday, Wednesday, 26th October 2016, I conveyed a Message from the Senate regarding its decision on the Assisted Reproductive Technology Bill, National Assembly Bill No.36 of 2014. In the Message, it is noted that the Bill was lost at the Second Reading on 19th October 2016 in the Senate. The effect of this is that the Bill now stands committed to a Mediation Committee in accordance to the provisions of Article 112 of the Constitution. Indeed, the Senate has already nominated five Senators to the aforesaid Mediation Committee.

Hon. Members, arising from the above and in consultation with the leadership of the Majority Party and Minority Party in the House, I have appointed the following Members to represent the National Assembly in the Mediation Committee:

Hon. Millie Odhiambo Mabona, MP.

Hon. John Sakwa, MP.

Hon. (Dr.) James Nyikal, MP.

Hon. (Ms) Cecilia Ngetich, MP.

Hon. (Ms) Florence Kajuju, MP.

Hon. Members, the Mediation Committee is advised to expeditiously commence the process of developing an agreed version of the Bill in line with the provisions of Article 113 of the Constitution.

Hon. Members, knowing that the House may be proceeding for some short recess, the Committee is encouraged to remember that it has a maximum of 30 days within which to complete its function.

Thank you.

Hon. Members, there will also be a communication relating to the Petition which was presented here recently in light of some new developments, but in the meantime, I allow Hon. Jude Njomo to present his second Petition.

PETITION

REQUEST FOR RELOCATION OF GIOTO DUMPSITE

Hon. Njomo: Hon. Speaker, I, the undersigned on behalf of the residents of Indian Bazaar in Kiambu Sub-County, Kiambu County draw the attention of the House to the following:

THAT, Article 42 of the Constitution of Kenya grants every person the right to a clean and healthy environment and that a clean environment is key to the wellbeing of residents;

THAT, the Kiambu County Government has established a dumpsite referred to as Goto Dumpsite in one of the estates in Kiambu Town without following due process;

THAT, the said dumpsite is located in the middle of a human settlement neighbouring Hekima Estate, several schools, churches, business premises and other public utilities;

THAT, the dumpsite emits a bad stench which is a health hazard to the residents, pupils and the business community in the area;

THAT, the residents are incurring immense medical expenses due to ailments occasioned by pollution from the dumpsite;

THAT, the dumpsite is a security threat to the residents as a number of organised criminal gangs reside in the dumpsite;

THAT, there is no waste management system in place resulting in encroachment of the neighbourhood;

THAT, on several occasions Petitioners have consulted and pleaded with the relevant authorities to resolve the matter to no avail, and;

THAT, the issues in respect of which this Petition is made are not pending before any court of law or any constitutional or legal body.

Therefore, your humble Petitioners pray that the National Assembly through the Departmental Committee on Environment and Natural Resources:-

- (i) Intervenes and ensures the closure of the Goto Dumpsite.
- (ii) Recommends that the relevant authorities establish a dumpsite away from human habitat.
- (iii) Ensures that the Petitioners' plight are addressed, and
- (iv) Makes any other order or direction that it deems fit in the circumstances of the Petition.

Your petitioners will ever pray.

Hon. Speaker, the residents of Kiambu are just praying that this House intervenes ---

Hon. Speaker: The Petition is self-explanatory. The rest is debate. This is not about Kiambu. You have presented a Petition, relax.

Before I allow Members to comment on the Petition if they desire to do so, allow me to recognise students and pupils from the following institutions, counties and constituencies:- In the Speaker's Gallery, there is Weru Secondary School from Ol Jorok Constituency, Nyandarua County and in the Public Gallery is Grasam Secondary School from Mathare Constituency, Nairobi County; New Glory Primary School from Kasarani Constituency, Nairobi County; and, Grace Gardens Secondary School from Ruaraka Constituency, Nairobi County. They are all welcome to observe proceedings in the National Assembly.

Is the Member for Makueni desirous of commenting on this Petition?

Hon. Maanzo: Thank you, Hon. Speaker, for giving me an opportunity to comment on this important Petition. It heavily relies on Article 42 of the Constitution about a clean environment. This is not a problem affecting Kiambu alone. It affects many other counties and areas. In fact, it refers to a place where many rivers originate and go through my Makueni Constituency. You will find that in this particular season when there is not much water, the rivers

are very dirty because some of them come from Nairobi, others from Kiambu and end up in Makueni. They travel for over 100 kilometres after which the residents have to draw water. The cleanliness of the dumpsites in Kiambu and Nairobi is important because all the dirt ends up in the rivers and pollutes the environment even beyond those particular areas.

I support this Petition. I urge Members to contribute when it will be prosecuted so that we have a cleaner environment for all Kenyans and not just for Kiambu residents.

Hon. Speaker: Let us have the Member for Igembe Central.

Hon. Kubai Iringo: Thank you, Hon. Speaker, for giving me this opportunity to comment on this Petition by Hon. Jude Njomo. Garbage collection in this country and especially in urban areas is a big problem which has been there for a very long time. It appears that the institutions concerned have never taken the time to come up with a permanent solution to this. If you go to each and every urban area especially here in Nairobi and other big cities, garbage is disposed of near places where people live and in rivers. It is quite a health hazard. It is a big challenge. The National Environment Management Authority (NEMA) and the authorities concerned, such as the county authorities, should come up with a permanent solution to recycle this refuse and also conserve the riparian areas and streams. Even the waterborne diseases that we get in this country come from the refuse because of this negligence. The NEMA should come up with a permanent solution to this.

Hon. Speaker: Let us have the Member for Ol Jorok, Hon. Waiganjo. There appears to be a problem with all the microphones on this side.

Hon. Waiganjo: Thank you, Hon. Speaker, for giving me an opportunity to also comment on this Petition. Environment and green energy must be emphasised in this country. County governments must take cue because proper management of the environment, particularly forest areas, rivers and all other natural environment in our counties is the responsibility of the county units and entities. We need to emphasise and create legislation, even at the level of county assemblies, so that whenever a specific county wants to go green, there is a legal framework to fall back to.

Even as we say NEMA must take the lead, we must properly assign responsibility where it belongs because people at the grassroots are the ones mainly concerned with the environment. That is a key Petition coming at a time when the country is going green. I congratulate Hon. Jude Njomo for bringing it forth.

Hon. Speaker: Let us have the Member for Chuka/Igambang'ombe

Hon. Njuki: Thank you, Hon. Speaker, for the opportunity to comment on this Petition for people of Indian Bazaar in Kiambu.

The paradox of this whole matter on the issue of the waste is that there are some countries in this world which are looking for waste when others have nowhere to dispose of their waste. The other day, I read that a country like Denmark which normally uses waste to produce energy, has a shortage of waste yet here we are wondering where to dispose of our waste. Whether or not we have the technology to produce energy from this waste, it is time we took responsibility for our own consumption.

Most of the time this waste comes from things that we normally get free from the environment. I will cite a case in point where today if you go to Europe you will not get a single shop that gives you a polythene paper bag to carry your goods when you buy them. You are forced to buy a paper bag and because of that reason, most people have gone back to recycling. You buy one paper bag which you keep on recycling. You do not have paper bags to waste. In this country, as much there was a proposal to encourage the manufacturers of nylon papers to

reduce the thickness of the paper so that it does not have to go to waste or burn it all together like in Rwanda, we will never get rid of the problem of disposal of waste paper bags. It is high time we thought of borrowing from those countries that have dealt with that problem. That is one form of waste that is normally dumped.

Coming closer home, when we talk about establishment of dumpsites in Kiambu County, I am sure Kiambu County has a Ministry of Environment. It is ironical to have a dumpsite in their own residences when NEMA and their Ministry of Environment are watching. The people of Kiambu are entitled to a clean environment so that that they can improve on their lives.

Cancer today is one of the biggest killers in Kenya. It never used to be that rampant before but, because of what we breathe in today from most of the waste, that is why such diseases have really manifested themselves in a form that is hardly treatable in our people.

I support the Petition and urge that the Committee looks into getting rid of the problem once and for all.

Hon. Speaker: Let us have the Member for Emuhaya.

Hon. (Dr.) Ottichilo: Thank you, Hon. Speaker, for allowing me to comment on this very important matter. I thank the Member of Parliament for Kiambu for raising this matter.

This matter is adequately covered under Articles 42 and 69 of our Constitution. Everybody is entitled to a clean environment. It is the responsibility of every Kenyan to ensure that our environment is clean. Unfortunately, we do not have waste management policies and laws in this country. Without those two legal documents, this problem will remain. It is important that these two documents are generated and presented to this House for debate and approval.

As the Departmental Committee on Environment and Natural Resources, we have tried to press the concerned Ministry of Environment and Natural Resources to bring the policy and the Bill. Unfortunately, the Ministry has failed. It is the onus of the Departmental Committee on Environment and Natural Resources to take up the mantle and come up with a draft Bill on waste management which will be a benchmark for the entire country. Otherwise, this is a problem that is increasing day by day and will continue to increase if we do not intervene and take adequate measures. So, this is a major problem which we must address as a House.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. That Petition stands committed to the Departmental Committee on Environment and Natural Resources.

Next Order!

PAPERS LAID

Hon. Speaker: The Chairperson, Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Departmental Committee on Justice and Legal Affairs on the Progress Report on the Implementation of the Election Laws (Amendment) Act, 2016 and the preparation for the 2017 General Elections.

This is a very important Report that arose from interaction between the Departmental Committee on Justice and Legal Affairs and the Independent Electoral and Boundaries Commission (IEBC). I see a number of comments being made by the Press which is not well

informed. It would be important for Members to get hold of this Report so that they can see how far we have gone in terms of implementation of the---

There are some claims being made here that my energy is very low. They know that my indomitable Committee has sponsored the Gender Bill which will go through. I do not know how my energy can be too low when we have a serious Bill which all the women here are contesting seriously except one who murmured to me that she supports me.

I am tabling the Report of the Committee on the Implementation of the Election Laws (Amendment) Act, 2016 which was passed by this House in an express manner. We have had meetings with the IEBC and they have given us a brief on what they are doing. We also told them what they need to do, as the oversight Committee. This Report contains a progress report and what the IEBC is expected to do. For the information of the House, the IEBC has already appointed a technical working committee that is expected to oversee the procurement process of the electronic system. So, that is in place, in addition to the Commissioners.

The law is being amended, but what we noted is that part of these laws that were passed are in contravention of the Public Procurement Act which states very clearly that, notwithstanding any other provision of the law and this includes this one here. If they are providing for something else, we as Parliament have said notwithstanding any other legislation. So, the amendments that we were seeking at that time were to provide for notwithstanding any other written laws but, of course you know some of these Members thought that we were pedantic in the manner in which we were proposing those things. Now, the consequences are with us, but we have asked the IEBC not to act as a court of law.

Our irreducible minimum is that they must implement the law as it is. Let someone else go and challenge it in the court and not for them to challenge it and neither can this House challenge it. If someone wishes to amend it, let them do so but we have to live with the consequences of our actions.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. I think even though Hon. Chepkong'a was not giving notice of Motion but laying a Paper, given the importance of that subject to all of us, that is why I gave him the opportunity to just alert us about the Report. I think as he said, it is fair for every one of us to get a copy of that Report and begin to internalise and familiarise with it.

The Chair, Select Committee on Delegated Legislation, Hon. Cheptumo.

Hon. Cheptumo: Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Select Committee on Delegated Legislation on its consideration of the Parliamentary Service (Senate Monitoring and Evaluation) (Procedures for Management of Funds) Regulations, 2016.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairperson, Constitutional Implementation Oversight Committee. Hon. Baiya.

Hon. Baiya: Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Constitutional Implementation Oversight Committee on its consideration of a Petition by one, Mr. Rage Ismael Hussein concerning the need for Parliament to introduce a Bill to amend the Constitution. The gist of this Petition was requesting Parliament to consider amending several provisions of the Constitution, specifically Article 9, with regard to October 10 being made a national holiday. Article 27(8), requiring the two-thirds gender principle to apply only on appointive and not elective positions, Article 97(1)(a) and (b), to

reduce the number of constituencies from 290 to 210, Article 99, to remove the age limit for vying of the elective positions and the minimum academic qualifications, Article 131, to provide that the President be above the law, Article 152(3), to provide for appointment of Cabinet Secretaries from persons serving as Members of Parliament, Article 232(1), to provide notes and coins to bear portraits of the First President, His Excellency the Late Mzee Jomo Kenyatta, Article 260, to increase the age bracket of persons who qualify to be defined as youth from 18 to 35 years to 18 to 45 years. There is also a proposal to abolish the position of governors in the counties and instead to be lead by Commissioners. That the President and the Deputy Official Opposition Leader to be treated as dignitaries and be allowed to attend Parliamentary sittings. A further proposal was that the salaries of elective positions be revised downwards to reduce the huge wage bill. Finally, a proposal to amend the Constitution to allow persons vying for the position of President and Deputy President to vie for any other elective positions concurrently.

The Committee has looked into all these proposals and has prepared a response to all these positions. I want to invite Members to look at the Report by the Committee and see the reasons we have given for our position. We are also going to have this Petition referred to the Petitioner himself.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. The Report will be forwarded to the Petitioner. The Chairperson, Departmental Committee on Environment and Natural Resources, Hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to lay the following Paper on the Table of the House: -

The Report of the Petition by Hon. Ahmed Ibrahim Abass on behalf of the residents of Ijara Constituency regarding the irregular gazettement of Boni-Ijara Forest.

The Petition was tabled on 15th March 2016 by the Hon. Member on behalf of the Ijara Residents. His Prayer was that the Departmental Committee on Environment and Natural Resources investigates the matter and compels the Ministry of Environment and Natural Resources to revoke Gazette Notice No.943 of 2016 and make any other orders or directions that they feel necessary.

In considering the Petition, we were able to meet with Hon. Abass and the Ministry of Environment and Natural Resources.

Hon. Speaker, we also undertook a field visit to Masalani on 28th to 30th July where we had public hearings.

The following are the observations of the Departmental Committee on Environment and Natural Resources:-

- (i) Article 61 of the Constitution gives the public, individually or as a group, a say in matters of land including acquisition, management, transfer, disposition and ownership;

From our investigation, we have established that communities living around Boni-Ijara Forest were not adequately consulted before the gazettement of the Forest. This, therefore, makes the gazettement irregular.

- (ii) From our investigation we also established that no community leader was involved or was aware of any public participation carried out by the Kenya Forest Service (KFS);
- (iii) The County Government of Garissa provided documents to the Committee indicating that the County Government had disagreed with the proposal by the Kenya Forest Service (KFS) and instead had offered that the Forest be gazetted as a county forest;

- (iv) The documents submitted by the Kenya Forest Service (KFS) indicated that they held many general meetings. It turned out that the meetings were only with Government leaders and Non-Governmental Organisations (NGOs) but not with community leaders from the area;
- (v) The community living around Boni Forest has lived harmoniously and has always conserved the Forest; and,
- (vi) The Forest provided various benefits to the local community and is a source of pasture and areas of cultural rites.

Our recommendation on this Petition is that the Cabinet Secretary (CS) for the Ministry of Environment and Natural Resources should immediately revoke Gazette Notice No. 943 dated 3rd February 2016 and degazette the Boni-Ijara Forest.

Hon. Speaker, I go to the next Petition.

The next Petition was by Hon. Silverse Anami, Member of Parliament of Shinyalu Constituency, on behalf of the residents of Kakamega Forest regarding deforestation in Kakamega Forest. He tabled this Petition on 12th April, 2016. His prayer was that the Committee recommends that the KFS, the National Environment Management Authority (NEMA) and other relevant Government agencies in consultation with the communities find a way of halting deforestation. Two, ensure that reforestation with a view to restoring the indigenous forest is undertaken.

We went to Kakamega on 5th August 2016, held public hearings in Isicheno and had a field and an aerial visit to Kakamega rainforest, and held meetings with the KFS.

Our observation on this Petition is:-

- (i) The total area of Kakamega rainforest is not clear as several Government agencies were giving us different figures;

This is very important because sometimes we feel that the KFS is shedding light to our question but it is basically a question of definition. The definition of “deforestation” is “clear removal of all trees”.

The Speaker: Hon. Amina, it is like you are reading all recommendations? You are actually supposed only to lay the Paper.

Hon. (Ms.) Abdalla: I thought it was okay. Let me just say in brief that we agree with the Petitioner that the KFS should reforest the area but disagree with him that there is deforestation. We feel other issues that make the relationship between the KFS and the community around that forest are not good.

With those few remarks, I lay the Report.

The Speaker: Next Order.

NOTICE OF MOTION

ADOPTION OF REPORT ON PARLIAMENTARY SERVICE (SENATE MONITORING AND EVALUATION) REGULATIONS

The Speaker: Hon. Chepkong’ a. Sorry, Cheptumo.

Hon. Cheptumo: Thank you, Hon. Speaker. I beg to give notice of the following Motion:-

THAT, the House adopts the Report of the Select Committee on Delegated Legislation on its consideration of the Parliamentary Service (Senate Monitoring and

Evaluation) (Procedure for Management of Funds) Regulations, 2016 and, pursuant to Standing Order No. 210(4)(b), recommends that the regulations be annulled in entirety.

Thank you, Hon. Speaker.

The Speaker: It is important you also give a copy to the regulation-making authority when you recommend the annulment. Even though I am the one who assigned, the regulations do not originate from me. Anyhow, you will give me a copy for onward transmission to the relevant quarters.

Next Order.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 1ST TO 3RD NOVEMBER, 2016

Hon. A.B. Duale: Thank you, Hon. Speaker.

Pursuant to Standing Order No. 42(2)(a) and on behalf of the House Business Committee, I rise to give the following Statement:-

As usual, the House Business Committee met on Tuesday this week. From the outset and without anticipating debate, I wish to remind Members that the House is scheduled to proceed for a short recess commencing tomorrow as per our calendar. As a result of this, the House Business Committee has not scheduled any business for next week.

The following businesses will be accorded priority when the House resumes from recess:-

(i) Consideration of the Departmental Committee on Administration and National Security on the vetting of the nominee for the appointment of the chairperson of the National Authority for Campaign Against Alcohol and Drug Abuse (NACADA);

(ii) The Second Reading of the following Bills:-

The Contempt of Court Bill, 2016;

The County Assembly Service Bill (Senate Bill No. 27 of 2014);

The National Youth Service Bill (Senate Bill No. 26 of 2014);

The National Honours (Amendment) Bill (Senate Bill No. 16 of 2014);

The National Flag, Emblems and Names (Amendment) Bill (Senate Bill No. 2 of 2013); and,

The Penal Code (Amendment) Bill 2016.

The House will consider several pending Committee Reports.

The Government through the Ministry of Energy and Petroleum is implementing the second phase of the Last Mile Connectivity Project. Members are encouraged to submit their proposals on the allocations where the transformers will be placed.

I lay the Statement on the Table of the House.

The Speaker: Leader of the Majority Party, I am assuming that Members are aware of the calendar. Is it fair to assume that everybody knows about the calendar? You passed that calendar in February this year, but I can see bewilderment. The reason I am raising this point is because the House Business Committee decided to extend that period by an extra one week on account of some engagements that Members are said to have in the constituencies. That is so that the House resumes on 15th November 2016. Is that correct, Leader of the Majority Party?

Hon. A.B. Duale affirmed.

Hon. Speaker: It is because I can see the Member of Mwingi Central a bit amused by the mention of “the calendar”. What is the issue, Leader of the Majority Party?

POINT OF ORDER

DE-WHIPPING OF MEMBERS FROM COMMITTEES BY POLITICAL PARTIES

Hon. A.B. Duale: Thank you, Hon. Speaker. I rise to seek your direction on a matter of great importance to this House arising out of the application of Standing Order No. 176 which deals with de-whipping of Members from Committees by political parties. Standing Order No. 176 of the National Assembly Standing Orders provides that a parliamentary party that nominates a Member to a select committee may give notice in writing to the Speaker that the Member is to be discharged from a select committee. The discharge of a Member shall take effect upon receipt by the Speaker, of that notice.

As you are aware and pursuant to Standing Order No. 176, several Members have in the recent past been discharged from Committees by their political parties in seeking to enforce discipline within their parties. Consequently, a question has arisen on the constitutionality of the act of the political parties de-whipping its Members from Committees. This is a very serious matter that I want you to rule on. It is on this basis that I rise to bring to the attention of the House the following fundamental issues:

As you are aware, pursuant to Article 124 of the Constitution, each House of Parliament may establish committees and shall make standing orders for the orderly conduct of these proceedings, including the proceedings of committees. In this regard, Standing Order No. 176 can be invoked by political parties, in terms of discharging its Members from the Committee as a disciplinary measure, noting that the Standing Orders are meant to ensure the orderly conduct of the proceedings of a Committee in terms of the reading of Article 124 of the Constitution. A close reading of Standing Order No.176 indicates that all that it takes for a Member to be discharged from a committee is for the parliamentary party that nominated him to a select committee to give notice in writing to the Speaker that the Member is discharged from that Committee.

Article 47 of the Constitution provides that every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The provisions of Article 47 are further amplified in the Fair Administrative Action Act No. 4 of 2015. Further, Article 50 of the Constitution exposes the right to a fair hearing hence a person cannot be condemned without a hearing.

Additionally, Article 236 of the Constitution provides that the person or a public officer shall not be subjected to disciplinary action without due process of law. It is well documented in Article 236 of the Constitution on the principle of due process of law. As you are aware, and pursuant to Article 260 of the Constitution, Members of Parliament are public officers. In this regard, to what extent - and I want you to answer this question - can political parties invoke the provisions of Standing Order No. 176 against certain errant Members despite the provisions of Articles 47, 50, 236(b) and Fair Administrative Action Act No. 4 of 2015?

(Hon. Mirenga stood in the gangway)

Hon. Speaker, Hon. Ken Obura should sit because the issue I am raising is of great concern to him as a Member of Parliament. So, he should listen to me. Despite the provisions of Articles 47, 50, 236(b) of the Constitution and the Fair Administrative Action Act No. 4 of 2015 combined together *vis-à-vis* Standing Order No. 176 where is the law heavier? It is heavier in the Constitution because it is supreme. It is not the Standing Orders. The Standing Orders draw powers from the Constitution.

Further, pursuant to Standing Order No. 176, once a Member is discharged from a Committee he or she forfeits the rights and privileges that arise from being a Member of that Committee and these include sitting allowance and other benefits. To what extent, therefore, do the provisions of Standing Order 176 offend the property right of a member in terms of Article 40 of the Constitution, which spells the fundamental right to property?

Moving on, pursuant to Article 95 of the Constitution, a Member of the National Assembly plays the role of representation, legislation and oversight on behalf of the people of the constituency he or she represents. In this regard, once a Member is discharged from a Committee, he is not able to execute the three functions and more specifically the function of oversight. This is a very serious matter.

Further, Article 92(c) of the Constitution provides that Parliament shall enact legislation for the regulation of political parties. Article 92 has, however, to be read together with Article 103(1)(e) of the Constitution which provides that the office of a Member of Parliament becomes vacant if having being elected to Parliament as a member of a political party, the Member resigns from the party or is deemed to have resigned from the party as determined in accordance with the Political Parties Act, 2011. Section 14(5) of the Political parties Act of 2011 spells out the circumstance under which a person is deemed to have resigned from a political party, which includes if a person, who while being a member of a political party, in one way or the other publicly advocates for the formation of another political party. A political party can, therefore, invoke the provisions of Section 14(5) of the Political Parties Act if it seeks to discipline an errant member who has offended the provisions of Section 14 of the Political Parties Act. However, such a member must be accorded a fair hearing prior to being expelled from the party. That is why our colleagues who were deemed to have moved to another party are now facing the political party tribunal. They have a prominent lawyer who served Ruto, the Deputy President, and I many years ago when were chased away by the ODM. History is repeating itself. Mr. Kioko Kilukumi was our lawyer. Unfortunately, Hon. Mpuru Aburi, who was an ODM activist is the one who took us to court.

(Laughter)

Today, the same Mpuru Aburi has been chased and he is in court. History is repeating itself. Such members may be accorded a fair hearing before being expelled. Indeed, Section 14(7) of the Political Parties Act further provides that a member of a political party may only be expelled from that party if he has infringed on the constitution of the political party and after the member has been accorded a fair opportunity to be heard in accordance with the internal party dispute resolution mechanism as provided for in the Constitution.

A whip of a political party cannot purport to sit in his office without giving Members fair hearing as provided for in law and then deliver a letter to the Office of the Speaker and the following day, these members have no *locus standi* in Committees. Additionally, Section 40 of the Act establishes the Political Parties Dispute Tribunal which has the jurisdiction, among other

things, to make a determination between a member of a political party and his party. However, the Tribunal may make a determination through an internal political party dispute resolution mechanism. One may also choose to appeal the decision of the Political Parties Dispute Tribunal at the High court, Court of Appeal and subsequently the Supreme Court. My inference is this: These Members cannot be de-whipped until and unless the political parties dispute resolution mechanism is sought, until they go to the High Court, Court of Appeal or Supreme Court. If in that process they are expelled, then they can be de-whipped but now they cannot be de-whipped.

Hon. Speaker, in conclusion, due to the provisions of Articles 92 and 103(1)(e) of the Constitution as read together with Section 14 of the Political Parties Act that takes precedence over any other disciplinary mechanism of dealing with errant Members, including what is envisaged in Article 176, you will agree with me on the issues I have raised regarding de-whipping of members of political parties, be it the Jubilee Coalition, Coalition for Reforms and Democracy (CORD), Orange Democratic Movement (ODM), Wiper Party, Forum for Restoration of Democracy (FORD) or any other party now and in the future.

Indeed, fundamentally, I will call for the review of Standing Order No. 176. I have raised this matter because the communication and direction you will give will be used by other Parliaments and other Speakers as a precedent. We must be told which law is superior between the various Articles of the Constitution that I have referred this House to, including Articles 47, 50 and 236; and the Fair Administrative Action Act. Which law is superior? Is it not the Articles of the Constitution that I have referred to, read together with Standing Order No.176?

As the Leader of the Majority Party, I must fight for those who are marginalised and endangered in this House. I come from a region where people have been marginalised for many years. That is why some of us voted for the current Constitution. This House does not have the luxury of legislating and at the same time discriminating against certain groups of our citizenry. This is where enforcement of the due process of the law must start. We cannot plant impunity in the precincts of Parliament. We cannot have leaders who, at the stroke of a pen, infringe on the constitutional rights of Members who sit here. I want you to leave a legacy. I keep a file in my office containing all the Communications from the Chair. I am sure that this Communication will help Hon. Chepkong'a and all of us to amend Standing Order No.176. Since, as a House, we approve names of persons to sit in Committees, the right of discharge must also be given to this House. We cannot build semi-gods. That right must be given by law. If today we want to remove Hon. Nyikal from the Committee of Health, this House must have the last say. It should not be Hon. Duale or Hon. Nyenze or any of our party leaders to make such decisions.

Finally, we represent constituencies. Constituency matters are discussed in Committees. Today there is insecurity in Mandera. If we remove Hon. Abdulaziz from the Departmental Committee on Administration and National Security, how will he represent the people of Mandera East on matters of security? Today we are going to debate the Report on the vetting of the nominee for the position of the Deputy Chief Justice and approve it. If you remove Hon. Kaluma from the Departmental Committee on Justice and Legal Affairs, as a lawyer, how does he issue his petition? This is not about Hon. Duale. We should not create leaders who exercise impunity. I am happy that I have never de-whipped a Member from the Jubilee Coalition.

Hon. Speaker, I need direction. I will be very happy if you allow three or four Members to enrich this matter so that you can give a ruling by the time we come back from the short recess.

Hon. Speaker: Leader of the Majority Party, listening to the lengthy submissions that have already been made, I doubt whether anything new will be added by any other person who

purports to want to contribute, save to excite emotions. You have dealt with all the relevant provisions of the Constitution and the Political Parties Act. Fortunately, you know that those are some of the laws I enjoy interpreting, apart from the Standing Orders. Hon. Duale has raised very fundamental issues. It does not matter. Do not even bother pointing at anybody. You think this one has anything new? He has nothing new to add.

Allow me to give a considered ruling when the House resumes because there is no question to be put. He rose on a point of order requesting that I make an interpretation to the various sections of the law, including the Articles of the Constitution that he has referred. Fortunately, I can almost tell you the procedure. The House's Rules Committee is actively involved in this matter. That is why it is at my fingertips. Were it not for the fact that I wanted something to go on record, I could as well have stood here and, in 30 minutes, given you bit by bit, my own view about how each of those Articles relate to other provisions of the law. However, let me do something that is considered. I will not allow any further debate on this matter. Hon. Duale has covered a huge ground. Any further comment will just be a matter of people trying to say that they have been de-whipped and that certain people were dictatorial or draconian. Such words will not make my interpretation any different. I do not require any support now – not on this matter. To be fair, Hon. Duale has spoken for a very long time because the issues are weighty.

Let us move to the next Order.

PROCEDURAL MOTION

EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEE FOR APPOINTMENT AS CHAIRPERSON OF NACADA

Hon. A.B. Duale: 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 Lt. Col. (Rtd) Julius Ayub Githiri, as the Chairperson of the National Authority for Campaign Against Alcohol and Drug Abuse (NACADA) notified to the House on 18th October, 2016 by a further period of not more than 14 days from 1st November, 2016.

Hon. Speaker, without anticipating debate, the House is set for a recess until 15th November, 2016. This is just to comply with the law, more so the Public Appointments (Parliamentary Approval) Act that gives us a timeline of 14 days.

This being a Procedural Motion, I beg to move and ask the Leader of the Minority Party, Hon. Nyenze, to second it so that when we come back from recess we can conclude it.

Hon. Speaker: Proceed, Hon. Nyenze.

Hon. Nyenze: Thank you, Hon. Speaker. I stand to second this Procedural Motion. It is good so that it can thoroughly be deliberated.

I wish to second.

Hon. Speaker: Member for Baringo North, we want to progress to the substantive business before us. Member for Tigania East, you must stop in your tracks.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Hon. Members before we proceed, allow me to recognize the presence, in the Public Gallery, of pupils from Umande Primary School and Eleri Primary School from Laikipia North Constituency, Laikipia County. Welcome to the National Assembly.

Next Order.

MOTION

APPROVAL FOR THE APPOINTMENT OF DEPUTY CHIEF JUSTICE

Hon. (Ms.) Kanyua: Thank you, Hon. Speaker. I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 166(1)(a) of the Constitution, and Section 8 (1) of the Public Appointments (Parliamentary Approval) Act, 2011, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of the Nominee for Appointment as the Deputy Chief Justice of the Republic of Kenya, laid on the Table of the House on Wednesday, 26th October, 2016, and approves the appointment of the Honourable Lady Justice Philomena Mbete Mwilu, as the Deputy Chief Justice of the Republic of Kenya.

Hon. Speaker, in moving this Motion, the Departmental Committee on Justice and Legal Affairs (JLAC) has filed a very detailed Report. However, I want to go into the elements that we considered as a Committee in approving the nominee. I would also like to recommend and request the House that it agrees with Departmental Committee on Justice and Legal Affairs.

The appointment process of the Deputy Chief Justice nominee was handled in a large part by the Judicial Service Commission (JSC). The JSC publicised the Gazette Notice in which they invited applicants for the position. There were 16 persons who responded to that application process. Eventually they interviewed 13 persons; the Report details those who were interviewed and in their recommendations, a letter was written by the Chair of the JSC panel that conducted the interviews recommending Hon. Lady Justice Philomena Mbete Mwilu.

This House received a letter from the Chief of Staff and Head of Public Service informing it of a communication for Lady Justice Philomena Mbete Mwilu for the appointment as the Deputy Chief Justice of the Republic of Kenya.

Hon. Speaker, a notification was issued by the Committee to the public for memoranda on the matter and there were several persons who responded to the notification. I wish to note that the following responded positively recommending Hon. Lady Justice Philomena Mwilu.

- (i) The Catholic Mission of Kaumoni
- (ii) Nyairo and Company Advocates
- (iii) The Hon. Chief Justice David Maraga
- (iv) Justice Paul Kihara Kariuki, the President of the Court of Appeal.

They all were in support of the nominee. In the same vein, an objection was received from Hon. Alice Muthoni Wahome. That objection was dealt with by the Committee. I will show how that was done.

In addition, we received all the clearance letters and certificates from the nominee, the Higher Education Loans Board (HELB), the Kenya Revenue Authority (KRA), the Ethics and Anti-Corruption Commission (EACC), the Criminal Investigation Department (CID) and all of them provided clearance for the nominee.

In accordance with the Public Appointments (Parliamentary Approval) Act No. 33 of 2011 we looked at the following issues in the vetting process: The academic qualifications; the employment record; the professional affiliations; potential conflict of interest; knowledge of relevant subjects; overall suitability for the position; tax compliance, including wealth declaration by the nominee; integrity and morality; jurisprudence, vision, leadership and judicial reforms; access to justice; expectations, and key priorities.

Hon. Speaker, in interviewing the nominee on Tuesday, 25th October, we followed the Public Appointments (Parliamentary Approval) Act and informed the nominee of the memoranda that we had received. In good time, we made available to the nominee the objection by Hon. Alice Muthoni Wahome. The nominee was able to return, in writing, her response to that objection.

The nominee was sworn before she gave her information. On various matters that the Committee questioned her on, we have some of the responses that she gave. She started with self-introduction and the context within which she was nominated for this position. The nominee was born on 15th April, 1958 in Makueni County. She went to Makueni Girls Secondary School for Kenya Junior Secondary School Certificate (KJSC), Muthetheni Girls High School for the East African Certificate of Education (EACE) and Loreto High School Limuru for the East African Advanced Certificate of Education (EAACE) Certificate. She holds a Bachelors Degree from the University of Nairobi (UoN), a post graduate degree from the Kenya School of Law (KSL) and has been admitted to pursue a Master's degree in Law (LL.M) at the UoN. This is a point the Committee noted and wishes to encourage the nominee to pursue her LL.M to completion.

She meets all the requirements of the Constitution of Kenya and has practised as an advocate for 32 years. She has served in law firms and also as a director of a parastatal and other institutions. She has been in the Judiciary for nine years. Her total post admission experience is 32 years.

Hon. Speaker, she is confident about her abilities as a judge having run the Eldoret station when she was a High Court Judge. She had a lot of interaction with the LSK during her time in Eldoret and was promoted to the Court of Appeal in the year 2012. She was cleared by the Magistrates and Judges Vetting Board. There were seven complaints against her, including one by Hon. Alice Wahome and the Vetting Board processed all the complaints mostly touching on delay. She gave satisfactory explanations to the Board at the time, including the fact that when she was in Eldoret she was almost a single judge. This was because there were issues with the judge that she was serving with. During that busy period in that station, there were issues of delay with some of the judgements but in the end the Vetting Board found her fit and suitable to continue serving as a judge in the Republic of Kenya.

She comes to the position with a varied background having served in the private sector, headed an organisation, served as a Judge of the High Court and also in the Court of Appeal.

Hon. Speaker, the Committee was particularly happy that the nominee has capacities in the judicial function and in managerial experience which will be needed in the position she is coming to serve in.

On the issue of delay in hearing of cases and delivery of judgements, the nominee shared with the Committee that before the 2010 Constitution, there were very few judges resulting in delays in judgements. Since then, the number of judges has been increased and there have been programmes like the Rapid Response Initiative (RRI) and the first in, first out, approach. There has also been a programme of working with other strategic partners, the Director of Public

Prosecutions (DPP) and the police in managing delays of hearing of cases and delivery of judgement.

The Committee particularly wants to encourage judges to bring their judgements within the 42 days rule. The issue of delay of cases and delays in delivery of judgements continues to affect judges in their career as they progress upwards. We found out that the nominee was able to answer questions on that matter and especially gave evidence how she would manage the issues better. She shared with the Committee that she has never been found wanting in her performance in the Judiciary, but we still feel that judges should take control and minimise adjournment of cases.

The nominee proposed many strategies of dealing with matters of processing of cases. She told us that in the role of Deputy Chief Justice (DCJ), she would give unqualified support to the Chief Justice (CJ) and ensure that the returns that are made by judicial officers are made regularly and that there is supervision of those returns.

It was our view, after hearing the nominee, that judgements should be well done and we should have both volume and quality. As she takes the position of the DCJ, she should ensure and encourage that matter in terms of performance of all other judges. She said that she would strengthen the check system and the target system where every judicial service officer has a target of the number of judgements and cases that they should handle.

She raised the matter of the ICT compliance and the need for the country to do away with long hand recording proceedings. She will also ensure that judges and magistrates make adequate arrangements when they are away from their duty stations. If there is a reason why a judge or magistrate will not be in the duty station, it should be communicated early on to the counsels and those whose cases are listed for that day.

There was an interesting debate on the matter of gay relationships and her views on it. Her answer was that if she is confronted with the issue, she will first determine whether it is a matter of choice or whether it is an inborn issue. If it is a matter of choice, the Constitution protects freedom of association with regard to the lifestyle one chooses, but in the same vein, marriages by persons not of the opposite sex are not allowed by the Constitution of Kenya, 2010.

(Applause)

On access to justice and lack of infrastructure and the distance between the courts, her views are based on the transformation framework that the Judiciary continues to implement and she will pursue the programme and ensure that it is implemented so that there is improved court infrastructure across the whole country. Subject to her approval by Parliament, she will work on a budget to address the problem of housing judicial officers. She noted that some counties have allocated land to the Judiciary for construction of houses including my own of Nyeri where we invite the Judiciary to construct residential premises for the members of the Judiciary to avoid conflict of interest with some landlords that we have seen.

On her views on public interest litigation, the question of the role of courts in development in this country continues to be under scrutiny. There has been a feeling that courts in this country are impeding development by the orders that they give. When the question was put to the nominee, she said that she would sensitise her colleagues through workshops and regular meetings to hear cases on merit and avoid granting injunctions where parties are not interested to pursue the case on merit. She was of the view that every judge is independent and cannot be directed even by the CJ, but on the matter of speeding up trials, the discussion can be

heard by judges. Where possible, a judge may refuse to grant an injunction so as to fast-track the hearing of the case in substance. Where an injunction has to be granted, the court should hear the matter on a day to day basis for expeditious disposal. The Constitution allows public interest litigation. It is up to the court to determine whose interest is more important than the other. The best approach is to have speedy determination of cases in court.

This House has been on record raising the issue of the role of injunctions as far as matters of development are concerned. We support the nominee's position that these cases be heard expeditiously and if she is approved by this House, she takes up the matter of supervision and ensures that such case are heard expeditiously.

On the question of separation of powers, again an issue that has exercised the mind of the Committee and of this House, she was of the view that the mandate of the Judiciary cannot be touched by any other arm of Government, but that does not mean that there cannot be consultation. The Judiciary, in its determination and decisional mandate cannot be interfered with. The nominee introduced, in the interview, a very interesting concept that we would wish to support; constructive interdependence- that the three arms of Government should have constructive interdependence among themselves. The Judiciary should engage other arms of Government to ensure that ---

(Technical hitch)

Thank you, Hon. Speaker. On jurisprudence, the issue came up before the Committee. On the divisions in the Supreme Court, the nominee had particular solutions to all those matters. The nominee was asked questions on various other issues, but I want to particularly point out the issue of the two-thirds, the issue of gender and women rights issues. She confirmed to all present that she continues to be a champion for the women's course and she gave us the history of the case with Hon. Alice Wahome which arose from the two-thirds Supreme Court case. The nominee agreed that there is sexual harassment in the Judiciary which she will address through a policy intervention.

On the issue of Judicial Service Commission (JSC) members appearing before a court, she was of the view that judges can be firm but in the fullness of time, that issue should be considered for legislation.

On semi-autonomous complaints mechanisms, she felt that that is a matter for the House to deal with. An interesting issue arose as to the tenure of the DCJ. The nominee having been born in 1958, has 12 years to serve in the Judiciary. She was of the view that there is no tenure for the DCJ. On this matter, the Committee had an unpleasant experience with the former DCJ. When Justice Rawal appeared before the Committee, she confirmed that she would retire at 70 years, but when she attained the age of 70 years, instead of going home, she went to court. So, we put the question directly to this nominee that: "At the age of 70 years, will you leave the Judiciary?" She confirmed that the day she hits 70 years, she would leave the Judiciary, but in the meantime, the Committee is completely convinced that the DCJ should serve for a term of 10 years and not a day more. The CJ has a term of 10 years. If he has a term of 10 years, there would be no reason for the DCJ to serve a longer period than the CJ even though the clear text of the law reflects the CJ and not the DCJ. When the DCJ assumes office, she would need to retire from that position at the expiry of 10 years. She could choose to continue in the Judiciary but on the position of the DCJ, the Committee is clear that the period is 10 years. The Committee will be bringing the necessary amendments to the law to make sure that, that position is respected.

Having looked at all the issues that were raised, our findings were as follows: The Hon. Lady Justice Philomena Mwilu has the requisite qualifications, vast experience in the Judiciary and qualifies for the appointment of the position of DCJ of the Republic of Kenya. Hon Justice Philomena Mwilu has a good record which was availed to the Committee. She has never been implicated in issues of lack of integrity and we found that very commendable.

On the case that she gave the Committee where she was restituted money from clerks who were conducting corrupt practices in her court, we found that she is somebody who can fight corruption in the Judiciary and the Report says as much.

On the final point of the matters raised by Hon. Alice Wahome, the nominee explained to the Committee that she did not cause the delays in the Election Petition No.20 of 2008. There were four interlocutory applications in the matter that had to be dealt with. She explained to the Committee that the bad blood appears to have come from the Supreme Court case and went on to follow the *Alice Muthoni Wahome v. James Maina Kamau* case. In the end, having heard the evidence, looked at the findings and the report that she gave to the Committee, the Committee is completely convinced that the case of Alice Muthoni Wahome was discharged.

The matter was raised before the Judges and Magistrates Vetting Board and in several other places. It was raised before the Committee and it was convinced that the Judge was not guilty of the allegations that were filed. In any case, the matter of bribery, which Hon. Alice Muthoni Wahome alleged on the part of the judge, should be investigated by the Ethics and Anti-Corruption Commission (EACC). As far as the nominee is concerned, we are convinced, as a Committee, that being a Judge in the Supreme Court case, she was one out of three, and so, her judgement was not the binding judgement.

In the matter of *Alice Muthoni Wahome v. James Maina Kamau*, the Judge conducted herself in the manner in which a judge is supposed to in handling that case.

There were a few dissenters in the Committee although majority of the Members agreed that the nominee should proceed to be approved by the House. The following dissented:- Hon. Irungu Kang'ata, Hon. John Njoroge and Hon. Benson Mutura. The rest of the Members of the Committee were in agreement that the nominee for the position of Deputy Chief Justice (DCJ), Hon. Philomena Mbete Mwilu, is a good nominee and her appointment should progress should this House agree with the Report of the Departmental Committee on Justice and Legal Affairs.

We found the Judge to be firm, courageous, religious and positive in engagement of social work including education of students who are not able to pay fees. We found a good combination of judicial function and managerial experience. We found her understanding of the role of the DCJ to be good, which is, firstly, to assist the Chief Justice and secondly, to sit as a Supreme Court Judge in that capacity to make decisions that move the country forward.

We have no doubt in our mind as we move the House to accept and approve the nomination of Philomena Mbete Mwilu. We also looked at the matter of regional balance as it relates to the Supreme Court and we think on that score, again, she fulfils the requirements that we would be looking at. I beg that the House approves the appointment of Lady Justice Philomena Mbete Mwilu to the Office of Deputy Chief Justice of the Republic of Kenya.

Let me end by pointing out that we noted the history and the path other Deputy Chief Justices have taken. The first Deputy Chief Justice was Hon. Nancy Baraza, the second was Hon. Rawal and Hon. Lady Justice Mwilu is the third Deputy Chief Justice. We wish her well as she conducts her work and as she moves to this new office. We are completely convinced that she merits. I am begging the House to approve this particular nominee, so that she assumes this office and serves the Republic in the way she explained to the Committee, that service to

Kenyans is going to be number one for her. As she comes into this position, she has no doubt in her mind that the Judiciary exists for no other reason, but to serve Kenyans.

I beg to move. I call on the Leader of the Majority Party of the National Assembly, Hon. Aden Duale, to second the Motion.

Hon. Speaker: Let us have Hon. Duale.

Hon. Kang'ata: On a point of order, Hon. Speaker.

Hon. A.B. Duale: Thank you, Hon. Speaker. I beg to second.

Hon. Speaker: Just one minute. What is your point of order, Member for Kiharu?

Hon. Kang'ata: Thank you, Hon. Speaker. I would like to raise two points of order with respect to this Report. The first point is the failure of the Committee to attach a minority report for posterity. As per our Standing Orders---

Hon. Speaker: Go back to your seat. You will raise that after the Motion has been seconded.

Hon. A.B. Duale: Hon. Speaker, we are at the tail-end of the 11th Parliament and procedure is becoming an issue. Issues can only be raised after the Speaker has put the Question. Those who have issues must wait for me to finish. I am seconding the Motion.

I thank the Departmental Committee on Justice and Legal Affairs and the Judicial Service Commission for their wisdom in thoroughly vetting, interviewing and picking Justice Philomena Mwilu as the next Deputy Chief Justice.

Secondly, I thank the Departmental Committee on Justice and Legal Affairs for giving a chance to all those who had issues including my good friend, Hon. Alice Wahome. It is very clear that Hon. Kang'ata is one of the people who have dissented. Before I even talk about Hon. Philomena, I want to go on record that Hon. Kang'ata was the lawyer for the young female security guard who hounded the then Deputy Chief Justice, Nancy Baraza, out of office. As we debate, we should know the connection.

From the Report of the Committee, Lady Justice Philomena has all the required qualifications and experience to be the next DCJ. During her vetting, which I watched and I have looked at the Report, she exhibited proper understanding of the law. She served as a Judge of the High Court and of the Court of Appeal. She served many organisations as a Legal Counsel and as a secretary to many boards. She understands the doctrine of the separation of powers within the three Arms of Government with respect to the constitutional territories.

She emphasised that there must be a constructive interdependence between the Judiciary and the other two Arms of Government. This is what Chief Justice Maraga and Lady Justice Philomena said. They must live up to their word. I am sure if they do not live up to their word, the Departmental Committee on Justice and Legal Affairs will call them back or any one of us can table a Motion to discuss them. The provisions are very clear.

She gave her vision for the Judiciary which is to ensure speedy dispensation of justice where cases are decided on merit. Lady Justice Philomena must help her colleagues. She must lead from the front in making sure corruption related cases are dealt with. That is where the issue is. She and the Chief Justice must set up a court that deals with corruption. They must sit for 24 hours, 7 days a week and sentence to jail those who play around with public resources.

She also said that she has a vision on how to clear the backlog of several cases pending before the Judiciary. She has a vision in as far as the automation of the Judiciary is concerned. We are in the digital era. This is a digital Government.

We cannot have our children in Class One being digital and our judges using shorthand. That is not the right thing. So, we need to do an automation of the courts. She agreed that she believes in the principle of transparency and fairness in the adjudication of cases and, thereby, create the necessary confidence and respect in the administration of justice.

The Supreme Court, in which Philomena will sit, is composed of seven wise men and women. I will be happy if this House agrees with me that all the communities, ethnic and religious diversity of our country is represented there. Those of us who live in the eastern part of Kenya like my friend, the Leader of the Minority Party, are represented. The pastoralists must be represented by Lenaola and the Muslims by Judge Mohammed Ibrahim. My friends from the Lake and Western regions must be represented by Smokin Wanjala and Dr. Ojwang'. This is the Kenya we want to build. Our great and able lady Justice Njoki Ndung'u will look after the Mt. Kenya region and, of course, Lenaola will also cover the whole of the Rift Valley. This is where we want Kenya to be.

We want Justice Philomena to be counted as a Deputy Chief Justice who will respect the independence of Parliament. We do not want to have a situation where when people come with whistles, the Standing Orders deal with them and they are sent out for four months, they go to a judge and sneak through the backdoor. Philomena, I hope you are watching me. Last week, the Speaker and I attended the swearing in of the Chief Justice and he told me that he was watching me with a pen and paper. I hope Lady Justice Philomena is watching this House with a pen and paper and what every Member says, she notes it down and will implement it.

We represent the people. The litigants who go court, those who are in jail, we are their Members of Parliament. Lawyers who go to court like Ahmednassir, I am his Member of Parliament and even judges including Philomena. I am sure she comes from a constituency in Makeni County, but I am not sure whether it is Hon. Maanzo's constituency. I understand it is Hon. Makenga's constituency. We want Judges Philomena and Chief Justice Maraga to reclaim back the Judiciary from activism. The Judiciary we passed under the new Constitution led by my very good friend, Hon. Willy Mutunga, to some extent, got lost. We want the Judiciary to be returned back to its place in the Constitution.

One of the reasons I want to support Philomena is that she really believes in the African culture and she said it. In fact, she spoke for the Muslims on polygamy that people must marry four wives. I have one, but I have a strategic plan of marrying the other three in the next five years. Philomena spoke on behalf of the African men and Muslims. The only place where she slipped a bit was about guys of the same sex who want to do some funny business in our country. I want to go on record that I will not live in Kenya where people of the same sex will get married. I am not afraid. She never supported them, but she said that they are in existence.

Today, this House must come out very clearly. Those of you who are good Christians and Muslims know what the Bible and the Quran say about human beings who would want to defile the concept of creation. God created a man and a woman for a purpose. It is like night and day. You cannot overturn creation and the purpose of the Almighty God. Philomena must instill that in her leadership to the other judges that if they believe in something, they are there to serve the people of Kenya.

Secondly, I want to request my colleagues to build a Kenya in which all of us will live in happily. Let this House rise above ethnic politics, that when someone from your community is being vetted, you appear in the Committee. Philomena Mwilu is not going to serve the Kamba community. She is ours. She is a Kenyan and not from Eastern Province. She was only born in Makeni one day, just the way I was born in Garissa and she is a Kenyan. We must support her

together with Justice Maraga. We should stand with them and make sure the Departmental Committee on Justice and Legal Affairs gives them all the necessary support and resources, so that if the Judiciary, Parliament and the Executive work well, Kenya will be a good place to live in.

This afternoon, I want to ask my colleagues to also pray for Philomena because we saw what Nancy Baraza went through and also what Lady Justice Rawal went through because of her age. She never left that office in an honourable way. Philomena is a Catholic and she must get the clergy to pray for her in that office, so that she does not take the route her predecessors have taken. We will pray and support her. I want to personally ask Members this afternoon to pass her name and ask the Speaker and the Clerk to submit the necessary instruments to State House and tomorrow, Friday, just like the other Friday when Justice David Maraga was sworn in, she will also be sworn in.

I beg to second.

Hon. Speaker: Hon. Members, before, I propose the Question, I want to make a correction that Justice Maraga was sworn in on Wednesday, 19th October 2016. Friday was 21st October, but because Thursday was Mashujaa Day, I am sure the Leader of the Majority Party must have assumed that it was a Friday.

Hon. Members, including the hardworking Member for Kibra, congratulations for some of the great things that you are doing.

(Question proposed)

Hon. Members, before I allow debate, allow me to make this Communication as I had earlier indicated.

COMMUNICATION FROM THE CHAIR

VIOLATION OF LABOUR LAWS AND TAX EVASION BY BIDCO AFRICA LIMITED

Hon. Speaker: This is on consideration of the Petition by concerned citizens on continued violation of labour laws and tax evasion by Bidco Africa Limited.

Hon. Members, you will recall that on Tuesday, 25th October 2016 during the Afternoon sitting, the Member for Kiambu, Hon. Jude Njomo, presented a public Petition on behalf of former and current employees of Bidco Africa Limited.

The Petitioners on whose behalf the Petition was presented prayed that the House-

- (i) Investigates and inquires into the allegations on the matters raised in the Petition;
- (ii) Requires the Kenya Revenue Authority, pursuant to the powers bestowed upon it by law, to investigate the tax evasion practices espoused in the Petition and report to the National Assembly, the Petitioners and the public as a matter of urgency;
- (iii) Requires the State labour and employment institutions to urgently address their concerns and take appropriate action; and,
- (iv) Makes any other order or direction that it deems fit in the circumstances of the Petition.

Hon. Members, you will further recall that I committed the subject Petition to the Departmental Committee on Labour and Social Welfare to consider and report its findings to the House within 60 days in accordance with the Standing Order No.227(2).

Since the committal of the Petition, I wish to bring to the attention of the House that I have received letters from two law firms, namely Ngatia and Company Associates Advocates and TripleOKLaw Advocates both dated 26th October 2016. The two law firms claim to act for Bidco Africa Limited which is the subject of the Petition. In their letters, it is contended that the issue of tax evasion for which the intervention of the House has been sought through the Petition is currently before court in two cases.

(A phone rung)

Hon. Members, I think it is only fair to have some element of decorum. I will repeat. The two law firms claim to act for Bidco Africa Limited, which is the subject of the Petition. In their letters, it is contended---

(A phone rung)

I hope the Serjeant-At-Arms can pick out the Member whose phone is causing all this interruption.

Hon. Members, is it Hon. Momanyi? It is rude to allow your mobile phone to ring loudly. It is just courteous to put it on silent mode.

In their letters, it is contended that the issue of tax evasion, for which the intervention of the House has been sought through the Petition, is currently before court in two cases, namely, High Court Civil Appeal No.33 of 2016, the parties being the Commissioner of Customs Services vs Bidco Oil Refineries Limited filed on 29th January 2016 and High Court Petition No.217 of 2016, the parties being Okiya Omtatah Okoiti & Another vs Bidco Africa Limited and four others filed on 26th May 2016.

The letters urge the House not to consider the Petition in light of the pending proceedings and further note that Paragraph 11 of the Petition is misleading to the extent that it avers that the issues in respect of which the Petition is made are not pending before any court of law or any constitutional or legal body. Their averment is to the effect that the subject matter of the Petition, in so far as it relates to the issue of tax evasion, is *sub judice*.

Hon. Members, the *sub judice* rule is set out in Standing Order No.89, which provides-

“(1) Subject to paragraph (5), no Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.

(2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

(3) In determining whether a criminal or civil proceeding is active, the following shall apply-

(a) criminal proceedings shall be deemed to be active when a charge has been made or a summons to appear has been issued;

(b) criminal proceedings shall be deemed to have ceased to be active when they are concluded by verdict or sentence or discontinuance;

(c) civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made until the proceedings are ended by judgment or discontinuance;

(d) appellate proceedings, whether criminal or civil, shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.

(4) A Member alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.

(5) Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the House to a Committee.”

The rule is premised on the constitutional principle of separation of powers by which Parliament should not be seen as trying to deal with matters that properly belong to the Judiciary. For the rule to apply, the matter alleged to be pending before the court or other legal body must be active and there must be a likelihood of prejudice to its fair determination of the issue under consideration if the House or its Committee refers to it in debate.

I must note that the House voluntarily imposes the rule on itself subject to the discretion of the Chair and that the Chair has discretion to allow reference to a matter notwithstanding that it is active and that there is a likelihood of prejudice to its fair determination by the courts.

I note that the letter received from Ngatia and Company Advocates encloses the pleadings filed by Mr. Okiya Omtatah Okoiti in High Court Petition No.217 of 2016. In the case by Mr. Omtatah, he seeks a number of declarations from the court against Bidco and other respondents including and I quote:-

“A declaration that, as at 31st December 2015 and as stated in the whistle-blower report, the 1st Respondent’s total tax exposure on the unpaid duty (including Value Added Tax) was Kshs4,394,779,047.00.”

The above declaration sought from the court is similar to the one sought in the Petition seeking the intervention of the House. The discussion of the issues relating to tax evasion by the subject of the Petition may, indeed, in my view, prejudice the fair determination of the cases.

Hon. Members, you will also note that the Standing Order No.223(g) requires a Petitioner to indicate whether issues in respect of which the Petition is made are pending before any court of law or other constitutional or legal body. The object of this Standing Order is to provide the House with information it may use to determine whether consideration of a Petition and the resolution of issues arising from it may prejudice their fair determination by a court or other constitutional or legal body concurrently dealing with the same matter.

This, therefore, begs the question why the Petitioners wilfully averred that there were no pending proceedings in court over the subject matter of the Petition relating to the issue of evasion of taxes. This may only lead to the inference that the disclosure of that fact would have adversely affected the cause of the Petitioners.

Hon. Members, in addition to the foregoing, I note that Bidco Africa Limited is a privately owned company. I have previously pronounced myself on the extent to which the House may interrogate the affairs of individuals and private companies. It is not to say that the jurisdiction of this House may be ousted by that existence alone. I trust that the matters being prayed for here in this Petition, especially with regard to labour violations are perfectly within the remits of this House. In my view, I trust that the Departmental Committee on Labour and Social Welfare would take the pronouncements that I have made in the past relating to

individuals and private companies as well as the fact that, that does not oust their jurisdiction. In addressing this matter, the Committee is directed that in its consideration of the Petition, matters touching on issue to do with taxes payable by the subject of the Petition must be avoided pending the final determination of that matter in Civil Appeal No.33 of 2016 and High Court Petition No.217 of 2016 since any resolution of the House relating to the issue of that would still require that the matter may end up being taken up by other relevant agents of Government, which might still end up going to the same civil jurisdiction of the High Court and other courts superior to it.

I, therefore, rule that the Petition will continue to be considered by the Departmental Committee on Labour and Social Welfare to the extent only of the matters relating to labour laws violations. The Committee is accordingly guided.

I thank you.

(Applause)

Leader of the Minority Party.

(Resumption of debate)

Hon. Nyenze: Thank you, Hon. Speaker, for giving me a chance to contribute to this very important Motion. I congratulate the Departmental Committee on Justice and Legal Affairs for doing a good Report. I also congratulate the Judicial Service Commission (JSC) because they conducted very rigorous interviews which touched on every aspect.

Hon. Justice Philomena Mbete Mwilu is a very qualified and seasoned advocate and a legal practitioner who has served for 32 years, nine of which have been spent on the bench. Justice Mwilu has an LLB and is pursuing her LLM. She is very competent with various aspects of Kenyan law and is, therefore, very balanced in terms of judgements. Justice Mwilu is a strong Christian. I watched her on television being interviewed and she answered the questions in a composed and elaborate manner. She is morally upright and her integrity is above board. I have no doubt that by supporting the Committee's recommendations and by us approving the appointment of the Deputy Chief Justice in the person of Justice Mwilu, Kenya will achieve a lot. I, therefore, urge this House to support this Motion.

Justice Mwilu supports and believes in the two-thirds gender rule. I am sure when she gets to that position, she will go further to make it a reality. I cannot say much. We know that our judicial system faces several challenges and one of them is corruption. That has to be addressed. There are also challenges in the judicial system where there is delay in clearing cases. That has led to a backlog of over 650 cases. A good example is the case of Mbiyu Koinange, which took 35 years to be concluded. We have cases such as Goldenberg, Anglo-leasing, and so many others that have taken years to conclude. These are issues that I am sure Justice Mwilu, while supporting the Chief Justice, David Maraga, will address. The two will make a good pair.

The Judiciary has outdated laws that need to be done away with. Those laws cannot administer justice the way they are. We know there has been wastage of resources. This House allocates billions of shillings to the Judiciary, but we get a lot of complaints about misuse of that money. Our judicial system lacks prosecutors. There is backlog of cases because of lack of prosecutors. These are things that should be balanced.

In the interest of time and I can see many Members want to contribute from the mood of the House, I do not want to take a lot of time. If we support the Departmental Committee on

Justice and Legal Affairs Report and approve the appointment of Justice Mwilu, this country will get an experienced, composed and liberal person who has fair judgement. The JSC had a very elaborate way of vetting. For them to have come up with that name, they must have burned the midnight oil. I support this Motion. I also urge my colleagues to support this Committee and approve the appointment of Justice Mbete Mwilu to deputise Justice David Maraga.

Hon. Speaker: Member for Kiharu.

Hon. Kang'ata: Thank you, Hon. Speaker. I draw the attention of Members to Article 45 of the Constitution which establishes the right to family. The family unit complements the role of a State. When you look at how humans have been evolving since the time they were created by God or even for those who do not believe in God, since the so-called Big Bang Theory, family has been a very crucial unit of the society.

Over the years, there have been very major attacks against the family unit. One of the ways in which modern times humans have been attacking the family unit is developing ideas where the centre of the world is on the individual. Therefore, you establish, under the guise of the so-called human rights regime, ideas of freedom to do whatever you want to do, say, freedom of sexual orientation and so on. Some of these ideas do not make sense at all and that is why I am opposing the nomination of this nominee. For instance, I posed the question in the Committee:- What is your view about same sex relations? The answer that she gave, in my opinion, exposed a candidate who is not deep in what we call jurisprudence.

Jurisprudence is the philosophy of law. When you say, for instance, that two people have the right to do whatever they want to do so long as a State does not interfere or what they do does not affect other people's rights, you fail to appreciate so many things. One, when you look at our Penal Code, there are so many victimless crimes, for instance, incest, namely, you have a sexual relationship with your relative. When you say you support gay rights on the basis that these are freedoms that you can choose with your partner, then what do you make sense of that?

(Loud consultations)

Hon. Speaker, I was in that Committee and I am the one who posed that question.

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

Hon. Speaker: Hon. Kaluma, are you raising a point of order?

Hon. Kaluma: No. It is Hon. Mutambu.

Hon. Speaker: Hon. Joe Mutambu, what is your point of order? Hon. Kang'ata, you resume your seat when a Member is on a point of order.

Hon. Mutambu: Is the Member in order to mislead the House by the way he is speaking? Is he promoting gayism or is he contributing to the debate in relation to Philomena Mwilu? Is he in order?

Hon. Speaker: The only thing is whether he is in order to mislead the House. As regards the rest, let him speak his mind.

(Laughter)

Hon. Kang'ata: Hon. Speaker, allow me to explain my point. I am one of the people who champion for the so-called "family unit." I always oppose anyone who does not promote the family unit at any forum. In other jurisdictions, like the United States of America, one of the key contentious issues is nomination of people for appointment to serve in the Supreme Court. That

is always an area of contention, even currently between the Democrats and the Republicans. People who value the importance of the Supreme Court will always oppose anyone who supports it. If you are a socially conservative like me, who believes in religion and the importance of a family unit, you will always oppose the appointment of a nominee who supports gay rights and abortion.

I stand here as a key defender of the family unit. I want to oppose the nomination, for instance, of Justice Lenaola. We have no power to vet Justice Lenaola because he went on record and gave his views on gay relations.

Hon. Speaker: Hon. Kang'ata, observe the rule of relevance. We are not dealing with Justice Lenaola here. We are not going to allow Members to use the privilege of the plenary to cast aspersions on other people who cannot defend themselves here. If you want to attack Justice Lenaola, you can go and do so outside this House so that you can deal with him.

(Applause)

Hon. Kang'ata: Hon. Speaker, I withdraw. However, when I put the question to Justice Mwilu as to what her views were on this subject, she clearly expressed herself on the basis of the answer that was given.

I oppose because those statements, in my opinion, denote her as a person who does not appear to appreciate the need to uphold the family unit. As Members of Parliament, we have been given this role by our voters. That is a key reason for those of us who are Christians. As a conservative Catholic, I am of the view that we must ensure that the Supreme Court is not comprised of people who hold such views. What will happen if a petition is filed in the High Court or in the Court of Appeal? We all know the jurisdiction of the Supreme Court. They will make a finding, which cannot be overturned by any other authority on this land. It becomes a precedent under the Constitution. A finding of the Supreme Court is binding to all the other courts. Therefore, we must look at the philosophy of the people we are appointing to that court. In my case, I asked that particular question to inquire into the philosophy upheld by that Judge. From the answer that she gave, I realised that her philosophy does not rhyme with my philosophy of a person who believes in strong religious grounds. I supported Chief Justice Maraga for only one reason, namely, when he said he was a strong Christian. On that basis alone, I knew that he is the kind of person who, if such a petition goes to the Court of Appeal, can stand with strong Christian values. He wanted to bring a demarcation between private values and legal values. Those who have learnt jurisprudence know that this is usually a fallacious demarcation. You cannot say that you are a Christian and you love each and every person. You can as well argue that way. Even me, as a Christian, I love robbers and killers, but I do not love their actions. As a Christian, I love gays. I have no problem with them, but I hate what they practice. I would not want them to escalate their evil ways to my children. It is on that basis that I dislike their practice. I urge the Members to rise above any other form of division and look at the larger interests of Christians and people of other religious faiths because the Supreme Court will always deal with those issues since they will always escalate to that level.

On that ground, I oppose and I urge those who know the importance of the Supreme Court, particularly in terms of interpretation of the Constitution, to come up with new norms. We need to ensure that we have people who can retain the moral fabric of this society serving at the level of the Supreme Court. Therefore, I oppose her appointment on the basis of the answer that she gave regarding her views on gay relations.

Thank you.

Hon. Speaker: Hon. Members, let us also appreciate that our courts, whether supreme or whatever, with a few exceptions, deal with all religions, so that we are not guided by just one faith. They deal with people of all manner of faiths. I am not talking about practices or sexual orientation. I am talking about faiths. We must appreciate that the courts are not just going to deal with only one particular religion.

Proceed, Hon. Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker. I rise to support the nomination of Lady Justice Philomena Mwilu for appointment to the Office of the Deputy Chief Justice of the Republic of Kenya. I speak as a practicing Catholic.

Justice Philomena Mwilu is a member of my church, namely, St. Paul University Chapel. Her Curriculum Vitae clearly shows that she is a Catholic. Further, she is a member of the Catholic Women Association (CWA), an association in the Catholic Church composed of women who promote family values. She is also a member of the Catholic Justice and Peace Commission (CJPC), whose objectives include promotion of peace and justice. The doctrine of the Catholic Church expects any practicing Catholic to behave in a manner that conforms to the church's dos and don'ts. Since she is a practicing Catholic, there is no way she can promote matters to do with gays. I listened keenly during the vetting process. The only official document that you can have from the Committee is this Report. I doubt the authenticity of the context that Hon. Kang'ata has brought here. We must proceed on the basis of the official document that we have on this matter. It is clearly stipulated that she is a Catholic and a Member of CWA and CJPC. In order for one to be a member of the Catholic Church, one must subscribe to the doctrine of the Catholic Church. I was in the particular Committee meetings.

Hon. Kang'ata is also a Catholic. As Catholic Members of Parliament, we normally have mass every Wednesday within the precincts of Parliament. We normally pray for the leadership of this country. I remember very clearly that as Catholic Members of Parliament, we prayed for Justice Philomena Mwilu to be nominated and get to this seat. The Bible says that "The fear of the Lord is the beginning of wisdom." All leadership comes from God. Looking at the way things are today, we do not want to rely on hearsay. I have interacted with Justice Philomena Mwilu from the church perspective. She is a humble, simple and courageous person. She is the right woman for this particular position. I request the Members of this House to approve her nomination. I am speaking without fear or favour that this is the right woman we need to work with Chief Justice David Maraga. With Chief Justice David and Deputy Chief Justice Philomena Mwilu at the helm of the Judiciary, I can assure you that corruption will end in this country. Issues of delay of court cases will be a thing of the past. The two of them come from a Christian perspective. Article 45 of the Constitution talks about the family and it states thus:-

"The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State."

The allegations are nowhere in her submissions. I did not see it. So, Hon. Kang'ata should tell us where he got this notion that Justice Philomena supports gay rights. She only mentioned, in line with Article 36 of the Constitution, about freedom of association. So, whoever they are, they have their freedom of association. That does not mean she supports or subscribes to gayism.

I encourage and plead with Members to support this lady of integrity. She has been in the practice for 32 years. She has been in the private, public and religious sectors. So, when it comes

to experience, she cuts across the board. We have been talking about the small issues that were raised by the Member for Kandara, Hon. Alice Wahome. At the end of the day, she is going to see light and those issues are going to be sorted out. The issues in the petition have been there even before. They were there during the Magistrates and Judges Vetting Board and were thrown out. The same issues have been brought here and they have been dismissed. We must weigh and do the cost benefit analysis. This is the time we want to have people who serve God.

Concerning regional balance, Justice Maraga comes from Nyamira County and Lady Justice Philomena comes from the Eastern region. What a good mix! This is a good combination that is going to take this country to greater heights of prosperity. In terms of legislation, we have had different conflicts as far as the three Arms of Government are concerned. We have the Executive, the Legislature and the Judiciary. The three Arms of Government have separation of powers, but they must work interdependently. The Legislature makes laws, the Executive implements laws and the Judiciary interprets laws.

Justice Philomena said clearly that she respects the separation of powers. This is what we want. She agrees in constructive dependency. These are some of the critical values that we are looking for as far as the positions of Chief Justice and that of Deputy Chief Justice are concerned. This position is going to provide leadership. Transformative leadership is what we want. These are the skills that Justice Philomena Mwilu has. We do not need to look far. I am requesting Hon. Members to support Justice Philomena Mwilu for this position.

We have seen our friends from the Senate suffering. People rush to courts for injunctions. When a governor has an issue and the Ethics and Anti-Corruption Commission (EACC) is supposed to investigate him, he goes to court to seek restraining orders so that he is not investigated. These are the things we are not going to accept. Listening to Justice Philomena, I gathered that she is a courageous lady. I have no doubt that she is not going to entertain such corruption where people rush to court for injunctions for their own selfish interests.

I listened to the President during the Summit of Accountability and Governance held at State House and he was at pains. The Judiciary has contributed so much as far as corruption is concerned. When these two people come to power, namely, the Chief Justice and the Deputy Chief Justice, we want them to have synergy and work together, so that corruption is controlled. Let me not talk much because a lot has been said. I request other Hon. Members to support this Motion, so that Lady Justice Philomena Mwilu can be appointed as the Deputy Chief Justice.

With those few remarks I support.

Hon. Speaker: I can see the Member for Bomet, Hon. Cecilia Ng'etich. All the microphones on this side are not working. I am told some of them are okay. In case you press yours and it does not show red, then smile and raise your hand or as we agreed yesterday, you can even wink.

(Laughter)

Hon. (Ms.) Ng'etich: Thank you, Hon. Speaker. I think the gentlemen do not know how to smile and so, we shall smile on their behalf.

I am here to support the appointment of Hon. Lady Justice Philomena Mbete approval as the Deputy Chief Justice of this country. She is suitable and qualified. She has integrity and leadership qualities.

Hon. Oyoo: On intervention.

Hon. Speaker: What is it Hon. Oyoo?

Hon. Oyoo: Thank you very much, Hon. Speaker. Given the kind of debate that we have had here and given the mood of the House, I suggest that the Mover be now called upon to reply. I realise that people are barely repeating what has already been said. I believe this is the true position.

(Applause)

Hon. Speaker: Very well. Hon. Ng'etich, you have another three minutes, so that I can also put that to question.

Hon. (Ms.) Ng'etich: Thank you, Hon. Speaker. I remember the when I was contributing on the debate on the nomination of the Chief Justice, I was cut short by an intervention.

Indeed, she was vetted by the JSC and was further interviewed and vetted by the Departmental Committee on Justice and Legal Affairs and found to have the requisite qualifications. The Committee was acting on behalf of this House. They said she exhibited impressive knowledge on topical issues, including demonstrating understanding of administration and management principles. So, what else do we need from a leader with such qualities? We need somebody with a vision, a person who is able to drive processes. The combination of Lady Justice and the Chief Justice is of high integrity and leadership qualities. There is no doubt that reforms are required in the Judiciary. I am confident that their strong religious backgrounds will stem out the many malpractices that are common in the dark corridors of justice. I am talking about bribery and delayed cases. I believe they will bring reforms and offer justice to all.

Hon. Speaker, I call upon all the Members to support Hon. Lady Justice Philomena for this appointment.

Hon. Speaker: Hon. Members, it was said by Hon. Oyoo that looking at the mood--- I do not know whether Hon. Oyoo was able to see the mood, but having listened to the Members, I will put the question.

*(Question, that the Mover be now called upon to reply,
put and agreed to)*

Hon. (Ms.) Kanyua: Thank you, Hon. Speaker. My reply is very short. Allow me, even though the mood of the House is one that I note, to give the Chairman, Hon. Chepkong'a, Hon. Munuve, Hon. Manje and Hon. Fatuma, one minute each. We are going to be really quick. Kindly, let us start with Hon. Chepkong'a.

(Loud consultations)

In view of the correction, I wish to thank all the Members who have supported the Report. We look upon the House for the approval. As the nominee joins the Supreme Court, we are looking forward to a peaceful election. We are also looking forward to the Supreme Court shaping the agenda of this country in terms of the many issues that are still pending in law.

Hon. Speaker, I beg to reply.

Hon. Members: Put the Question.

(Loud consultations)

Hon. Speaker: Order Members. The Member walking away!

(Question put and agreed)

Hon. Speaker: Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL,

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Order Members. I appreciate the excitement after the approval of the Deputy Chief Justice. Now, that business is over. We have a Deputy Chief Justice (DCJ). So, we go to the next business.

(Hon. A. B. Duale consulted loudly)

Hon. Duale! They are congratulating themselves after passing the Motion on the appointment of the DCJ.

(Several Hon. Members withdrew from the Chamber)

Order, Members! Those who are walking out, please, do so with some decorum. We have some business to do in the House. We are in the Committee of the whole House to debate the Statute Law (Miscellaneous Amendments) Bill, Senate Bill No.6 of 2014.

Provisions relating to the National Transport and Safety Authority Act

Clause 2

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There is a proposed amendment by the Chairperson of Departmental Committee on Transport, Public Works and Housing. Yes, Chair.

Hon. Ganya: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 2 of the Bill be amended in the Schedule to the proposed amendments to the National Transport and Safety Authority Act by deleting—

(a) paragraph (a) of the proposed amendment to section 4(1);

- (b) paragraph (a) of the proposed amendment to section 6(1); and,
- (c) the proposed new section.

Hon. A. B. Duale: Explain.

Hon. Ganya: I will explain.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let him do it. He has already moved the amendment. Please, give us the import of the amendment.

Hon. Ganya: This is basically on the National Transport Safety Authority (NTSA), which is a State corporation. On Clause 4(1), the Senate wants to basically bring some ambiguity in terms of the functions of county and the national Government by splitting these functions between the two levels of Government. This is a national Authority under the national Government with national functions. In that light, we do not see any need why it should be made a shared function at this level. However, the actual Act, the National Transport Safety Act, 2012 under Section 21, provides for county transport and safety committee, whereby at the county level, the governor can appoint a committee member to manage safety issues at the county level, but at the national level, we do not see any need why we should have this ambiguity. In this regard, we propose deletion of that particular clause.

The second one is about the board of directors.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Member, it is good to go on record that you are moving the three amendments.

Hon. Ganya: I am moving the three amendments together.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Please, since we are dealing with Section 4(1), allow me to propose the Question, to that section and then we move to Section 6(1) and the last bit.

(Question of the amendment proposed)

For that section, I will give one Member, Hon. Gichigi, Member for Kipipiri, a chance.

An Hon. Member: He is not in.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): He is not in. Hon. A. B. Duale, the Leader of the Majority Party.

Hon. A. B. Duale: Hon. Temporary Deputy Chairlady, the Senate must read the Constitution. They cannot be “squatters” in functions that do not belong to them. NTSA is a national body. It is just like the National Police Service. They have their officers in the village on the ground on all roads. So, I support the Departmental Committee on Transport, Public Works and Housing for diligently seeing these “squatters” called the Senate, who do not read the law. When it comes to mediation, we will have a strong team.

I support. We must protect the Constitution. The Fifth Schedule of the Constitution documents the functions of county governments. Already, we are having a problem with health care and water, for those of us who are pastoralists. If those county guys are told to take care of traffic, there will be death on our roads. I support Hon. Chachu and his Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The last one will be the Member for Igembe. He is not there. Chairperson, the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong’a: Thank you, Hon. Temporary Deputy Chairlady. I support the proposed amendment by the Departmental Committee on Transport, Public Works and Housing as moved by Hon. Chachu Ganya.

It is important that the Senate reads the Constitution. They cannot originate Bills which do not touch on counties. This is a legislation that concerns the national Government. So, in itself, it is unconstitutional for them to bring an amendment. So, this is an unconstitutional amendment that has been brought into this House, which should not even be subject of mediation.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Chair, do you support the amendment or not?

Hon. Chepkong'a: I support the amendment. I am telling the Leader of the Majority Party that he does not need to appoint a mediation team on an unconstitutional amendment.

I support the amendment.

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

Clause 2(b) and (c)

Hon. Ganya: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 of the Bill be amended in the Schedule to the proposed amendments to the National Transport and Safety Authority Act by deleting-

(b) paragraph (a) of the proposed amendment to section 6(1); and

(c) the proposed new section.

This is about the appointment of the board of directors to the National Transport and Safety Authority (NTSA). The Senate proposes that the Council of Governors (CoG) should nominate three members to this board. This is a national body and the board must be appointed by the national Government. We do not see any need for the CoG to appoint three persons to this Authority, it being a national function.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I will give an opportunity to the Leader of the Majority Party.

(Hon. A.B. Duale consulted loudly)

Hon. Duale, you are having a small committee in the House. You know where we meet to consult. I am sure you are consulting on your contributions. Do you want to contribute on this? We are on Section 6(1) of the National Transport and Safety Authority Act.

Hon. A.B. Duale: No, Hon. Temporary Deputy Chairlady. We were dealing with the after-effects of Lady Justice Philomena and Alice Wahome. We have finished.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): We are already past matters to do with the Deputy Chief Justice (DCJ). May I remind you that Hon. Lady Justice Philomena is not part of this House?

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I know her very well. I was dealing with Alice Wahome. After a meal, you must deal with the family. We still want to deal with Alice Wahome.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Member, you are out of order. We are on a different matter. We are in the Committee of the whole House. Do you have any comment on this, Hon. Chepkong'a?

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me hear from Hon. Nyikal.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I really support this amendment. I want to make a statement regarding these county and national Government functions. There is a tendency to mix the issues further. We have the Intergovernmental Relations Act, the Intergovernmental Relations Committee and the Sectoral Committees, if the need for consultations arises. If all institutions start mixing people from both the national and county governments, we will cause a lot of confusion.

Therefore, I support this amendment.

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

(Clause 2 as amended agreed to)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): What is your point of order, Hon. Millie Odhiambo?

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairlady, because the systems are not working, I could not be seen when I was pressing the intervention button to support our Lady Justice. We are now not even able to participate. I do not know how we are supposed to proceed. Are we going to hasten the repair of the system?

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): That is a good question, Hon. Millie Odhiambo. Yesterday and today, you used the Dispatch Box. Being a senior Member of this House, you are noticeable. The way you are dressed today makes you noticeable. You have the legal background.

Provisions relating to the National Authority for the Campaign Against Alcohol and Drug Abuse, Act No.14 of 2012.

Schedule

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There is an amendment by the Chairperson of the Departmental Committee on Administration and National Security.

Hon. (Ms.) Muhia: Thank you, Hon. Temporary Deputy Chairlady. I am standing in for the Chairperson of the Departmental Committee on Administration and National Security, Hon. Kamama. He is not in the House. First, I would like to congratulate Lady Justice Mwilu, who has just assumed office after approval by this House.

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

THAT, the Bill be amended in Clause 2 in the Schedule in the proposed amendments to the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) Act, No. 14 of 2012-

- (a) in the proposed amendments to Section 5
 - (i) by deleting paragraph (b); and
 - (ii) by deleting paragraph (c);
- (b) by deleting the proposed amendments to Section 6.

The Bill proposes to amend the NACADA Act by inserting the words “and the Council of Governors” in paragraph (j) which provides for the function of NACADA to prepare and submit an alcohol and drug abuse status report to both Houses of Parliament.

Article 96(1) of the Constitution provides that the Senate represents the counties and serves to protect the interests of the counties and their governments. It would, therefore, not be necessary for the Authority to submit the said report to both the Senate and the CoG as it would be a duplication of work.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Is there any Member who wants to contribute to this? No one is catching the Speaker’s eye. You have caught my eye, Hon. Chair.

Hon. Chepkong’a: Hon. Temporary Deputy Chairlady, we must support the indomitable lady from Nyandarua. She has spoken well in terms of this Schedule. As she has rightly observed, to require the Authority to forward their report to the Senate as well as to the Council of Governors is duplication. The Senate takes care of the interests of the counties, which includes the CoG. Once the report has been given to the Senate, it is assumed that governors have also received it. If there is any need to call them, it is the Senate to do so to discuss that report.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairlady. I have been listening to the amendment moved by the Member of the Departmental Committee on Administration and National Security, where I also sit. I support that amendment. As a Committee, we agreed that once the report is sent to the Senate, it does not make sense to share the same report with the CoG. When you read the Constitution, it is very clear that the Senate takes care of the interests of the counties. It will just be duplication and spending unnecessary effort to share this report with the CoG.

I support the amendment. It will be good enough to just share the report with the Senate and the National Assembly.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, it is very straightforward. The CoG is not a legislative arm of Government. When I table documents here from the Auditor-General, I do not send them to the President. The moment I table them here, they become public documents. The CoG is an arm of the Executive. This is a function of the Legislature. The moment I table it here, it becomes a public document. So, the Council of Governors (CoG) is an arm of the Executive. This is a function of the Legislature. The Hon. Member for Nyandarua this must be one of the reasons why you should be elected again. I am very happy with the Chairs of the Departmental Committee on Transport, Public Works and Housing, the Departmental Committee on Agriculture, Livestock and Co-operatives and the Departmental Committee on Administration and National Security. This is a serious House.

They have looked at the Senate Bill and seen where it is contravening on its functions. I am sure the CoG is an Executive arm. They are supposed to be summoned by the Senate to answer questions on that Report. The moment it is tabled in the Senate, it becomes a public document and even the citizens in the counties can access it.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you for your comments on the same.

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

(Schedule as amended agreed to)

Provisions relating to the Sports Act No.25 of 2013

*(Sections 4, 5, 6(1), 10, 18(2), 23, 34, 67(1), 68(1)
and New Section 75 agreed to)*

Provisions relating to the Pyrethrum Act No.22 of 2013

Clause 2

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There is a proposed amendment on Clause 2 by the Chair of the Departmental Committee on Agriculture, Livestock and Cooperatives, Hon. Mbiuki.

Hon. Mbiuki: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 of the Bill be amended in the Schedule by deleting the proposed amendments to the Pyrethrum Act, No.22 of 2013 and substituting therefor the following new amendments—

The Pyrethrum Act, No. 22 of 2013

Section 6(2) (a) renumber paragraph (c) as paragraph (e) appearing immediately after paragraph (d);
(b) delete the word “two” and substitute therefor the word “one” in subparagraph (i) of paragraph (e);
(c) insert the following new sub paragraph immediately after subparagraph (i) in paragraph (e)—

“(ia) one person shall be nominated by the Council of Governors;”

Section 6(3) Insert the following new subsections immediately after subsection (3)—

(3A) In nominating and appointing members under this section the nominating persons and bodies' shall uphold the principle of one-third gender representation.

(3B) Appointments to the Board shall take into account the national values referred to in

Article 10 of the Constitution and the principle that the composition of the Board taken as a whole shall reflect the regional and ethnic diversity of the people of Kenya.

The Committee decided to delete all the proposed amendments by the Senate because they seek to amend Section 6(2)(e) which does not exist in the Act. The reason we are proposing this amendment is because the Senate had purported to amend Section 6(2)(e) which does not even exist in the Act. Section 6(2)(a) is just to correct the sequence in the original Act while Section 6(2)(b) is to create a position for---

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Mbiuki, we have Section 6(3)(A) and (B).

Hon. Mbiuki: Yes, Hon. Temporary Deputy Chairlady. We are trying to correct the sequence of the original work. Section 6(2)(b) has proposed to create the position of the CoG appointee. Section 6(2)(c) is to ensure that there is representation from the CoG because pyrethrum is a devolved function.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): What is your import on 6(3)(A) and (B)? Just make a comment on that.

Hon. Mbiuki: The import of this amendment is that the Committee deleted Clause 6(3)(B), because the Senate purported to make amendments to Clause 6(4) which did not exist.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Okay. Having moved the import of the amendments to Section 6(2) and 6(3)(A)(B), is there any Member who wants to comment on this?

Yes, the Chair of the Departmental Committee on Justice and Legal Affairs.

(Question of the amendment proposed)

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the Departmental Committee on Agriculture, Livestock and Cooperatives on the proposed amendments.

What shocks me is that the Senate made an attempt to amend a Section that does not exist. That in itself looks like they do not take their work seriously. I like the proposal by our own Committee, particularly on Section 6(3) on nominating and appointing members. That is the requirement that there must be one-third gender rule. You know these are the issues that we are grappling with. This is in fulfillment of the progressive implementation of the two-thirds gender rule.

This is a very progressive way of dealing with this issue. You can see our own Committee is very cognisant of the fact that the Senate is unaware that there is something called Article 27(8) of the Constitution. Therefore, I must thank this Committee for doing that.

The other proposal I like is 3(B) that the appointments should comply with Article 10 of the Constitution which requires that there must be regional and ethnic diversity of the Kenyan people. This again, goes to speak to Article 100 of the Constitution which requires that there must be ethnic diversity, gender balance and the disabled. This is a very good provision which was ignored by some people in another House.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Senators. Hon. Kajuju, do you want to comment on this?

Hon. (Ms.) Kajuju: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment by the Committee and state that it is important for a person nominated by the CoG to be brought on board in this arrangement. As it has been said, agriculture is devolved and we know expertise will be required in this process.

I also note that the Committee is more gender sensitive than the Departmental Committee on Justice and Legal Affairs where I sit chaired by Hon. Chepkong'a. This is because this amendment does not talk about a progressive approach. It goes direct to the point by saying that gender balance must be realised.

Therefore, I do not think that the thinking of the Departmental Committee on Agriculture, Livestock and Cooperatives is in tandem with the thinking of Hon. Chepkong'a with all the respect I have for him. I also like the fact that it reflects diversity and takes into account that we have very many laws in Kenya which have not been harmonised with the Constitution. Therefore, what this amendment has done is to look at the Constitution and find laws that were passed without harmonisation with the Constitution and make sure that they are captured in those amendments to ensure the same spirit of the Constitution is not lost.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Makali, you want to say something on this?

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairlady. Let me also add my voice in supporting these amendments. They will go a long way in improving the Pyrethrum Act, No. 22 of 2013.

What is very interesting is the inclusion of the CoG. You will realise that the way the CoG is structured has sub-committees which take care of specific devolved functions. Agriculture being one of the devolved functions, it will be important that a member of the CoG sits in this important committee.

Other issues which are also important are issue of gender representation, the one-third representation and regional and ethnic diversity. As you get the board, you need to consider that. The only thing we need to note, even as you consider regional and ethnic diversity of this country, is that it might not be possible to cater for all of them in one board. So, this should be a key principle in appointing all boards so that as you move from one board to the other there is national representation and the face of Kenya is seen in the membership of these boards.

I support.

*(Question, that the words to 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 2 as amended agreed to)

Provisions relating to Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, No.56 of 2012

(Sections 4, 5, 7, 8, 9 and 11(1) agreed to)

Provisions relating to the National Honours Act, No.11 of 2013

(Section 5 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, having gone through the provisions of the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No.6 of 2014), I call upon the Mover to report.

Yes, Hon. Chepkong'a.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No.6 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Members! You can have your seats. May I call upon the Chairperson to do the reporting to the House?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No.6 of 2014) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Yes, Hon. Chepkong'a.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Kajuju to second the Motion for agreement with the Report of the Committee of the whole House.

I thank you.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Speaker, I support and second.

(Question proposed)

(Question put and agreed to)

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move that the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No.6 of 2014) be now read the Third Time.

I want to thank all the committees that were very astute in terms of looking at the Bill as proposed by the Senate and noting the irregularities that were contained thereon. The amendments that have been proposed by all the committees of this House have been very sound, constitutional and reasonable in the manner they have been presented to this House. We hope that when the Mediation Committee is appointed by the Leader of the Majority Party together with the Leader of the Minority Party, they will do so expeditiously so that when we resume – I am not anticipating debate - we pass this fairly quickly because it contains very important provisions that seek to meet the gender quota.

This is a very important Bill. As we continue to discuss the Constitution of Kenya (Amendment) Bill, this is one way Members of Parliament who represent interests of women will see how the male counterparts are seeking to support the progressive implementation of the gender rule as contained under Article 27(a).

With those remarks, I move and request Hon. Kajuju to second. She will not oppose my comments with regard to the gender rule. For your information, she has been very supportive in the Committee. She has been a proponent of the idea that the gender rule needs to be implemented in the manner in which we have proposed.

Thank you.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Speaker, allow me to, first of all, correct my very learned Chairman and Senior Counsel in the profession in which we profess. My reservations have always been noted as far as the use of the word “progressive” is concerned in reference to the gender provision. I hope that he shall apologise and withdraw in due course. We oppose that Bill and we believe it is going to fail.

I second the Motion and pray that it be accepted by this House. I also thank the Committee Members who have worked tirelessly to ensure that everything that relates to the Constitution comes into place in as far as harmonisation is concerned.

I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I see only one request. Hon. Makali, just a comment for Third Reading.

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker. I would like to make a quick comment on this Bill. Let me, first of all, thank the Senate for initiating these amendments. After going through different clauses of this Bill, I realise that there are some areas where it is obvious that the Senate, as the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives said, is proposing an amendment of a non-existent clause. That does not augur well for purposes of law-making. In future, those are areas we need to be careful on.

Now that we have amendments approved by this House, obviously there will be a Mediation Committee. I want to plead with those Members who will be selected to join the Mediation Committee to make sure that the issues we have raised, as a House, are factored into the Bill so that we make a law that is in line with the existing Constitution.

The Constitution is very clear in terms of the roles of the Senate and the National Assembly. There could be some laws talking about the Council of Governors (CoG). It is important that people do their assignments as per the mandate given by either an Act of Parliament or the Constitution.

With those comments, I want to appreciate the input of the two Houses towards the realisation of these amendments.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, thank you for your comments. We are not in a position to put the Question. So, I order that the Question be put at the next appropriate time.

(Putting of the Question deferred)

Next Order!

BILLS

Second Readings

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, for the convenience of the House, Order Nos.11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 are stood down because the Adjournment Motion is due at 5:30 p.m.

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL

THE CONTEMPT OF COURT BILL

THE COUNTY ASSEMBLY SERVICES BILL

THE NATIONAL YOUTH SERVICE BILL

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL

THE NATIONAL HONOURS (AMENDMENT) BILL

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL

THE ELECTION LAWS (AMENDMENT) (NO. 3) BILL

THE PENAL CODE (AMENDMENT) BILL

(Bills deferred)

MOTIONS

ADOPTION OF REPORT ON INVESTIGATION
INTO WILDLIFE POACHING IN KENYA

ADOPTION OF REPORT ON INVESTIGATION INTO
GARISSA UNIVERSITY COLLEGE TERRORIST ATTACK

ADOPTION OF REPORT ON INQUIRY INTO
PROCUREMENT OF APRON BUSES BY KAA

ADOPTION OF REPORT ON INQUIRY INTO
IMPORTATION OF A CONSIGNMENT OF FERTILIZER

(Motions deferred)

Let us move on to the next Order.

MOTION FOR ADJOURNMENT

ADJOURNMENT TO A DAY OTHER THAN
THE NEXT NORMAL SITTING DAY

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order 28 and notwithstanding the earlier resolution of the House of 18th February, 2016 on the Calendar of the Assembly (Regular Sessions), this House adjourns until Tuesday, 15th November, 2016.

The two-week short recess will allow Members to take a break, rejuvenate and adequately attend to the constituency obligations and family matters. We have debated and adopted several Committee reports.

Key among those reports are the Report of the Departmental Committee on Justice and Legal Affairs on the vetting of the nominee for the Deputy Chief Justice of the Republic of Kenya, which was passed this afternoon; the Report by the same Committee on the vetting of the nominee for the position of Chief Justice of the Republic of Kenya; the Report of the Departmental Committee on Finance, Planning and Trade on the vetting of nominees for the appointment to the Central Bank of Kenya Board of Directors; and the Report of the Departmental Committee on Finance, Planning and Trade and the Committee on Regional Integration on the Consideration of the Ratification of the Economic Partnership Agreement (EPA) intended for the partner states of the EAC on one hand and the European Union and its member states on the other hand. I thank Members for that adoption during a special Session.

Finally, the 20th Public Investments Committee Report on audited accounts of State corporations was also adopted during this Session.

We have also passed the Kenya Defence Forces (Amendment) Bill, 2015 and the County Assembly Powers and Privileges Bill, 2014 which is a Senate Bill. Several other Bills are awaiting the Committee of the Whole House and Second Readings.

Similarly, we have adopted Sessional Paper No.6 of 2014 on the National Children Policy and Sessional Paper No.1 of 2015 on National Policy on Elimination of Child Labour.

Upon resumption from the short recess, priority will be given to consideration of the Report of the Departmental Committee on Administration and National Security on the vetting of the nominee for the appointment of the Chairperson of the National Authority for Campaign against Alcohol and Drug Abuse (NACADA).

Other reports to be dealt with are that of investigation into wildlife poaching; investigation into the attack of Garissa University by the Departmental Committee on Administration and National Security; the inquiry into procurement of the apron buses by Kenya Airports Authority (KAA) by the Departmental Committee on Transport, Public Works and Housing; and inquiry into the consignment of fertilisers by the Ministry of Agriculture being done by the Departmental Committee on Agriculture, Livestock and Cooperatives.

As we go on recess, I am sure we will have time to engage our constituency board members. We will also have time to look at the priorities in our constituencies and submit the project proposals for the 2016/2017 Financial Year. We should also submit proposals for the Kshs34 million meant for the development of education infrastructure in each constituency. That way, we shall be doing what we are supposed to do as we approach the 2017 General Election.

Hon. Temporary Deputy Speaker, I want to thank Hon. Wario. We campaigned with him vigorously for a lady called "Fauzia". I have no relation with Fauzia, but Sala Ward is just about 200 metres from my house in Garissa; it is across the river. I am sure that the people of Sala Ward, Tana River have seen the progress route which is to be used in bringing more women to Parliament and county assemblies.

We want women of this country to go to the people and ask for votes. They should convince women and men voters. Days when legislative seats were given for free are long gone. I want to go on record and state that because I am the Leader of the Jubilee Coalition in the House. Our position is to respect democracy. We want more women in the Senate and the National Assembly, and the Government as a whole. That is why this Government has decided to appoint women to very key positions. You can talk about the Ministry of Foreign Affairs and others.

Hon. S.S. Ahmed: Anne Waiguru!

Hon. A.B. Duale: You know you have sat with Waiguru. She is also an intelligent woman in her own way. She is not the first one. Anyway, the Minister for Foreign Affairs is a woman. The Minister for Defence is also a woman.

Hon. Temporary Deputy Speaker, I talked to Hon. Shakeel, who is one of the marginalized Members of Parliament elected by the great people of Kisumu. The people of Kisumu had a choice to elect one of their own, but they decided to give him a chance to be an MP, but not to come and make noise in the House. They are watching you. You are privileged. You know Mahamud, Kamanda, Omar, myself and others come from our constituencies. However, you are marginalized. The people saw the talent in you and they gave you a chance. So, do not come to misbehave in this House.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Duale, speak to your contribution!

Hon. S.S. Ahmed: That is hate speech!

Hon. A.B. Duale: When I am talking, you have to wait for your chance. There is no hate speech there. I enjoy the privilege.

Hon. Temporary Deputy Speaker, Uhuru Kenyatta Government has realized the potential in women. However, in the Legislature things are different. The Legislature must at all times believe in the principle of universal suffrage. It is the people, in their wisdom, who will elect people. They do not elect you because you are a man or a woman; they look at the qualities you possess.

Hon. Temporary Deputy Speaker, during the Committee of the whole House there was an amendment from the Senate targeting Section 2(e) of the Pyrethrum Act. That Section does not exist! You were amending a law that does not exist. So, I want to tell the Legal Department of the Senate, the relevant Committee of the Senate and the Clerk of the Senate that they must be thorough when making laws.

Previously, we amended the National Police Service Act. We amended something through the Departmental Committee on Administration and National Security. However, I saw a Private Members Bill from the Senate purporting to amend what we had already amended. If you look at the Order Paper, you will see a law from the Senate on flags and emblems by Hon. Bony Khalwale. This House dealt with that matter a long time ago through a Bill by Hon. Keynan. So, what are we doing? I think that is why this Senate should only sit for three months in a year. This is based on the workload.

This afternoon I want to thank a great lady called “Philomena Mwilu”. We just passed her to be the next Deputy Chief Justice. Those who say that the Jubilee administration is composed of two tribes are propagandist and their days are numbered. When you say that Jubilee is composed of two tribes only--- I neither belong to the President’s tribe nor the Deputy President’s tribe.

However, I want to tell the country that if you look at the leadership of the National Assembly from the Jubilee side and you compare it with the CORD side, you can tell who is tribal. The Leader of the Minority Party is called “Francis Nyenze” and he is the Member for Kitui West Constituency. He comes from the backyard of the Wiper Leader. His Deputy is Hon. Jakoyo Midiwo, a cousin to the former Prime Minister.

The small seat that remained was given to a man called “Hon. Chris Wamalwa”. He is a distant cousin of the Leader of the Minority Party in the Senate. Go to the Senate and you will find that the Leader of the Minority Party gave himself a job. Now, come to our side. I am the leader. I come from the dessert. I am a Muslim and Uhuru Kenyatta is not one.

I am a Cushite. I think one of them is a Nilote and the other one a Bantu. Look at my Deputy. She comes from the coast. Look at our Whip. He is a Maasai. Today, we have passed the name of a lady called “Philomena” not because of her tribe, but because of her competence.

In this country, we must bring all communities together. We must practice issue-based politics. We need politics that will unite our people. As we go for this recess, we must preach against violence. We must also preach against ethnicity. We must all get united in the war against terrorism. You have seen the card that *Al Shabab* is playing. They intend to kill only Christians. The security apparatus in Mandera must up their game. They know the concentration areas of our brothers, that is, the non-locals. They know where they are in the hotels and estates. This House has allocated huge resources to security.

Hon. Nkaiserry; the Inspector-General, Boinet and the Director-General of NIS have relatively made Kenya safer in the last eight months. Let us give it to them because they have tried. Since they took over, we have enjoyed relative calm. We want our Kenya Defence Forces to secure our borders. Members of Parliament like Hon. Mahamud and Hon. Diriye who come

from constituencies that border Somalia and Ethiopia know what the ordinary citizens go through.

Hon. Temporary Deputy Speaker, I want to thank Members for taking their time to pass Bills here. We have passed a number of Bills, Committee Reports and Sessional Papers. I want to thank the Office of the Speaker, the Deputy Speaker, the Chairpersons Panel, the Committee Chairpersons, the Vice-Chairpersons of Committees, the various committee members, the 349 Members, the staff who serve us, including those who serve us tea, the security and the Serjeant-at-Arms. Everybody has made a contribution to the success of this Session.

We want to pray for our country. We want two good weeks of engaging with our voters. I am sure that Kenyan voters will look at their leaders not because of their names and where they come from, but because of their track record in terms of development.

Thank you very much and I beg to move.

The Temporary Deputy Speaker (Hon. Mbalu): Thank you, Hon. Members. The Hon. Leader for the Majority Party knows the procedure. Hon. Kajuju, there's no seconding and proposing. Let us have Hon. Muluvi.

Hon. Muluvi: Thank you, Hon. Temporary Deputy Speaker. Mine was an intervention. I wanted to register my appreciation to the fact that Justice Philomena Mwilu has got the job.

Secondly, I wanted to challenge the Hon. Leader of the Majority Party. When we talk about two tribes, we are referring to appointments from the Executive and not from this House.

Thank you.

The Temporary Deputy Speaker (Hon. Mbalu): Hon. Muluvi, I thought it was your chance to contribute and yet you are addressing issues raised by Hon. Duale. I will take it to be a point of order. You still have a chance to contribute on the same when you will be ready. Let us have Hon. Nyikal. Hon. Kajuju you will not get time to contribute. I know you are looking for the progressive implementation of the two-third gender rule.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Motion for Adjournment. Hon. Duale has been preaching that there should be unity. He always starts by dividing the House. Whenever he makes statements, he starts by dividing the House. He raises issues that are emotional. If you really want unity in the House and in the country you do not do that. So, his statements do not befit his position.

During this short Session, the National Assembly has done great work. We have passed two reports; one appointing the Chief Justice and the other appointing the Deputy Chief Justice. I did not get the opportunity to express my support for the Deputy Chief Justice. Of all the things that she answered, what I noted was her realization of the short-comings that we have in the Sexual Offences Act, and this has to do with the sanctions and sentences given to young offenders, particularly boys.

In the Report, she recognizes that sentences are harsh on young offenders since there is no discretion in sentencing and they are not given an opportunity to reform.

It is very sad, say, for a 19-year-old boy who is just at home to get into what he thinks is marriage with, say, a 17-year-old girl. This is sometimes done with the permission and involvement of the parents. In their ignorance, they do not know that they are breaking the law. When the boy is taken to court and charged with defilement he is handed life sentence and yet all the while he believed that he had married. This is something we have to look at.

That Act is great but it is harsh on young offenders, particularly boys. Therefore, her realization that there is need to amend this Act is something I support and it needs to be acted

upon. She also realises that the Act does not portray equity between boys and girls. I noted that and I second.

We also passed the Sessional Paper on the National Child Policy and on Child Labour. Those are extremely important documents that we passed in this House.

On the one-third gender rule, I opposed that Motion. It was an error that was committed at the time we put the Constitution in place. We had intended to get a figure through an electoral process. It is impossible to predict what you will get numerically through an electoral process.

Article 177 on county government indicated that you just nominate enough women to get the one-third gender rule, but in the National Assembly we are scared of the issue of numbers. I think we will have to replace this and come up with a formula which may include amending the Constitution. That way, we will have to cite numbers so that we meet the one-third gender rule without thinking that we can get it through an electoral process. That is something we will come back to look at properly.

The committees carefully looked at The Statute Law (Miscellaneous Amendments) Bill that we have passed. They picked out the pitfalls that are there. Once again, we must look back and use the provision of miscellaneous amendments for what it is meant for, which is introducing minor amendments and not major changes to Acts of Parliament.

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

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

Finally, I acknowledge that there are some improvements in security, but what I do not understand is that every time we get into these catastrophes, you find that there was adequate information, everybody was aware of it but the catastrophe still takes place. I do not understand why that happens.

Overall, in this short Session, we passed very important reports.

With those few remarks, I beg to support the Motion for Adjournment.

Hon. Deputy Speaker: Let us have Hon. Samuel Gichigi. He is not there. Hon. Joseph M'eruaki? So, why have they put all their cards here?

Hon. Wanjiku Muhia, you have the Floor.

Hon. (Ms.) Muhia: Thank you, Hon. Deputy Speaker. I support the Motion for Adjournment and I am happy that as we go for this short recess, the House Business Committee (HBC) Members have been very considerate to mothers like us. The HBC considered that one week is too short and two weeks will be sufficient because Members need to do other businesses and even have time to relax.

I am also happy to know that we have a Chief Justice in place and he is from a Christian background. I am also happy that the Deputy Chief Justice has not attained the seat progressively; she has attained it competitively. I am happy that her competency gave her the job. This is a good message to our Members because when we speak about gender they normally think that women are just after free seats. They can now see that there are competent women in this nation. I would like to speak about the many amendments that we passed today. I urge the Members of this House that, in future, every amendment that comes from the Senate, has to be read between the lines and critiqued.

With regard to what I was moving under the NACADA Act, you will realise that the Senate was transferring powers of the Authority to the Council of Governors. These amendments are ridiculous in the sense that the Constitution has not recognized the Council of Governors as a legislative arm or an oversight one. However, the Senate moved and passed such amendments and brought them to this House expecting us to do the same.

There was also a ridiculous amendment where Senators wanted the NACADA membership to be increased from 15 members to 19 members and yet the country is already in the mood of reducing the number of board members. In fact, the Presidential Task Force talks about not exceeding nine members on every board.

Under the amendments to the Pyrethrum Act, the Senate wanted us to amend a section of an Act that does not exist. This now calls on us to criticise amendments that are brought here from the Senate. The Clerks and other parliamentary officers who work with the Senators should advise them correctly.

As I finish, I want to say that I am very happy sitting on an affirmative action seat. I am always very grateful to this House because Members gave us some funds which are enabling us to move. Today in every other county, you can hear the citizens saying they can see *mama* county. Before when we had no funds, the people felt they did not need this seat- that *punda amechoka*. However, because of the funds that this House gave to the women representatives, we are able to work and show the citizens that they can vote for us again. We can even move to other seats and come back to this House.

I would not hesitate to say that we need to pray for our country as we approach the elections which are very near. We need to continue praying for our country. As leaders, we should lead from the front by trying to bring cohesion and peace. We should also fight against irrelevant wars among ourselves as leaders seeking for votes.

With those few remarks, I beg to support.

Hon. Deputy Speaker: Yes, Hon. Shakeel Shabbir.

Hon. S. S. Ahmed: Thank you, Hon. Deputy Speaker. At the outset, I would like to support the Motion for Adjournment. When Hon. Duale, the Leader of the Majority Party spoke, his first message was to divide and deride ODM and the CORD fraternity for not being inclusive. I think that was wrong.

The general message that we want one Kenya is very appropriate. It is true we want one Kenya. I stand in front of you as one example. I am from a minority community. There are only three Asian members in my constituency of nearly 100,000 people. They still voted for me. These are the sort of things that we want in one Kenya. We want to get away from this issue of tribalism. The Wajir case was a drastic example of how people are trying to break up our unity through religion. The way they went and attacked non-Muslims in Wajir is wrong. What we need to do is make sure that terrorism is stopped.

The other major issue we have which is like terrorism is corruption. That is also terrorism that is affecting *wananchi*. I was coming down Uhuru Highway and I found many people, central Kenyans and others sick and tired of corruption.

I want to take this opportunity to talk about the issue at the Ministry of Health. I can see the former Permanent Secretary, Dr. Nyikal has gone. It has been revealed that Kshs5 billion was not accounted for and yet the Principal Secretary for Health has the audacity to come and threaten people who are questioning. He must remember that he is there to do a job. The arrogance and impunity of that person cannot be taken lying down. I hope His Excellency the

President has heard what these people are saying and he will bring the hammer down on some of them.

On affirmative action, in the 10th Parliament I was with you, Hon. Deputy Speaker. I was a member of Kenya Women Parliamentarians Association (KEWOPA) because there were only about 12 or 13 women Members in this Parliament. There was a time when the 10th Parliament, with 13 or 14 women, did more work on gender and other action - I hope Hon. Kajuju is listening - than the 90 women that we have now. We have no problem on the issue of women. We want women to be with us on their own strength.

Today, I want to honour my two colleagues because they are always there. But among the women representatives, we must admit there are hardly 10 who are making an impact.

The Leader of the Majority Party mentioned women in the Cabinet. Hon. Deputy Speaker, you are a strong woman who rose to that position not because you are a woman but because of what you stand for. There is Amina Mohamed, the Cabinet Secretary for Defence and many others. Of course, I jokingly said Waiguru. Waiguru has her strengths and weaknesses. I think we need to follow up on this.

The other thing, I was trying to renew my son's passport. I went to the Department of Immigration and I was astounded by the efficiency and the way these people work. The e-citizen platform is, of course, causing a problem, but the whole attitude at the Department of Immigration has changed. I was brilliantly happy.

Finally, I want to congratulate ODM for winning three out of four MCA seats in the by-elections. It tells you where we are going in future.

Thank you, Hon. Deputy Speaker for the time.

Hon. Deputy Speaker: Let us now have Hon. Florence Kajuju. Hold your horses, Hon. Munuve.

Hon. (Ms.) Kajuju: Thank you, Hon. Deputy Speaker. I rise to support the Motion for Adjournment. Since I came to the 11th Parliament, I could see the challenges and expectations of this country, because it is this House that is supposed to ensure that we implement the Constitution as it is. We have tried because I have seen very many Bills that have passed through this House. We have been able to agree and the President has been able to assent to them.

The only challenge I have with this House is the issue of the two-thirds gender Bill that we were supposed to have passed way back in 2015. To date, we have not been able to pass it. I am alive to the fact that there is a pending amendment to the Constitution, but that pending amendment is not what is expected of us.

I hope that as we come back on 15th November, we will ensure that this House does not become the first House that will fail the women of Kenya, and that this House will not embarrass the womenfolk. I call upon this House, even as we go on recess, to think about the two-thirds gender Bill and see how we can secure its fulfillment.

Just to correct the Leader of the Majority Party, he has said that we expect free things. I do not think there is any woman in Kenya today who expects to be given anything on a silver platter. Even the women representative's seat, we fight to become number one. I faced nine candidates and emerged the winner. It was not easy. I do not expect it to be easier any time. Either way, we fight to get what we want.

I also note that we have been able to ensure that the Supreme Court is fully constituted with a Chief Justice (CJ) we interviewed and vetted. I believe in him. I believe that the Judiciary is going to have a lot of confidence in CJ David Maraga. I also agree with the Departmental Committee on Justice and Legal Affairs where I sit that Philomena Mwilu was the right

candidate for the Deputy Chief Justice (DCJ) position. I, therefore, believe they are going to do a good job.

I also pray that Justice Lenaola is approved by the President of the Republic of Kenya to become a judge of the Supreme Court. I have worked in his court as an advocate and I dare say that he always does a good job. He is a good judge. I know he will do a good job in the Supreme Court.

The two-week recess comes when schools are closing from tomorrow. I know that most of us are fathers and mothers. Others have very young children. It is a good opportunity for you to have family time, especially now that our children will be away from school for two months.

I also note that the Jubilee Government has done a good job in the appointment of Michael Joseph as the Chairman of the Kenya Airways (KQ) Board. The KQ is part of Kenyans. I want to pray and believe that with what Michael Joseph did in Safaricom, he will ensure that KQ does not “die”. The “death” of KQ would mean the death of very many persons and spirits that believe that the economy of Kenya must be kept at a good position.

Last week, I witnessed the distribution of tablets in the digital literacy programme in our schools. The other week we were with PS Kiptoo in Meru, and the other week we were with PS Torome. They came to give tablets to Class One pupils. It was a good thing. It brought an electrifying effect on the pupils who received the tablets. I only pray that our Government will move quickly to ensure that these tablets are distributed to other schools so that our children can get what they deserve.

I, therefore, support this Motion for Adjournment. I agree that we need that break.

Hon. Deputy Speaker: Hon. Ferdinand Wanyonyi, you have the Floor.

Hon. F.K. Wanyonyi: Hon. Deputy Speaker, I also want to support this Motion for Adjournment. I wish you were here when the Leader of the Majority Party was moving the Motion for Adjournment. I was not happy with the way he made his remarks.

This is a House that is supposed to represent all Kenyans in this country. For the Leader of the Majority Party, and I wish he was here as I speak, to belittle the position of the Opposition in this country is very bad. Wherever he is, he should listen. We are sometimes carried away with power. For him to say that the Leader of the Minority Party in this House was appointed because he is a Kamba and because of being a member of Wiper Democratic Movement is wrong.

Secondly, for him to have said that *Mheshimiwa* Chris Wamalwa is a cousin to the Leader of the Minority Party in the Senate is totally wrong. He needs to apologise to this nation. I come from Trans Nzoia and Hon. Chris Wamalwa has no relationship with the Leader of the Minority Party in the Senate.

Let us preach unity among Kenyans. Just because you think you are number three, and he claims to be number three in this country--- I think it is wrong. I sat here. I am over 58 years old and I do not want to see this country get into the problems we had in the last general elections.

I have witnessed cases where the other side has used taxpayers’ money to woo voters. We should have policies and agenda to sell to those who can vote for us and not use money. I am saying this because I have witnessed a case where we are going to buy voters to be able to win the next elections.

Hon. (Ms.) Kajuju: On a point of order, Hon. Deputy Speaker.

Hon. F. K. Wanyonyi: You do not know what I am talking about. So, you better shut up!

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Wanyonyi! You cannot tell another Member the words that you have uttered. Kindly, withdraw and apologise.

Hon. F. K. Wanyonyi: I withdraw the remarks because I have offended my fellow citizen.

Hon. Deputy Speaker: Apologise, Hon. Wanyonyi.

Hon. F.K. Wanyonyi: I apologise to my sister Hon. Kajuju if she got hurt by the statement.

Hon. Deputy Speaker, it is not fair. We do not want violence. We want to have very peaceful elections. The two weeks we are going to be out there, I do not want to hear that some people have been stoned or something else. I come from an area where we have all the tribes of this country and we live in harmony. All I want to do is to talk to them so that those who want to stand can do so and sell their manifesto and be voted in. However, I am also not happy with cases where people are moving around with a lot of money to buy democracy in this country.

Hon. Deputy Speaker, as I finish, I wish we would go on recess with the Kshs34 million that is supposed to be given to the constituencies so that we can do some work that we were supposed to. It has taken a bit of time, but I hope that in the next two to three days, we will have this money released to Members of Parliament so that we can develop our respective areas.

Lastly, I take this opportunity to congratulate the DCJ who is a lady for having taken her position in this country. I know her because I went to school with her. She is a very efficient lady and I hope she takes this country to the next stage.

Hon. Deputy Speaker, those are my few remarks.

Hon. Deputy Speaker: Hon. Munuve, you have the Floor.

Hon. Mati: Hon. Speaker, this is interesting because if Hon. Wanyonyi went to school with the DCJ, that means I also went to school with him although I never saw him.

Today is a great day. This House has approved the candidature of Hon. Justice Philomena Mbete Mwilu, a lady of impeccable character, a reformist and a person with a lot of managerial skills. I have known Philomena since we were at the University of Nairobi and I worked closely with her when she was a board member of Nairobi Water Company while I was the Chairman of the Water Services Trust Fund. It pained me at some point when one or two Members tried to cast aspersions on the integrity and person of Justice Mwilu. Now, that is water under the bridge. Let us wait and see her perform which I am sure she will.

I was very impressed when she said that on reaching the age of 70 years, she will not go to court but will go home. This is something we had to deal with at some point in this House.

I would also like to take this opportunity to thank Hon. Nyenze, the Leader of the Minority Party. Rarely, have I been on the same side with him but today, on the issue of Justice Philomena Mwilu, we found ourselves on the same side. I just hope and pray that there will be more times that our ideals and objectives will converge. It will be difficult though because we have gone through a lot as a country. I support the Motion for Adjournment because it gives people time to think over things.

This House is slowly being incapacitated by, what I would call for lack of a better word, Personal Political Parties (PPPS) and Family Political Parties (FPPS). We do not finish a week before people are de-whipped. Very soon, Hon. Deputy Speaker, you might find the House unable to transact business because it does its work through committees. Since the House works through committees, as long as you continue removing Committee Members, one of the problems that might emerge is that you might not get quorum because people have been

incapacitated. That is why I very much support Hon. Duale's idea of relooking at this matter afresh.

You cannot have people that aspire only to one thing; political sycophancy and when they do not see it in people, they decide to cut their feet. I say this with a heavy heart because I have been out of committees for eight months and this week I saw more brothers and sisters being de-whipped. We do not know who else is going to be de-whipped. Those acts prove to Kenyans what some of those people would do if they ascended to power. It shows that those people would decide to incapacitate and abuse Members of Parliament because MPs do not represent themselves. Most MPs are elected by 20,000 or 30,000 people. For one person to decide, on their own, that they will curtail the participation of this person who represents 20,000 people is regrettable.

Going back to the issue of the DCJ, I also take this opportunity to thank the Judicial Service Commission (JSC), His Excellency the President and his Government for having seen it fit to forward Lady Justice Mbete Mwilu's name to the House as a fitting tribute to her exemplary career.

I wish everybody a good two weeks. I also wish that all those who have been de-whipping people will get converted on the way to the next elections.

With those few remarks, I wish you a very good recess as well.

Hon. Deputy Speaker: The Leader of the Minority Party, can you let Hon. Duale speak before you conclude the session?

Hon. M.D. Duale: Thank you, Hon. Deputy Speaker. I want to take this opportunity to thank you for giving me an opportunity to contribute to the Motion for Adjournment.

Hon. Members: Which Duale?

Hon. Deputy Speaker: Hon. Duale, you need to speak more often because some Members do not know that there is another Duale in the House.

Hon. M.D. Duale: Thank you very much, Hon. Deputy Speaker. I will take note of that and I will do what I can to speak more often.

As we go for this short recess, it is very welcome because currently, the exams for Standard Eight students in primary school will start next week. Some of us are parents who have children doing the exams. Some of us also have candidates in Form Four. Although it is said that we will not be able to access them during this term for those who are in boarding schools, it will be an opportunity to join those of us who have children who will sit for these exams.

I want to speak on the issue of security, particularly terrorism. I come from Garissa County and I represent Dadaab Constituency. This Constituency has had several terror attacks in some villages. Although Hon. A.B. Duale noted that there has been some improvement, much more could be done in terms of preventing terror attacks.

In the last three months, a station in my constituency was attacked and prior to that another one was attacked. In both cases, the terrorists managed to overrun the facility and take away vehicles belonging to the security personnel. They also looted ammunition.

They took away two men from my constituency which they attacked. Those men are to date missing. We do not know their status but they have not been found. They had all the freedom to take away ammunition, machine guns, guns and very many other things.

My concern is that terrorist attacks are almost predictable. What has really shocked me is that the terrorists have taken away motor vehicles belonging to our security personnel and those vehicles were not fitted with tracking devices to know where they are or to even destroy them if

they have managed to take them away from us. The terrorists are celebrating that they have them somewhere near Kismayu.

They have also taken away a lot of ammunition which they intend to use when they come back. We want to know from the concerned Ministry what it costs to have a tracking device installed on security vehicles operating along border areas. What does it cost to have an armoury built for security officers so that arms do not end up in the hands of terrorists? What does it cost to have networks available so that in some places, we can get information from the communities? I have visited some facilities which host our security officers and they are in a very deplorable state. They spend a lot of time looking for water instead of doing their core business of securing us. I am concerned about this issue. Even as we go on recess, this message should go to the relevant people like the CS, Ministry of Interior and Co-ordination of National Government and the Inspector-General of Police so that we do not continue losing our men, ammunition and vehicles to *Al Shabaab*.

With those few remarks, I support the Adjournment Motion. Thank you, very much.

Hon. Deputy Speaker: The Leader of the Minority Party, you can conclude for us unless another Member walks in.

Hon. Nyenze: Thank you, Hon. Deputy Speaker for giving me this chance to contribute to the Motion for Adjournment. It is good time to go and interact with our constituents. As an Hon. Member said earlier on, we need the money that was allocated to constituencies so that as we go, we allocate it to schools, police lines and others areas.

In this country, we have talked about corruption for a long time and the fight against it has to be won, if this country has to develop. As the National Assembly, we have a very big part to play and the ball rests in our court. We should ask ourselves, are we, as Members of the National Assembly, above board? Do we own companies which do business and get contracts? Do we influence how those contracts are awarded? Do we protect some people? Do we receive favours so that we do not do certain things? Once we examine ourselves and the war on corruption starts in this House, we will win it.

Blaming the Judiciary, the Executive and county governments may not yield much. Let us start by examining ourselves and start the war on corruption from this House. The issue of tribalism and negative ethnicity is promoted by political statements from politicians who are in this House. Let us be the mirror and the example which can be followed by Kenyans because everything starts in this House and ends here. We should give a good example because we are called Hon. Members. The statement made by the Leader of the Majority Party that we were appointed in the opposition because of relations is very unfortunate. We want a peaceful country and each leader has to choose the words they speak.

On terrorism, Kenya should consider pulling out of Somalia the way Ethiopia has done. In fact, the Ethiopians said there is no international support or participation and that is why they were pulling out of Somalia. Can Kenya follow suit because we are losing money, our men and there is no gainful thing? The Somalia Government has become stable now and it can fight *Al Shabaab* and other threats. Can the Kenya soldiers be brought back home so that we can cut on costs and save the lives of those young Kenyans?

Standard Eight and Form Four examinations are about to start and I wish every student in this Republic success. May they do well, and may there be no cheating so that they succeed.

Lastly, there is famine ravaging Ukambani because of failed rains. Cows and people are dying and we have not seen enough mitigating factors and plans being made to give these people relief food or addressing the long-term problem of water provision for irrigation farming. We

have Athi and Tana Rivers which pass through Ukambani. The Government should provide money to build service dams and more boreholes in Ukambani so as to stop the cycle of poverty.

The Kamba are hardworking people, very well educated, very smart but suffer drought now and then. It is time the Jubilee Government took time and made it a priority to provide water in Ukambani for farming, livestock and domestic use. We better stop everything else so that both the national Government and county governments make it a priority to supply water to homesteads.

With those few remarks, I support the Motion for Adjournment. It is time to go, be with our constituents and serve them. Let people not stay in Nairobi and expect to be elected.

I support.

Thank you, Hon. Deputy Speaker.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, seeing no further interest in the debate, and the time being 6.30 p.m., this House stands adjourned until Tuesday, 15th November, 2016, at 2.30 p.m.

The House rose at 6.30 p.m.